

# Part 26 - Other Socioeconomic Programs

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## **Subpart 26.1 - Indian Incentive Program**

### **26.101 Definitions.**

As used in this subpart-

*Indian* means any person who is a member of any Indian tribe, band, group, pueblo, or community that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with [25 U.S.C. 1452\(c\)](#) and any "Native" as defined in the Alaska Native Claims Settlement Act ( [43 U.S.C. 1601](#)).

*Indian organization* means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C., Chapter 17.

*Indian-owned economic enterprise* means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership constitutes not less than 51 percent of the enterprise.

*Indian tribe* means any Indian tribe, band, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, that is recognized by the Federal Government as eligible for services from BIA in accordance with [25 U.S.C. 1452\(c\)](#).

*Interested party* means a prime contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

## **26.102 Presolicitation.**

Indian organizations and Indian-owned economic enterprises shall have the maximum practicable opportunity to participate in performing contracts awarded by Federal agencies. In fulfilling this requirement, the Indian Incentive Program allows an incentive payment equal to 5 percent of the amount paid to a subcontractor in performing the contract, if the contract so authorizes and the subcontractor is an Indian organization or Indian-owned economic enterprise.

### **26.102-1 Policy.**

Agencies may allow an incentive payment to prime contractors equal to 5 percent of the amount paid to a subcontractor that is an Indian organization or Indian-owned economic enterprise (see 25 U.S.C. 1544).

### **26.102-2 Contract clause.**

Contracting officers in civilian agencies may insert the clause at 52.226-1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises, in solicitations and contracts if-

(a) In the opinion of the contracting officer, subcontracting possibilities exist for Indian organizations or Indian-owned economic enterprises; and

(b) Funds are available for any increased costs as described in paragraph (b)(2) of the clause at 52.226-1.

## **26.103 Postaward.**

(a) Contracting officers and prime contractors may rely on the representation of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges its status or the contracting officer has independent reason to question that status.

(b) Contracting officers must refer challenges to the U.S. Department of the Interior, Bureau of Indian Affairs (BIA), Acquisition Management Director (<https://www.bia.gov/as-ia/ocfo/acquisitions>). The BIA will determine the eligibility and notify the contracting officer.

# Subpart 26.2 - Major Disaster or Emergency Assistance Activities

## 26.201 Definitions.

As used in this subpart—

*Emergency response contract* means a contract with private entities that supports assistance activities in a major disaster or emergency area, such as debris clearance, distribution of supplies, or reconstruction.

*Local firm* means a private organization, firm, or individual residing or doing business primarily in a major disaster or emergency area.

*Major disaster or emergency area* means the area included in the official Presidential declaration(s) and any additional areas identified by the Department of Homeland Security. Major disaster declarations and emergency declarations are published in the Federal Register and are available at <https://www.fema.gov/disasters/disaster/declarations>.

## 26.202 Presolicitation.

(a) When awarding emergency response contracts during the term of a major disaster or emergency declaration by the President of the United States under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act ( [42 U.S.C. 5121](#), *et seq.*), preference shall be given, to the extent feasible and practicable, to local firms. Preference may be given through a local area set-aside or an evaluation preference.

(b) When using the authority under the Stafford Act, see the definitions of "micro-purchase threshold" and "simplified acquisition threshold" in 2.101 for the authority to use an increased micro-purchase threshold and simplified acquisition threshold.

### 26.202-1 Policy.

(a) Local area preference. Contracting officers must, when practicable, award emergency response contracts to local firms (see 42 U.S.C. 5150). To support this policy, contracting officers may—

(1) Set aside acquisitions to allow only local firms within a specific geographic area to compete (see part 6); or

(2) Use an evaluation preference.

(b) Transition of work.

(1) Agencies may award emergency response contracts before a major disaster or emergency occurs to ensure immediate relief is available. Structure such contracts to support timely transition of work to local firms after a major disaster or emergency area has been established.

(2) Agencies must transition emergency response contracts to local firms after a major disaster or emergency is declared, unless the head of the agency determines on an individual or class basis that is not practicable. However, agencies are not required to terminate or renegotiate existing contracts to make the transition.

## **26.202-2 Procedures.**

(a) Elevated thresholds. When contracting for emergency response activities, the elevated micro-purchase and simplified acquisition thresholds in 2.101 apply.

(b) Non-local justification requirements. After the President declares a major disaster or emergency, agencies must justify spending any Federal funds on emergency response contracts not awarded to a local firm. Agencies must document such justification in writing, and contracting officers must keep it in the contract file.

(c) Area. A major disaster or emergency area may span counties in several neighboring States. When establishing a geographic area for a local firm set-aside, the contracting officer must stay within the declared area(s), but is not required to include all the counties within the declared areas(s).

(d) Disaster response registry. Contracting officers must consult the Disaster Response Registry via <https://www.sam.gov> to determine contractor availability for emergency response activities inside the United States and outlying areas.

## **26.202-3 Solicitation provision and contract clauses.**

(a) Insert the provision at 52.226-3, Disaster or Emergency Area Representation, and fill in the geographic area in paragraph (a), in solicitations involving local area set-asides.

(b) Insert the clause at 52.226-4, Notice of Disaster or Emergency Area Set-aside, and fill in the geographic area in paragraph (a), in solicitations and contracts involving local area set-asides.

(c) Insert the clause at 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area, in solicitations and contracts involving local area set-asides.

## **Subpart 26.3 - Historically Black Colleges and Universities and Minority Institutions**

### **26.301 Presolicitation.**

#### **26.301-1 General.**

(a) As established in Executive Order 12928 of September 16, 1994, agencies should promote participation of Historically Black Colleges and Universities and Minority Institutions in Federal procurement.

(b) This subpart does not apply to contracts performed entirely outside the United States and its outlying areas.

#### **26.301-2 Solicitation provision.**

(a) Insert the provision at 52.226-2, Historically Black College or University and Minority Institution Representation, in solicitations that exceed the micro-purchase threshold, and that are for research, studies, supplies, or services of the type normally acquired from higher educational institutions.

## **Subpart 26.4 - Food Donations to Nonprofit Organizations**

### **26.401 Definitions.**

As used in this subpart-

*Apparently wholesome food* means food that meets all quality and labeling standards imposed by Federal, State, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

*Excess food* means food that-

- (1) Is not required to meet the needs of the executive agencies; and

(2) Would otherwise be discarded.

*Food-insecure* means inconsistent access to sufficient, safe, and nutritious food.

*Nonprofit organization* means any organization that is-

(1) Exempt from tax under section 501(a) of that Code.

(2) Described in section 501(c) of the Internal Revenue Code of 1986; and described in section 501(c) of the Internal Revenue Code of 1986; and

## **26.402 Presolicitation.**

The Government encourages executive agencies and their contractors, to the maximum extent practicable and safe, to donate excess apparently wholesome food to nonprofit organizations that provide assistance to food-insecure people in the United States.

### **26.402-1 Policy.**

(a) The Government encourages agencies and their contractors to donate excess, apparently wholesome food to nonprofit organizations helping food-insecure people in the United States (see 42 U.S.C. 1792).

(b) The following limitations apply—

(1) Costs. Agencies may not assume responsibility for the costs and logistics of collecting, transporting, maintaining the safety of, or distributing excess food donations.

(2) Liability. An agency (including an agency that enters into a contract with a contractor) and any contractor making food donations following this policy is exempt from civil and criminal liability to the extent provided under 42 U.S.C. 1791.

### **26.402-2 Contract clause.**

Insert the clause at 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations, in solicitations and contracts greater than \$30,000 for providing, serving, or selling food in the United States.

## **Subpart 26.5 - Drug-Free Workplace**

### **26.501 Applicability.**

This subpart applies to contracts, except those-

(a) At or below the simplified acquisition threshold; however, the requirements of this subpart apply to all contracts of any value awarded to an individual;

(b) For commercial products and commercial services (see part 12);

(c) Performed outside the United States and its outlying areas or any part of a contract performed outside the United States and its outlying areas;

(d) Awarded by law enforcement agencies, if the head of the law enforcement agency involved determines that applying this subpart would be inappropriate in connection with the law enforcement agency's undercover operations; or

(e) Where application would be inconsistent with the international obligations of the United States or with the laws and regulations of a foreign country.

## **26.502 Definitions.**

As used in this subpart-

*Controlled substance* means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), and as further defined in regulation at 21 CFR 1308.11-1308.15.

*Conviction* means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

*Criminal drug statute* means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

*Employee* means an employee of a contractor directly engaged in performing work under a Government contract. "Directly engaged" includes all direct cost employees and any other contractor employee who has other than a minimal impact or involvement in contract performance.

*Individual* means an offeror or contractor that has no more than one employee including the offeror or contractor.

## **26.503 Presolicitation.**

### **26.503-1 Contract clause.**



Insert the clause at 52.226-7, Drug-Free Workplace, in solicitations and contracts except as provided in 26.501.

## **26.504 Evaluation, and award.**

### **26.504-1 Policy.**

(a) Contracting officers may not consider an offeror, other than an individual, a responsible source unless it agrees to provide a drug-free workplace according to the clause at 52.226-7.

(b) Contracting officers may not award a contract of any dollar value to an individual unless that individual agrees to not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing the contract.

## **26.505 Postaward.**

### **26.505-1 Suspension of payments, contract termination, and debarment and suspension actions.**

(a) Contracting officers may suspend contract payments when they determine in writing that there is adequate evidence of any of the causes at paragraph (d) of this section.

(b) Contracting officers may terminate contracts for default when they determine in writing any of the causes at paragraph (d) of this section exist.

(c) When a contracting officer initiates action under paragraph (a) or (b) of this section, they must refer the case to the agency suspending and debarring official (see part 9).

(d) The specific causes for suspension of contract payments, termination of a contract for default, or suspension and debarment are—

(1) The contractor has failed to comply with the requirements of the clause at 52.226-7, Drug-Free Workplace; or

(2) The number of contractor employees convicted of violations of criminal drug statutes occurring in the workplace indicates that the contractor has failed to make a good faith effort to provide a drug-free workplace.

(e) An agency head may waive a suspension of payments, termination of contract, or suspension or debarment of a contractor under this section, if considered necessary to prevent a

severe disruption of the agency operation to the detriment of the Government or the general public.  
The agency head cannot delegate the waiver authority.

## **Subpart 26.6 - Texting While Driving**

### **26.601 Presolicitation.**

#### **26.601-1 Policy.**

Agencies must encourage contractors and subcontractors to adopt and enforce policies that ban text messaging while driving-

- (a) Company-owned or rented vehicles or Government-owned vehicles; or
- (b) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.

#### **26.602 Contract clause.**

The contracting officer shall insert the clause at 52.226-8, Encouraging Contractor Policies to Ban Text Messaging While Driving, in all solicitations and contracts.

# Part 52 - Solicitation Provisions and Contract Clauses

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[52.226 \[Reserved\]](#)

[52.226-1 Utilization of Indian Organizations and Indian-Owned Economic Enterprises.](#)

[52.226-2 Historically Black College or University and Minority Institution Representation.](#)

[52.226-3 Disaster or Emergency Area Representation.](#)

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[52.226-8 Encouraging Contractor Policies to Ban Text Messaging While Driving.](#)

## 52.226 [Reserved]

### 52.226-1 Utilization of Indian Organizations and Indian-Owned Economic Enterprises.

As prescribed in 26.102-2, insert the following clause:

UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES (DEVIATION AUG 2025)

(a) *Definitions.* As used in this clause:

*Indian* means any person who is a member of any Indian tribe, band, group, pueblo, or community that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) (see 25 U.S.C. 1452) and any “Native” as defined in the Alaska Native Claims Settlement Act (see 43 U.S.C. 1602).

*Indian organization* means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C., chapter 17.

*Indian-owned economic enterprise* means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership constitutes not less than 51 percent of the enterprise.

*Indian tribe* means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, that is recognized by the Federal Government as eligible for services from BIA. See 25 U.S.C. 1452.

*Interested party* means a prime contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to receive a subcontract.

(b) *Opportunity to participate in subcontracts.* The Contractor shall use its best efforts to give Indian organizations and Indian-owned economic enterprises maximum practicable opportunity to participate in the subcontracts it awards, while still efficiently performing its contract.

(1) The Contracting Officer and the Contractor may rely on the representation of an Indian organization or Indian-owned economic enterprise as to its own eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status.

(2) If the representation of a subcontractor is challenged, the Contracting Officer will refer the matter to the U.S. Department of the Interior, Bureau of Indian Affairs (BIA), Acquisition Management Director ( <https://www.bia.gov/as-%20ia/ocfo/acquisitions>).

(3) BIA will determine the eligibility and notify the Contracting Officer. The Contractor shall not make an incentive payment within 50 working days of subcontract award or while a challenge is pending. If a subcontractor is determined to be ineligible, the Contractor shall not make an incentive payment under the Indian Incentive Program.

(4) The Contractor may request an adjustment under the Indian Incentive Program to the following:

- (i) The estimated cost of a cost-type prime contract.
- (ii) The target cost of a cost-plus-incentive-fee prime contract.
- (iii) The target cost and ceiling price of a fixed-price incentive prime contract.
- (iv) The price of a firm-fixed-price prime contract.

(5) The amount of the adjustment to the prime contract is 5 percent of the estimated cost, target cost, or firm-fixed-price included in the subcontract first awarded to the Indian organization or Indian-owned economic enterprise.

(6) The Contractor must prove the amount claimed. They must request an adjustment before completing contract performance.

(c) *Incentive payment.* The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the amount paid to the subcontractor.

(End of clause)

## **52.226-2 Historically Black College or University and Minority Institution Representation.**

As prescribed in 26.304, insert the following provision:

HISTORICALLY BLACK COLLEGE OR UNIVERSITY AND MINORITY INSTITUTION REPRESENTATION (OCT 2014)

(a) *Definitions.* As used in this provision—

*Historically black college or university* means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2.

*Minority institution* means an institution of higher education meeting the requirements of Section 365(3) of the Higher Education Act of 1965 ( [20 U.S.C. 1067k](#)), including a Hispanic-serving institution of higher education, as defined in Section 502(a) of the Act ( [20 U.S.C. 1101a](#)).

(b) *Representation.* The offeror represents that it—

☐ is ☐ is not a historically black college or university;

☐ is ☐ is not a minority institution.

(End of provision)

## **52.226-3 Disaster or Emergency Area Representation.**

As prescribed in 26.206(a), insert the following provision:

DISASTER OR EMERGENCY AREA REPRESENTATION (NOV 2007)

(a) *Set-aside area*. The area covered in this contract is: \_\_\_\_\_ *[Contracting Officer to fill in with definite geographic boundaries.]*

(b) *Representations*. The offeror represents that it ☐ does ☐ does not reside or primarily do business in the designated set-aside area.

(c) An offeror is considered to be residing or primarily doing business in the set-aside area if, during the last twelve months-

(1) The offeror had its main operating office in the area; and

(2) That office generated at least half of the offeror's gross revenues and employed at least half of the offeror's permanent employees.

(d) If the offeror does not meet the criteria in paragraph (c) of this provision, factors to be considered in determining whether an offeror resides or primarily does business in the set-aside area include-

(1) Physical location(s) of the offeror's permanent office(s) and date any office in the set-aside area(s) was established;

(2) Current state licenses;

(3) Record of past work in the set-aside area(s) (e.g., how much and for how long);

(4) Contractual history the offeror has had with subcontractors and/or suppliers in the set-aside area;

(5) Percentage of the offeror's gross revenues attributable to work performed in the set-aside area;

(6) Number of permanent employees the offeror employs in the set-aside area;

(7) Membership in local and state organizations in the set-aside area; and

(8) Other evidence that establishes the offeror resides or primarily does business in the set-aside area. For example, sole proprietorships may submit utility bills and bank statements.

(e) If the offeror represents it resides or primarily does business in the set-aside area, the offeror shall furnish documentation to support its representation if requested by the Contracting Officer. The solicitation may require the offeror to submit with its offer documentation to support the representation.

(End of provision)

## **52.226-4 Notice of Disaster or Emergency Area Set-Aside.**

As prescribed in 26.206(b), insert the following clause:

### **NOTICE OF DISASTER OR EMERGENCY AREA SET-ASIDE (NOV 2007)**

(a) *Set-aside area.* Offers are solicited only from businesses residing or primarily doing business in \_\_\_\_\_ *[Contracting Officer to fill in with definite geographic boundaries.]* Offers received from other businesses shall not be considered.

(b) This set-aside is in addition to any small business set-aside contained in this contract.

(End of clause)

## **52.226-5 Restrictions on Subcontracting Outside Disaster or Emergency Area.**

As prescribed in 26.206(c), insert the following clause:

### **RESTRICTIONS ON SUBCONTRACTING OUTSIDE DISASTER OR EMERGENCY AREA (NOV 2007)**

(a) *Definitions.* The definitions of the following terms used in this clause are found in the Small Business Administration regulations at 13 CFR 125.6(e): cost of the contract, cost of contract performance incurred for personnel, cost of manufacturing, cost of materials, personnel, and subcontracting.

(b) The Contractor agrees that in performance of the contract in the case of a contract for-

(1) *Services (except construction).* At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the Contractor or employees of other businesses residing or primarily doing business in the area designated in the clause at FAR 52.226-4, Notice of Disaster or Emergency Area Set-Aside;

(2) *Supplies (other than procurement from a nonmanufacturer of such supplies).* The Contractor or employees of other businesses residing or primarily doing business in the set-aside area shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials;

(3) *General construction.* The Contractor will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees or employees of other businesses residing or primarily doing business in the set-aside area; or

(4) *Construction by special trade Contractors.* The Contractor will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees or employees of other businesses residing or primarily doing business in the set-aside area.

(End of clause)

## **52.226-6 Promoting Excess Food Donation to Nonprofit Organizations.**

As prescribed in 26.402-2, insert the following clause:

### **PROMOTING EXCESS FOOD DONATION TO NONPROFIT ORGANIZATIONS (DEVIATION AUG 2025)**

(a) *Definitions.* As used in this clause-

*Apparently wholesome food* means food that meets all quality and labeling standards imposed by Federal, State, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

*Excess food* means food that-

- (1) Is not required to meet the needs of the executive agencies; and
- (2) Would otherwise be discarded.

*Food-insecure* means inconsistent access to sufficient, safe, and nutritious food.

*Nonprofit organization* means any organization that is—

- (1) Described in section 501(c) of the Internal Revenue Code of 1986; and
- (2) Exempt from tax under section 501(a) of that Code.

(b) *Food donation.* The Contractor is encouraged to donate excess apparently wholesome food to nonprofit organizations that help food-insecure people in the United States, where practical and safe.

(c) *Costs.*

(1) The Contractor, including any subcontractors, shall assume the responsibility for all the costs and logistics of collecting, transporting, maintaining the safety of, or distributing the excess, apparently wholesome food to the nonprofit organization(s) helping food-insecure people.

(2) Costs incurred for excess food donations are unallowable and, as such, the Contractor will not be reimbursed for any associated costs.



(d) *Liability*. The Government and the Contractor, including any subcontractors, shall be exempt from civil and criminal liability to the extent provided under the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791). Nothing in this clause shall supersede State or local health regulations (subsection (f) of 42 U.S.C. 1791).

(End of clause)

## **52.226-7 Drug-Free Workplace.**

As prescribed in 26.506 , insert the following clause:

### **DRUG-FREE WORKPLACE (MAY 2024)**

(a) *Definitions*. As used in this clause-

*Controlled substance* means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act ( [21 U.S.C. 812](#)) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

*Conviction* means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

*Criminal drug statute* means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

*Drug-free workplace* means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

*Employee* means an employee of a Contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

*Individual* means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) The Contractor, if other than an individual, shall-within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration-

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about-

(i) The dangers of drug abuse in the workplace;

(ii) The Contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by paragraph (b)(1) of this clause;

(4) Notify such employees in writing in the statement required by paragraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will-

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;

(5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

(7) Make a good faith effort to maintain a drug-free workplace through implementation of paragraphs (b)(1) through (b)(6) of this clause.

(c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

(d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 26.505, render the Contractor subject to suspension of contract payments, termination of the contract or default, and suspension or debarment.

(End of clause)

## **52.226-8 Encouraging Contractor Policies to Ban Text Messaging While Driving.**

As prescribed in 26.605, insert the following clause:

### **ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (MAY 2024)**

(a) *Definitions.* As used in this clause-

*"Driving"*-

(1) Means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.

(2) Does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

*Text messaging* means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and

route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park.

(b) This clause implements Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, dated October 1, 2009.

(c) The Contractor is encouraged to-

(1) Adopt and enforce policies that ban text messaging while driving-

(i) Company-owned or rented vehicles or Government-owned vehicles; or

(ii) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.

(2) Conduct initiatives in a manner commensurate with the size of the business, such as-

(i) Establishment of new rules and programs or reevaluation of existing programs to prohibit text messaging while driving; and

(ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(d) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts that exceed the micro-purchase threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award.

(End of clause)