

Department of State

628.305

surety shall be referred to the Assistant Inspector General for Investigations.

[59 FR 66763, Dec. 28, 1994, as amended at 69 FR 19336, Apr. 13, 2004]

628.203-7 Exclusion of individual sureties.

The Procurement Executive is the agency head's designee for the purposes of FAR 28.203-7.

[59 FR 66763, Dec. 28, 1994]

Subpart 628.3—Insurance

SOURCE: 71 FR 34840, June 16, 2006, unless otherwise noted.

628.305 Overseas workers' compensation and war-hazard insurance.

(b)(1) Acquisitions for services, including construction but excluding personal services contracts, requiring contractor personnel to perform work outside of the United States, shall include the contractual obligation for coverage under the Defense Base Act (42 U.S.C. Sections 1651-1654, as amended), for covered contractor employees. For the purposes of this section, "covered contractor employees" includes the following individuals:

(i) United States citizens or residents;

(ii) Individuals hired in the United States or its possessions, regardless of citizenship; and,

(iii) Local nationals and third country nationals where contract performance takes place in a country where there are no local workers' compensation laws.

(2) Individuals who are self-employed (*i.e.*, they have not incorporated) do not meet the definition of an employee. No Defense Base Act insurance is required when contracting with these individuals.

(3) Exceptions are discussed in paragraphs (e)(1) and (f) of this section.

(c) The Department of State has entered into a contract with an insurance broker and carrier to provide Defense Base Act insurance (at a fixed rate for services and construction) to cover DOS contracts that require performance overseas by covered contractor employees. Upon award of a contract

that requires Defense Base Act insurance, the contracting officer shall provide the contractor with the name of the insurance broker from which the contractor must acquire the Defense Base Act insurance.

(d) The authority to recommend a waiver from the Defense Base Act, as set forth in FAR 28.305(d), is reserved to the Secretary of State.

(e)(1) The Secretary of Labor has waived the applicability of the Defense Base Act to all DOS service contracts, including construction, for contractor employees who are local nationals or third country nationals. This waiver is conditioned on the requirement for the contractor to provide workers' compensation benefits against the risk of work injury or death and assume liability toward the employees and their beneficiaries for war-hazard injury, death, capture, or detention as prescribed by the local workers' compensation laws.

(2) In cases where a contract is performed in a country where there are no local workers' compensation laws, local and third country national contractor employees are considered to be "covered contractor employees", and the contractor shall acquire Defense Base Act insurance for those employees pursuant to the contract between the Department of State and the Defense Base Act insurance broker.

(f)(1) Section 16 of the State Department Basic Authorities Act (22 U.S.C. 2680a), as amended, provides that the Defense Base Act shall not apply with respect to such contracts as the Secretary of State determines are contracts with persons employed to perform work for the Department of State on an intermittent basis for not more than 90 days in a calendar year. The Department of State has established that "persons" includes employees hired by companies under contract with the Department. The Procurement Executive has the authority to issue the waivers for employees who work on an intermittent or short-term basis. Waivers may be issued only for employees who are U.S. citizens and residents, and only where the contractor provides evidence of alternative workers' compensation coverage for those employees. Waivers may not