

# Subpart 26.5 - Drug-Free Workplace

Parent topic: [Part 26 - Other Socioeconomic Programs](#)

## 26.500 Scope of subpart.

This subpart implements [41 U.S.C. chapter 81](#), *Drug-Free Workplace*.

## 26.501 Applicability.

This subpart applies to contracts, including contracts with 8(a) contractors under FAR [subpart 19.8](#) and modifications that require a justification and approval (see [subpart 6.3](#)), except contracts-

- (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 the *acquisition of 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) By law enforcement agencies, if the head of the law enforcement agency or designee involved determines that application of 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 Authority.

[41 U.S.C. chapter 81](#), *Drug-Free Workplace*.

## 26.503 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 CFR1308.11-1308.15.

*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 the performance of work under a Government contract. "Directly engaged" is defined to include all *direct cost employees* and any other contract *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*.

## **26.504 Policy.**

(a) No *offeror* other than an individual *shall* be considered a responsible source (see 9.104-1(g) and 19.602-1(a)(2)(i)) for a contract that exceeds the *simplified acquisition threshold*, unless it agrees that it will provide a *drug-free workplace* by-

(1) Publishing 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) Establishing an ongoing drug-free awareness program to inform its 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) Providing all employees engaged in performance of the contract with a copy of the statement required by paragraph (a)(1) of this section;

(4) Notifying all employees *in writing* in the statement required by paragraph (a)(1) of this section, that as a condition of employment on a covered 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) Notifying the *contracting officer in writing* within 10 days after receiving notice under subdivision (a)(4)(ii) of this section, 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 paragraph (a)(4) of this section of a *conviction*, taking 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.
  - (ii) Requiring 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.
- (7) Making a good faith effort to maintain a *drug-free workplace* through implementation of paragraphs (a)(1) through (a)(6) of this section.
- (b) No individual *shall* be awarded a contract of any dollar value unless that individual agrees not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing the contract.
  - (c) For a contract of 30 days or more performance duration, the contractor *shall* comply with the provisions of paragraph (a) of this section within 30 days after contract award, unless the *contracting officer* agrees *in writing* that circumstances warrant a longer period of time to comply. Before granting such an extension, the *contracting officer shall* consider such factors as the number of contractor employees at the worksite, whether the contractor has or *must* develop a *drug-free workplace* program, and the number of contractor worksites. For contracts of less than 30 days performance duration, the contractor *shall* comply with the provisions of paragraph (a) of this section as soon as possible, but in any case, by a date prior to when performance is expected to be completed.

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

- (a) After determining *in writing* that *adequate evidence* to suspect any of the causes at paragraph (d) of this section exists, the *contracting officer may* suspend contract payments in accordance with the procedures at [32.503-6\(a\)\(1\)](#).
- (b) After determining *in writing* that any of the causes at paragraph (d) of this section exist, the *contracting officer may* terminate the contract for default.
- (c) Upon initiating action under paragraph (a) or (b) of this section, the *contracting officer shall* refer the case to the agency *suspension* and *debarment* official, in accordance with agency procedures, pursuant to [subpart 9.4](#).
- (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) A determination under this section to suspend contract payments, terminate a contract for default, or debar or suspend a contractor *may* be waived by the *agency head* for a particular contract, in accordance with agency procedures, only if such waiver is necessary to prevent a severe

disruption of the agency operation to the detriment of the Federal Government or the general public (see subpart 9.4). The waiver authority of the *agency head* cannot be delegated.

## **26.506 Contract clause.**

Except as provided in 26.501, insert the clause at 52.226-7, *Drug-Free Workplace*, in *solicitations* and contracts.