

information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) ways to enhance the quality, utility, and clarity of the information collected; and (c) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96-21581 Filed 8-28-96; 8:45 am]

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DEPARTMENT OF ENERGY

48 CFR Parts 904, 909, 923, 926, 952 and 970

RIN 1991-AB31

Acquisition Regulation: Agency Proposal To Eliminate Non-Statutory Certification Requirements

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) is publishing a Notice of Proposed Rulemaking to amend the Department of Energy Acquisition Regulation (DEAR) to eliminate all non-statutorily imposed contractor and offeror certification requirements.

DATES: Written comments on the proposed rulemaking must be received on or before October 28, 1996.

ADDRESSES: Comments (3 copies) should be addressed to John R. Bashista, Office of Policy (HR-51), Office of Procurement and Assistance Management, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: John R. Bashista (202) 586-8192 (telephone); (202) 586-0545 (facsimile); john.bashista@hq.doe.gov (electronic mail).

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Agency Proposal to Eliminate Non-Statutory Certification Requirements
- III. Public Comments.
- IV. Procedural Requirements.
 - A. Review Under Executive Order 12866.
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 - C. Review Under the Paperwork Reduction Act.
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 - E. Review Under Executive Order 12612.
 - F. Review Under Executive Order 12988.

G. Public Hearing Determination.

I. 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.

This proposed rule constitutes DOE's proposal for the elimination of all non-statutorily imposed contractor and offeror certification requirements from the DEAR pursuant to section 4301(b)(1)(B) of FARA. DOE has not identified any regulatory certification requirement contained in the DEAR which it has determined should be proposed for retention. Consequently, the Department is not pursuing approval from the Secretary of Energy to retain any certification requirement not specifically imposed by statute. The Department invites public comment on its proposal to eliminate all regulatory certification requirements from the DEAR and on its determination that there are no certification requirements which should be proposed for retention.

II. Agency Proposal To Eliminate Non-Statutory Certification Requirements

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

1. 952.204-2—Security Requirements

Section 952.204-2 will be amended to remove the non-statutory certification requirement pertaining to retention by a contractor of classified matter after contract completion or termination. A contractor seeking to retain classified material would still be required to identify such material, and the reasons for its retention, to the contracting officer.

2. 952.204-73—Foreign Ownership, Control, or Influence (FOCI) Over Contractor

Section 952.204-73 will be amended to remove the certification requirement for offerors to certify that FOCI data submitted to the Department is accurate, complete and current and that the disclosure is made in good faith; and to remove the requirement for offerors to certify that FOCI information previously submitted to DOE for a facility security clearance is accurate, complete and current. The disclosure requirement at DEAR 904.7003, however, will remain. In addition, technical and conforming amendments to the DEAR are proposed to 904.7003, 904.7005 and 904.7103. Prior to issuance of a final rule pertaining to the proposed amendment of subsection 952.204-73 herein, DOE will issue for public comment a separate proposed rule which will amend the policies currently set forth in the DEAR to be consistent with this rule. The separate rulemaking will implement the requirements of Executive Order 12829, "National Industrial Security Program," and recent amendments to the Federal Acquisition Regulation (61 FR 31617) reflecting the Governmentwide applicability of the National Industrial Security Program Operating Manual.

3. 952.209-70—Organizational Conflicts of Interest—Disclosure or Representation

Section 4304 of FARA repealed section 33 of the Federal Energy Administration Act of 1974 (15 U.S.C. 789), and section 19 of the Federal Non-nuclear Energy Research and Development Act of 1974 (42 U.S.C. 5918) which formed the basis for DOE's organizational conflicts of interest (OCI) policies and procedures set forth in Subpart 909.5 of the DEAR. With the repeal of the statutory basis for DOE's OCI program, the Department is now subject to the regulatory OCI program set forth in Subpart 9.5 of the Federal Acquisition Regulation (FAR). Based on an internal review comparing the current DOE program to the FAR program, the Department has determined that there are several important elements of the current DOE program which should be retained.

DOE published a separate proposed rule in the Federal Register on August 6, 1996 to codify and make mandatory DOE's new program in the DEAR. This separate rule will provide for the elimination of the certification currently contained in section 952.209-70.

4. 952.226-73—Energy Policy Act Target Group Certification

Section 952.226-73 will be amended to remove the certification language requiring offerors to certify as to their status as one of the designated target groups under section 3021 of the Energy Policy Act of 1992. This provision will be amended to require a representation from offerors regarding their status instead of a certification. In addition, technical and conforming amendments to the DEAR are proposed to subsection 926.7007 pursuant to the amendment of subsection 952.226-73.

5. 952.227-13—Patent Rights—Acquisition by the Government

Section 952.227-13, paragraph (e)(3) of the DEAR will be amended to remove the certification requirements for contractors in the interim and final reports pertaining to the disclosure of all inventions developed under the subject contract. Contractors will still be required to submit interim and final reports and to disclose all inventions developed under the subject contract.

6. 952.227-80—Technical Data Certification

Section 952.227-80 will be deleted from the DEAR including the certification requirement for offerors to certify that they have not delivered or are not obligated to deliver to the Government under any other contract or subcontract the same or substantially the same technical data as included in their offer to the Department. The Department will use the provision at FAR 52.227-15 entitled, "Representation of Limited Rights Data and Restricted Computer Software", instead of DEAR 952.227-80. A technical and conforming amendment of the prescription contained at DEAR 952.227-83 is also made pursuant to the proposed removal of DEAR 952.227-80.

7. 952.227-81—Royalty Payments Certification

Section 952.227-81 will be deleted from the DEAR including the certification requirement for offerors to disclose whether their contract price includes an amount representing the payment of royalty by the offeror to others in connection with contract performance and, if so, identifying pertinent information about the royalty. The Department will use DEAR 952.227-9, Refund of royalties (FEB 1995) instead of 952.227-81.

8. 970.5204-57—Certification Regarding Workplace Substance Abuse Programs at DOE Facilities

Section 970.5204-57 will be amended to remove the requirement for offerors to certify that they will provide to the contracting officer within 30 days after either notification of selection for award or award of a contract, their written workplace substance abuse program consistent with the requirements of 10 CFR 707. Instead, offerors will be required to agree to provide a drug-free workplace in accordance with 41 U.S.C. 701(a)(1) as a condition of responsibility prior to contract award. This amendment will implement section 4301(a)(3) of FARA which eliminates the statutory certification requirement in section 5152 of the Drug-Free Workplace Act of 1988. In addition, technical and conforming amendments to the DEAR are also proposed for sections 909.104, 923.570-2, 923.570-3, 970.2305-4 and 970.2305-5 pursuant to the amendment of section 970.5204-57.

III. Public Comments

DOE invites interested persons to participate by submitting data, views, or arguments with respect to the DEAR 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 fully 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. DOE 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.

IV. 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 the Executive Order by the Office of Information and Regulatory Affairs.

B. 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 *et seq.*). Pursuant to Appendix A of Subpart D of 10 CFR Part 1021, National Environmental Policy Act Implementing Procedures (Categorical Exclusion A6), DOE has determined that this proposed rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment.

C. Review Under the Paperwork Reduction Act

To the extent that new information collection or record keeping requirements are imposed by this rulemaking, they are provided for under Office of Management and Budget paperwork clearance package No. 1910-0300. No new information collection is proposed by this rule.

D. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96-354, which 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. This proposed rule would eliminate any compliance costs on small businesses associated with the administrative aspects of providing the express certifications proposed for elimination from the Department of Energy Acquisition Regulation. The Department 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.

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 proposed rule will not have a substantial direct effect on the institutional interests or traditional functions of States.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigations; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The Department of Energy has completed the required review and determined that, to the extent permitted by law, the proposed regulations meet the relevant standards of Executive Order 12988.

G. Public Hearing Determination

DOE has concluded that this proposed 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, 909, 923, 926, 952 and 970

Government procurement.

Issued in Washington, D.C. on August 26, 1996.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

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

1. The authority citations for parts 904, 909, 923 and 926 continue to read as follows:

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

PART 904—ADMINISTRATIVE MATTERS

2. Section 904.7003 is amended by revising paragraph (d) to read as follows:

904.7003 Disclosure of foreign ownership, control, or influence.

* * * * *

(d) The contracting officer shall not award or extend any contract subject to this subpart, exercise any options under a contract, modify any contracts subject to this subpart, or approve or consent to a subcontract subject to this subpart unless:

(1) The contractor provides the information required by the solicitation provision at 48 CFR 952.204-73, and

(2) The contracting officer has made a positive determination in accordance with 48 CFR 904.7004.

3. Section 904.7005 is amended by revising paragraph (a) to read as follows:

904.7005 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 48 CFR 952.204-73, Foreign Ownership, Control or Influence over Contractor, in all solicitations for contracts subject to 48 CFR 904.7001.

* * * * *

4. Section 904.7103 is amended by revising paragraph (a) to read as follows:

904.7103 Solicitation provision and contract clause.

(a) Any solicitation, including those under simplified acquisition procedures, for a contract under the national security program which will require access to proscribed information shall include the provision at 48 CFR 952.204-73 with its Alternate I.

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PART 909—CONTRACTOR QUALIFICATIONS

5. Section 909.104-1 is amended by revising paragraph (h) to read as follows:

909.104-1 General Standards. (DOE coverage—paragraph (h))

(h) For solicitations for contract work subject to the provisions of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, the prospective contractor must agree, in accordance with 48 CFR 970.5204-57, Agreement Regarding Workplace Substance Abuse Programs at DOE Sites, to provide the contracting officer with its written workplace substance abuse program in order to be determined responsible and, thus, eligible to receive the contract award.

PART 923—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

6. Section 923.570-2 is amended by revising paragraph (a) to read as follows:

923.570-2 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 48 CFR 970.5204-57, Agreement Regarding Workplace Substance Abuse Programs at DOE Sites, in solicitations where the work to be performed by the contractor will occur on sites owned or controlled by DOE and operated under the authority of the Atomic Energy Act of 1954, as amended, as specified in 48 CFR 923.570-1, Applicability.

* * * * *

7. Section 923.570-3 is amended by revising paragraphs (b)(2) and (b)(3) to read as follows, and by removing paragraph (b)(4):

923.570-3 Suspension of payments, termination of contract, and debarment and suspension actions.

* * * * *

(b) * * *

(1) * * *

(2) The contractor has failed to comply with the terms of the provision at 48 CFR 970.5204-57; or

(3) Such a number of contractor employees having been convicted of violations of criminal drug statutes for violations occurring on the DOE-owned or -controlled site, as to indicate that the contractor has failed to make a good faith effort to provide a drug free workplace.

PART 926—OTHER SOCIOECONOMIC PROGRAMS

8. Section 926.7007 is amended by revising paragraph (d) to read as follows:

926.7007 Solicitation provisions and contract clauses.

* * * * *

(d) The contracting officer shall insert the provision at 48 CFR 952.226-73, Energy Policy Act Target Group Representation, in solicitations for Energy Policy Act procurements.

* * * * *

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

9. The authority citations for part 952 continue to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c); 42 U.S.C. 13524.

10. Section 952.204-2 is amended by revising paragraphs (a) and (b) of the clause to read as follows:

952.204-2 Security requirements.

* * * * *

Security (XXX 19XX)

(a) Responsibility. It is the contractor's duty to safeguard all classified information, special nuclear material, and other DOE property. The contractor shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding all classified information and protecting against sabotage, espionage, loss or theft of the classified documents and material in the contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter in the possession of the contractor or any person under the contractor's control in connection with performance of this contract. If retention by the contractor of any classified matter is required after the completion or termination of the contract, the contractor shall identify the items and types or categories of matter proposed for retention, the reasons for the retention of the matter, and the proposed period of retention. If the retention is approved by the contracting officer, the security provisions of the contract shall continue to be applicable to the matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.

(b) Regulations. The contractor agrees to comply with all security regulations and requirements of DOE in effect on the date of award.

* * * * *

11. Section 952.204-73 is amended by removing the certification language following the list of questions at the end of paragraph (c) and preceding paragraph (d), and revising paragraph (e) to read as follows:

952.204-73 Foreign ownership, control, or influence over contractor (Representation)

* * * * *

Foreign Ownership, control or influence over contractor (XXX 19XX)

* * * * *

(c) * * *

(d) * * * * *

(e) The offeror shall require any subcontractors having access to classified information or a significant quantity of special nuclear material to provide responses to the questions in paragraph (c) of this provision directly to the DOE contracting officer.

* * * * *

12. Section 952.226-73 is amended by revising the introductory text to paragraph (a) of the provision to read as follows:

952.226-73 Energy Policy Act target group representation.

* * * * *

Energy Policy Act target group representation (XXX 19XX)

(a) The offeror is:

* * * * *

13. Section 952.227-13 is amended by revising paragraph (e)(3) of the clause to read as follows:

952.227-13 Patent rights-acquisition by the Government.

* * * * *

Patent rights-acquisition by the Government (XXX 19XX)

* * * * *

(e) Invention identification, disclosures, and reports.

* * * * *

(3) The Contractor shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing all subject inventions during that period, and including a statement that all subject inventions have been disclosed (or that there are not such inventions), and that such disclosure has been made in accordance with the procedures required by paragraph (e)(1) of this clause.

(ii) A final report, within 3 months after completion of the contracted work listing all subject inventions or containing a statement that there were no such inventions, and listing all subcontracts at any tier containing a patent rights clause or containing a statement that there were no such subcontracts.

* * * * *

952.227-80 and 952.227-81 [Removed]

14. Sections 952.227-80 and 952.227-81 are removed.

15. Section 952.227-83 is amended by revising the prescription to read as follows:

952.227-83 Rights in technical data solicitation representation.

Pursuant to 48 CFR 927.7004-1 and 927.7004-2, include this provision and the legend at FAR 52.215-12 in solicitations which may result in contracts for research, development, or demonstration work or contracts for supplies in which delivery of required technical data is contemplated.

* * * * *

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

16. 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).

17. Subsection 970.2305-4 is amended by revising paragraph (a) to read as follows:

970.2305-4 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 48 CFR 970.5204-57, Agreement Regarding Workplace Substance Abuse Programs at DOE Sites, in solicitations for the management and operation of DOE-owned or -controlled sites operated under the authority of the Atomic Energy Act of 1954, as amended.

* * * * *

18. Subsection 970.2305-5 is amended by revising paragraph (b)(2) to read as follows:

970.2305-5 Suspension of payments, termination of contract, and debarment and suspension actions.

* * * * *

(b) * * *

(1) * * *

(2) The contractor has failed to comply with the terms of the provision at 48 CFR 970.5204-57;

* * * * *

19. Subsection 970.5204-57 is amended by revising the section and provision heading, removing paragraph (d) of the provision, and revising paragraphs (b) and (c) of the provision to read as follows:

970.5204-57 Agreement regarding workplace substance abuse programs at DOE facilities.

* * * * *

AGREEMENT REGARDING WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (XXX 19 XX)

* * * * *

(b) By submission of its offer, the offeror agrees to provide to the contracting officer, within 30 days after notification of selection for award, or award of a contract, whichever occurs first, pursuant to this solicitation, its written workplace substance abuse program consistent with the requirements of 10 CFR part 707.

(c) Failure of the offeror to agree to the condition of responsibility set forth in paragraph (b) of this provision, renders the offeror unqualified and ineligible for award. [FR Doc. 96-22047 Filed 8-28-96; 8:45 am]

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