

articulate legal arguments in support of or in opposition to a proposed exempted class of works is useful, testimony from witnesses who can explain and demonstrate pertinent facts is encouraged.

An LCD projector and screen will be available in the hearing rooms. Other electronic or audiovisual equipment necessary for a presentation should be brought by the person testifying. Persons intending to bring such equipment into the Library of Congress, e.g., laptops, slide projectors, etc., are encouraged to give the Office advance notice and to arrive early in order to clear security screening by the Library police.

The Office intends to organize individual sessions of the hearings around particular or related classes of works proposed for exemption. If a request to testify involves more than one proposed exemption or related exemption, please specify, in order of preference, the proposed exemptions on which you would prefer to testify.

Following receipt of the requests to testify, the Copyright Office will prepare an agenda of the hearings which will be posted on the Copyright Office Web site at: <http://www.copyright.gov/1201/> and sent to all persons who have submitted requests to testify. The Copyright Office will also provide additional information on directions and parking for all persons testifying at the Palo Alto, CA round of hearings. To facilitate this process, it is essential that all of the required information listed above be included in a request to testify.

Dated: February 16, 2006.

**David O. Carson,**

*Copyright General Counsel.*

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 219 and 252

RIN 0750-AE93

#### Defense Federal Acquisition Regulation Supplement; Small Business Programs (DFARS Case 2003-D047)

**AGENCY:** Defense Acquisition Regulations System, 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 small business programs. 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 April 24, 2006, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2003-D047, using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- E-mail: [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2003-D047 in the subject line of the message.

- Fax: (703) 602-0350.

- Mail: Defense Acquisition Regulations System, Attn: Ms. Deborah Tronic, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062.

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

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah 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/dars/dfars/transformation/index.htm>.

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

- Update and clarify requirements for contracting with small business and small disadvantaged business concerns; and

- Delete text containing procedures for referring matters to the Small Business Administration; procedures for processing contract awards under the 8(a) Program; and information on the DoD test program for negotiation of comprehensive small business subcontracting plans. Text on these subjects will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI). Additional information on PGI is available at <http://www.acq.osd.mil/dpap/dars/pgi>.

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 updates and clarifies DFARS text, but makes no significant change to DoD policy for contracting with small business concerns. 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-D047.

##### 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 219 and 252

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

Therefore, DoD proposes to amend 48 CFR parts 219 and 252 as follows:

1. The authority citation for 48 CFR parts 219 and 252 continues to read as follows:

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

##### PART 219—SMALL BUSINESS PROGRAMS

2. Section 219.000 is revised to read as follows:

**219.000 Scope of part.**

This part also implements 10 U.S.C. 2323, which—

(1) Is applicable to DoD through fiscal year 2009; and

(2) Establishes goals for awards to small disadvantaged business (SDB) concerns, historically black colleges and universities (HBCUs), and minority institutions (MIs). See subpart 226.70 for policy on contracting with HBCU/ MIs.

**219.202–1 [Removed]**

3. Section 219.202–1 is removed.

4. Section 219.602 is revised to read as follows:

**219.602 Procedures.**

When making a nonresponsibility determination for a small business concern, follow the procedures at PGI 219.602.

**219.602–1 and 219.602–3 [Removed]**

5. Sections 219.602–1 and 219.602–3 are removed.

6. Section 219.702 is revised to read as follows:

**219.702 Statutory requirements.**

(1) Section 834 of Public Law 101–189, as amended (15 U.S.C. 637 note), requires DoD to establish a test program to determine whether comprehensive subcontracting plans on a corporate, division, or plant-wide basis will reduce administrative burdens while enhancing subcontracting opportunities for small and small disadvantaged business concerns. See PGI 219.702 for the requirements of the test program.

(2) Comprehensive subcontracting plans shall not be subject to application of liquidated damages during the period of the test program (Section 402, Public Law 101–574).

**219.703 [Amended]**

7. Section 219.703 is amended in paragraph (a)(2)(B) by removing “Small, Small Disadvantaged and Women-Owned”.

8. Section 219.704 is revised to read as follows:

**219.704 Subcontracting plan requirements.**

(1) The goal for use of small disadvantaged business concerns shall include subcontracts with historically black colleges and universities and minority institutions (see subpart 226.70), in addition to subcontracts with small disadvantaged business concerns. Subcontracts with historically black colleges and universities and minority institutions do not have to be included in the small disadvantaged business goal in commercial items subcontracting plans.

(2) In those subcontracting plans which specifically identify small businesses, prime contractors shall notify the administrative contracting officer of any substitutions of such firms. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.

(3) See 215.304 for evaluation of offers in acquisitions that require a subcontracting plan.

**219.705–2 [Removed]**

9. Section 219.705–2 is removed.

10. Section 219.708 is amended by revising paragraph (b)(1) to read as follows:

**219.708 Solicitation provisions and contract clauses.**

(b)(1)(A) Use the clause at 252.219–7003, Small Business Subcontracting Plan (DoD Contracts), in solicitations and contracts that contain the clause at FAR 52.219–9, Small Business Subcontracting Plan.

(B) In contracts with contractors that have comprehensive subcontracting plans approved under the test program described in 219.702, use the clause at 252.219–7004, Small Business Subcontracting Plan (Test Program), instead of the clauses at 252.219–7003, Small Business Subcontracting Plan (DoD Contracts), and FAR 52.219–9, Small Business Subcontracting Plan.

\* \* \* \* \*

11. Section 219.800 is amended by revising paragraph (a) to read as follows:

**219.800 General.**

(a) By Partnership Agreement (PA) between the Small Business Administration (SBA) and the Department of Defense (DoD), the SBA delegated to the Under Secretary of Defense (Acquisition, Technology, and Logistics) its authority under paragraph 8(a)(1)(A) of the Small Business Act (15 U.S.C. 637(a)) to enter into 8(a) prime contracts, and its authority under 8(a)(1)(B) of the Small Business Act to award the performance of those contracts to eligible 8(a) Program participants. However, the SBA remains the prime contractor on all 8(a) contracts, continues to determine eligibility of concerns for contract award, and retains appeal rights under FAR 19.810. The SBA delegates only the authority to sign contracts on its behalf. Consistent with the provisions of the PA, this authority is hereby redelegated to DoD contracting officers. This authority expires on September 30,

2006. A copy of the PA is available at PGI 219.800.

\* \* \* \* \*

12. Section 219.803 is revised to read as follows:

**219.803 Selecting acquisitions for the 8(a) Program.**

When selecting acquisitions for the 8(a) Program, follow the procedures at PGI 219.803.

13. Section 219.804–2 is revised to read as follows:

**219.804–2 Agency offering.**

When processing requirements under the PA, follow the procedures at PGI 219.804–2.

**219.804–3 [Removed]**

14. Section 219.804–3 is removed.

15. Section 219.805–2 is revised to read as follows:

**219.805–2 Procedures.**

When processing requirements under the PA, follow the procedures at PGI 219.805–2 for requesting eligibility determinations.

16. Sections 219.808–1 and 219.811 are revised to read as follows:

**219.808–1 Sole source.**

For sole source requirements processed under the PA, follow the procedures at PGI 219.808–1.

**219.811 Preparing the contracts.**

For preparing awards under the PA, follow the procedures at PGI 219.811.

**219.811–1 and 219.811–2 [Removed]**

17. Sections 219.811–1 and 219.811–2 are removed.

18. Section 219.811–3 is amended by revising paragraph (3) to read as follows:

**219.811–3 Contract clauses.**

\* \* \* \* \*

(3) Use the clause at 252.219–7011, Notification to Delay Performance, in solicitations and purchase orders issued under the PA cited in 219.800.

**219.812 [Removed]**

19. Section 219.812 is removed.

20. Section 219.1101 is added to read as follows:

**219.1101 General.**

The determination to use or suspend the price evaluation adjustment for DoD acquisitions can be found at <http://www.acq.osd.mil/dpap/dars/classdev/index.htm>.

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

21. Section 252.219–7003 is amended by revising the section heading, the

clause title and date, the introductory text preceding paragraph (a), and paragraph (g) to read as follows:

**252.219-7003 Small business subcontracting plan (DoD contracts).**

\* \* \* \* \*

**SMALL BUSINESS SUBCONTRACTING PLAN (DOD CONTRACTS) (XXX 2006)**

This clause supplements the Federal Acquisition Regulation 52.219-9, Small Business Subcontracting Plan, clause of this contract.

\* \* \* \* \*

(g) In those subcontracting plans which specifically identify small businesses, the Contractor shall notify the Administrative Contracting Officer of any substitutions of such firms. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.

22. Section 252.219-7004 is amended by revising the section heading, the clause title and date, and paragraph (d) to read as follows:

**252.219-7004 Small business subcontracting plan (test program).**

\* \* \* \* \*

**SMALL BUSINESS SUBCONTRACTING PLAN (TEST PROGRAM) (XXX 2006)**

\* \* \* \* \*

(d) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled "Utilization of Small Business Concerns," or (2) an approved plan required by this clause, shall be a material breach of the contract.

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**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

**49 CFR Part 383**

[Docket No. FMCSA-1997-2181]

RIN 2126-AA03

**Commercial Driver Instruction Permits; Withdrawal**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice of Proposed Rulemaking (NPRM), withdrawal.

**SUMMARY:** FMCSA withdraws its notice of proposed rulemaking (NPRM) on

additional minimum Federal standards for State-issued learner's permits that allow drivers to be trained in the operation of commercial motor vehicles (CMVs). The NPRM requesting comments was published on August 22, 1990, at 55 FR 34478. The comment period was extended to November 30, 1990 (55 FR 42741, October 23, 1990). FMCSA determined that the issues addressed in the NPRM and the public comments on these issues do not reflect many initiatives and activities that occurred after publication of the NPRM. Therefore, the 1990 NPRM is obsolete and it is in the public interest to withdraw it.

**DATES:** The NPRM with request for comments published on August 22, 1990, is withdrawn as of February 23, 2006.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Redmond, Senior Transportation Specialist, (202) 366-5014, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Background**

The commercial driver's license (CDL) program, established by the Commercial Motor Vehicle Safety Act (CMVSA) of 1986 [Pub. L. 99-570, October 27, 1986, 100 Stat. 3207-170] is an evolving program. Part 383 of Title 49, Code of Federal Regulations, implements the CMVSA (currently codified at 49 U.S.C. 31301 *et seq.*). As of April 1, 1992, it prohibits any person who does not possess a CDL or learner's permit issued by his or her State of domicile from operating a CMV requiring a CDL. The prohibition impacts driver-training activities by limiting trainees to their State of domicile to receive training and behind-the-wheel experience, and take the skills test necessary to obtain a CDL. This creates problems because commercial driver training facilities are not equally available in all States.

To address this and other issues such as lack of uniformity of duration of learners' permits, associated driver history recordkeeping, and test reciprocity between States, the Federal Highway Administration (FHWA) published an NPRM to: (1) Propose standards for issuing a learner's permit; (2) make it easier for out-of-State drivers to obtain on-the-road skills-training operating a CMV; and (3) make it easier for such drivers to obtain a CDL outside their State of domicile. The NPRM proposed additional minimum Federal requirements for a learner's permit,

which was referred to as a commercial driver's instruction permit (CDIP). FHWA's intent was to establish minimum standards, uniformity, and reciprocity for commercial instructional permits and to remove impediments to driver training caused by CDL residency requirements.

Effective January 1, 2000, DOT transferred responsibility for motor carrier functions and operations to FMCSA (64 FR 72959, December 29, 1999). In the discussion below, the governing agency is referred to as FMCSA, regardless of whether the action described occurred before or after this transfer of responsibility.

**Comments Received on the NPRM**

The NPRM requested comments from interested parties by October 22, 1990, and this comment period was later extended through November 30, 1990. As of August 1, 2005, there were 65 submissions to the NPRM docket; the last comment was posted in the docket on October 17, 1995. FMCSA reviewed all comments regardless of submission date. Of the 65 submissions, 58 are directly related to the proposed rule, three are letters addressed to Members of Congress requesting support for the rule, one amended a previous comment, two addressed other issues indirectly related to the proposed rule, and one contains a petition to extend the comment period. The largest single group of commenters was State driver licensing officials. The majority of commenters opposed the proposal put forward by FMCSA, but proposed an alternative approach developed by the American Association of Motor Vehicle Administrators (AAMVA).

*Learner's Permit for Out-of-State Residents*

Two fundamental issues raised in the 1990 NPRM concerned problems obtaining on-the-road skills-training and taking the CDL skills test in a representative vehicle because States are prohibited from issuing a permit or CDL to a driver not domiciled in that jurisdiction. This limits the ability of drivers to obtain required on-the-road skills-training, and obtain a learner's permit or temporary CDL in States where they are not permanently domiciled.

The NPRM proposed amending 49 CFR 383.23 to allow any jurisdiction where the driver receives training, even if it is not the State of domicile, to issue a learner's permit. The intent was to address the problem that commercial driver training facilities are not equally available in all States.