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**226.7200 Scope of subpart.**

This subpart implements section 862 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81).

**226.7201 Definition.**

“*Science, Technology, Engineering, and Mathematics (STEM) Programs*,” as used in this subpart, means programs or incentives, either formal or informal, that encourage the pursuit of education and experience in the science, technology, engineering, and mathematics disciplines.

**226.7202 Applicability.**

This subpart applies to all solicitations and contracts.

**226.7203 Policy.**

DoD encourages contractors to undertake actions, to the maximum extent practicable, that—

(a) Enhance undergraduate, graduate, and doctoral programs in science, technology, engineering, and mathematics (referred to as “STEM” disciplines);

(b) Make investments, such as programming and curriculum development, in STEM programs within elementary and secondary schools;

(c) Encourage employees to volunteer in Title I schools in order to enhance STEM education and programs;

(d) Make personnel available to advise and assist faculty at such colleges and universities in the performance of STEM research and disciplines critical to the functions of DoD;

(e) Establish partnerships between the contractor and historically black colleges and universities and minority institutions for the purpose of training students in scientific disciplines;

(f) Award scholarships and fellowships, and establish cooperative work-education programs in scientific disciplines; or

(g) Conduct recruitment activities at historically black colleges and universities and other minority-serving institutions or offer internships or apprenticeships.

**226.7204 Contract clause.**

The contracting officer shall insert the clause at 252.226–70XX, Encouragement of Science, Technology, Engineering, and Mathematics (STEM) Programs, in all solicitations and contracts.

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 4. The authority citation for part 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 5. Section 252.226–70XX is added to read as follows:

**252.226–70XX Encouragement of Science, Technology, Engineering, and Mathematics (STEM) Programs.**

As prescribed in 226.7204, insert the following clause:

**Encouragement of Science, Technology, Engineering, and Mathematics (STEM) Programs (Date)****(a) Definition.**

“*Science, Technology, Engineering, and Mathematics (STEM) Programs*,” as used in this clause, means programs and or incentives, either formal or informal, that encourage the pursuit of education and experience in the science, technology, engineering, and mathematics disciplines.

(b) In accordance with section 862 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81), the Contractor is encouraged to undertake actions, to the maximum extent practicable, that—

(1) Enhance undergraduate, graduate, and doctoral programs in science, technology, engineering, and mathematics (referred to as “STEM” disciplines);

(2) Make investments, such as programming and curriculum development, in STEM programs within elementary and secondary schools;

(3) Encourage employees to volunteer in Title I schools in order to enhance STEM education and programs;

(4) Make personnel available to advise and assist faculty at such colleges and universities in the performance of STEM research and disciplines critical to the functions of DoD;

(5) Establish partnerships between the contractor and historically black colleges and universities and minority institutions for the purpose of training students in scientific disciplines;

(6) Award scholarships and fellowships, and establish cooperative work-education programs in scientific disciplines; or

(7) Conduct recruitment activities at historically black colleges and universities and other minority-serving institutions or offer internships or apprenticeships.

(c) *Costs.* (1) The Contractor shall assume the responsibility for all the costs and investments in support of the STEM disciplines.

(2) The Contractor will not be reimbursed for any costs incurred or associated with the support of the STEM disciplines. Any costs incurred for supporting the STEM disciplines are unallowable under this contract.

(End of clause)

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**DEPARTMENT OF DEFENSE****Defense Acquisition Regulations System****48 CFR Part 231**

RIN 0750–AH76

**Defense Federal Acquisition Regulation Supplement; Unallowable Fringe Benefit Costs (DFARS Case 2012–D038)**

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

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to explicitly state that fringe benefit costs incurred or estimated that are contrary to law, employer-employee agreement, or an established policy of the contractor are unallowable.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before April 29, 2013, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2012–D038, using any of the following methods:

*Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inserting “DFARS Case 2012–D038” under the heading “Enter keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “DFARS Case 2012–D038.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “DFARS Case 2012–D038” on your attached document. Follow the instructions for submitting comments.

*Email:* [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2012–D038 in the subject line of the message.

*Fax:* 571–372–6094.

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

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov) approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, telephone 571-372-6106.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD is proposing to revise the DFARS at 231.205-6 to implement the Director of Defense Pricing policy memo "Unallowable Costs for Ineligible Dependent Health Care Benefits, dated February 17, 2012. The rule adds paragraph 231.205-6(m)(1) to explicitly state that fringe benefit costs incurred or estimated that are contrary to law, employer-employee agreement, or an established policy of the contractor are unallowable.

FAR 42.709, which implements 10 U.S.C. 2324(a) through (d) and 41 U.S.C. 4303, covers the assessment of penalties against contractors that include unallowable indirect costs in final indirect cost rate proposals or the final statement of costs incurred or estimated to be incurred under a fixed-price incentive contract. The section applies to all contracts in excess of \$700,000, except fixed-price contracts without cost incentives or firm-fixed-price contracts for the purchase of commercial items. FAR 42.709-1(a) provides penalties that apply if the indirect cost is expressly unallowable under a cost principle in the FAR, or an executive agency supplement to the FAR.

FAR 31.205-6(m) states that the costs of fringe benefits (which include employee health care benefits) are allowable to the extent that they are reasonable and are required by law, employer-employee agreement, or an established policy of the contractor. Although fringe benefit costs that do not meet these criteria are not allowable, the FAR does not make them expressly unallowable. Specifying these fringe benefit costs as expressly unallowable in the DFARS makes it clear that the penalties at FAR 42.709-1 are applicable if a contractor includes such unallowable fringe benefit costs in a final indirect cost rate proposal or in the final statement of costs incurred or estimated to be incurred under a fixed-price incentive contract.

**II. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and

equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Information and Regulatory Affairs has determined that this is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**III. Regulatory Flexibility Act**

DoD has prepared an initial regulatory flexibility analysis consistent with 5 U.S.C. 603. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

DoD does not expect this proposed 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 this rule will only impact entities that are submitting covered proposals containing unallowable indirect fringe benefit costs. FAR 31.205-6(m) already states what fringe benefit costs are allowable. This rule provides explicit clarification that fringe benefit costs incurred or estimated that are contrary to law, employer-employee agreement, or an established policy of the contractor are unallowable. If this rule takes effect, the penalties at FAR 42.709-1 will apply to any entity that includes such unallowable indirect charges in a final indirect cost rate proposal or the final statement of costs incurred or estimated to be incurred under a fixed-price incentive contract for a contract that exceeds \$700,000.

At this time, DoD is unable to estimate the number of small entities to which this rule will apply. According to FPDS data for FY 2012, there were approximately 3000 contract awards exceeding \$700,000 to small entities, excluding fixed-price contracts without cost incentives or any firm-fixed-price contract for the purchase of commercial items. We estimate that a very small percentage of the entities receiving these awards would be submitting covered proposals containing unallowable fringe benefit costs. 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 2012-D038) in correspondence.

**IV. Paperwork Reduction Act**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

**List of Subjects in 48 CFR Part 231.**

Government procurement.

**Manuel Quinones,**

*Editor, Defense Acquisition Regulations System.*

Therefore, DoD proposes to amend 48 CFR parts 231 as follows:

**PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES**

■ 1. The authority citation for 48 CFR part 231 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Section 231.205-6 is amended by adding paragraph (m)(1) to read as follows:

**231.205-6 Compensation for personal services.**

\* \* \* \* \*

(m)(1) Fringe benefit costs incurred or estimated that are contrary to law, employer-employee agreement, or an established policy of the contractor are unallowable.

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**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

**49 CFR Parts 380, 383, and 384**

[Docket No. FMCSA-2007-27748]

**Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators; Public Listening Session**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of public listening session.

**SUMMARY:** FMCSA announces that it will hold a public listening session to solicit ideas and information on the issue of entry-level training for drivers of commercial motor vehicles (CMVs). Specifically, the Agency solicits input on factors, issues, and data it should consider in anticipation of a rulemaking to implement the entry-level driver