

List of Subjects in 48 CFR Part 231

Government procurement.

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

Therefore, 48 CFR Part 231 is amended as follows:

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR Part 231 continues to read as follows:

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

2. Section 231.205–71 is added to read as follows:

231.205–71 Defense capability preservation agreements.

(a) *Scope and authority.* Where it would facilitate the achievement of the policy objectives relating to defense reinvestment, diversification, and conversion set forth in 10 U.S.C. 2501(b), DoD may enter into a “defense capability preservation agreement” with a contractor. As authorized by Section 808 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106), such an agreement would permit the contractor to claim certain indirect costs attributable to its private sector work as allowable costs on its defense contracts.

(b) *Procedure.* A contractor may submit a request for such an agreement, together with appropriate justification, through the Assistant Secretary of Defense for Economic Security, to the Under Secretary of Defense for Acquisition and Technology, who has exclusive approval or disapproval authority. The contractor should also provide an informational copy of any such request to the cognizant administrative contracting officer.

[FR Doc. 96–11887 Filed 5–10–96; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

48 CFR Parts 904, 906, 911, 912, 913, 915, 919, 925, 926, 933, 950, 952 and 970

RIN 1991–AB27

Acquisition Regulation; Technical Amendments

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) today issues a final rule to make technical, non-substantive amendments to the Department of Energy Acquisition

Regulation (DEAR). The Federal Acquisition Regulation (FAR) was amended several times to implement various parts of the Federal Acquisition Streamlining Act of 1994, Public Law 103–355. This rule amends sections of the DEAR to conform to the revised provisions of the FAR.

EFFECTIVE DATE: This final rule will be effective June 12, 1996.

FOR FURTHER INFORMATION CONTACT: Richard B. Langston, Office of Policy (HR–51), Office of the Deputy Assistant Secretary for Procurement and Assistance Management, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–8247.

SUPPLEMENTARY INFORMATION:**I. Explanation of Revisions****II. Procedural Requirements**

- A. Review Under Executive Order 12866
- 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. Review Under the National Environmental Policy Act
- G. Public Hearing Determination

I. Explanation of Revisions

The revisions in this rule are either technical and nonsubstantive in nature, or nondiscretionary. They involve the renumbering or redesignating of DEAR sections or subsections, or the substitution of new terminology for designations previously used to describe “small purchases” and “small and small disadvantaged businesses.” These revisions are intended to ensure that the DEAR conforms to the FAR to implement various parts of the Federal Acquisition Streamlining Act of 1994, Public Law 103–355. Three amendments to the FAR created a need for this technical amendment of the DEAR. New FAR regulations governing micropurchases, i.e., acquisitions below \$2,500, and simplified acquisitions, i.e., acquisitions exceeding the micropurchase level but not greater than \$100,000, were published respectively on December 15, 1994 at 59 FR 64786 and July 3, 1995 at 60 FR 34741. These two amendments require changes at DEAR Parts 901, 904, 906, 913, 915, 925, 952 and 970. The third amendment affected provisions dealing with commercial items, small business, and protests. It was published on September 18, 1995, at 60 FR 48206. It requires changes at DEAR Parts 911, 912, 919, 926, and 933.

II. Procedural Requirements**A. Review Under Executive Order 12866**

This regulatory action has been determined not to be 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), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected legal 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. DOE certifies that this rule meets the requirements of sections 2 (a) and (b) of Executive Order 12778.

C. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, which requires preparation of a regulatory flexibility analysis for any rule that is likely to have a significant economic impact on a substantial number of small entities. This rule will have no impact on interest rates, tax policies or liabilities, the cost of goods or services, or other direct economic factors. It will also not have any indirect economic consequences such as changed construction rates. 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

No new information collection or recordkeeping requirements are imposed by this rule. Accordingly, no OMB clearance is required under the

Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

E. Review Under Executive Order 12612

Executive Order 12612, entitled "Federalism," 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, or 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. DOE has determined that this rule will not have a substantial direct effect on the institutional interests or traditional functions of States.

F. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR 1500-1508), the Department has established guidelines for its compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321). Pursuant to Appendix A of Subpart D of 10 CFR 1021, National Environmental Policy Act Implementing Procedures (Categorical Exclusion A6), DOE has determined that this rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment.

G. Prior Notice and Public Hearing Determination

The final regulations published in this notice are interpretive of FAR provisions implementing the Federal Acquisition Streamlining Act of 1994, Public Law 103-355. They are non-discretionary in nature. DOE therefore is not providing prior notice and opportunity for public comment.

DOE also has concluded that this rule does not involve any significant issues of law or fact. Therefore, consistent with 5 U.S.C. 553, DOE has not scheduled a public hearing.

List of Subjects in 48 CFR Parts 904, 906, 911, 912, 913, 915, 919, 925, 926, 933, 950, 952, and 970

Government procurement.

Issued in Washington, D.C., on April 25, 1996.

Richard H. Hopf,
Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

1. The authority citation for Parts 904, 906, 911, 912, 913, 915, 919, 925, 926, 933, 950, and 952 continues to read as follows:

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

1a. The authority citation for Part 970 continues to read:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act of 1977, Public Law 95-91 (42 U.S.C. 7254).

PART 904—ADMINISTRATIVE MATTERS

§ 904.7103 [Amended]

2. Section 904.7103, "Solicitation provision and contract clause" is amended, at both paragraphs (a) and (b), by revising the words "small purchase or other simplified purchase" to read "simplified acquisition."

PART 906—COMPETITION REQUIREMENTS

§ 906.303-1 [Amended]

3. Subsection 906.303-1(a), Requirements, is amended by removing the final sentence.

PART 912—[REDESIGNATED AS PART 911]

4. Part 912 is redesignated Part 911 (Part 912 is reserved). The heading for the new 911 is "DESCRIBING AGENCY NEEDS."

§ 912.300, 912.302, 912.304 [Redesignated as 911.600, 911.602, 911.604]

a. Sections 912.300, 912.302, and 912.304 are redesignated 911.600, 911.602, and 911.604 respectively.

911.600 [Amended]

b. Newly redesignated Section 911.600 is amended by revising the reference "FAR subpart 12.3" to read "FAR subpart 911.6."

§ 911.604 [Amended]

c. Newly designated Section 911.604 is amended:

- i. in paragraph (a) by revising "952.212-70" to read "952.211-70" and removing "(JUNE 1987)";
- ii. in paragraph (b) by revising "952.212-71" to read "952.211-71" and removing "(JUNE 1987)";

iii. in paragraph (c) by revising "952.212-70" and "952.212-71" to read "952.211-70" and "952.211-71" respectively;

iv. in paragraph (d) by revising "952.212-70" to read "952.211-70" and removing "(JUNE 1987)"; and,

v. in paragraph (e) by revising "952.212-71" to read "952.211-71" and removing "(JUNE 1987)."

PART 913—SIMPLIFIED ACQUISITION PROCEDURES

5. The Part heading for Part 913 is amended to read as set forth above.

§ 913.505-1 [Amended]

6. Subsection 913.505-1 is amended as follows:

a. at paragraph (a)(2) by revising the words "small purchase" in the first sentence to read "simplified acquisition";

b. by adding a new third sentence to read: 913.505-1 Optional Form (OF) 347, Order for Supplies or Services, and Optional Form 348, Order for Supplies or Services-Continuation or DOE F 4250.3, Order for Supplies or Services. * * * Standard Form 1449 shall be used for acquisitions of commercial items.

c. by adding, at paragraph (b)(2), the words "or Standard Form 1449" after the words "Optional Form 347."

PART 915—CONTRACTING BY NEGOTIATION

915.970-8 [Amended]

7. Subsection 915.970-8 is amended at paragraph (f)(1), second sentence, by removing the words "labor surplus," and at paragraph (f)(2)(i), first sentence, by revising the words "small business and small disadvantaged business" to read "small, small disadvantaged and women-owned small business," by removing paragraph (f)(2)(ii), and by redesignating subparagraph (f)(2)(iii) as (f)(2)(ii).

915.971-3 [Amended]

8. Subsection 915.971-3, is amended at paragraph (b)(viii), by revising the words "small and small disadvantaged" to read "small, small disadvantaged and women-owned small."

PART 919—SMALL BUSINESS PROGRAMS

9. The Part heading for Part 919 is revised to read as set forth above.

919.201 [Amended]

10. Paragraph (c) of section 919.201 is amended in each of the first three sentences, by revising the words "small and small disadvantaged" to read

“small, small disadvantaged, and women-owned small” and in the fourth sentence, by revising the words “small business/small disadvantaged business (SB/DB) specialist” to read “small business specialist.”

919.501 [Amended]

11. Section 919.501, General, at the end of the first sentence of paragraph (c), is amended by revising the words “small purchase limitation” to read “simplified acquisition threshold.”

919.602-1 [Amended]

12. Subsection 919.602-1, Referral, is amended at paragraph (a)(2) by removing the words “and disadvantaged.”

919.7 [Amended]

Subpart 919.7—Subcontracting with Small Business, Small Disadvantaged Business, and Women-Owned Small Business Concerns

13. The heading of Subpart 919.7 is revised to read as set forth above.

PART 925—FOREIGN ACQUISITION

925.901 [Amended]

14. Section 925.901, Omission of the examination of records clause, is amended by revising its heading to read “Omission of the audit clause.” and by revising “48 CFR 25.903” to read “48 CFR 25.901.”

PART 926—OTHER SOCIOECONOMIC PROGRAMS

926.7003 [Amended]

15. Section 926.7003, Review of the procurement request, is amended by removing “/Labor Surplus Area Set Aside.”

PART 933—PROTESTS, DISPUTES, AND APPEALS

933.106 [Amended]

16. Section 933.106 is amended by revising the words “for other than small purchases” to read “above the simplified acquisition threshold.”

PART 950—EXTRAORDINARY CONTRACTUAL ACTIONS

950.7101 [Amended]

17. Section 950.7101, at paragraph (c)(2), first sentence, is amended by revising the words “small businesses and small disadvantaged businesses” to read “small, small disadvantaged and women-owned small businesses.”

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

952.212 [Redesignated as 952.211]

18. Section 952.212 is redesignated 952.211. Its subsections are amended as follows:

a. Subsections 952.212-70, 952.212-71, 952.212-72, and 952.212-73 are redesignated 952.211-70, 952.211-71, 952.211-72, and 952.211-73 respectively.

b. Redesignated subsection 952.211-70, is amended by revising the reference “912.304(a)” to read “911.604(a)” in the introductory paragraph and by revising the reference “912.304(d)” to read “911.604(d)” in Alternate I.

c. Redesignated 952.211-71 is amended by revising the reference “912.304(b)” to read “911.604(b)” in the introductory paragraph and by revising the reference “912.304(e)” to read “911.604(e)” in Alternate I.

952.226 [Amended]

19. Section 952.226 is amended at 952.226-70(c) in the first sentence, 952.226-70(d) and 970.226-72(c)(2) by revising the words “Small Business and Small Disadvantaged Business Subcontracting Plan” to read “Small, Small Disadvantaged and Women-Owned Subcontracting Plan” and at 952.226-71(b) by revising the words “Utilization of Small Business Concerns and Small Disadvantaged Business Concerns” to read “Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns.”

952.250-70 [Amended]

20. Subsection 952.250-70, Nuclear hazards indemnity agreement, is amended at paragraph (h) by removing the words “Officials Not to Benefit” and revising the words “Examination of Records by the Comptroller General” to read “Audit and records—negotiation.”

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

970.19 Small, Small Disadvantaged and Women-Owned Small Business Concerns

21. The heading of subpart 970.19 is revised to read as set forth above.

970.5203-2 [Removed and reserved]

22. Subsection 970.5203-2, Examination of Records by the Comptroller General, is removed and reserved.

970.5204-9 [Amended]

23. Subsection 970.5204-9, Accounts, records, and inspection, is amended by revising paragraph (g) and adding

paragraph (i). The revised and added paragraphs read:

970.5204-9 Accounts, records, and inspection.

* * * * *

Accounts, Records, and Inspection (APR 1996)

* * * * *

(g) *Subcontracts.* The contractor further agrees to require the inclusion of provisions similar to those in paragraphs (a) through (g) and paragraph (i) of this clause in all subcontracts (including fixed-price or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.

Note: If the prime contract contains a “Defective Cost or Pricing Data” clause, this paragraph (g) shall be modified by adding the following:

The contractor further agrees to include an “Audit” clause, the substance of which is the “Audit” clause set forth at FAR 52.215-2, in each subcontract which does not include provisions similar to those in paragraph (a) through paragraph (g) and paragraph (i) of this clause, but which contains a “defective cost and pricing data” clause.

* * * * *

(i) Comptroller General.

(1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.

(2) This paragraph may not be construed to require the contractor or subcontractor to create or maintain any record that the contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(3) Nothing in this contract shall be deemed to preclude an audit by the General Accounting Office of any transaction under this contract.

970.5204-13 [Amended]

24. Subsection 970.5204-13, Allowable costs and fixed-fee (Management and Operating contracts), at clause paragraph (e)(36)(ii)(A), is amended by revising the words “Small Businesses and Small Disadvantaged Businesses” (both sentences) to read “small, small disadvantaged and women-owned small businesses” and by revising the words “Utilization of Small Business Concerns and Small Disadvantaged Business Concerns” to read “Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns” in the first sentence.

970.5204-14 [Amended]

25. Subsection 970.5204-14, Allowable costs and fixed-fee (support contracts), at paragraph (e)(34)(ii)(A), is amended by revising the words "Small Businesses and Small Disadvantaged Businesses" (both sentences) to read "small, small disadvantaged and women-owned small businesses" and by revising the words "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns" to read "Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns." (first sentence).

970.5204-44 [Amended]

26. Subsection 970.5204-44, Flowdown of contract requirements to subcontracts, is amended by removing and reserving paragraph (b)(12), Examination of Records by the Comptroller General, and revising the title of subparagraph (b)(19) to read "Accounts, Records, and Inspection."

[FR Doc. 96-11918 Filed 5-10-96; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 678**

[I.D. 042696D]

Atlantic Shark Fisheries; Large Coastal Shark Species

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the commercial fishery for large coastal

sharks conducted by vessels with a Federal Atlantic shark permit in the Western North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. This action is necessary to prevent exceeding the semiannual quota of 1285 metric tons (mt) for the period January 1 through June 30, 1996.

EFFECTIVE DATE: The closure is effective from 11:30 p.m. local time May 17, 1996, through June 30, 1996.

FOR FURTHER INFORMATION CONTACT: C. Michael Bailey, 301-713-2347; Kevin B. Foster, 508-281-9260; or John M. Ward 813-570-5335.

SUPPLEMENTARY INFORMATION: The Atlantic shark fishery is managed by NMFS according to the Fishery Management Plan (FMP) for Atlantic Sharks prepared by NMFS under authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR part 678.

Section 678.24(b) of the regulations provides for two semiannual quotas of large coastal sharks to be harvested from Atlantic, Caribbean, and Gulf of Mexico waters by commercial fishermen. The first semiannual quota of 1,285 mt is available for harvest from January 1 through June 30, 1996.

The Assistant Administrator for Fisheries, NOAA (AA), is required under § 678.25 to monitor the catch and landing statistics and, on the basis of these statistics, to determine when the catch of Atlantic, Caribbean, and Gulf of Mexico sharks will equal any quota under § 678.24(b). When shark harvests reach, or are projected to reach, a quota established under § 678.24(b), the AA is further required under § 678.25 to close the fishery.

The AA has determined, based on the reported catch and other relevant

factors, that the semiannual quota for the period January 1 through June 30, 1996, for large coastal sharks, in or from the Western North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, will be attained by May 17, 1996. During this closure, for vessels issued a permit under § 678.4, retention of large coastal sharks from the management unit is prohibited, unless the vessel is operating as a charter vessel or headboat, in which case, the vessel limit per trip is four large coastal sharks. Also, the sale, purchase, trade, or barter or attempted sale, purchase, trade, or barter of carcasses and/or fins of large coastal sharks harvested by a person aboard a vessel that has been issued a permit under § 678.4, is prohibited, except for those that were harvested, offloaded, and sold, traded, or bartered prior to May 17, 1996, and were held in storage by a dealer or processor.

Vessels that have been issued a Federal permit under § 678.4 are reminded that, as a condition of permit issuance, the vessel may not retain a large coastal shark during the closure, except as provided by § 678.24(a). Fishing for pelagic and small coastal sharks may continue. The recreational fishery is not affected by this closure.

Classification

This action is taken under 50 CFR part 678 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. *et seq.*

Dated: May 6, 1996

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96-11851 Filed 5-8-96; 2:28 pm]

BILLING CODE 3510-22-F