

204.904 [Removed]

5. Section 204.904 is removed.

[FR Doc. 05-7083 Filed 4-11-05; 8:45 am]

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DEPARTMENT OF DEFENSE**48 CFR Parts 205, 226, and 252**

[DFARS Case 2003-D029]

Defense Federal Acquisition Regulation Supplement; Socioeconomic Programs

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to socioeconomic considerations in DoD contracting. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before June 13, 2005, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2003-D029, using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Defense Acquisition Regulations Web Site: <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. Follow the instructions for submitting comments.
- E-mail: dfars@osd.mil. Include DFARS Case 2003-D029 in the subject line of the message.
- Fax: (703) 602-0350.
- Mail: Defense Acquisition Regulations Council, Attn: Ms. Debbie Tronic, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062.
- 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. Debbie Tronic, (703) 602-0289.

SUPPLEMENTARY INFORMATION:**A. Background**

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the

efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dpap/dfars/transf.htm>.

This proposed rule is a result of the DFARS Transformation initiative.

The proposed changes—

- Delete text at DFARS 226.103 containing internal DoD procedures for funding of incentive payments to contractors under the clause at 252.226-7001, Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns. This text will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at <http://www.acq.osd.mil/dpap/dars/pgi>.
- Relocate text on contracting with historically black colleges and universities and minority institutions (HBCU/MI) from DFARS Subpart 226.70 to Subpart 226.3, for consistency with the location of FAR policy on this subject. The relocated text is substantially unchanged, but excludes information on HBCU/MI percentage goals and infrastructure assistance (presently at DFARS 226.7000 and 226.7002) that is considered unnecessary for inclusion in the DFARS.
- Delete DFARS Subpart 226.72, Base Closures and Realignment, as the text in this subpart unnecessarily duplicates text found elsewhere in the DFARS.

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 the rule makes no significant change to DoD contracting policy. 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 subparts in accordance with 5

U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003-D029.

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.*

List of Subjects in 48 CFR Parts 205, 226, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR Parts 205, 226, and 252 as follows:

1. The authority citation for 48 CFR Parts 205, 226, and 252 continues to read as follows:

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

PART 205—PUBLICIZING CONTRACT ACTIONS**205.207 [Amended]**

2. Section 205.207 is amended in paragraph (d)(i) introductory text by removing “226.7003” and adding in its place “226.370”.

PART 226—OTHER SOCIOECONOMIC PROGRAMS

3. Section 226.103 is revised to read as follows:

226.103 Procedures.

Follow the procedures at PGI 226.103 when submitting a request for funding of an Indian incentive.

4. Subpart 226.3 is added to read as follows:

Subpart 226.3—Historically Black Colleges and Universities and Minority Institutions

Sec.

226.370 Contracting with historically black colleges and universities and minority institutions.

226.370-1 General.

226.370-2 Definitions.

226.370-3 Policy.

226.370-4 Set-aside criteria.

226.370-5 Set-aside procedures.

226.370-6 Eligibility for award.

226.370-7 Protesting a representation.

226.370-8 Goals and incentives for subcontracting with HBCU/MIs.

226.370-9 Solicitation provision and contract clause.

226.370 Contracting with historically black colleges and universities and minority institutions.**226.370-1 General.**

This section implements the historically black college and university (HBCU) and minority institution (MI) provisions of 10 U.S.C. 2323.

226.370-2 Definitions.

Definitions of HBCUs and MIs are in the clause at 252.226-7000, Notice of Historically Black College or University and Minority Institution Set-Aside.

226.370-3 Policy.

DoD will use outreach efforts, technical assistance programs, advance payments, HBCU/MI set-asides, and evaluation preferences to meet its contract and subcontract goals for use of HBCUs and MIs.

226.370-4 Set-aside criteria.

Set aside acquisitions for exclusive HBCU and MI participation when the acquisition is for research, studies, or services of the type normally acquired from higher educational institutions and there is a reasonable expectation that—

- (a) Offers will be submitted by at least two responsible HBCUs or MIs that can comply with the subcontracting limitations in the clause at FAR 52.219-14, Limitations on Subcontracting;
- (b) Award will be made at not more than 10 percent above fair market price; and
- (c) Scientific or technological talent consistent with the demands of the acquisition will be offered.

226.370-5 Set-aside procedures.

- (a) As a general rule, use competitive negotiation for HBCU/MI set-asides.
- (b) When using a broad agency announcement (FAR 35.016) for basic or applied research, make partial set-asides for HBCU/MIs as explained in 235.016.
- (c) Follow the special synopsis instructions in 205.207(d). Interested HBCU/MIs must provide evidence of their capability to perform the contract, and a positive statement of their eligibility, within 15 days of publication of the synopsis in order for the acquisition to proceed as an HBCU/MI set-aside.
- (d) Cancel the set-aside if the low responsible offer exceeds the fair market price (defined in FAR Part 19) by more than 10 percent.

226.370-6 Eligibility for award.

- (a) To be eligible for award as an HBCU or MI under the preference procedures of this subpart, an offeror must—
 - (1) Be an HBCU or MI, as defined in the clause at 252.226-7000, Notice of

Historically Black College or University and Minority Institution Set-Aside, at the time of submission of its initial offer including price; and

- (2) Provide the contracting officer with evidence of its HBCU or MI status upon request.
- (b) The contracting officer shall accept an offeror's HBCU or MI status under the provision at FAR 52.226-2, Historically Black College or University and Minority Institution Representation, unless—
 - (1) Another offeror challenges the status; or
 - (2) The contracting officer has reason to question the offeror's HBCU/MI status. (A list of HBCU/MIs is published periodically by the Department of Education.)

226.370-7 Protesting a representation.

Any offeror or other interested party may challenge an offeror's HBCU or MI representation by filing a protest with the contracting officer. The protest must contain specific detailed evidence supporting the basis for the challenge. Such protests are handled in accordance with FAR 33.103 and are decided by the contracting officer.

226.370-8 Goals and incentives for subcontracting with HBCU/MIs.

- (a) In reviewing subcontracting plans submitted under the clause at FAR 52.219-9, Small Business Subcontracting Plan, the contracting officer shall—
 - (1) Ensure that the contractor included anticipated awards to HBCU/MIs in the small disadvantaged business goal; and
 - (2) Consider whether subcontracts are contemplated that involve research or studies of the type normally performed by higher educational institutions.
- (b) The contracting officer may, when contracting by negotiation, use in solicitations and contracts a clause similar to the clause at FAR 52.219-10, Incentive Subcontracting Program, when a subcontracting plan is required and inclusion of a monetary incentive is, in the judgment of the contracting officer, necessary to increase subcontracting opportunities for HBCU/MIs. The clause should include a separate goal for HBCU/MIs.

226.370-9 Solicitation provision and contract clause.

- (a) Use the clause at 252.226-7000, Notice of Historically Black College or University and Minority Institution Set-Aside, in solicitations and contracts set aside for HBCU/MIs.
- (b) Use the provision at FAR 52.226-2, Historically Black College or

University and Minority Institution Representation, in solicitations set aside for HBCU/MIs.

Subpart 226.70—[Removed and Reserved]

5. Subpart 226.70 is removed and reserved.

Subpart 226.72—[Removed]

6. Subpart 226.72 is removed.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**252.226-7000 [Amended]**

7. Section 252.226-7000 is amended in the introductory text by removing "226.7008" and adding in its place "226.370-9".

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DEPARTMENT OF DEFENSE**48 CFR Parts 211, 223, and 252**

[DFARS Case 2003-D039]

Defense Federal Acquisition Regulation Supplement; Environment, Occupational Safety, and Drug-Free Workplace

AGENCY: Department of Defense (DoD).
ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to the environment, occupational safety, and a drug-free workplace. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before June 13, 2005, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2003-D039, using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Defense Acquisition Regulations Web site: <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. Follow the instructions for submitting comments.
- E-mail: dfars@osd.mil. Include DFARS Case 2003-D039 in the subject line of the message.
- Fax: (703) 602-0350.