

**226.370-5**

and there is a reasonable expectation that—

(a) Offers will be submitted by at least two responsible HBCUs or MIs that can comply with the subcontracting limitations in the clause at FAR 52.219-14, Limitations on Subcontracting;

(b) Award will be made at not more than 10 percent above fair market price; and

(c) Scientific or technological talent consistent with the demands of the acquisition will be offered.

**226.370-5 Set-aside procedures.**

(a) As a general rule, use competitive negotiation for HBCU/MI set-asides.

(b) When using a broad agency announcement (FAR 35.016) for basic or applied research, make partial set-asides for HBCU/MIs as explained in 235.016.

(c) Follow the special synopsis instructions in 205.207(d). Interested HBCU/MIs must provide evidence of their capability to perform the contract, and a positive statement of their eligibility, within 15 days of publication of the synopsis in order for the acquisition to proceed as an HBCU/MI set-aside.

(d) Cancel the set-aside if the low responsible offer exceeds the fair market price (defined in FAR part 19) by more than 10 percent.

**226.370-6 Eligibility for award.**

(a) To be eligible for award as an HBCU or MI under the preference procedures of this subpart, an offeror must—

(1) Be an HBCU or MI, as defined in the clause at 252.226-7000, Notice of Historically Black College or University and Minority Institution Set-Aside, at the time of submission of its initial offer including price; and

(2) Provide the contracting officer with evidence of its HBCU or MI status upon request.

(b) The contracting officer shall accept an offeror's HBCU or MI status under the provision at FAR 52.226-2, Historically Black College or University and Minority Institution Representation, unless—

(1) Another offeror challenges the status; or

**48 CFR Ch. 2 (10-1-11 Edition)**

(2) The contracting officer has reason to question the offeror's HBCU/MI status. (A list of HBCU/MIs is published periodically by the Department of Education.)

**226.370-7 Protesting a representation.**

Any offeror or other interested party may challenge an offeror's HBCU or MI representation by filing a protest with the contracting officer. The protest must contain specific detailed evidence supporting the basis for the challenge. Such protests are handled in accordance with FAR 33.103 and are decided by the contracting officer.

**226.370-8 Goals and incentives for subcontracting with HBCU/MIs.**

(a) In reviewing subcontracting plans submitted under the clause at FAR 52.219-9, Small Business Subcontracting Plan, the contracting officer shall—

(1) Ensure that the contractor included anticipated awards to HBCU/MIs in the small disadvantaged business goal; and

(2) Consider whether subcontracts are contemplated that involve research or studies of the type normally performed by higher educational institutions.

(b) The contracting officer may, when contracting by negotiation, use in solicitations and contracts a clause similar to the clause at FAR 52.219-10, Incentive Subcontracting Program, when a subcontracting plan is required and inclusion of a monetary incentive is, in the judgment of the contracting officer, necessary to increase subcontracting opportunities for HBCU/MIs. The clause should include a separate goal for HBCU/MIs.

**226.370-9 Solicitation provision and contract clause.**

(a) Use the clause at 252.226-7000, Notice of Historically Black College or University and Minority Institution Set-Aside, in solicitations and contracts set aside for HBCU/MIs.

(b) Use the provision at FAR 52.226-2, Historically Black College or University and Minority Institution Representation, in solicitations set aside for HBCU/MIs.

**Subpart 226.70 [Reserved]**