

■ 5. Section 247.574 is amended by adding paragraph (f) to read as follows:

247.574 Solicitation provisions and contract clauses.

* * * * *

(f) Use the clause at 252.247–7027, Riding Gang Member Requirements, in solicitations and contracts for the charter of, or contract for carriage of cargo by, a U.S.-flag vessel documented under chapter 121 of title 46 U.S.C.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Section 252.247–7027 is added to read as follows:

252.247–7027 Riding gang member requirements.

As prescribed in 247.574(f), use the following clause:

RIDING GANG MEMBER REQUIREMENTS (OCT 2010)

(a) *Definition.* *Riding gang member*, as used in this clause, has the same definition as “riding gang member” in title 46 U.S.C. 2101.

(b) *Requirements relating to riding gang members.* Notwithstanding 46 U.S.C. 8106, the Contractor shall ensure each riding gang member holds a valid U.S. Merchant Mariner’s Document issued under 46 U.S.C. chapter 73, or a transportation security card issued under section 70105 of such title.

(c) *Exemption.*

(1) An individual is exempt from the requirements of paragraph (b) of this clause and shall not be treated as a riding gang member for the purposes of section 8106 of title 46, if that individual is on a vessel for purposes other than engaging in the operation or maintenance of the vessel and is—

(i) One of the personnel who accompanies, supervises, guards, or maintains unit equipment aboard a ship, commonly referred to as supercargo personnel;

(ii) One of the force protection personnel of the vessel;

(iii) A specialized repair technician; or

(iv) An individual who is otherwise required by the Secretary of Defense or designee to be aboard the vessel.

(2) Any individual who is exempt under paragraph (c)(1) of this clause must pass a DoD background check before going aboard the vessel. With regard to these exempt individuals, the Contractor shall submit the name and other necessary identifying information for a background check to the approving official specified in the contract. The head of the contracting activity may waive this requirement if the individual possesses a valid U.S. Merchant Mariner’s Document issued under 46 U.S.C., chapter 73, or a transportation security card issued under section 70105 of such title.

(3) An individual exempted under paragraph (c)(1) of this clause is not treated as a riding gang member and shall not be counted as an individual in addition to the crew for the purposes of 46 U.S.C. 3304.

(End of clause)

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 219 and 252

[DFARS Case 2009–D002]

Defense Federal Acquisition Regulation Supplement; Electronic Subcontracting Reporting System

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the Defense Acquisition Regulation Supplement (DFARS) to conform to the Federal Acquisition Regulation (FAR) by providing Department of Defense (DoD)-specific policy and procedures related to the Electronic Subcontracting Reporting System (eSRS). The FAR has been revised to reflect use of the eSRS, rather than Standard Form 294—Subcontract Report for Individual Contracts, and Standard Form 295—Summary Subcontract Report, for submission of small business subcontract reports.

DATES: *Effective date:* October 25, 2010.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before December 27, 2010, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2009–D002, using any of the following methods:

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

○ *E-mail:* dfars@osd.mil. Include DFARS Case 2009–D002 in the subject line of the message.

○ *Fax:* 703–602–0350.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Cassandra R. Freeman, OUSD (AT&L) DPAP (DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060.

All comments received will be posted to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Ms. Cassandra R. Freeman, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060, Telephone 703–602–8383;

facsimile(703)602–0350. Please cite DFARS Case 2009–D002.

SUPPLEMENTARY INFORMATION:

A. Background

This DFARS case is the companion case to FAR Case 2005–040 Electronic Subcontracting Reporting System. This DFARS interim rule amends sections 219.708 and 252.219 to provide DoD-specific procedures and policies related to DoD’s implementation of eSRS.

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 small businesses are not required to have subcontracting plans and, therefore, are not required to use eSRS to submit reports on their progress in achieving the goals in those plans.

Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 DFARS Case 2009–D002 in correspondence.

C. Paperwork Reduction Act

This interim rule does not impose any new information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* This rule provides DoD instructions on how to submit reports that are already required by the FAR and are covered under Office of Management and Budget Clearance Numbers 9000–0006 and 9000–0007.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. The FAR already requires the use of eSRS for submission of subcontracting reports. This interim rule provides to DoD contractors the DoD-specific policies and procedures that they must follow in order to be able to submit subcontract reports using eSRS, as required by the FAR.

List of Subjects in 48 CFR Parts 219 and 252

Government procurement.

Clare M. Zebrowski,

Editor, Defense Acquisition Regulations System.

■ 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.

PART 219—SMALL BUSINESS PROGRAMS

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

219.708 Contract clauses.

(b)(1)(A) Use the clause at 252.219–7003, Small Business Subcontracting Plan (DoD Contracts)—

(1) In solicitations and contracts that contain the clause at FAR 52.219–9, Small Business Subcontracting Plan.

(2) With its Alternate I in contracts that use Alternate III of 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. Include —

(1) FAR clause 52.219–9, Small Business Subcontracting Plan and 252.219–7003 in the contract for purposes of the contractor flowing these clauses down to subcontractors, except

(2) When the contract will not be reported in FPDS (see FAR 4.606 (c)(5)), include FAR clause 52.219–9, Small Business Subcontracting Plan with its Alternate III and 252.219–7003 Small Business Subcontracting Plan (DoD Contracts) with its Alternate I in the contract for purposes of the contractor flowing these clauses down to subcontractors.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Section 252.212–7001 is amended by revising the clause date to read “(OCT 2010)” in the clause title and paragraphs (b)(3) and (b)(4).

■ 4. Section 252.219–7003 is revised to read as follows:

252.219–7003 Small business subcontracting plan (DoD contracts).

As prescribed in 219.708(b)(1)(A)(1), use the following clause:

SMALL BUSINESS SUBCONTRACTING PLAN (DoD CONTRACTS) (OCT 2010)

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

(a) *Definitions.* As used in this clause—
Historically black colleges and universities means institutions determined by the Secretary of Education to meet the requirements of 34 CFR Section 608.2. The term also means any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

Minority institutions means institutions meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d–5(3)). The term also includes Hispanic-serving institutions as defined in Section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1)).

Summary Subcontract Report (SSR) Coordinator means the individual at the department or agency level who is registered in eSRS and is responsible for acknowledging receipt or rejecting SSRs in eSRS for the department or agency.

(b) Except for company or division-wide commercial items subcontracting plans, the term “small disadvantaged business,” when used in the FAR 52.219–9 clause, includes historically black colleges and universities and minority institutions, in addition to small disadvantaged business concerns.

(c) Work under the contract or its subcontracts shall be credited toward meeting the small disadvantaged business concern goal required by paragraph (d) of the FAR 52.219–9 clause when:

(1) It is performed on Indian lands or in joint venture with an Indian Tribe or a Tribally-owned corporation, and

(2) It meets the requirements of 10 U.S.C. 2323a.

(d) Subcontracts awarded to workshops approved by the Committee for Purchase from People Who are Blind or Severely Disabled (41 U.S.C. 46–48), may be counted toward the Contractor’s small business subcontracting goal.

(e) A mentor firm, under the Pilot Mentor-Protege Program established under Section 831 of Public Law 101–510, as amended, may count toward its small disadvantaged business goal, subcontracts awarded—

(1) Protege firms which are qualified organizations employing the severely handicapped; and

(2) Former protege firms that meet the criteria in Section 831(g)(4) of Public Law 101–510.

(f) The master plan is approval by the Contractor’s cognizant contract administration activity.

(g) In those subcontracting plans which specifically identify small businesses, the

Contractor shall notify the Administrative Contracting Officer of any substitutions of firms that are not small business firms, for the small business firms specifically identified in the subcontracting plan. 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.

(h)(1) For DoD, the Contractor shall submit reports in eSRS as follows:

(i) The Individual Subcontract Report (ISR) shall be submitted to the contracting officer at the procuring contracting office, even when contract administration has been delegated to the Defense Contract Management Agency.

(ii) An SSR for other than a commercial subcontracting plan, or construction and related maintenance repair contracts, shall be submitted in eSRS to the department or agency within DoD that administers the majority of the Contractor’s individual subcontracting plans. An example would be Defense Finance and Accounting Service or Missile Defense Agency.

(2) For DoD, the authority to acknowledge receipt or reject reports in eSRS is as follows:

(i) The authority to acknowledge receipt or reject the ISR resides with the contracting officer who receives it, as described in paragraph (h)(1)(i) of this clause.

(ii) Except as provided in (h)(2)(iii), the authority to acknowledge receipt or reject SSRs in eSRS resides with the SSR Coordinator at the department or agency that administers the majority of the Contractor’s individual subcontracting plans.

(iii) The authority to acknowledge receipt or reject SSRs for construction and related maintenance and repair contracts resides with the SSR Coordinator for each department or agency.

(iv) The authority to acknowledge receipt or reject the Year-End Supplementary Report for Small Disadvantaged Businesses resides with the SSR Coordinator who acknowledges receipt or rejects the SSR.

(v) If the Contractor submits the Small Disadvantaged Business Participation report using eSRS, the authority to acknowledge receipt or reject this report in eSRS resides with the contracting officer who acknowledges receipt or rejects the ISR.

(End of clause)

ALTERNATE I (OCT 2010)

As prescribed in 219.708(b)(1)(A)(2), substitute the following paragraph (h)(1)(i) for paragraph (h)(1)(i) in the basic clause:

(h)(1)(i) The Standard Form 294 Subcontracting Report for Individual Contracts shall be submitted in accordance with the instructions on that form; paragraph (h)(2)(i) is inapplicable.

■ 5. Section 252.219–7004 is added to read as follows:

252.219–7004 Small business subcontracting plan (test program).

As prescribed in 219.708(b)(1)(B), use the following clause:

SMALL BUSINESS SUBCONTRACTING PLAN (TEST PROGRAM) (OCT 2010)

(a) Definition.

Electronic Subcontracting Reporting System (eSRS) means the Governmentwide, electronic, Web-based system for small business subcontracting program reporting. The eSRS is located at <http://www.esrs.gov>.

(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 Public Law 95-507.

(c) The Contractor shall—

(1) Ensure that subcontractors with subcontracting plans agree to submit an Individual Subcontract Report (ISR) and/or Summary Subcontract Report (SSR) using the Electronic Subcontracting Reporting System (eSRS);

(2) Provide its contract number, its DUNS number, and the e-mail address of the Contractor's official responsible for acknowledging or rejecting the ISR to all first-tier subcontractors, who will be required to submit ISRs, so they can enter this information into the eSRS when submitting their reports;

(3) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own DUNS number, and the e-mail address of the subcontractor's official responsible for acknowledging or rejecting the ISRs to its subcontractors with subcontracting plans who will be required to submit ISRs; and

(4) Acknowledge receipt or reject all ISRs submitted by its subcontractors using eSRS.

(d) The Contractor shall submit SSRs using eSRS at <http://www.esrs.gov>. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Purchases from a corporation, company, or subdivision that is an affiliate of the prime Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime contractors and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian Tribe. Only subcontracts involving performance in

the U.S. or its outlying areas should be included in these reports.

(1) This report may be submitted on a corporate, company or subdivision (*e.g.*, plant or division operating as a separate profit center) basis, as negotiated in the comprehensive subcontracting plan with the Defense Contract Management Agency.

(2) This report encompasses all subcontracting under prime contracts and subcontracts with the Department of Defense, regardless of the dollar value of the subcontracts, and is based on the negotiated comprehensive subcontracting plan.

(3) The Contractor shall submit the report semi-annually for the six months ending March 31 and the twelve months ending September 30. Reports are due 30 days after the close of each reporting period.

(4) The authority to receipt or reject the SSR resides with the Comprehensive Subcontracting Program Division, the Defense Contract Management Agency Small Business Center.

(e) All reports submitted at the close of each fiscal year shall include a Year-End Supplementary Report for Small Disadvantaged Businesses. The report shall include subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. If the data are not available when the year-end SSR is submitted, the prime Contractor and/or subcontractor shall submit the Year-End Supplementary Report for Small Disadvantaged Businesses within 90 days of submitting the year-end SSR. The authority to acknowledge receipt or reject the Year End Report resides with the Comprehensive Subcontracting Program Division, the Defense Contract Management Agency Small Business Center.

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

(g) The Contractor shall include, in contracts that offer subcontracting possibilities, are expected to exceed \$550,000 (\$1,000,000 for construction of any public facility), and are required to include the clause at 52.219-8, Utilization of Small Business Concerns—

(1) FAR 52.219-9, Small Business Subcontracting Plan, and 252.219-7003, Small Business Subcontracting Plan (DoD Contracts), when the Contracting Officer has included these clauses in the contract for purposes of flowdown to subcontractors;

(2) 52.219-9 Small Business Subcontracting Plan with its Alternate III and 252.219-7003, Small Business Subcontracting Plan (DoD Contracts), with its Alternate I, when the Contracting Officer has included these clauses in the contract for flowdown to subcontractors to allow for submission of SF 294s in lieu of ISRs; or

(3) 252.219-7004, Small Business Subcontracting Plan (Test Program), in

subcontracts with subcontractors that participate in the test program described in DFARS 219.702.

(End of clause)

■ 6. In appendix I to chapter 2, Section I-105 is amended by revising paragraph (b)(7) to read as follows:

Appendix I—Policy and Procedures for the DoD Pilot Mentor-Protege Program

* * * * *

I-105 Mentor approval process.

(b) * * *

(7) The total dollar amount and percentage of subcontracts that the company awarded to all SDB, women-owned small business, HUBZone small business, and service-disabled veteran-owned small business firms under DoD contracts and other Federal agency contracts during the 2 preceding fiscal years. (Show DoD subcontract awards separately.) If the company presently is required to submit a Summary Subcontract Report (SSR) or previously submitted the Standard Form (SF) 295, the request must include copies of the final reports for the 2 preceding fiscal years.

■ 7. In appendix I to chapter 2, section I-112.1 is amended by revising the section heading and paragraph (a) to read as follows:

I-112.1 Reporting requirements applicable to Individual Subcontract Reports (ISR), Summary Subcontract Reports (SSR) and SF 294s.

(a) Amounts credited toward applicable subcontracting goal(s) for unreimbursed costs under the Program must be separately identified on the appropriate ISR, SSR or SF 294 reports from the amounts credited toward the goal(s) resulting from the award of actual subcontracts to protege firms. The combination of the two must equal the mentor firm's overall accomplishment toward the applicable goal(s).

* * * * *

■ 8. In appendix I to chapter 2, section I-112.2 is amended by revising paragraph (c)(3) to read as follows:

I-112.2 Program specific Reporting requirements.

* * * * *

(c) * * *

(3) Dollars credited, if any, toward applicable subcontracting goals as a result of developmental assistance provided to the protege and a copy of the ISR or SF 294 and/or SSR for each contract where developmental assistance was credited.

* * * * *

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