

**FEDERAL COMMUNICATIONS  
COMMISSION**
**47 CFR Part 73**
**[MM Docket No. 93-170]**
**Radio Broadcasting Services; Bemidji  
and Red Lake, MN**
**AGENCY:** Federal Communications  
Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 238C1 to Bemidji, Minnesota, as that community's third commercial FM broadcast service in response to a petition filed by J. Thomas Lijewski. See 58 FR 35421, July 1, 1993. The coordinates for Channel 238C1 at Bemidji are 47-28-29 and 94-52-49. In response to a counterproposal filed by Red Lake Band, we will allot Channel 231C1 to Red Lake, Minnesota, on the Red Lake Reservation. The coordinates for Red Lake are 47-55-30 and 95-19-00. Canadian concurrence has been received for both allotments. With this action, this proceeding is terminated.

**DATES:** Effective June 16, 1995. The window period for filing applications for Channel 238C1 at Bemidji, Minnesota, and Channel 231C1 at Red Lake, Minnesota, will open on June 16, 1995, and close on July 17, 1995.

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

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Order*, MM Docket No. 93-170, adopted April 20, 1995, and released May 2, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW, Suite 140, Washington, D.C. 20037, (202) 857-3800.

**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 Minnesota, is amended by adding Channel 238C1 at Bemidji and Red Lake, Channel 231C1.

Federal Communications Commission.

**John A. Karousos,**
*Chief, Allocations Branch, Policy and Rules  
Division, Mass Media Bureau.*

[FR Doc. 95-11116 Filed 5-4-95; 8:45 am]

**BILLING CODE 6712-01-F**
**DEPARTMENT OF ENERGY**
**48 CFR Parts 926, 952, and 970**
**RIN 1991-AB11**
**Acquisition Regulation:  
Implementation of Section 3021 of the  
Energy Policy Act of 1992**
**AGENCY:** Department of Energy (DOE).

**ACTION:** Final rule.

**SUMMARY:** The Department of Energy (DOE) hereby amends the Department of Energy Acquisition Regulation (DEAR) to carry out Section 3021 of the Energy Policy Act of 1992 which requires DOE to achieve a 10 percent goal for awards of prime contracts and subcontracts for specific types of universities and for small business concerns owned and controlled by socially and economically disadvantaged individuals and by women.

**EFFECTIVE DATE:** June 5, 1995.

**FOR FURTHER INFORMATION CONTACT:** Robert M. Webb, Office of Policy (HR-51), Office of Procurement and Assistance Management, U.S. Department of Energy, Washington, DC 20585, (202) 586-8264.

**SUPPLEMENTARY INFORMATION:**

- I. Background
  - A. Discussion
  - B. Disposition of Comments
- II. Procedural Requirements
  - A. Regulatory Review
  - B. Review Under Executive Order 12778
  - C. Review Under the Regulatory Flexibility Act
  - D. Review Under the Paperwork Reduction Act
  - E. Review Under Executive Order 12612
  - F. National Environmental Policy Act

**I. Background**
**A. Discussion**

Section 3021(a) of Energy Policy Act of 1992 (Pub. L. 102-486) requires that DOE, to the extent practicable, provide that the obligation of not less than 10 percent of the total combined amounts obligated for contracts and subcontracts pursuant to competitive procedures be expended with small business concerns

owned and controlled by socially and economically disadvantaged individuals or by women; with historically Black colleges and universities; or with colleges and universities having a student body in which more than 20 percent of the students are Hispanic Americans or Native Americans.

On July 11, 1994, a proposed rule to amend the DEAR to establish DOE policies and procedures for implementing Section 3021 of the Energy Policy Act was published at 59 FR 35294.

Seven sets of comments were received. Those comments have been considered and appropriate changes have been made as described in the analysis below.

**B. Disposition of Comments**

One commenter recommended that the proposed rule "be rescinded and that these rules be redrawn to incorporate reforms made possible" by the enactment of the Federal Acquisition Streamlining Act of 1994, Pub. L. 103-355. We have made alterations that will be discussed later in this preamble to the rule to reflect the Streamlining Act's effects. Generally, we have expanded the provisions of the rule designed to achieve the goals of Section 3021 by including recognition of small disadvantaged business set-asides as authorized by the Streamlining Act, the introduction of a simplified acquisition threshold, and the deletion of the "small purchase threshold" also provided by the Streamlining Act. Another commenter "strongly urge[s] implementation" of these rules. We are proceeding with the implementation of this section of the Energy Policy Act with the promulgation of this rule.

A commenter states that we have misinterpreted Section 3021 in that "[t]he term 'no less than' does not equate with a goal but, rather, with a specific amount; a set-aside." A second commenter contends that Section 3021 establishes a goal, but believes that the provisions and clauses of the proposed rule were not sufficiently clear that the 10 percent is a goal and not "a quota." We disagree with the first commenter in that the statutory language is "*To the extent practicable*, the head of each agency shall provide that the obligation of *not less than 10 percent \* \* \**" (emphasis added.) It is clear that the percentage sets a target that is conditioned on the circumstances of the competitive procurements. We believe that the promulgation of this final rule in its present form is the proper implementation of this statutory provision. We have reviewed each of the provisions of the solicitation provisions

and contract clauses cited by the second commenter and believe them to be clear that the 10 percent is a goal and requires their best efforts. We expect that there may be wide variation depending upon the nature of the work and the contractor involved. Some may have goals of substantially less than 10 percent and others may have goals of substantially more than 10 percent. We have made no changes in this area.

One commenter requests that we alter the definition of "colleges and universities having a student body in which more than 20 percent of the students are Hispanic Americans or Native Americans." This commenter would expand the definition "to include universities which have a significant, 20 percent or more, Hispanic community within a radius of 200 miles." (emphasis added) The statute provides no basis for such a change.

Another commenter suggests that woman-owned businesses should be included as a separate category because "it doesn't identify women-owned small business concerns clearly enough as a target group" and "it may lead to inferences that women-owned business concerns must also be small disadvantaged concerns in order to form part of a target group." Section 3021 describes the relevant class to be "small business concerns controlled by socially and economically disadvantaged individuals or women." Woman-owned businesses are separate beneficiaries of Section 3021 and need not be socially and economically disadvantaged. We have inserted "by" preceding "women" in our implementation to bring a parallel structure and clarify the ambiguous statutory provision. One commenter requests that 926.7001(d) be deleted. They object to the order of preference of solicitation methods for awarding procurements under the Energy Policy Act, stating that the first preference should be some form of small disadvantaged business competitive procurements that would allow 8(a) firms to compete with other small disadvantaged businesses. At the time of the publication of the proposed rule, there was no authority for set-asides for small disadvantaged businesses. Section 7102 of the Federal Acquisition Streamlining Act provides for such set-asides. We have, therefore, altered that section to provide for that type of solicitation as first in the order of preference.

Two commenters have requested that we offer a more specific definition of an "Energy Policy Act requirement" than that in the last sentence of 926.7002. We would like to provide more specific guidance and have made attempts to;

however, funds are not appropriated specifically for Energy Policy Act requirements. Our attempts during the drafting of the proposed rule have led us to conclude there are no more definitive tests worthy of publication. We have provided a list within DOE to help those who must identify these requirements, but we have made no change to the rule.

One commenter has noted that our reference to 34 CFR 602.2(a) needed to be brought up to date to reflect the Department of Education's deleting it in a rulemaking in April of 1994. In this regard, they suggest the use of 34 CFR 600.2(a). They are correct that the former provision has been deleted and that the latter is the appropriate substitution. Our original use of 34 CFR 602.2(a) was in error in any event. We have made the appropriate substitutions.

The same commenter suggests that Congress' use of "Hispanic Americans" and "Native Americans" indicates an intention that the students described be citizens of the United States. The description used would then have to be altered in the contractual provisions and clauses. The statute does not specifically require these students to be citizens of the United States and to impose such a regulatory requirement would unduly burden colleges and universities. We have made no change.

The same commenter recommends that the certification for Historically Black Colleges and Universities be deleted from the provision at 952.226-73(a)(2) and that the rule provide a list of those colleges and universities that "would be more useful for both the Department of Energy and contractor personnel." We believe that there is little to be gained by such a list, since it would, at best, be merely a copy of the Department of Education list contained at 34 CFR 608.2(b) and would, on the other hand, put the Department of Energy regulations at the substantial risk of not being in conformance with the latest list of the Department of Education. We have made no change.

The same commenter suggests that the small disadvantaged business certification at 952.227-73(a)(3) be deleted as redundant of other similar certifications already existent. For the purposes of Section 3021, the contracting personnel need only look in one place. The offeror is not unreasonably burdened. We have made no change.

Finally, we have performed a review of the rule and have made the following minor changes to clarify the rule and improve its operation. We have added "under the Energy Policy Act" in the first sentence of 926.7001(a) to prevent

any misinterpretation of the scope of this rule. We have added a recognition of set-asides in the description of competitive procedures at 926.7001(f).

We have corrected the description for use of the Energy Policy Act utilization clause for all contracts over the simplified acquisition threshold at 926.7005(b)(1)(ii) and made 926.7005(b)(2) more accurate. We have altered the phrase explaining the spaces for goals in the clause at 952.226-72(b) to reflect the basis of the percentages to be entered. We have made other typographical and minor editorial changes.

## II. Procedural Requirements

### A. Review Under Executive Order 12866

The Department of Energy has determined that today's regulatory action is not a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993).

Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

### B. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. This final rule will have no preemptive effect; will not have any effect on existing Federal laws; and will only clarify the existing regulations on this subject. The revised clauses apply only to contracts which would be awarded after the effective date of the final rule and, thus, have no retroactive effect. Therefore, DOE certifies that this final rule meets the requirements of Sections 2(a) and (b)(2) of Executive Order 12778.

### C. Review Under the Regulatory Flexibility Act

This final rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96-354, that requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

### D. Review Under the Paperwork Reduction Act

This rule will require only an insignificant addition to the data collection required for the Standard Forms 294 and 295. Accordingly, no OMB clearance is required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

### E. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, and in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

Today's final rule will revise certain policy and procedural requirements. However, DOE has determined that none of the revisions will have a substantial direct effect on the institutional interests or traditional functions of States.

### F. Review Under the National Environmental Policy Act

DOE has concluded that this rule falls into a class of actions that are categorically excluded from the National Environmental Policy Act of 1969 (42 U.S.C. 4321, 4331-4335, 4341-4347 (1976)) under 10 CFR Part 1021, Appendix A to Subpart D as rulemakings that are strictly procedural, such as rulemakings establishing contracting practices (Exclusion A6). Therefore, this rule does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

### List of Subjects in 48 CFR Parts 926, 952, and 970

Government procurement.

Issued in Washington, DC, on April 28, 1995.

#### Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set forth in the Preamble, 48 CFR Chapter 9 is amended as set forth below:

1. A new Part 926, Other Socioeconomic Programs, consisting of Subpart 926.70, Implementation of Section 3021 of the Energy Policy Act of 1992, is added to read as set forth below:

#### PART 926—OTHER SOCIOECONOMIC PROGRAMS

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

Secs.

- 926.7001 Policy.
- 926.7002 Responsibilities.
- 926.7003 Review of the procurement request.
- 926.7004 Size standard for Energy Policy Act procurements.
- 926.7005 Preferences under the Energy Policy Act.
- 926.7006 Goal measurement and reporting requirements.
- 926.7007 Solicitation provisions and contract clauses.

**Authority:** 42 U.S.C. 7254; 40 U.S.C. 486(c).

##### 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 (Pub. L. 102-486) specifies that the Department of Energy 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; or

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

(b) These three groups 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 (FAR) 48 CFR 15.6 and (DEAR) 48 CFR 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/Labor Surplus Area Set-Aside 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 (SIC 8711) shall be the size standard specified for military and aerospace equipment and military weapons.

###### 926.7005 Preferences under the Energy Policy Act.

(a) *Prime contracts.* 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.

(b) *Subcontracts.* (1) The contracting officer shall assure that all competitive Energy Policy Act solicitations over the simplified acquisition threshold contain:

(i) A solicitation provision providing for consideration of the extent to which the offerors have provided for subcontracting opportunities to entities from among the Energy Policy Act target groups; and

(ii) A clause providing for the maximum utilization of entities from among Energy Policy Act target groups in the performance of Energy Policy Act contracts.

(2) In addition, the contracting officer shall assure that all competitive Energy Policy Act procurements expected to exceed \$500,000 (\$1,000,000 for construction) include a clause for reporting after award as part of the Small Business and Small Disadvantaged Business Subcontracting Plan process.

**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 three target groups under an unrestricted procurement;

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

(5) Any competitively awarded subcontract to one of the three 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 (FAR) 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 \$500,000 (\$1,000,000 in the case of construction).

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

(e) The contracting officer shall insert the clause at (FAR) 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.

**PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

2. The authority citation for Part 952 continues to read as follows:

**Authority:** 42 U.S.C. 7254; 40 U.S.C. 486(c).

3. Subpart 952.2 is amended by adding sections 952.226-70, 952.226-71, 952.226-72, and 952.226-73 to read as follows:

**952.226-70 Subcontracting goals under section 3021(a) of the Energy Policy Act of 1992.**

As prescribed in 926.7007(a), insert the following provision:

Subcontracting Goals Under Section 3021(a) of the Energy Policy Act of 1992 (Pub. L. 102-486) (May 1995)

(a) Definition.—Energy Policy Act target groups, as used in this provision means:

(1) An institution of higher education that meets the criteria of 34 CFR 600.4(a) and has a student enrollment that consists of at least 20 percent:

(i) Hispanic Americans, *i.e.*, students whose origins are in Mexico, Puerto Rico, Cuba, or Central or South America, or any combination thereof, or

(ii) Native Americans, *i.e.*, American Indians, Eskimos, Aleuts, and Native Hawaiians, or any combination thereof;

(2) Institutions of higher learning determined by the Secretary of Education to be Historically Black Colleges and Universities pursuant to 34 CFR 608.2; and

(3) Small business concerns, as defined under section 3 of the Small Business Act (15 U.S.C. 632), that are owned and controlled by individuals who are both socially and economically disadvantaged within the meaning of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or by a woman or women.

(b) Section 3021 of the Energy Policy Act (Pub. L. 102-486) establishes a goal of award of 10 percent of the contract dollar value for prime and subcontract Energy Policy Act awards to Energy Policy Act target groups.

(c) The offeror, if other than one of the three groups specified in paragraph (a) of this clause, shall submit, as part of its business management proposal or, if this solicitation requires the submission of a Small Business and Small Disadvantaged Business Subcontracting Plan, then as part of that plan, unless otherwise stated in the proposal preparation instructions, individual subcontracting goals for each of the three Energy Policy Act target groups. Individual goals shall be expressed in terms of a percentage of the offeror's proposed contract dollar value. In addition, the offeror shall provide a description of the nature of the effort to be performed by each of the three groups, and, if possible, the identity of the contemplated subcontractor(s).

(d) Unless otherwise stated, such goals shall be considered in the evaluation of the Business Management Proposal as discussed in Section M of this solicitation or, if applicable, as part of the evaluation of the Small Business and Small Disadvantaged Business Subcontracting Plan.

(End of provision)

**952.226-71 Utilization of Energy Policy Act target entities.**

As prescribed in 926.7007(b), insert the following clause:

Utilization of Energy Policy Act Target Entities (May 1995)

(a) Definition.—Energy Policy Act target groups, as used in this provision means:

(1) An institution of higher education that meets the requirements of 34 CFR 600.4(a)

and has a student enrollment that consists of at least 20 percent:

- (i) Hispanic Americans, *i.e.*, students whose origins are in Mexico, Puerto Rico, Cuba, or Central or South America, or any combination thereof, or
  - (ii) Native Americans, *i.e.*, American Indians, Eskimos, Aleuts, and Native Hawaiians, or any combination thereof;
  - (2) Institutions of higher learning determined to be Historically Black Colleges and Universities by the Secretary of Education pursuant to 34 CFR 608.2; and
  - (3) Small business concerns, as defined under section 3 of the Small Business Act (15 U.S.C. 632), that are owned and controlled by individuals who are both socially and economically disadvantaged within the meaning of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or by a woman or women.
- (b) Obligation. In addition to its obligations under the clause of this contract entitled Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, the contractor, in performance of this contract, agrees to provide its best efforts to competitively award subcontracts to entities from among the Energy Policy Act target groups.
- (End of clause)

**952.226-72 Energy Policy Act subcontracting goals and reporting requirements.**

As prescribed in 926.7007(c), insert the following clause:

Energy Policy Act Subcontracting Goals and Reporting Requirements (May 1995)

- (a) Definition.—Energy Policy Act target groups, as used in this provision means:
- (1) An institution of higher education that meets the requirements of 34 CFR 600.4(a), and has a student enrollment that consists of at least 20 percent:
    - (i) Hispanic Americans, *i.e.*, students whose origins are in Mexico, Puerto Rico, Cuba, or Central or South America, or any combination thereof, or
    - (ii) Native Americans, *i.e.*, American Indians, Eskimos, Aleuts, and Native Hawaiians, or any combination thereof;
    - (2) Institutions of higher learning determined to be Historically Black Colleges and Universities by the Secretary of Education pursuant to 34 CFR 608.2; and
    - (3) Small business concerns, as defined under section 3 of the Small Business Act (15 U.S.C. 632), that are owned and controlled by individuals who are both socially and economically disadvantaged within the meaning of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or by a woman or women.
  - (b) Goals. The contractor, in performance of this contract, agrees to provide its best efforts to award subcontracts to the following classes of entities:
    - (1) Small business concerns controlled by socially and economically disadvantaged individuals or by women: \* \* \* percent;
    - (2) Historically Black colleges and universities: \* \* \* percent;
    - (3) Colleges or universities having a student body in which more than 20 percent

- of the students are Hispanic Americans or Native Americans: \* \* \* percent.
  - [\* \* \* These goals are stated in a percentage reflecting the relationship of estimated award value of subcontracts to the value of this contract and appear elsewhere in this contract.]
  - (c) Reporting requirements. (1) The contractor agrees to report, on an annual Federal Government fiscal year basis, its progress against the goals by providing the actual annual dollar value of subcontract payments for the preceding 12-month period, and the relationship of those payments to the incurred contract costs for the same period. Reports submitted pursuant to this clause must be received by the contracting officer (or designee) not later than 45 days after the end of the reporting period.
  - (2) If the contract includes reporting requirements under FAR 52.219-9, Small Business and Small Disadvantaged Business Subcontracting Plan, the contractor's progress against the goals stated in paragraph (b) of this clause 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.
- (End of clause)

**952.226-73 Energy Policy Act target group certification.**

As prescribed in 926.7007(d), insert the following provision:

- Energy Policy Act Target Group Certification (May 1995)
- (a) Certification. The offeror certifies that it is:
- (1) \_\_\_ An institution of higher education that meets the requirements of 34 CFR 600.4(a), and has a student enrollment that consists of at least 20 percent:
    - (i) Hispanic Americans, *i.e.*, students whose origins are in Mexico, Puerto Rico, Cuba, or Central or South America, or any combination thereof, or
    - (ii) Native Americans, *i.e.*, American Indians, Eskimos, Aleuts, and Native Hawaiians, or any combination thereof;
    - (2) \_\_\_ An institution of higher learning determined to be a Historically Black College and University by the Secretary of Education pursuant to 34 CFR 608.2; or
    - (3) \_\_\_ A small business concern, as defined under section 3 of the Small Business Act (15 U.S.C. 632), that is owned and controlled by individuals who are both socially and economically disadvantaged within the meaning of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or by a woman or women.
  - (b) By submission of an offer, the offeror agrees to provide to the Contracting Officer, upon request, evidence satisfactory to the contracting officer that the offeror is an entity from the Energy Policy Act target group identified.
- (End of provision)

**PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS [AMENDED]**

4. The authority citation for Part 970 continues to read as follows:

**Authority:** Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Public Law 95-91 (42 U.S.C. 7254), sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420), and sec. 1534 of the Department of Defense Authorization Act, 1986, Public Law 99-145 (42 U.S.C. 7256a), as amended.

5. Part 970 is amended to add a new subpart 970.26, Other Socioeconomic Programs, consisting of Section 970.2601, Implementation of Section 3021 of the Energy Policy Act of 1992, to read as follows:

**Subpart 970.26—Other Socioeconomic Programs**

**970.2601 Implementation of Section 3021 of the Energy Policy Act of 1992.**

The goal requirements of Section 3021 of the Energy Policy Act of 1992, and the attendant reporting requirements shall be included in the subcontracting plan for the management and operating contract and shall apply to the annual dollar obligations specifically provided to the Management and Operating contractor for competitively awarded subcontracts that fulfill Energy Policy Act requirements. See 970.7104-12(f).

**Subpart 970.71—Management and Operating Contractor Purchasing**

6. Section 970.7104-12 is amended by redesignating paragraph (f) as (g) and adding a new paragraph (f) as follows:

**970.7104-12 Small business and small disadvantaged business concerns.**

\* \* \* \* \*

(f) Management and operating contractors may provide in their purchasing systems and methods for the application of preferences to Energy Policy Act target groups, taking into consideration the provisions of 926.70, Implementation of Section 3021 of the Energy Policy Act of 1992.

\* \* \* \* \*

[FR Doc. 95-11167 Filed 5-4-95; 8:45 am]