PART 926—OTHER SOCIOECONOMIC PROGRAMS

Authority: 42 U.S.C. 7101 and 50 U.S.C. 2401

Source: 60 FR 22300, May 5, 1995, unless otherwise noted.

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Parent topic: SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

Subpart 926.5—Drug-Free Workplace

Source: 57 FR 32676, July 22, 1992, unless otherwise noted. Redesignated at 89 FR 89752, Nov. 13, 2024.

926.500 Scope of subpart.

For contracts performed at DOE sites, in lieu of 48 CFR subpart 23.5, contracting activities shall use 923.570, Workplace Substance Abuse Programs at DOE Sites.

926.570 Workplace substance abuse programs at DOE sites.

(a) The Department of Energy (DOE), as part of its overall responsibilities to protect the environment, maintain public health and safety, and safeguard the national security, has established policies, criteria, and procedures for contractors to develop and implement programs that help maintain a workplace free from the use of illegal drugs.

(b) Regulations concerning DOE's contractor workplace substance abuse programs are promulgated at 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites.

926.570-1 Applicability.

The policies, criteria, and procedure specified in 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, apply to contracts for work performed at sites owned or controlled by DOE and operated under the authority of the Atomic Energy Act of 1954, as amended, where such work—

(a) Has a value of $25,000 or more; and

(b) Has been determined by DOE to involve—

(1) Access to or handling of classified information or special nuclear materials;

(2) High risk of danger to life, the environment, public health and safety or national security; or

(3) The transportation of hazardous materials to or from a DOE site.

926.570-2 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 970.5226-4, Agreement Regarding Workplace Substance Abuse Programs at DOE Sites, in solicitations where the work to be performed by the contractor will occur on sites owned or controlled by DOE and operated under the authority of the Atomic Energy Act of 1954, as amended, as specified in 926.570-1, Applicability.

(b) The contracting officer shall insert the clause at 970.5226-5, Workplace Substance Abuse Programs at DOE Sites, in contracts where the work to be performed by the contractor will occur on sites owned or controlled by DOE and operated under the authority of the Atomic Energy Act of 1954, as amended, as specified in 926.570-1, Applicability.

926.570-3 Suspension of payments, termination of contract, and debarment and suspension actions.

(a) The contracting officer shall comply with the procedures of FAR 26.505 regarding the suspension of contract payments, the termination of the contract for default, and the debarment and suspension of a contractor relative to failure to comply with 970.5226-5, Workplace Substance Abuse Programs at DOE Sites.

(b) For purposes of 10 CFR part 707, the specific causes for suspension of contract payments, termination of the contract for default, and debarment and suspension of the contractor are—

(1) The contractor fails to either comply with the requirements of 10 CFR part 707 or perform in a manner consistent with its approved program;

(2) The contractor has failed to comply with the terms of the clause at 970.5223-4, Workplace Substance Abuse Programs at DOE Sites; or

(3) Such a number of contractor employees having been convicted of violations of criminal drug statutes for violations occurring on the DOE-owned or -controlled site, as to indicate that the contractor has failed to make a good faith effort to provide a drug free workplace.

Subpart 926.70—Implementation of Section 3021 of the Energy Policy Act of 1992

926.7001 Policy.

(a) Section 3021(a) of the Energy Policy Act of 1992, as amended, specifies that the Department of Energy (DOE) shall, to the extent practicable, provide that not less than 10 percent of the total combined amounts obligated for competitively awarded contracts and subcontracts under the Energy Policy Act be expended with—

(1) Small business concerns controlled by socially and economically disadvantaged individuals or by women;

(2) Historically Black colleges and universities;

(3) Colleges and universities having a student body in which more than 20 percent of the students are Hispanic Americans or Native Americans; or

(4) Qualified HUBZone small business concerns, as defined at FAR 2.101.

(b) The four groups in paragraph (a) of this section are collectively referred to in this section as “Energy Policy Act target groups.”

(c) Awards of Energy Policy Act procurements should be in the following descending order of preference—

(1) Competitive awards pursuant to a set-aside for small disadvantaged business;

(2) Competitive awards to small businesses owned and controlled by socially and economically disadvantaged individuals and by women for Energy Policy Act requirements under the Small Business Administration's section 8(a) program; and

(3) Competitive awards that provide an evaluation preference in accordance with 926.7006 to offerors from the Energy Policy Act target groups.

(d) The DOE implementation of Section 3021 requirements with regard to the award of subcontracts under Energy Policy Act procurements is discussed at 926.7006.

(e) Competitive procedures, for purposes of Energy Policy Act implementation, consist of awards under set-asides to small disadvantaged business and firms certified as 8(a) Small Business Administration and competitive procedures in accordance with 48 CFR subpart 15.6 and subpart 915.6.

926.7002 Responsibilities.

Offices initiating procurement requests have primary responsibility to identify potential contract requirements falling within the scope of section 3021 of the Energy Policy Act. Identification shall occur at the earliest possible point in time in the acquisition cycle, but not later than the submission of the procurement request to the contracting officer. For purposes of Section 3021, a contract requirement is any award that directly satisfies an Energy Policy Act program or requirement.

926.7003 Review of the procurement request.

Any Energy Policy Act procurement, including basic research contracts with educational institutions, shall be reviewed in accordance with the Small Business and 8(a) Program Review Procedures in order to ensure that full consideration is given to the potential for making Energy Policy Act awards.

926.7004 Size standard for Energy Policy Act procurements.

The size standard for Energy Policy Act engineering services procurements shall be Exception 2 under North American Industry Classification System code 541330, Engineering Services.

926.7005 Preferences under the Energy Policy Act.

Solicitations for all competitive Energy Policy Act procurements not for 8(a) firms and in excess of the simplified acquisition threshold shall provide for an evaluation preference for offers received from entities from among the Energy Policy Act target groups. The evaluation criteria shall provide that in instances in which two or more proposals being considered for final selection are ranked as essentially equal after consideration of all technical and cost evaluation factors, and if one of these proposals is from an offeror from among an Energy Policy Act target group that offeror will be selected for award.

926.7006 Goal measurement and reporting requirements.

(a) *General.* The following types of contract awards for Energy Policy Act procurements shall be counted toward achievement by DOE of the 10 percent goal—

(1) Any award set-aside for small, disadvantaged business;

(2) Any competitive section 8(a) award;

(3) Any competitive award to one of the four target groups under an unrestricted procurement;

(4) Any award to one of the four target groups conducted under simplified acquisition procedures in excess of the micro-purchase threshold; and

(5) Any competitively awarded subcontract to one of the four target groups under a prime award.

(b) *Prime contract awards.* Award values and dollars obligated under prime contracts and modifications to prime contracts for Energy Policy Act requirements shall be reported through the Department of Energy Procurement and Assistance Data System.

(c) *Subcontract awards.* The contractor shall be required to report, on an annual Federal Government fiscal year basis, its progress against Section 3021 goals by providing the actual dollar value of subcontract payments and the relationship of those payments to the incurred contract cost. If the contract includes reporting requirements under 48 CFR 52.219-9, Small Business and Small Disadvantaged Business Subcontracting Plan, the contractor's progress against the Section 3021 goals shall be included as an addendum to Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, as applicable, for the period that corresponds to the end of the Federal Government fiscal year.

926.7007 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 952.226-70, Subcontracting Goals under Section 3021(a) of the Energy Policy Act of 1992 (Pub. L. 102-486) (Energy Policy Act), in solicitations for Energy Policy Act procurements.

(b) The contracting officer shall insert the clause at 952.226-71, Utilization of Energy Policy Act Target Entities, in contracts for the Energy Policy Act requirements with an award value in excess of the simplified acquisition threshold.

(c) The contracting officer shall insert the clause at 952.226-72, Energy Policy Act Subcontracting Goals and Reporting Requirements, in contracts for Energy Policy Act requirements with an award value in excess of $750,000 ($1,500,000 in the case of construction).

(d) The contracting officer shall insert the provision at 952.226-73, Energy Policy Act Target Group Representation, in solicitations for Energy Policy Act procurements.

(e) The contracting officer shall insert the clause at 48 CFR 52.219-14, Limitation on Subcontracting, in contracts for Energy Policy Act requirements with an entity from among the Energy Policy Act target groups.

Subpart 926.71—Implementation of Section 3161 of the National Defense Authorization Act for Fiscal Year 1993.

Source: 62 FR 34861, June 27, 1997, unless otherwise noted.

926.7101 Policy.

Consistent with the requirements of section 3161(c)(2), 50 U.S.C. 2704(c)(2), in instances where DOE has determined that a change in workforce at a DOE Defense Nuclear Facility is necessary, the Department, to the extent practicable, is required to provide employees under Department of Energy contracts whose employment in positions at such a facility is terminated with a preference in any hiring of the Department. Consistent with published DOE guidance regarding section 3161, such preference in hiring extends to hiring by DOE contractors and subcontractors.

926.7102 Definition.

Eligible employee means a current or former employee of a contractor or subcontractor employed at a DOE Defense Nuclear Facility—

(1) Whose position of employment has been, or will be, involuntarily terminated (except if terminated for cause);

(2) Who has met the eligibility criteria contained in Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time; and

(3) Who is qualified for a job vacancy with the Department or one of its contractors with respect to work under its contract with the Department at the time a position is available.

926.7103 Requirements.

(a) Section 3161, 50 U.S.C. 2704(c)(2), confers a continuing right to a preference in hiring to an eligible employee of Department of Energy Defense Nuclear Facilities. This right to a preference in hiring includes employment opportunities of any Department of Energy contractor, regardless of the place of performance of the contract. Accordingly, eligible former employees of contractors and subcontractors employed at Department of Energy Defense Nuclear Facilities, to the extent practicable, shall be provided a hiring preference in employment opportunities of other Department of Energy contractors for work under their contracts.

(b) The Office of Worker and Community Transition (WT) is responsible for establishing policies and procedures relating to the Department of Energy implementation of Section 3161. Contracting Officers, in concert with representatives of the field office responsible for implementation of Section 3161 at the Department of Energy Defense Nuclear Facility and local counsel, should consult with the Office of Worker and Community Transition to determine applicability of Section 3161 requirements, including hiring preference requirements, for displaced workers.

926.7104 Contract clause.

The contracting officer shall insert the clause at 952.226-74, Workforce Restructuring and Displaced Employee Hiring Preference, in contracts (both non-management and operating contracts and management and operating contracts), except for contracts for commercial items, pursuant to 41 U.S.C. 403, that exceed $500,000.