

Subtitle F—Contracts in Iraq and Afghanistan

SEC. 861. MEMORANDUM OF UNDERSTANDING ON MATTERS RELATING TO CONTRACTING.

Deadlines.
10 USC 2302
note.

(a) MEMORANDUM OF UNDERSTANDING REQUIRED.—The Secretary of Defense, the Secretary of State, and the Administrator of the United States Agency for International Development shall, not later than July 1, 2008, enter into a memorandum of understanding regarding matters relating to contracting for contracts in Iraq or Afghanistan.

(b) MATTERS COVERED.—The memorandum of understanding required by subsection (a) shall address, at a minimum, the following:

(1) Identification of the major categories of contracts in Iraq or Afghanistan being awarded by the Department of Defense, the Department of State, or the United States Agency for International Development.

(2) Identification of the roles and responsibilities of each department or agency for matters relating to contracting for contracts in Iraq or Afghanistan.

(3) Responsibility for establishing procedures for, and the coordination of, movement of contractor personnel in Iraq or Afghanistan.

(4) Identification of common databases that will serve as repositories of information on contracts in Iraq or Afghanistan and contractor personnel in Iraq or Afghanistan, including agreement on the elements to be included in the databases, including, at a minimum—

(A) with respect to each contract—

(i) a brief description of the contract (to the extent consistent with security considerations);

(ii) the total value of the contract; and

(iii) whether the contract was awarded competitively; and

(B) with respect to contractor personnel—

(i) the total number of personnel employed on contracts in Iraq or Afghanistan;

(ii) the total number of personnel performing security functions under contracts in Iraq or Afghanistan; and

(iii) the total number of personnel working under contracts in Iraq or Afghanistan who have been killed or wounded.

(5) Responsibility for maintaining and updating information in the common databases identified under paragraph (4).

(6) Responsibility for the collection and referral to the appropriate Government agency of any information relating to offenses under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice) or chapter 212 of title 18, United States Code (commonly referred to as the Military Extraterritorial Jurisdiction Act), including a clarification of responsibilities under section 802(a)(10) of title 10, United States Code (article 2(a) of the Uniform Code of Military Justice), as amended by section 552 of the John Warner National

Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364).

Regulations.

(c) IMPLEMENTATION OF MEMORANDUM OF UNDERSTANDING.—Not later than 120 days after the memorandum of understanding required by subsection (a) is signed, the Secretary of Defense, the Secretary of State, and the Administrator of the United States Agency for International Development shall issue such policies or guidance and prescribe such regulations as are necessary to implement the memorandum of understanding for the relevant matters pertaining to their respective agencies.

(d) COPIES PROVIDED TO CONGRESS.—

(1) MEMORANDUM OF UNDERSTANDING.—Copies of the memorandum of understanding required by subsection (a) shall be provided to the relevant committees of Congress within 30 days after the memorandum is signed.

(2) REPORT ON IMPLEMENTATION.—Not later than 180 days after the memorandum of understanding required by subsection (a) is signed, the Secretary of Defense, the Secretary of State, and the Administrator of the United States Agency for International Development shall each provide a report to the relevant committees of Congress on the implementation of the memorandum of understanding.

(3) DATABASES.—The Secretary of Defense, the Secretary of State, or the Administrator of the United States Agency for International Development shall provide access to the common databases identified under subsection (b)(4) to the relevant committees of Congress.

Effective date.

(4) CONTRACTS.—Effective on the date of the enactment of this Act, copies of any contracts in Iraq or Afghanistan awarded after December 1, 2007, shall be provided to any of the relevant committees of Congress within 15 days after the submission of a request for such contract or contracts from such committee to the department or agency managing the contract.

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SEC. 862. CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS IN AREAS OF COMBAT OPERATIONS.

(a) REGULATIONS ON CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS.—

Deadline.

(1) IN GENERAL.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense, in coordination with the Secretary of State, shall prescribe regulations on the selection, training, equipping, and conduct of personnel performing private security functions under a covered contract in an area of combat operations.

(2) ELEMENTS.—The regulations prescribed under subsection (a) shall, at a minimum, establish—

(A) a process for registering, processing, accounting for, and keeping appropriate records of personnel performing private security functions in an area of combat operations;

(B) a process for authorizing and accounting for weapons to be carried by, or available to be used by, personnel performing private security functions in an area of combat operations;

(C) a process for the registration and identification of armored vehicles, helicopters, and other military vehicles

operated by contractors performing private security functions in an area of combat operations;

(D) a process under which contractors are required to report all incidents, and persons other than contractors are permitted to report incidents, in which—

(i) a weapon is discharged by personnel performing private security functions in an area of combat operations;

(ii) personnel performing private security functions in an area of combat operations are killed or injured; or

(iii) persons are killed or injured, or property is destroyed, as a result of conduct by contractor personnel;

(E) a process for the independent review and, if practicable, investigation of—

(i) incidents reported pursuant to subparagraph (D); and

(ii) incidents of alleged misconduct by personnel performing private security functions in an area of combat operations;

(F) requirements for qualification, training, screening (including, if practicable, through background checks), and security for personnel performing private security functions in an area of combat operations;

(G) guidance to the commanders of the combatant commands on the issuance of—

(i) orders, directives, and instructions to contractors performing private security functions relating to equipment, force protection, security, health, safety, or relations and interaction with locals;

(ii) predeployment training requirements for personnel performing private security functions in an area of combat operations, addressing the requirements of this section, resources and assistance available to contractor personnel, country information and cultural training, and guidance on working with host country nationals and military; and

(iii) rules on the use of force for personnel performing private security functions in an area of combat operations;

(H) a process by which a commander of a combatant command may request an action described in subsection (b)(3); and

(I) a process by which the training requirements referred to in subparagraph (G)(ii) shall be implemented.

(3) AVAILABILITY OF ORDERS, DIRECTIVES, AND INSTRUCTIONS.—The regulations prescribed under subsection (a) shall include mechanisms to ensure the provision and availability of the orders, directives, and instructions referred to in paragraph (2)(G)(i) to contractors referred to in that paragraph, including through the maintenance of a single location (including an Internet website, to the extent consistent with security considerations) at or through which such contractors may access such orders, directives, and instructions.

(b) CONTRACT CLAUSE ON CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS.—

Website.

Deadline.

(1) REQUIREMENT UNDER FAR.—Not later than 180 days after the date of the enactment of this Act, the Federal Acquisition Regulation issued in accordance with section 25 of the Office of Federal Procurement Policy Act (41 U.S.C. 421) shall be revised to require the insertion into each covered contract (or, in the case of a task order, the contract under which the task order is issued) of a contract clause addressing the selection, training, equipping, and conduct of personnel performing private security functions under such contract.

(2) CLAUSE REQUIREMENT.—The contract clause required by paragraph (1) shall require, at a minimum, that the contractor concerned shall—

(A) comply with regulations prescribed under subsection (a), including any revisions or updates to such regulations, and follow the procedures established in such regulations for—

(i) registering, processing, accounting for, and keeping appropriate records of personnel performing private security functions in an area of combat operations;

(ii) authorizing and accounting of weapons to be carried by, or available to be used by, personnel performing private security functions in an area of combat operations;

(iii) registration and identification of armored vehicles, helicopters, and other military vehicles operated by contractors and subcontractors performing private security functions in an area of combat operations; and

(iv) the reporting of incidents in which—

(I) a weapon is discharged by personnel performing private security functions in an area of combat operations;

(II) personnel performing private security functions in an area of combat operations are killed or injured; or

(III) persons are killed or injured, or property is destroyed, as a result of conduct by contractor personnel;

(B) ensure that all personnel performing private security functions under such contract are briefed on and understand their obligation to comply with—

(i) qualification, training, screening (including, if practicable, through background checks), and security requirements established by the Secretary of Defense for personnel performing private security functions in an area of combat operations;

(ii) applicable laws and regulations of the United States and the host country, and applicable treaties and international agreements, regarding the performance of the functions of the contractor;

(iii) orders, directives, and instructions issued by the applicable commander of a combatant command relating to equipment, force protection, security, health, safety, or relations and interaction with locals; and

(iv) rules on the use of force issued by the applicable commander of a combatant command for personnel performing private security functions in an area of combat operations; and

(C) cooperate with any investigation conducted by the Department of Defense pursuant to subsection (a)(2)(E) by providing access to employees of the contractor and relevant information in the possession of the contractor regarding the incident concerned.

(3) **NONCOMPLIANCE OF PERSONNEL WITH CLAUSE.**—The contracting officer for a covered contract may direct the contractor, at its own expense, to remove or replace any personnel performing private security functions in an area of combat operations who violate or fail to comply with applicable requirements of the clause required by this subsection. If the violation or failure to comply is a gross violation or failure or is repeated, the contract may be terminated for default.

(4) **APPLICABILITY.**—The contract clause required by this subsection shall be included in all covered contracts awarded on or after the date that is 180 days after the date of the enactment of this Act. Federal agencies shall make best efforts to provide for the inclusion of the contract clause required by this subsection in covered contracts awarded before such date.

(5) **INSPECTOR GENERAL REPORT ON PILOT PROGRAM ON IMPOSITION OF FINES FOR NONCOMPLIANCE OF PERSONNEL WITH CLAUSE.**—Not later than March 30, 2008, the Inspector General of the Department of Defense shall submit to Congress a report assessing the feasibility and advisability of carrying out a pilot program for the imposition of fines on contractors for personnel who violate or fail to comply with applicable requirements of the clause required by this section as a mechanism for enhancing the compliance of such personnel with the clause. The report shall include—

(A) an assessment of the feasibility and advisability of carrying out the pilot program; and

(B) if the Inspector General determines that carrying out the pilot program is feasible and advisable—

(i) recommendations on the range of contracts and subcontracts to which the pilot program should apply; and

(ii) a schedule of fines to be imposed under the pilot program for various types of personnel actions or failures.

(c) **AREAS OF COMBAT OPERATIONS.**—

(1) **DESIGNATION.**—The Secretary of Defense shall designate the areas constituting an area of combat operations for purposes of this section by not later than 120 days after the date of the enactment of this Act.

Deadline.

(2) **PARTICULAR AREAS.**—Iraq and Afghanistan shall be included in the areas designated as an area of combat operations under paragraph (1).

(3) **ADDITIONAL AREAS.**—The Secretary may designate any additional area as an area constituting an area of combat operations for purposes of this section if the Secretary determines that the presence or potential of combat operations in

such area warrants designation of such area as an area of combat operations for purposes of this section.

(4) **MODIFICATION OR ELIMINATION OF DESIGNATION.**—The Secretary may modify or cease the designation of an area under this subsection as an area of combat operations if the Secretary determines that combat operations are no longer ongoing in such area.

(d) **EXCEPTION.**—The requirements of this section shall not apply to contracts entered into by elements of the intelligence community in support of intelligence activities.

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SEC. 863. COMPTROLLER GENERAL REVIEWS AND REPORTS ON CONTRACTING IN IRAQ AND AFGHANISTAN.

(a) **REVIEWS AND REPORTS REQUIRED.**—

(1) **IN GENERAL.**—Every 12 months, the Comptroller General shall review contracts in Iraq or Afghanistan and submit to the relevant committees of Congress a report on such review.

(2) **MATTERS COVERED.**—A report under this subsection shall cover the following with respect to the contracts in Iraq or Afghanistan reviewed for the report:

(A) Total number of contracts and task orders awarded during the period covered by the report.

(B) Total number of active contracts and task orders.

(C) Total value of all contracts and task orders awarded during the reporting period.

(D) Total value of active contracts and task orders.

(E) The extent to which such contracts have used competitive procedures.

(F) Total number of contractor personnel working on contracts during the reporting period.

(G) Total number of contractor personnel, on average, who are performing security functions during the reporting period.

(H) The number of contractor personnel killed or wounded during the reporting period.

(I) Information on any specific contract or class of contracts that the Comptroller General determines raises issues of significant concern.

(3) **SUBMISSION OF REPORTS.**—The Comptroller General shall submit an initial report under this subsection not later than October 1, 2008, and shall submit an updated report every year thereafter until October 1, 2010.

(b) **ACCESS TO DATABASES ON CONTRACTS.**—The Secretary of Defense and the Secretary of State shall provide full access to the databases described in section 861(b)(4) to the Comptroller General for purposes of the reviews carried out under this section.

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SEC. 864. DEFINITIONS AND OTHER GENERAL PROVISIONS.

(a) **DEFINITIONS.**—In this subtitle:

(1) **MATTERS RELATING TO CONTRACTING.**—The term “matters relating to contracting”, with respect to contracts in Iraq and Afghanistan, means all matters relating to awarding, funding, managing, tracking, monitoring, and providing oversight to contracts and contractor personnel.

(2) **CONTRACT IN IRAQ OR AFGHANISTAN.**—The term “contract in Iraq or Afghanistan” means a contract with the Department of Defense, the Department of State, or the United States Agency for International Development, a subcontract at any

tier issued under such a contract, or a task order or delivery order at any tier issued under such a contract (including a contract, subcontract, or task order or delivery order issued by another Government agency for the Department of Defense, the Department of State, or the United States Agency for International Development), if the contract, subcontract, or task order or delivery order involves work performed in Iraq or Afghanistan for a period longer than 14 days.

(3) COVERED CONTRACT.—The term “covered contract” means—

(A) a contract of a Federal agency for the performance of services in an area of combat operations, as designated by the Secretary of Defense under subsection (c) of section 862;

(B) a subcontract at any tier under such a contract;

or

(C) a task order or delivery order issued under such a contract or subcontract.

(4) CONTRACTOR.—The term “contractor”, with respect to a covered contract, means the contractor or subcontractor carrying out the covered contract.

(5) PRIVATE SECURITY FUNCTIONS.—The term “private security functions” means activities engaged in by a contractor under a covered contract as follows:

(A) Guarding of personnel, facilities, or property of a Federal agency, the contractor or subcontractor, or a third party.

(B) Any other activity for which personnel are required to carry weapons in the performance of their duties.

(6) RELEVANT COMMITTEES OF CONGRESS.—The term “relevant committees of Congress” means each of the following committees:

(A) The Committees on Armed Services of the Senate and the House of Representatives.

(B) The Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives.

(C) The Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives.

(D) For purposes of contracts relating to the National Foreign Intelligence Program, the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

(b) CLASSIFIED INFORMATION.—Nothing in this subtitle shall be interpreted to require the handling of classified information or information relating to intelligence sources and methods in a manner inconsistent with any law, regulation, executive order, or rule of the House of Representatives or of the Senate relating to the handling or protection of such information.