

B. Regulatory Flexibility Act

The interim rule may 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 restricts agencies from soliciting offers from, awarding contracts to, or consenting to subcontracts with institutions of higher education which are determined to have a policy of denying, or effectively preventing, the Secretary of Defense from obtaining for military recruiting purposes entry to campuses, access to students on campuses, or access to directory information pertaining to students. In addition, the interim rule requires that departments and agencies shall make no further payments under existing contracts and shall initiate termination action if institutions are determined to have such a policy. A copy of the Initial Regulatory Flexibility Analysis has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Initial Regulatory Flexibility Analysis may be obtained from Ms. Linda Holcombe, Defense Acquisition Regulations Council, 3062 Defense Pentagon, Washington, D.C. Comments are invited. Comments from small entities concerning the affected DFARS subparts will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 94-D310 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule does not impose reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 209 and 252

Government procurement.

Claudia L. Naugle,
Deputy Director, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 209 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 209 and 252 continues to read as follows:

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

PART 209—CONTRACTOR QUALIFICATIONS

2. Subpart 209.4 is amended to add Sections 209.470, 209.470-1, 209.470-2, and 209.470-3 as follows:

Subpart 209.4—Debarment, Suspension, and Ineligibility

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209.470 Military recruiting on campus.**209.470-1 Policy.**

(a) Section 558 of the National Defense Authorization Act for Fiscal Year 1995 (Pub. L. 103-337), provides that no funds available to the Department of Defense may be provided by grant or contract to any institution of higher education that either—

- (1) Has a policy of denying—
 - (i) Entry to campuses or access to students on campus; or
 - (ii) Access to directory information pertaining to students; or
 - (2) Effectively prevents the Secretary of Defense from obtaining for military recruiting purposes—
 - (i) Entry to campuses or access to students on campus; or
 - (ii) Access to directory information pertaining to students.
- (b) Institutions of higher education that are determined under the procedures prescribed by the Secretary of Defense to have the policy or practice in paragraph (a) of this subsection shall be listed as ineligible on the list of Parties Excluded From Federal Procurement Programs published by the General Services Administration (GSA). (See FAR 9.404).

209.470-2 Procedures.

- (a) Agencies shall not solicit offers from, award contracts to, or consent to subcontracts with ineligible contractors.
- (b) After a determination of ineligibility, departments and agencies shall make no further payments under existing contracts with the institutions, and shall initiate termination action.

209.470-3 Contract clause.

Use the clause at 252.209-7007, Military Recruiting on Campus, in all solicitations and contracts with institutions of higher education.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.209-7007 is added to read as follows:

252.209-7007 Military Recruiting on Campus

As prescribed in 209.470-3, use the following clause:

Military Recruiting on Campus (Mar 1995)

(a) *Definitions.* "Directory information," as used in this clause, means, with respect to a student, the student's name, address, telephone listing, date and place of birth, level of education, degrees received, and the

most recent previous educational institution enrolled in by the student. Students are individuals who are 17 years of age or older.

(b) *General.* An institution of higher education that has been determined, using procedures established by the Secretary of Defense to implement section 558 of Pub. L. 103-337 (1994): (1) To have a policy of denying, or (2) to prevent effectively the Secretary of Defense from obtaining for military recruiting purposes entry to their campuses, access to students on campuses, or access to directory information pertaining to students, access to students on campuses, is ineligible for contract award and payments under existing contracts. In addition, the Government shall terminate this contract for the contractor's material failure to comply with the terms and conditions of award.

(c) *Agreement.* The contractor represents that it does not now have and agrees that during performance of this contract it will not adopt a policy of denying, and that it does not, is not, and will not during performance of the contract, effectively prevent the Secretary of Defense from obtaining for military recruiting purposes entry to campuses, access to students on campuses, or access to directory information pertaining to students.

(End of clause)

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48 CFR Part 219**Defense Federal Acquisition Regulation Supplement; Subcontracting Plans**

AGENCY: Department of Defense (DoD).
ACTION: Interim rule with request for comment.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to extend the authority through September 30, 1997, for contractors to claim credit towards their small business subcontracting goals for subcontracts with qualified nonprofit agencies for the blind and severely disabled.

DATES: *Effective date:* February 27, 1995.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before May 9, 1995, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: LTC Edward C. King Jr., PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax number (703) 602-0350. Please cite DFARS Case 94-D312 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT:
LTC Edward C. King Jr, (703) 602-0131.

SUPPLEMENTARY INFORMATION:

A. Background

Section 804 of the Fiscal Year 1995 Defense Authorization Act (Pub. L. 103-337) extends the authority through September 30, 1997, for contractors to claim credit towards their small business subcontracting goals for subcontracts with qualified nonprofit agencies for the blind and severely disabled. DFARS Subpart 219.7 is amended to permit contractors to receive credit when awarding subcontracts to such entities.

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 the rule only applies to large 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 subpart will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 94-D312 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies. Information collection requirements imposed by this rule were cleared under OMB control number 9000-0007 for Standard Form 295, Summary Subcontract Report.

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 as an interim rule as it is necessary to authorize prime contractors to receive credit toward their subcontracting goals as permitted by Section 804 of Pub. L. 103-337. However, comments received in response to this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Part 219

Government procurement.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 219 is amended as follows:

1. The authority citation for 48 CFR part 219 continues to read as follows:

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

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

2. Section 219.703 is amended by revising paragraph (a) introductory text to read as follows:

219.703 Eligibility requirements for participating in the program.

(a) Qualified nonprofit agencies for the blind and other severely disabled, that have been approved by the Commission for Purchase from People Who Are blind or Severely Disabled under the Javits-Wagner-O'Day Act (41 U.S.C. 46-48), are eligible as a result of Section 9077 of Pub. L. 102-396, and subsequent Appropriations Acts, and Sections 808 of Pub. L. 102-484 and 804 of Pub. L. 103-377 through September 30, 1997, to participate in the program. Under this authority, subcontracts awarded to such entities may be counted toward the prime contractor's small business subcontracting goal through fiscal year 1997.

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48 CFR Parts 223 and 252

Defense Federal Acquisition Regulation Supplement; Hazardous Materials

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add an exception to the statutory prohibition on storage and disposal of non-DoD-owned toxic and hazardous materials at military installations.

DATES: *Effective Date:* March 6, 1995.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before May 9, 1995, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: LTC Edward C. King Jr., PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, D.C. 20301-3062. Telefax number (703) 602-0350. Please cite DFARS Case 94-D309 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT:
LTC Edward C. King Jr, (703) 602-0131.

SUPPLEMENTARY INFORMATION:

A. Background

Section 325 of the Fiscal Year 1995 Defense Authorization Act (Pub. L. 103-337) amends 10 U.S.C. 2692 to add an exception to the prohibition on storage and disposal of non-DoD-owned toxic and hazardous materials at military installations. DFARS Subpart 223.71 and the clause at 252.223-7006 are amended to add the exception in all solicitations and contracts which require, may require, or permit contractor performance on a DoD installation.

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 of the limited applicability of the rule to industrial-type facilities located on military installations. An initial regulatory flexibility analysis has therefore not been performed. Comments from small entities concerning the affected subpart and clause will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 94-D309 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements which require the 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 as an interim rule without prior opportunity for public comments because it is necessary to add the exception authorized by Section 325 of Pub. L. 103-337. However, comments received in response to this interim rule will be considered in formulating the final rule.