

1995, and Supplemental Information, *infra*. With this action, this proceeding is terminated.

**DATES:** Effective June 7, 1996. The window period for filing applications will open on June 7, 1996, and close on July 8, 1996.

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95-75, adopted April 5, 1996, and released April 23, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

All channels can be allotted to the noted communities in compliance with the Commission's minimum distance separation requirements. Channel 224C2 can be allotted to Blossom, Texas with a site restriction of 11.0 kilometers (6.8 miles) east to avoid a short-spacing conflict with the allotment of Channel 225A at Bells, Texas. The coordinates for Channel 224C2 at Blossom are 33-40-07 and 95-16-13. As noted, the allotment of Channel 224C2 at Blossom requires the substitution of Channel 227A for 224A at DeQueen, Arkansas, Channel 227A can be allotted to DeQueen and can be used at the site specified in Station KDQN(FM)'s license. The coordinates for Channel 227A at DeQueen are 34-01-57 and 94-19-43. Channel 288C2 can be allotted to Coalgate, Oklahoma, with a site restriction of 13.4 kilometers (8.3 miles) east to avoid short-spacing conflicts with the licensed site of Station KXXK(FM), Channel 288A, Chickasha, Oklahoma, and with Station KSTV(FM)'s pending application to upgrade from Channel 289C1 to Channel 289C at Decatur, Texas. The coordinates for Channel 288C2 at Coalgate are 34-32-20 and 96-04-20.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

#### **PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

#### **§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Texas, Arkansas and Oklahoma, is amended by adding Blossom, Channel 224C2; by removing Channel 224A and adding Channel 227A at DeQueen; and by adding Coalgate, Channel 288C2.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

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BILLING CODE 6712-01-F

#### **47 CFR Part 73**

[MM Docket No. 95-156; RM-8701]

#### **Radio Broadcasting Services; Shelton, WA**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Sound Broadcasting, Inc., allots Channel 233A at Shelton, Washington, as the community's first local FM transmission service. See 60 FR 53892, October 18, 1995. Channel 233A can be allotted to Shelton in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.6 kilometers (4.1 miles) northwest to avoid short-spacings to the licensed sites of Station KMPS-FM, Channel 231C, Seattle, Washington, and Station KUKN(FM), Channel 233A, Kelso, Washington. The coordinates for Channel 233A at Shelton are North Latitude 47-14-43 and West Longitude 123-10-25. See Supplementary Information, *infra*.

**DATES:** Effective June 7, 1996. The window period for filing applications will open on June 7, 1996 and close on July 8, 1996.

**FOR FURTHER INFORMATION CONTACT:** Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95-156, adopted April 5, 1996, and released April 23, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy

contractors, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Recognizing that the allotment of Channel 233A would be short-spaced to the proposed allotment of Channel 233C at Vancouver, British Columbia, we have determined that no potential interference would result from this allotment. Therefore, since the Shelton is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government for the allotment of Channel 233A has been obtained as a specially-negotiated allotment. With this action, this proceeding is terminated.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

#### **PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

#### **§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by adding Shelton, Channel 233A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96-10440 Filed 4-26-96; 8:45 am]

BILLING CODE 6712-01-F

#### **DEPARTMENT OF DEFENSE**

#### **48 CFR Parts 215, 219, 236, 242, 252, and 253**

[DFARS Case 95-D039]

#### **Defense Federal Acquisition Regulation Supplement; Small Disadvantaged Business Concerns**

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** The Department of Defense suspended the sections of the Defense Federal Acquisition Regulation Supplement (DFARS) that prescribe the set-aside of acquisitions for small disadvantaged businesses (SDBs). The Department is issuing this final rule to implement initiatives designed to limit the adverse impact of this suspension. The efforts of a government-wide group

to reform affirmative action programs in procurement continue. This action was reviewed by the Office of Management and Budget under Executive Order 12866.

**EFFECTIVE DATE:** April 29, 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan Schneider, (703) 602-0131.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This final rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) to implement initiatives designed to facilitate awards to SDBs while taking account of the Supreme Court's decision in *Adarand Constructors, Inc. v. Peña*, 115 S.Ct. 2097 (1995). This DFARS rule includes contracting procedures that: (1) expand the use of the evaluation factor for SDBs to include competitive awards based on other than price or price-related factors; (2) consider small, small disadvantaged, and women-owned small business subcontracting as a factor in the evaluation of past performance; (3) clarify that the contracting officer will weigh enforceable commitments to use small businesses, SDBs, women-owned small businesses, historically black colleges and universities, and minority institutions more heavily than non-enforceable ones, if the commitment to use such firms is included in the solicitation as a source selection criterion; (4) require prime contractors to notify the contracting officer of any substitutions of firms that are not small, small disadvantaged, or women-owned small businesses for the firms listed in the subcontracting plan; and (5) establish a test program of an SDB evaluation preference that would remove bond cost differentials between SDBs and other businesses as a factor in most source selections for construction acquisitions.

A proposed rule was published in the Federal Register on December 14, 1995 (60 FR 64135), with a correction published on December 21, 1995 (60 FR 66246). DoD considered all comments received in response to the proposed rule.

**B. Regulatory Flexibility Act**

The Regulatory Flexibility Act applies. A final regulatory flexibility analysis has been performed and is available by writing the Defense Acquisition Regulations Council, PDUSD(A&T)DP(DAR), 3062 Defense Pentagon, Washington, DC 20301-3062.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (Pub. L. 104-13) applies. OMB has

approved the information collection requirement under OMB Control Number 0704-0386.

List of Subjects in 48 CFR Parts 215, 219, 236, 242, 252, and 253

Government procurement.  
Michele P. Peterson,  
*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Parts 215, 219, 236, 242, 252, and 253 are amended as follows:

**PART 215—CONTRACTING BY NEGOTIATION**

1. The authority citation for 48 CFR Parts 215, 219, 236, 242, 252, and 253 continues to read as follows:

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

2. Section 215.605 is amended by revising the section title and paragraphs (b)(ii)(B) and (b)(ii)(E), and by adding paragraph (b)(iv) to read as follows:

**215.605 Evaluation factors and subfactors.**

(b) \* \* \*

(ii) \* \* \*

(B) The extent of commitment to use such firms (for example, enforceable commitments are to be weighted more heavily than non-enforceable ones);

\* \* \* \* \*

(E) When not otherwise required by 215.608(a)(2), past performance of the offerors in complying with requirements of the clause at FAR 52.219-8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, and 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan; and

\* \* \* \* \*

(iv) When an evaluation includes the criterion in paragraph (b)(ii)(A) of this section, the small, small disadvantaged, or women-owned small businesses considered in the evaluation shall be listed in any subcontracting plan submitted pursuant to FAR 52.219-9 to facilitate compliance with 252.219-7003(g).

\* \* \* \* \*

3. Section 215.608 is amended by redesignating existing paragraph (a) as paragraph (a)(1) and by adding paragraph (a)(2) to read as follows:

**215.608 Proposal evaluation.**

(a) \* \* \*

(2) When a past performance evaluation is required by FAR 15.605, and the solicitation includes the clause at FAR 52.219-8, Utilization of Small, Small Disadvantaged and Women-

Owned Small Business Concerns, the evaluation shall include the past performance of offerors in complying with requirements of that clause. When a past performance evaluation is required by FAR 15.605, and the solicitation includes the clause at FAR 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, the evaluation shall include the past performance of offerors in complying with requirements of that clause.

\* \* \* \* \*

**PART 219—SMALL BUSINESS PROGRAMS**

4. The heading of Part 219 is revised to read as set forth above.

5. Section 219.704 is amended by adding paragraph (a)(4) to read as follows:

**219.704 Subcontracting plan requirements.**

(a) \* \* \*

(4) In those subcontracting plans which specifically identify small, small disadvantaged, and women-owned small businesses, prime contractors shall notify the administrative contracting officer of any substitutions of firms that are not small, small disadvantaged, or women-owned small businesses for the firms listed 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.

6. Section 219.1006 is amended by revising paragraph (b)(1)(B) to read as follows:

**219.1006 Procedures.**

(b)(1) \* \* \*

(B) The evaluation preference at 219.70 shall not be used. However, note the test program at 219.72 for construction acquisitions.

\* \* \* \* \*

7. Section 219.7001 is amended by revising paragraph (a) to read as follows:

**219.7001 Applicability.**

(a) The evaluation preference shall be used in competitive acquisitions except as provided in paragraph (b) of this section and in 219.1006(b)(1)(B).

\* \* \* \* \*

8. Subpart 219.72 is added to read as follows:

**Subpart 219.72—Evaluation Preference for Small Disadvantaged Business (SDB) Concerns in Construction Acquisitions—Test Program**

- Sec.  
219.7200 Policy.  
219.7201 Administration of the test program.  
219.7202 Applicability.  
219.7203 Procedures.  
219.7204 Contract clause.

**219.72—Evaluation Preference for Small Disadvantaged Business (SDB) Concerns in Construction Acquisitions—Test Program**

**219.7200 Policy.**

DoD policy is to ensure that, during this test program, offers from small disadvantaged business (SDB) concerns shall be given an evaluation preference in construction acquisitions.

**219.7201 Administration of the test program.**

The test program will be conducted over a 36-month period. The test program will be conducted by all DoD contracting activities that award construction contracts. The focal point for the test program is the Director, Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense for Acquisition and Technology (Director, SADBU). The military departments and defense agencies shall submit status reports to the Director, SADBU. The first status report shall be submitted 18 months after initiation of the test program; the second status report shall be submitted 36 months after initiation of the test program. These reports shall specify the impact of the evaluation preference over each of the reporting periods of the test program, and shall provide recommendations with respect to continuation and/or modification of the evaluation preference.

**219.7202 Applicability.**

(a) The evaluation preference shall be used in competitive acquisitions for construction (see definition in FAR Subpart 36.1) when work is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

(b) Do not use the evaluation preference in acquisitions which—

- (1) Are less than or equal to the simplified acquisition threshold;
  - (2) Are set aside for small businesses;
- or
- (3) Are awarded under section 8(a) procedures.

(c) The evaluation preference need not be applied when the head of the

contracting activity determines that the evaluation preference is having a disproportionate impact on non-SDB concerns or nondisadvantaged small business concerns.

**219.7203 Procedures.**

(a) Solicitations that require bonding shall require offerors to separately state bond costs in the offer. Bond costs include the costs of bid, performance, and payment bonds.

(b) Evaluate total offers. If the apparently successful offeror is an SDB concern, no preference-based evaluation is required under this subpart.

(c) If the apparently successful offeror is not an SDB concern, evaluate offers excluding bond costs. If, after excluding bond costs, the apparently successful offeror is an SDB concern, add bond costs back to all offers, and give offers from SDB concerns a preference in evaluation by adding a factor of 10 percent to the total price of all offers, except—

- (1) Offers from SDBs which have not waived the evaluation preference; and
- (2) Offers from historically black colleges and universities or minority institutions, which have not waived the evaluation preference.

(d) When using the procedures in 236.303–70, Additive or deductive items, the evaluation preference in this subpart shall be applied.

**219–7204 Contract clause.**

Use the clause at 252.219–7008, Notice of Evaluation Preference for Small Disadvantaged Business Concerns—Construction Acquisitions—Test Program, in all solicitations—

- (1) That involve the evaluation preference of this subpart; and
- (2) Where work is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

**PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS**

9. Section 236.303–70 is amended by revising the introductory text of paragraph (c)(2) to read as follows:

**236.303–70 Additive or deductive items.**

\* \* \* \* \*

(c) \* \* \*

(2) Evaluate all bids, including those using the procedures in 219.7203, on the basis of the same additive or deductive bid items.

\* \* \* \* \*

**PART 242—CONTRACT ADMINISTRATION**

10. Subpart 242.15 is added to read as follows:

**Subpart 242.15—Contractor Performance Information**

- Sec.  
242.1503 Procedures.

**242.1503 Procedures.**

Evaluations should consider any notifications submitted under paragraph (g) of the clause at 252.219–7003, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts).

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

11. Section 252.219–7003 is amended by revising the clause date to read “(APR 1996)” and by adding paragraph (g) to read as follows:

**252.219–7003 Small, small disadvantaged and women-owned small business subcontracting plan (DoD contracts).**

\* \* \* \* \*

(g) In those subcontracting plans which specifically identify small, small disadvantaged, and women-owned small businesses, the Contractor shall notify the Administrative Contracting Officer of any substitutions of firms that are not small, small disadvantaged, or women-owned small businesses for the firms listed 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.

12. Section 252.219–7008 is added to read as follows:

**252.219–7008 Notice of evaluation preference for small disadvantaged business concerns—construction acquisitions—test program.**

As prescribed in 219.7204, use the following clause:

**NOTICE OF EVALUATION PREFERENCE FOR SMALL DISADVANTAGED BUSINESS CONCERNS—CONSTRUCTION ACQUISITIONS—TEST PROGRAM (APR 1996)**

(a) *Definitions.*

As used in this clause—

“Historically black colleges and universities (HBCUs),” 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 paragraphs (3),

(4), and (5) 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)).

"Small disadvantaged business (SDB) concern," means a small business concern, owned and controlled by individuals who are both socially and economically disadvantaged, as defined by the Small Business Administration at 13 CFR Part 124, the majority of earnings of which directly accrue to such individuals. This term also means a small business concern owned and controlled by an economically disadvantaged Indian tribe or Native Hawaiian organization which meets the requirements of 13 CFR 124.112 or 13 CFR 124.113, respectively.

(b) *Evaluation preference.*

(1) Offerors shall separately state bond costs in the offer. Bond costs include the costs of bid, performance, and payment bonds.

(2) Offers will be evaluated initially based on their total prices. If the apparently successful offeror is an SDB concern, no preference-based evaluation will be conducted.

(3) If the apparently successful offeror is not an SDB concern, offers will be evaluated based on their prices excluding bond costs. If, after excluding bond costs, the apparently successful offeror is an SDB concern, bond costs will be added back to all offers, and offers from SDB concerns will be given a preference in evaluation by adding a factor of 10 percent to the total price of all offers, except—

(i) Offers from SDBs which have not waived the evaluation preference; and

(ii) Offers from HBCUs or minority institutions, which have not waived the evaluation preference.

(c) *Waiver of evaluation preference.*

A small disadvantaged business, historically black college or university, or minority institution offeror may elect to waive the preference. The agreements in paragraph (d) of this clause do not apply to offers which waive the preference.

\_\_\_\_ Offeror elects to waive the preference.

(d) *Agreements.*

A small disadvantaged business concern, historically black college or university, or minority institution offeror, which did not waive the preference, agrees that in performance of the contract, in the case of a contract for—

(i) General construction, at least 15 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern.

(ii) Construction by special trade contractors, at least 25 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern.

(End of clause)

## PART 253—FORMS

13. Section 253.204-70 is amended by revising paragraph (e)(3) to read as follows:

### 253.204-70 DD Form 350, Individual Contracting Action Report.

\* \* \* \* \*

(e) \* \* \*

(3) *Block E3, Next Low Offer.*

(i) Complete Block E3 only if Block E2 is completed, or the evaluation preference for small disadvantaged business concerns in construction acquisitions set forth in subpart 219.72 is applied. Otherwise, leave Block E3 blank.

(ii) If Block E2 is completed, enter the offered price from the small business firm that would have been the low offeror if qualified nonprofit agencies employing people who are blind or severely disabled had not participated in the acquisition. In the evaluation preference for small disadvantaged business concerns in construction acquisitions set forth in subpart 219.72 is applied, enter the offered price from the non-SDB concern that would have been the successful offeror if the evaluation preference had not been applied. Enter the amount in whole dollars.

\* \* \* \* \*

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