

Dated: November 26, 1996.

J.C. Card,

*Rear Admiral, U.S. Coast Guard, Chief,
Marine Safety and Environmental Protection.*
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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1819, 1834, 1845, 1852 and 1870

Revision to the NASA FAR Supplement to Eliminate Non-Statutory Certification Requirements

AGENCY: National Aeronautics and
Space Administration (NASA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Aeronautics and
Space Administration is publishing a
notice of proposed rulemaking to amend
the NASA FAR Supplement (NFS) to
eliminate all non-statutory imposed
contractor and offeror certification
requirements.

DATES: Written comments on the
proposed rulemaking must be received on
or before February 18, 1997.

ADDRESSES: Comments (3 copies) should
be addressed to Donald G. Abrams,
Office of Procurement, Contract
Management Division, Code HK, NASA
Headquarters, Washington DC 20546.

FOR FURTHER INFORMATION CONTACT:
Donald G. Abrams, telephone (202) 358-
0512; facsimile (202) 358-3083; or
electronic mail
donald.abrams@hq.nasa.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 4301(b)(1)(B) of the Federal
Acquisition Reform Act of 1996 (FARA),
Pub. L. 104-106, requires agencies that
have procurement regulations
containing one or more certification
requirements for contractors and
offerors that are not specifically
imposed by statute to issue for public
comment a proposal to amend their
regulations to remove the certification
requirements. Such certification
requirements may be omitted from the
agency proposal if (i) the senior
procurement executive for the executive
agency provides the head of the
executive agency with a written
justification for the requirement and a
determination that there is no less
burdensome means for administering
and enforcing the particular regulation
that contains the certification
requirement; and (ii) the head of the
executive agency approves in writing

the retention of such certification
requirement.

The proposed rule constitutes NASA's
proposal for the elimination of all non-
statutory imposed contractor and offeror
certification requirements from the NFS
pursuant to section 430(b)(1)(B) of
FARA. NASA has not identified any
regulatory certification requirement
contained in the NFS which it has
determined should be proposed for
retention. Consequently, the Agency is
not pursuing approval from the
Administrator of NASA to retain any
certification requirement not
specifically imposed by statute. The
Agency invites public comment on its
proposal to eliminate all regulatory
certification requirements from the NFS
and on its determination that there are
no certification requirements which
should be proposed for retention.

Agency Proposal to Eliminate Non- Statutory Certification Requirements

The following is the Agency's
proposal pertaining to each contractor
and offeror certification requirement
contained in the NFS.

1. 1816.303 Cost Sharing Contracts

This requirement, which dealt with
the certification requested from a
university to the fact that it has "no
commercial, production, educational, or
service activities on which to use the
results of the research and no means of
recovering any cost sharing on such
projects", has been deleted from the
rewrite of the NFS.

2. 1819.7211 Application Process for Mentor Firms to Participate in the Program

This section, which required that "a
proposed mentor must submit the
following information (1) certification
that the mentor firm is currently
performing under at least one active
approved subcontracting plan * * *" will
be rewritten to require simply a
statement to the same effect.

3. 1832.7002 Responsibility

This section has been removed due to
the rewrite of the NFS (effective October
29, 1996, 61 FR 55765-55774).

4. 1832.7004(b) Contractual Implementation (Milestone Billing)

The section has been removed due to
the rewrite of the NFS (effective October
29, 1996, 61 FR 55765-55774).

5. 1834-005-1 Competition (Major Systems Acquisition)

The passing reference under "(4)
Phase D, Development, involves final
detailed design, fabrication,
certification, and delivery of an
operational system that meets program

requirements," will be deleted from the
rewrite to the NFS.

6. 1845.302-73 Determination and Findings (Decision to Provide Government Property)

Whereas the previous section was
worded, "contractor has certified
inability to acquire the facilities", this
will be rewritten to have the contractor
"demonstrate inability to
acquire* * *".

7. 1852.223-70 Safety and Health

Previously, the clause required the
contractor to submit a certification
program for personnel involved in
hazardous operations as required by the
contract schedule or the contracting
officer." This will be rewritten to
require "qualification standards for
personnel* * *". This clause was
published in the Federal Register
October 29, 1996 (61 FR 55753-55764).

8. 1852-247-73 Shipment by Government Bills of Lading

This optional transportation clause for
use in f.o.b. Origin contracts instructs
the contractor to certify on his/her
invoices that the material has been
shipped. It will be rewritten to require
simply a statement that the material has
been shipped.

9. 1870.102-703 VI Proposal Submission Information (Investigation Acquisition System)

Section 2.6, entitled Certification,
previously required that "the proposal
must be signed by an institutional
official authorized to certify
institutional support * * *". It will be
rewritten to be entitled "Signatory" and
require "signed by institutional official
authorized to ensure* * *".

Public Comments

NASA invites interested persons to
participated by submitting data, views,
or arguments with respect to the NFS
amendments set forth in this proposed
rule. Three copies of written comments
should be submitted to the address
indicated in the ADDRESSES section of
this rule. All comments received will be
available for public inspection during
normal work hours. All written
comments received by the date
indicated in the DATES section of this
notice will be carefully assessed and full
considered prior to the effective date of
these amendments as a final rule. Any
information considered to be
confidential must be so identified and
submitted in writing, one copy only.
NASA reserves the right to determine
the confidential status of the
information and to treat it according to

its determination in accordance with 10 CFR 1004.11.

Impact

NASA certified 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.

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

List of Subjects in 48 CFR Parts 1819, 1834, 1845, 1852 and 1870

Government Procurement.

Tom Luedtke,
Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR 1819, 1834, 1845, 1852 and 1870 are proposed to be amended as follows:

1. The authority citation for 48 CFR 1819, 1834, 1845, 1852 and 1870 continues to read as follows:

Authority: U.S.C. 2473(c)(1).

PART 1819—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

1819.7211 [Amended]

2. Section 1819.7211 is revised to read as follows:

1819.7211 Application process for mentor firms to participate in the program.

(a) Prime contractors interested in becoming a mentor firm must submit a request to the NASA OSDBU to be approved under the program. The application will be evaluated on the extent to which the company plans to provide developmental assistance. The information required in paragraph (b) of this section must be submitted to be considered for approval as a mentor firm.

(b) A proposed mentor must submit the following information to the NASA OSDBU:

(1) A statement that the mentor firm is currently performing under at least one active approved subcontracting plan (small business exempted) and that they are eligible, as of the date of application, for the award of Federal contracts;

(2) The cognizant NASA contract number(s), type of contract, period of performance (including options), title of technical program effort, name of NASA Program Manager (including contact information) and name of NASA field center where support is provided;

(3) The number of proposed Mentor-Protégé arrangements;

(4) Data on all current NASA contracts and subcontracts to include the contract/subcontract number(s), period of performance, awarding NASA installation or contractor and contract/subcontract value(s) including options;

(5) Data on total number and dollar amount of subcontracts awarded under NASA prime contracts within the past 2 years and the number of dollar value of such subcontracts awarded to entities defined as protégés.

(6) Information on the proposed types of developmental assistance. For each proposed Mentor-Protégé relationship include information on the company's ability to provide developmental assistance to the identified protégé firm and how that assistance will potentially increase subcontracting opportunities for the protégé firm, including subcontracting opportunities in industry categories where these entities are not dominant in the company's current subcontractor base; and

(7) A Letter of Intent signed by both parties. At a minimum, the Letter of Intent must include the stated commitment that the parties intend to enter into a mentor-protégé agreement under the NASA program, that they intend to cooperate in the development of a suitable developmental assistance program to meet their respective needs, and that they agree to comply with the obligations in section 1819.7215 and all other provisions governing the program.

PART 1834—MAJOR SYSTEM ACQUISITION

1834.005-1 [Amended]

3. In section 1834.005-1, the existing paragraph (b)(4) is removed and paragraph (b)(5) is redesignated as paragraph (b)(4).

PART 1845—GOVERNMENT PROPERTY

1845.302-73 [Amended]

4. Section 1845.302-73 is revised to read as follows:

1845.302-73 Determination and findings.

(a) Procedure. Determination and findings (D&F) required under FAR 45.302-1(a)(4) shall be prepared by the contracting officer and approved by the procurement officer. Prior to approval of the D&F by the procurement officer, concurrence must be obtained from the Director of Administration or equivalent, to ensure that the requiring activity and the installation supply and equipment management officer agree to the use of the Government facilities by the contractor. D&Fs shall address individual types of facilities to be provided to the contractor. Reference to

specific variations in quantities of items to be provided should be included in the D&F if additional requirements are anticipated. A separated D&F is required before adding new types of items or significant changes in quantity. A separate D&F is also required before adding any new work to the contract that requires additional Government facilities.

(b) Format. A sample format follows:

(Format) National Aeronautics and Space Administration, Washington, DC 20546

Determination and Findings

Decision To Provide Government Facilities

On the basis of the following findings and determinations, Government-owned facilities may be provided to [insert the name of the contractor] pursuant to the authority of FAR 45.302-1(a) (4).

Findings

1. The [insert the name of the contracting activity] and the contractor (have entered)/ (proposed to enter) into Contract No. [insert the contract number]. (Include the following information: Type of contract, contract value, and a brief description of the scope of work performed under the contract.)

2. (Justify that Government facilities are needed for performance under the contract. The justification shall demonstrate either (i) that the contract cannot be fulfilled by any other means, or (ii) that it is in the public interest to provide the facilities. It is imperative that the justification be fully substantiated by evidence.)

3. (If the contract effort cannot be fulfilled by any other means, indicate why the contractor cannot provide the facilities. For example, due to financial constraints, the contractor has demonstrated inability to acquire the facilities; or, even though the contractor is willing and financially able to acquire these facilities for its own account, the contractor has stated that time will not permit making arrangements to obtain timely delivery to meet NASA requirements. If timely delivery is the problem, state when the contractor will replace the Government facilities with contractor-owned facilities. Address leadtime, validate the contractor's claims, and state that private financing was sought and either not available or not advantageous to the Government. If private financing was not advantageous to the Government, provide justification. Indicate other alternatives considered and reasons for rejection.)

4. (Give a general description of the types of facilities to be provided and indicate the variation in quantities of items based on functional requirements. Explain how these facilities pertain to the scope of work to be completed. State that the contract cannot be accomplished without the specified facility items being provided. Include an estimate of the value of the facilities and a statement that no facilities items under \$10,000 unit cost will be provided unless the contractor is a nonprofit, on-site, or the facilities are only available from the Government.)

5. (Indicate whether the property will be accountable under this contract or a separate facilities contract.)

Determination

For the reasons set forth above, it is hereby determined that the Government-owned facilities identified herein will be provided to the contractor.

Procurement Officer _____

Date _____

(End of format)

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Part 1852 is amended as set forth below:

1852.223-70 [Amended]

6. Section 1852.223-70 is revised to read as follows: 1852.223-70 Safety and Health.

As prescribed in 1823.7001(a), insert the following clause:

Safety and Health (February 1996)

(a) The Contractor shall take all reasonable safety and health measures in performing under this contract. The Contractor shall comply with all Federal, State, and local laws applicable to safety and health in effect on the date of this contract and with the safety and health standards, specifications, reporting requirements, and provisions set forth in the contract Schedule.

(b) The Contractor shall take or cause to be taken any other safety and health measures the Contracting Officer may reasonably direct. To the extent that the Contractor may be entitled to an equitable adjustment for those measures under the terms and conditions of this contract, the equitable adjustment shall be determined pursuant to the procedures of the changes clause of this contract; provided, that no adjustment shall be made under this Safety and Health clause for any change for which an equitable adjustment is expressly provided under any other provision of the contract.

(c) The Contractor shall immediately notify and promptly report to the Contracting Officer or a designee any accident, incident, or exposure resulting in fatality, lost-time occupational injury, occupational disease, contamination of property beyond any stated acceptable limits set forth in the contract Schedule, or property loss of \$25,000 or more arising out of work performed under this contract. The Contractor is not required to include in any report an expression of opinion as to the fault or negligence of any employee. Service contractors (excluding construction contracts) shall provide quarterly reports specifying lost-time frequency rate, number of lost-time injuries, exposure, and accident/incident dollar losses as specified in the contract Schedule. The Contractor shall investigate all work-related incidents or accidents to the extent necessary to determine their causes and furnish the

Contracting Officer a report, in such form as the Contracting Office may require, of the investigative findings and proposed or completed corrective actions.

(d) (1) The Contracting Officer may notify the Contractor in writing of any noncompliance with this clause and specify corrective actions to be taken. The Contractor shall promptly take and report any necessary corrective action.

(2) If the Contractor fails or refuses to institute prompt corrective action in accordance with subparagraph (d) (1) of this clause, the Contracting Officer may invoke the stop-work order clause in this contract or any other remedy available to the Government in the event of such failure or refusal.

(e) The Contractor (or subcontractor or supplier) shall insert the substance of this clause, including this paragraph (e) and any applicable Schedule provisions, with appropriate changes of designations of the parties, in subcontracts of every tier that (1) amount to \$1,000,000 or more (unless the Contracting Officer makes a written determination that this is not required), (2) require construction, repair, or alteration in excess of \$25,000, or (3) regardless of dollar amount, involve the use of hazardous materials or operations.

(f) Authorized Government representatives of the Contracting Officer shall have access to and the right to examine the sites or areas where work under this contract is being performed in order to determine the adequacy of the Contractor's safety and health measures under this clause.

(g) As a part of the Contractor's safety plan (and health plan, when applicable) and to the extent required by the Schedule, the Contractor shall furnish a list of all hazardous operations to be performed, including operations indicated in paragraphs (a) and (b) of this clause, and a list of other major or key operations required or planned in the performance of the contract, even though not deemed hazardous by the Contractor. NASA and the Contractor shall jointly decide which operations are to be considered hazardous, with NASA as the final authority. Before hazardous operations commence, the Contractor shall submit for NASA concurrence either or both of the following, as required by the contract Schedule or by the Contracting Officer:

(1) Written hazardous operating procedures for all hazardous operations.

(2) A certification program for personnel involved in hazardous operations.

(End of clause)

\$ 1852.247-73 [Amended]

7. Section 1852.247-73 is revised to read as follows:

\$ 1852.247-73 Shipment by Government bills of lading.

As prescribed in 1847.305-70(c), insert the following clause:

Shipment by Government Bills of Lading
(March 1989)

(a) The Contractor shall ship items deliverable under this contract, if the

transportation cost per shipment exceeds \$100, by Government bills of lading (GBLs). At least 15 days before shipment, the Contractor shall request in writing GBLs from: _____ [Insert name, title, and mailing address of designated transportation officer or other official delegated responsibility for GBLs]. If time is limited, requests may be by telephone: _____ [Insert appropriate telephone number]. Requests for GBLs shall include the following information.

- (1) Item identification/description.
- (2) Origin and destination.
- (3) Individual and total weights.
- (4) Dimensions and total cubic footage.
- (5) Total number of pieces.
- (6) Total dollar value.
- (7) Other pertinent data.

(b) The Contractor shall prepay transportation charges of \$100 or less per shipment. The Government shall reimburse the Contractor for these charges if they are added to the invoice as a separate line item supported by the paid freight receipts. If paid receipts in support of the invoice are not obtainable, a statement as described below must be completed, signed by an authorized company representative, and attached to the invoice. The shipments identified below have been made, transportation charges have been paid by (company name), and paid freight or comparable receipts are not obtainable.

Contract or Order Number: _____

Destination: _____

” _____

(End of clause)

PART 1870—NASA SUPPLEMENTARY REGULATIONS

\$ 1870.102, Appendix I Chapter 7— [Amended]

8. In Appendix I to 1870.102, Chapter 7, section 703, paragraph VI is revised to read as follows:

APPENDIX I TO 1870.102— GUIDELINES FOR ACQUISITION OF INVESTIGATIONS

* * * * *

CHAPTER 7—PROCUREMENT AND OTHER CONSIDERATIONS

703. Other Administrative and Functional Requirements

* * * * *

VI. Proposal Submission Information

1. Preproposal Activities—In this section, the AO will indicate requirements and activities as the following:

a. Submittal of “Notice of Intent” to propose (if desired), date for submission, and any additional required data to be submitted. Indicate whether there are information packages which will only be sent to those who submit “Notice of Intent.”

b. Attendance at the preproposal conference (if held). Information should be provided as to time, place, whether attendance will be restricted in number from

each institution, and whether prior notice of intention to attend is required. If desired, a request may be included that questions be submitted in writing several days before the conference in order to prepare replies.

c. The name and address of the scientific or technical contact for questions or inquiries.

d. Any other preproposal data considered necessary.

2. Format of Proposals—This section should provide the investigator with the information necessary to enable an effective evaluation of the proposal. The information is as follows:

a. Proposal—The AO should indicate how the proposal should be submitted to facilitate evaluation. The proposal should be submitted in at least two sections: (1) Investigation and Technical Section; and (2) Management and Cost Section.

b. Signatory—The proposal must be signed by an institutional official authorized to ensure institutional support, sponsorship of the investigation, management, and financial aspects of the proposal.

c. Quantity—The number of copies of the proposal should be specified. One copy should be clear black and white, and on white paper of quality suitable for reproduction.

d. Submittal Address—Proposals from domestic sources should be mailed to arrive not later than the time indicated for receipt of proposals to:

National Aeronautics and Space Administration, Office of (Program)

Code _____ AO No. _____
Washington, DC 20546

e. Format—To aid in proposal evaluation, and to facilitate comparative analysis, a uniform proposal format will be required for each AO. The number of pages, page size, and restriction on photo reduction, etc., may be included. The format contained in Appendix C can be used as a guide. Proposers may be requested to respond to all of the items or the AO may indicate that only selected items need be addressed. Using the Appendix format as a guide, specific guidelines may be prepared for the AO or an appropriate form developed.

3. Additional Information—This section may be used to request or furnish data necessary to obtain clear proposals that should not require further discussions with the proposer by the evaluators. Other pertinent data could also be included, such as significant milestones.

4. Foreign Proposals—The procedures for submission of proposals from outside the U.S. are contained in Appendix B, "General Instructions and Provisions." This section will describe any additional requirements, for example, if information copies of proposals are required to be furnished by the proposer to other organizations at the same time the proposal is submitted.

5. Cost Proposals (U.S. Investigators Only)—This section defines any special requirements regarding cost proposals of domestic investigators. Reference then should be made to the cost proposal

certifications indicated in Appendix B, "General Instructions and Provisions".

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BILLING CODE 7510-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 961210346-6346-01; I.D. 120596A]

RIN 0648-XX76

Fisheries of the Northeastern United States; Summer Flounder, Scup and Black Sea Bass Fisheries; Specifications for the 1997 Summer Flounder Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes specifications for the 1997 summer flounder fishery that include a coastwide harvest limit, an increase in minimum commercial fish size, and an increase in codend minimum mesh size. The implementing regulations for the fishery require NMFS to publish specifications for the upcoming fishing year and to provide an opportunity for public comment. The intent of these measures is to prevent overfishing of the summer flounder resource.

DATES: Public comments must be received on or before January 13, 1997.

ADDRESSES: Copies of supporting documents used by the Summer Flounder Monitoring Committee are available from: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904-6790. Comments on the proposed specifications should be sent to: Dr. Andrew A. Rosenberg, Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298. Mark on the outside of the envelope, "Comments—1997 Summer Flounder Specifications."

FOR FURTHER INFORMATION CONTACT: Dana Hartley, Fishery Management Specialist, 508-281-9226.

SUPPLEMENTARY INFORMATION:

Background

The regulations implementing the Fishery Management Plan for the Summer Flounder Fishery (FMP) describe the process for establishing annual management measures to achieve the targeted fishing mortality (F_{tgt}) rates stipulated in the FMP. The schedule established by the FMP is a fishing mortality rate of 0.41 in 1996, 0.30 in 1997, and 0.23 in 1998 and beyond. In addition, the FMP specifies that the coastwide harvest limit for 1996 and 1997 may not exceed 18.51 million lb (8.4 million kg), except if the specified fishing mortality rate (F) of 0.23 is met.

The FMP established a Summer Flounder Monitoring Committee (Monitoring Committee) consisting of representatives from the Atlantic States Marine Fisheries Commission (ASMFC), the New England, Mid-Atlantic and South Atlantic Fishery Management Councils, and NMFS. The Monitoring Committee makes recommendations to the Mid-Atlantic Fishery Management Council's (Council) Demersal Species Committee and the ASMFC after reviewing the following information: (1) Commercial and recreational catch data; (2) estimates of fishing mortality; (3) stock status; (4) current estimates of recruitment; (5) virtual population analysis (VPA) results; (6) levels of regulatory noncompliance by fishermen or individual states; (7) impact of fish size and net mesh regulations; (8) sea sampling and Northeast Fisheries Science Center winter trawl survey data; (9) impact of gear other than otter trawls on the mortality of summer flounder; and (10) other relevant information.

The Monitoring Committee recommends annual measures designed to achieve F_{tgt} to the Council's Demersal Species Committee and the ASMFC. These measures may include: (1) A coastwide harvest limit, (2) changes in commercial minimum fish size and mesh size, and (3) restrictions to gears other than otter trawls. The Council and the ASMFC then consider the Monitoring Committee's recommendations and any public comments and make their recommendations.

1997 Recommendations

The summer flounder stock assessment conducted within the 22nd Northeast Regional Stock Assessment Workshop (SAW-22), held in the spring of 1996, identified key issues that were addressed by the Monitoring Committee and discussed by the Council. As in all the years since FMP implementation,