

Telephone (703) 602-0311; facsimile (703) 602-0350.

List of Subjects in 48 CFR Parts 202, 213, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR Parts 202, 213, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 202, 213, and 252 continues to read as follows:

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

PART 202—DEFINITIONS OF WORDS AND TERMS

202.101 [Amended]

■ 2. Section 202.101 is amended in the definition of “Contracting activity”, under the heading “NAVY”, by removing “Marine Corps Materiel Command” and adding in its place “Marine Corps Systems Command”.

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

213.301 [Amended]

■ 3. Section 213.301 is amended in paragraph (2)(ii)(B) by removing “8.001” and adding in its place “8.002”.

213.302-5 [Amended]

■ 4. Section 213.302-5 is amended as follows:

■ a. In paragraph (d) introductory text, in the first sentence, by removing “Buy American Act—Balance of Payments Program—Supplies” and adding in its place “Buy American Act—Supplies”; and

■ b. In paragraph (d)(ii), by removing “225.1101(13)” and adding in its place “225.1101(10)”.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212-7001 [Amended]

■ 5. Section 252.212-7001 is amended in paragraph (b), in entry “252.225-7021” by removing “(APR 2003)” and adding in its place “(AUG 2003)”.

[FR Doc. 03-24628 Filed 9-30-03; 8:45 am]

BILLING CODE 5001-08-P

DEPARTMENT OF DEFENSE

48 CFR Parts 226 and 252

[DFARS Case 2002-D033]

Defense Federal Acquisition Regulation Supplement; Indian Incentive Program

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 8021 of the DoD Appropriations Act for Fiscal Year 2003. Section 8021 revises the criteria for application of the Indian Incentive Program to DoD contracts.

DATES: Effective date: October 1, 2003.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before December 1, 2003, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. As an alternative, respondents may e-mail comments to: dfars@acq.osd.mil. Please cite DFARS Case 2002-D033 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Angelena Moy, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062; facsimile (703) 602-0350. Please cite DFARS Case 2002-D033.

At the end of the comment period, interested parties may view public comments on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf>.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy, (703) 602-1302.

SUPPLEMENTARY INFORMATION:

A. Background

The Indian Incentive Program provides for incentive payments to contractors, and subcontractors at any tier, that use Indian organizations and Indian-owned economic enterprises as subcontractors. DoD implementation of the Indian Incentive Program is in DFARS Subpart 226.1 and the clause at 252.226-7001. Section 8021 of the DoD Appropriations Act for Fiscal Year 2003 (Public Law 107-248) revises the criteria for application of the Indian Incentive Program by establishing a \$500,000 threshold for contracts and

subcontracts under which incentives may be paid; by authorizing incentive payments for subcontracts awarded to Native Hawaiian small business concerns; and by adding contracts and subcontracts for commercial items to the Program. This interim rule amends DFARS subpart 226.1 and the clause at 252.226-7001 to implement section 8021 of Public Law 107-248.

In addition, this interim rule incorporates changes to the clause at 252.226-7001 resulting from the proposed rule published at 67 FR 70389 on November 22, 2002, under DFARS Case 2002-D013. That proposed rule removed references to specific contract types from the clause, since the Indian Incentive Program applies to all contract types. Four sources submitted comments on the proposed rule. A discussion of the comments is provided below.

1. Comment: The rule should clarify that a contractor can receive a separate equitable adjustment in addition to the incentive payment under the clause. The equitable adjustment would apply if the cost of subcontracting with an Indian organization exceeds the cost of subcontracting with a non-Indian source. The 1996 version of the Indian Incentive clause at FAR 52.226-1 substantiates this position.

DoD Response: Do not concur. 25 U.S.C. 1544 provides that “a contractor * * * may be allowed an additional amount of compensation equal to 5 percent of the amount paid, or to be paid, to a subcontractor or supplier, in carrying out the contract if such subcontractor or supplier is an Indian organization or Indian-owned economic enterprise * * *” Section 8021 of Public Law 107-248 appropriates funds “only for incentive payments authorized by * * * 25 U.S.C. 1544 * * *” Accordingly, the clause at DFARS 252.226-7001 provides for an incentive payment of 5 percent of the amount of a subcontract awarded to an Indian organization or Indian-owned economic enterprise.

When the Indian Incentive Program was added to the FAR as an interim rule on August 22, 1991 (56 FR 41736), the clause at 52.226-1 provided that a contract adjustment under the Program would be the lesser of (1) the difference between the price of the subcontract awarded to an Indian concern and the price of the otherwise low, non-Indian offeror, or (2) 5 percent of the price of the subcontract awarded to an Indian concern. When the FAR rule was finalized on July 26, 1996 (61 FR 39210), the clause was revised to eliminate the first option and to specify the “5 percent” payment method as the