

Federal Acquisition Regulation

23.504

(d) Contracts by law enforcement agencies, if the head of the law enforcement agency or designee involved determines that application of this subpart would be inappropriate in connection with the law enforcement agency's undercover operations; or

(e) Where application would be inconsistent with the international obligations of the United States or with the laws and regulations of a foreign country.

[54 FR 4968, Jan. 31, 1989, as amended at 55 FR 21707, May 25, 1990; 60 FR 34758, July 3, 1995; 60 FR 48248, Sept. 18, 1995]

23.502 Authority.

Drug-Free Workplace Act of 1988 (Pub. L. 100-690).

23.503 Definitions.

As used in this subpart—

Controlled substance means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), and as further defined in regulation at 21 CFR 1308.11-1308.15.

Conviction means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

Employee means an employee of a contractor directly engaged in the performance of work under a Government contract. *Directly engaged* is defined to include all direct cost employees and any other contract employee who has other than a minimal impact or involvement in contract performance.

Individual means an offeror/contractor that has no more than one employee including the offeror/contractor.

[54 FR 4968, Jan. 31, 1989, as amended at 55 FR 21707, May 25, 1990; 66 FR 2130, Jan. 10, 2001]

23.504 Policy.

(a) No offeror other than an individual shall be considered a responsible

source (see 9.104-1(g) and 19.602-1(a)(2)(i)) for a contract that exceeds the simplified acquisition threshold, unless it agrees that it will provide a drug-free workplace by—

(1) Publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establishing an ongoing drug-free awareness program to inform its employees about—

(i) The dangers of drug abuse in the workplace;

(ii) The contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Providing all employees engaged in performance of the contract with a copy of the statement required by paragraph (a)(1) of this section;

(4) Notifying all employees in writing in the statement required by subparagraph (a)(1) of this section, that as a condition of employment on a covered contract, the employee will—

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;

(5) Notifying the contracting officer in writing within 10 days after receiving notice under subdivision (a)(4)(ii) of this section, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 days after receiving notice under subparagraph (a)(4) of this section of a conviction, taking one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or