

DELEGATION STATUS FOR PART 63 STANDARDS—STATE OF NEW MEXICO—Continued  
[Excluding Indian Country]

Subpart	Source category	NMED <sup>1 2</sup>	ABCAQCB <sup>1 3</sup>
UUUU .....	Cellulose Production Manufacture .....	X	X
VVVV .....	Boat Manufacturing .....	X	X
WWWW .....	Reinforced Plastic Composites Production .....		X
XXXX .....	Tire Manufacturing .....	X	X
YYYY .....	Combustion Turbines .....		X
AAAAA .....	Lime Manufacturing Plants .....		X
BBBBB .....	Semiconductor Manufacturing .....		X
CCCCC .....	Coke Ovens: Pushing, Quenching and Battery Stacks .....	X	X
DDDDD .....	Industrial/Commerical/Institutional Boilers and Process Heaters .....		
EEEEE .....	Iron Foundries .....		X
FFFFF .....	Integrated Iron and Steel .....		X
GGGGG .....	Site Remediation .....		X
HHHHH .....	Miscellaneous Coating Manufacturing .....		X
IIIII .....	Mercury Cell Chlor-Alkali Plants .....		X
JJJJJ .....	Brick and Structural Clay Products Manufacturing .....		X
KKKKK .....	Clay Ceramics Manufacturing .....		X
LLLLL .....	Asphalt Roofing and Processing .....		X
MMMMM .....	Flexible Polyurethane Foam Fabrication Operation .....		X
NNNNN .....	Hydrochloric Acid Production, Fumed Silica Production .....		X
PPPPP .....	Engine Test Facilities .....		X
QQQQQ .....	Friction Products Manufacturing .....		X
RRRRR .....	Taconite Iron Ore Processing .....		X
SSSSS .....	Refractory Products Manufacture .....		X
TTTTT .....	Primary Magnesium Refining .....		X

<sup>1</sup> Authorities that cannot be delegated include § 63.6(g), Approval of Alternative Non-Opacity Standards; § 63.6(h)(9), Approval of Alternative Opacity Standards; § 63.7(e)(2)(ii) and (f), Approval of Major Alternatives to Test Methods; § 63.8(f), Approval of Major Alternatives to Monitoring; and § 63.10(f), Approval of Major Alternatives to Recordkeeping and Reporting. In addition, all authorities identified in the certain subparts that EPA has designated that cannot be delegated.

<sup>2</sup> Program delegated to New Mexico Environment Department (NMED) for standards promulgated by EPA, as amended in the **Federal Register** through September 1, 2002.

<sup>3</sup> Program delegated to Albuquerque-Bernalillo County Air Quality Control Board (ABCAQCB) for standards promulgated by EPA, as amended in the **Federal Register** through July 1, 2004.

<sup>4</sup> This standard was originally delegated to NMED on February 9, 2004. The ABCAQCB has adopted the subpart unchanged and applied for delegation of the standard. The standard was vacated and remanded to EPA by the United States Court of Appeals for the District of Columbia Circuit on June 18, 2004, and EPA's petition for rehearing was denied on April 15, 2005. The standard is not being delegated at this time to ABCAQCB.

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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:** Final rule.

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

**EFFECTIVE DATE:** December 9, 2005.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah Tronic, Defense Acquisition

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DFARS Case 2003-D029.

#### 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 final rule is a result of the DFARS Transformation initiative. The DFARS changes include—

- Deletion of text at 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 has been relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at <http://www.acq.osd.mil/dpap/dars/pgi>.
- Relocation of text on contracting with historically black colleges and universities and minority institutions (HBCU/MI) from 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 (226.7000 and 226.7002) that is considered unnecessary for inclusion in the DFARS.
- Deletion of Subpart 226.72, Base Closures and Realignments, as the text

in this subpart unnecessarily duplicates text found elsewhere in the DFARS.

DoD published a proposed rule at 70 FR 19038 on April 12, 2005. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule without change.

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 certifies that this final rule will not 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 streamlines DFARS text, but makes no significant change to DoD contracting policy.

### 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, 48 CFR parts 205, 226, and 252 are amended 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.

### Subpart 226.3—Historically Black Colleges and Universities and Minority Institutions

**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:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to the environment, occupational safety, and a drug-free workplace. This rule is a result of a transformation initiative undertaken

by DoD to dramatically change the purpose and content of the DFARS.

**EFFECTIVE DATE:** December 9, 2005.

**FOR FURTHER INFORMATION CONTACT:** Ms. Debra Overstreet, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0296; facsimile (703) 602-0350. Please cite DFARS Case 2003-D039.

#### **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 final rule is a result of the DFARS Transformation Initiative. The DFARS changes include—

- Deletion of redundant or unnecessary text at 223.300, 223.302, 223.370-3(a), 223.570-1, and 223.570-3.
- Deletion of text at 223.370-4 and 223.405 containing internal DoD procedures relating to safety precautions for ammunitions and explosives and use of recovered materials. This text has been relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at <http://www.acq.osd.mil/dpap/dars/pgi>.
- Relocation of text on ozone-depleting substances, from Subpart 211.2 to Subpart 223.8, with retention of a cross-reference in Subpart 211.2.

DoD published a proposed rule at 70 FR 19039 on April 12, 2005. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule without change.

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 certifies that this final rule will not 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 streamlines DFARS text, but makes no significant change to DoD contracting policy.

##### **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 211, 223, and 252**

Government procurement.

**Michele P. Peterson,**  
*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR parts 211, 223, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 211, 223, and 252 continues to read as follows:

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

##### **PART 211—DESCRIBING AGENCY NEEDS**

■ 2. Section 211.271 is revised to read as follows:

##### **211.271 Elimination of use of class I ozone-depleting substances.**

See subpart 223.8 for restrictions on contracting for ozone-depleting substances.

##### **PART 223—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE**

■ 3. The heading of part 223 is revised to read as set forth above.

##### **223.300 [Removed]**

■ 4. Section 223.300 is removed.

■ 5. Section 223.302 is revised to read as follows:

##### **223.302 Policy.**

(e) The contracting officer shall also provide hazard warning labels, that are received from apparent successful offerors, to the cognizant safety officer.

■ 6. Section 223.370-3 is amended by revising paragraph (a) to read as follows:

##### **223.370-3 Policy.**

(a) DoD policy is to ensure that its contractors take reasonable precautions in handling ammunition and explosives