

**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](mailto:dfars@osd.mil). Include DFARS Case 2003-D039 in the subject line of the message.
- Fax: (703) 602-0350.

○ Mail: Defense Acquisition Regulations Council, Attn: Mr. Bill Sain, 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:** Mr. Bill Sain, (703) 602-4245.

**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/dp/dars/transf.htm>.

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

○ Deletion of redundant or unnecessary text at DFARS 223.300, 223.302, 223.370-3(a), 223.570-1, and 223.570-3.

○ Deletion of text at DFARS 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 will be 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 DFARS Subpart 211.2 to Subpart 223.8, with retention of a cross-reference in Subpart 211.2.

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 removes DFARS text that is unnecessary or internal to DoD, but 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-D039.

**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, DoD proposes to amend 48 CFR Parts 211, 223, and 252 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 so as to minimize the potential for mishaps.

\* \* \* \* \*

7. Section 223.370-4 is revised to read as follows:

**223.370-4 Procedures.**

Follow the procedures at PGI 223.370-4.

8. Section 223.405 is revised to read as follows:

**223.405 Procedures.**

Follow the procedures at PGI 223.405.

**223.570-1 [Removed]**

9. Section 223.570-1 is removed.

**223.570-2 [Redesignated as 223.570-1]**

10. Section 223.570-2 is redesignated as section 223.570-1.

**223.570-3 [Removed]**

11. Section 223.570-3 is removed.

**223.570-4 [Redesignated as 223.570-2]**

12. Section 223.570-4 is redesignated as section 223.570-2.

13. Section 223.803 is revised to read as follows:

**223.803 Policy.**

(1) *Contracts.* No DoD contract may include a specification or standard that requires the use of a class I ozone-depleting substance or that can be met only through the use of such a substance unless the inclusion of the specification or standard is specifically authorized at a level no lower than a general or flag officer or a member of the Senior Executive Service of the requiring activity in accordance with Section 326, Public Law 102-484 (10 U.S.C. 2301 (repealed) note). This restriction is in addition to any imposed by the Clean Air Act and applies after June 1, 1993, to all DoD contracts, regardless of place of performance.

(2) *Modifications.*

(i) Contracts awarded before June 1, 1993, with a value in excess of \$10 million, that are modified or extended (including option exercise) and, as a result of the modification or extension, will expire more than one year after the effective date of the modification or extension, must be evaluated in accordance with agency procedures for the elimination of ozone-depleting substances.

(A) The evaluation must be carried out within 60 days after the first modification or extension.

(B) No further modification or extension may be made to the contract until the evaluation is complete.

(ii) If, as a result of this evaluation, it is determined that an economically feasible substitute substance or alternative technology is available, the contracting officer shall modify the contract to require the use of the substitute substance or alternative technology.

(iii) If a substitute substance or alternative technology is not available, a written determination shall be made to that effect at a level no lower than a general or flag officer or a member of the Senior Executive Service of the requiring activity.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

### 252.223-7004 [Amended]

14. Section 252.223-7004 is amended in the introductory text by removing “223.570-4” and adding in its place “223.570-2”.

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## DEPARTMENT OF DEFENSE

### 48 CFR Part 213

[DFARS Case 2003-D059]

#### Defense Federal Acquisition Regulation Supplement; Use of the Governmentwide Commercial Purchase Card for Micro-Purchases

**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 requirements for use of the Governmentwide commercial purchase card for actions at or below the micro-purchase threshold. 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-D059, 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](mailto:dfars@osd.mil). Include DFARS Case 2003-D059 in the subject line of the message.

- Fax: (703) 602-0350.

- Mail: Defense Acquisition Regulations Council, Attn: Ms. Robin Schulze, 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. Robin Schulze, (703) 602-0326.

#### 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 rule amends DoD policy for use of the Governmentwide commercial purchase card for actions at or below the micro-purchase threshold to—

- Lower the approval level for exceptions to the policy, from a general or flag officer or a member of the Senior Executive Service, to the chief of the contracting office; and
- Add a new blanket exception to the policy that applies if an authorized official renders the agency's or activity's purchase card program inactive.

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 pertains only to internal DoD review and approval requirements for exceptions to DoD policy for use of the Governmentwide commercial purchase card. 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 subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003-D059.

##### 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 Part 213

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

Therefore, DoD proposes to amend 48 CFR Part 213 as follows:

1. The authority citation for 48 CFR Part 213 continues to read as follows:

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

##### PART 213—SIMPLIFIED ACQUISITION PROCEDURES

2. Section 213.270 is amended as follows:

- a. By revising paragraph (b);
- b. By redesignating paragraph (c) as paragraph (d); and
- c. By adding a new paragraph (c) to read as follows:

##### 213.270 Use of the Governmentwide commercial purchase card.

\* \* \* \* \*

(b)(1) The chief of the contracting office of the cardholder activity makes a written determination that—

(i) The source or sources available for the supply or service do not accept the purchase card; and

(ii) The contracting office is seeking a source that accepts the purchase card.

(2) To prevent mission delays, if an activity does not have a resident chief of the contracting office, delegation of this authority to the level of the senior local commander or director is permitted;