

agency embodied an excessive demand or was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

* * * * *

14. Section 1.1527 is revised to read as follows:

§ 1.1527 Decision.

The Administrative Law Judge shall issue an initial decision on the application as soon as possible after completion of proceedings on the application. The decision shall include written findings and conclusions regarding the applicant's eligibility and whether the applicant was a prevailing party or whether the demand by the agency or agencies in the proceeding was substantially in excess of, and was unreasonable when compared with, the decision in the adversary adjudication, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the Commission's position substantially justified, whether the applicant unduly protracted the proceedings, committed a willful violation of law, or otherwise acted in bad faith, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

§ 1.1528 [Amended]

15. The first sentence of § 1.1528 is amended by removing the word "fee."

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DEPARTMENT OF DEFENSE

48 CFR Parts 219 and 252

[DFARS Case 96-D304]

**Defense Federal Acquisition Regulation Supplement;
Comprehensive Subcontracting Plans**

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has amended the Defense Federal Acquisition Regulation Supplement (DFARS) to reflect revisions made to the DoD Test Program

for Negotiation of Comprehensive Small Business Subcontracting Plans. This action was subject to Office of Management and Budget review under Executive Order 12866.

DATES: Effective Date: July 31, 1996.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before September 30, 1996, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Susan L. Schneider, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax number (703) 602-0350. Please cite DFARS Case 96-D304 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Susan L. Schneider, (703) 602-0131.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS Subpart 219.7 and the clause at 252.219-7004 to reflect revisions made to the DoD Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans. The revisions to the test program implement Section 811 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106). The revised test plan is published elsewhere in this issue of the Federal Register.

This rule also contains editorial revisions to reflect changes to Part 19 of the Federal Acquisition Regulation, published as Item V of Federal Acquisition Circular 90-32 on September 18, 1995 (60 FR 48206).

B. Regulatory Flexibility Act

The interim rule is not expected 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 small businesses are exempt from subcontracting plan requirements, and the rule does not change the contractor's obligation to maximize subcontracting opportunities for small business concerns. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts will also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 96-D304 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this interim rule does not impose any information collection requirements which require approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this rule as an interim rule. Compelling reasons exist to promulgate this rule without prior opportunity for public comment. This interim DFARS rule reflects changes to the Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans, as required by Section 811 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106). Section 811, which amends requirements that contractors must meet to participate in the test program, was effective upon enactment on February 10, 1996. However, comments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 219 and 252

Government procurement.

Michele P. Peterson,
*Executive Editor, Defense Acquisition
Regulation Council.*

Therefore, 48 CFR Parts 219 and 252 are amended 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.

2. Part 219 heading is revised to read as follows:

PART 219—SMALL BUSINESS PROGRAMS

3. Section 219.702 is amended by revising the introductory text of paragraph (a) to read as follows:

219.702 Statutory and requirements.

(a) Section 834 of Public Law 101-189, as amended, requires the 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.

* * * * *

4. Section 219.708 is amended by revising paragraphs (b)(1)(A), (b)(1)(B), and (c)(1)(A) to read as follows:

219.708 Solicitation provisions and contract clauses.

(b)(1) (A) Use the clause at 252.219-7003, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts), in solicitation and contracts that contain the clause at FAR 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan.

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

* * * * *

(c)(1) * * *

(A) When contracting by negotiation, use the clause at 252.219-7005, Incentive for Subcontracting with Small Businesses, Small Disadvantaged Businesses, Historically Black Colleges and Universities, and Minority Institutions, in all solicitations and contracts that contain the clause at FAR 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan. Incentives for exceeding SDB subcontracting goals shall be paid only if an SDB subcontracting goal was exceeded as a result of actual subcontract awards to SDBs, and not as a result of developmental assistant credit under the Pilot Mentor-Protege Program (see subpart 219.71).

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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

252.219-7004 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (Test Program).

* * * * *

Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (Test Program) (Jul 1996)

(a) * * *

(b) The Offeror's comprehensive small business subcontracting plan and its successors, which are authorized by and approved under the test program of Section 834 of Pub. L. 101-189, as amended, shall be included in and made a part of the resultant contract. Upon expulsion from the test program or expiration of the test program, the Contractor shall negotiate an individual subcontracting plan for all future contracts that meet the requirements of Section 211 of Pub. L. 95-507.

(c) The Contractor shall submit Standard Form 295, Summary Subcontract Report, in accordance with the instructions on the form, except Item 14, Remarks, shall be completed to include semi-annual cumulative (1) small business, small disadvantaged business, and women-owned small business goals, and (2) small business and small disadvantaged business goals, actual accomplishments, and percentages for each of the two designated industry categories.

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

(End of clause)

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

5 CFR Chapter L

49 CFR Part 99

RIN 3209-AA15

Supplemental Standards of Ethical Conduct for Employees of the Department of Transportation

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department of Transportation, with the concurrence of the Office of Government Ethics (OGE), is issuing regulations for DOT employees that supplement the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) issued by OGE. These regulations are a necessary supplement to the executive branch-wide Standards because they address ethics matters unique to DOT. In particular, they specify agency designees authorized to make determinations and grant approvals under the Standards, designate DOT components as separate

agencies for purposes, in part, of the gift rules contained in the Standards, and prohibit employees of the Federal Railroad Administration and the Federal Aviation Administration, which are two administrations within DOT, from having certain financial interests.

EFFECTIVE DATE: These rules become effective: August 30, 1996.

FOR FURTHER INFORMATION CONTACT: William R. Register, Office of the General Counsel (C-10), Department of Transportation, 400 7th Street, S.W., Room 10102, Washington, D.C. 20590, (202) 366-9154.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, OGE published the Standards of Ethical Conduct for Employees of the Executive Branch. See 57 FR 35006-35067, as corrected at 57 FR 48557, 57 FR 52583 and 60 FR 51667, with additional grace period extensions at 59 FR 4779-4780, 60 FR 6390-6391 and 60 FR 66857-66858. The executive branch-wide Standards are now codified at 5 CFR part 2635. Effective February 3, 1993, they established uniform ethical conduct standards applicable to all executive branch personnel.

Also, effective February 3, 1993, DOT canceled most of the regulations on Employee Responsibilities and Conduct in 49 CFR part 99 which apply to DOT employees. See 58 FR 7993-7995. The remaining DOT regulations, which include post-employment guidance and regulatory conflict of interest waivers under 18 U.S.C. 208(b)(2), continue in effect pending issuance of superseding OGE regulations.

With the concurrence of OGE, 5 CFR 2635.105 authorizes executive branch agencies to publish agency-specific supplemental regulations necessary to implement their respective ethics programs. The Department of Transportation, with OGE's concurrence, has determined that the supplemental regulations in this rulemaking are necessary to the ongoing implementation of DOT's ethics program.

II. Analysis of the Regulations

Section 6001.101 General

Section 6001.101 explains that the regulations contained in the final rules apply to DOT employees and are supplemental to the executive branch-wide standards. Employees of DOT are also subject to the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635 and the executive branch financial disclosure regulations at 5 CFR part 2634.