

# Submission of Federal Rules Under the Congressional Review Act

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 GAO

President of the Senate

Speaker of the House of Representatives

Please fill the circles electronically or with black pen or #2 pencil.

1. Name of Department or Agency Department of Defense	2. Subdivision or Office OUSD(AT&L)DPAP(DAR)
3. Rule Title Personal Services Contracts	
4. Rule Identification Number (RIN) or Other Unique Identifier (if applicable) DFARS Case 2003-D103	
5. Major Rule <input type="radio"/> Non-major Rule <input checked="" type="radio"/>	
6. Final Rule <input type="radio"/> Other <input checked="" type="radio"/> Interim Rule	
7. With respect to this rule, did your agency solicit public comments? Yes <input type="radio"/> No <input checked="" type="radio"/> N/A <input type="radio"/>	
8. Priority of Regulation (fill in one) <input checked="" type="radio"/> Economically Significant; or Significant; or Substantive, Nonsignificant <input type="radio"/> Routine and Frequent or Informational/Administrative/Other (Do not complete the other side of this form if filled in above.)	
9. Effective Date (if applicable) September 16, 2004 (estimated)	
10. Concise Summary of Rule (fill in one or both) attached <input checked="" type="radio"/> stated in rule <input type="radio"/>	

Submitted by: Deidre A. Lee (signature) SEP 13 2004  
Name: Deidre A. Lee  
Title: Director, Defense Procurement and Acquisition Policy

For Congressional Use Only:  
Date Received: \_\_\_\_\_  
Committee of Jurisdiction: \_\_\_\_\_

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	Yes	No	N/A
A. With respect to this rule, did your agency prepare an analysis of costs and benefits?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
B. With respect to this rule, at the final rulemaking stage, did your agency			
1. certify that the rule would not have a significant impact on a substantial number of small entities under 5 U.S.C. § 605(b)?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
2. prepare a final Regulatory Flexibility Analysis under 5 U.S.C. § 604(a)?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
C. With respect to this rule, did your agency prepare a written statement under § 202 of the Unfunded Mandates Reform Act of 1995?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
D. With respect to this rule, did your agency prepare an Environmental Assessment or an Environmental Impact Statement under the National Environmental Policy Act (NEPA)?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
E. Does this rule contain a collection of information requiring OMB approval under the Paperwork Reduction Act of 1995?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
F. Did you discuss any of the following in the preamble to this rule?	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
● E.O. 12612, Federalism	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
● E.O. 12630, Government Actions and Interference with Constitutionally Protected Property Rights	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
● E.O. 12866, Regulatory Planning and Review	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
● E.O. 12875, Enhancing the Intergovernmental Partnership	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
● E.O. 12988, Civil Justice Reform	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
● E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
● Other statutes or executive orders discussed in the preamble concerning the rulemaking process (please specify)			
_____			
_____			
_____			

(Billing Code 5001-08-P)

DEPARTMENT OF DEFENSE

48 CFR Part 237

[DFARS Case 2003-D103]

Defense Federal Acquisition Regulation Supplement;

Personal Services Contracts

**AGENCY:** Department of Defense (DoD).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Sections 721 and 841 of the National Defense Authorization Act for Fiscal Year 2004. Section 721 provides permanent authority for DoD to enter into personal services contracts for health care at locations outside of DoD medical treatment facilities. Section 841 adds authority for DoD to enter into contracts for personal services that are to be performed outside the United States or that directly support the mission of a DoD intelligence or counter-intelligence organization or the special operations command.

**DATES:** Effective date: [Date of publication in Federal Register].

Comment date: Comments on the interim rule should be submitted to the address shown below on or before [60 days after date of publication], to be considered in the formation of the

final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2003-D103, using any of the following methods:

- o Federal eRulemaking Portal: <http://www.regulations.gov>.

Follow the instructions for submitting comments.

- o Defense Acquisition Regulations Web Site:

<http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. Follow the instructions for submitting comments.

- o E-mail: [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2003-D103 in the subject line of the message.

- o Fax: Primary: (703) 602-7887; Alternate: (703) 602-0350.

- o Mail: Defense Acquisition Regulations Council, Attn: Ms. Teresa Brooks, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062.

- o Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202-3402.

All comments received will be posted to

<http://emissary.acq.osd.mil/dar/dfars.nsf>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Teresa Brooks, (703) 602-0326.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This interim rule amends DFARS Subpart 237.1 to implement Sections 721 and 841 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136).

Section 721 amends 10 U.S.C. 1091(a)(2) to provide permanent authority for DoD to enter into personal services contracts for health care at locations outside of DoD medical treatment facilities (such as military entrance processing stations). The law previously provided for this authority to expire on December 31, 2003.

Section 841 amends 10 U.S.C. 129b to add authority for DoD to enter into contracts for personal services that (1) are to be provided by individuals outside the United States to support DoD activities and programs outside the United States; (2) directly support the mission of a DoD intelligence or counter-intelligence organization; or (3) directly support the mission of the DoD special operations command. This authority applies if the services to be procured are urgent or unique and would not be practical to obtain by other means.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

#### **B. Regulatory Flexibility Act**

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because application of the rule is limited to personal services contracts for (1) health care at locations outside of DoD medical treatment facilities, or (2) urgent or unique services that are to be performed outside the United States, or are in direct

support of intelligence missions, when it would not be practical for DoD to obtain these services by other means. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003-D103.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**D. Determination to Issue an Interim Rule**

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Sections 721 and 841 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136). Section 721 provides permanent authority for DoD to enter into personal services contracts for health care at locations outside of DoD medical treatment facilities. Section 841 adds authority for DoD to enter into contracts for urgent or unique personal services that (1) are to be provided by individuals outside the United States to support

DoD activities and programs outside the United States; (2) directly support the mission of a DoD intelligence or counter-intelligence organization; or (3) directly support the mission of the DoD special operations command. Sections 721 and 841 became effective upon enactment on November 24, 2003. Comments received in response to this interim rule will be considered in the formation of the final rule.

**List of Subjects in 48 CFR Part 237**

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Part 237 is amended as follows:

1. The authority citation for 48 CFR Part 237 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

**PART 237—SERVICE CONTRACTING**

2. Section 237.104 is amended as follows:

a. In paragraph (b)(i) introductory text, in the first sentence, by removing "Public Law 101-165, section 9002" and adding in its place "10 U.S.C. 129b";

b. By redesignating paragraph (b)(ii)(A) (2) as paragraph (b)(ii)(A) (3);

c. By adding a new paragraph (b)(ii)(A) (2);

d. By revising paragraph (b)(ii)(C); and

e. By adding paragraphs (b)(iii) and (b)(iv) to read as follows:

**237.104 Personal services contracts.**

(b) \* \* \*

(ii) \* \* \*

(A) \* \* \*

(2) Health care services at locations outside of medical treatment facilities (such as the provision of medical screening examinations at military entrance processing stations); and

\* \* \* \* \*

(C) Approval requirements for-

(1) Direct health care personal services contracts (see paragraphs (b)(ii)(A)(1) and (2) of this section) and a pay cap are in DoDI 6025.5, Personal Services Contracts for Health Care Providers.

(i) A request to enter into a personal services contract for direct health care services must be approved by the commander of the medical/dental treatment facility where the services will be performed.

(ii) A request to enter into a personal services contract for a location outside of a medical treatment facility must be approved by the chief of the medical facility who is responsible for the area in which the services will be performed.

(2) Services of clinical counselors, family advocacy

program staff, and victim's services representatives (see paragraph (b) (ii) (A) (3) of this section), shall be in accordance with agency procedures.

\* \* \* \* \*

(iii) (A) In accordance with 10 U.S.C. 129b(d), an agency may enter into a personal services contract if-

(1) The personal services-

(i) Are to be provided by individuals outside the United States, regardless of their nationality;

(ii) Directly support the mission of a defense intelligence component or counter-intelligence organization of DoD;

or

(iii) Directly support the mission of the special operations command of DoD; and

(2) The head of the contracting activity provides written approval for the proposed contract. The approval shall include a determination that addresses the following:

(i) The services to be procured are urgent or unique;

(ii) It would not be practical to obtain such services by other means; and

(iii) For acquisition of services in accordance with paragraph (b) (iii) (A) (1) (i) of this section, the services to be acquired are necessary and appropriate for supporting DoD activities and programs outside the United States.

(B) The contracting officer shall ensure that the applicable requirements of paragraph (b) (iii) (A) (2) of this section have been satisfied and shall include the approval documentation in the contract file.

(iv) The requirements of 5 U.S.C. 3109, Employment of Experts and Consultants; Temporary or Intermittent, do not apply to contracts entered into in accordance with paragraph (b) (iii) of this section.

\* \* \* \* \*