

the State of Alabama on September 11, 1998, for implementing and enforcing the Emissions Guidelines applicable to existing Municipal Waste Combustors with capacity to combust more than 250 tons per day of municipal solid waste. The Plan was submitted by the ADEM to satisfy certain Federal Clean Air Act requirements. In the final rules section of this **Federal Register**, the EPA is approving the Alabama State Implementation Plan revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time.

DATES: Comments must be received in writing by December 18, 1998.

ADDRESSES: Written comments should be addressed to Kimberly Bingham at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Region 4, Air, Pesticides and Toxics Management Division, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303-3104.

Alabama Department of Environmental Management, Air Division, 1751 Congressman W.L. Dickinson Drive, Montgomery, Alabama 36109.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham at (404) 562-9038 or Scott Davis at (404) 562-9127.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: November 4, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 98-30603 Filed 11-17-98; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL-6175-3]

Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; State of Arizona; Pinal County Air Quality Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to section 112(l) of the 1990 Clean Air Act (CAA), the Pinal County Air Quality Control District (PQAQCD) requested delegation of specific national emission standards for hazardous air pollutants (NESHAPs). In the Rules section of this **Federal Register**, EPA is granting PQAQCD the authority to implement and enforce specified NESHAPs. The direct final rule also explains the procedure for future delegation of NESHAPs to PQAQCD. EPA is taking direct final action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by December 18, 1998.

ADDRESSES: Written comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Copies of the submitted requests are available for public inspection at EPA's Region IX office during normal business hours (docket number A-96-25).

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, Telephone: (415) 744-1200.

SUPPLEMENTARY INFORMATION: This document concerns delegation of unchanged NESHAPs to the Pinal County Air Quality Control District. For further information, please see the

information provided in the direct final action which is located in the Rules section of this **Federal Register**.

Authority: This action is issued under the authority of Section 112 of the Clean Air Act, as amended, 42 U.S.C. Section 7412.

Dated: September 28, 1998.

David P. Howekamp,

Director, Air Division, Region IX.

[FR Doc. 98-30723 Filed 11-17-98; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF ENERGY

48 CFR Part 970

RIN 1991-AB02

Acquisition Regulation: Financial Management Clauses for Management and Operating (M&O) Contracts

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy (DOE) proposes to amend its Acquisition Regulation to designate certain Department of Energy Acquisition Regulation (DEAR) M&O contract clauses and Federal Acquisition Regulation (FAR) clauses as Standard Financial Management Clauses to be included in M&O contracts unless the Chief Financial Officer (CFO) concurs in a deviation. Additionally, this proposed rule will revise selected existing financial management clauses and add financial management related clauses.

DATES: Written comments must be submitted no later than January 19, 1999.

ADDRESSES: Comments should be addressed to: Michael L. Righi, Office of Policy (HR-51), Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Michael L. Righi (202-586-8175) at the address above.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Detailed List of Changes
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 - D. Review Under the Paperwork Reduction Act
 - E. Review Under Executive Order 12612
 - F. Review Under the National Environmental Policy Act
 - G. Review Under Small Business Regulation Enforcement Fairness Act of 1996

I. Background

On November 15, 1990, Congress enacted the Chief Financial Officers Act of 1990 (the Act), Pub. L. 101-576. The Act requires that each Federal agency implement improvements in its systems of accounting, financial management, and internal controls. DOE has since developed and tested various policies, practices, and procedures in its efforts to implement the mandates contained in the Act. These efforts have included a review of the Department's financial relationship with, and data received from, its M&O contractors. Today's proposed rule would include new policies and changes to existing policy in the Department's acquisition regulations.

II. Detailed List of Changes

1. The authority citation for Part 970 would be restated.

2. Section 970.3201 would be revised by replacing the word "bank" in the first sentence with the words "financial institution." This would permit DOE to utilize a financial institution, other than a bank, to provide services with regard to a special account. The second sentence would be deleted and its requirements incorporated into Section 970.3202.

3. Section 970.3202 would be amended by revising paragraphs (b) and (c). Paragraph (b) would be revised by replacing the word "bank" with the words "financial institution" and adding the words "or, at the option of the Government, by direct payment or other payment mechanism to the contractor" at the end of the sentence. Also, the term "letter-of-credit" would be changed to "payments cleared financing arrangement" in order to implement the Automatic Standard Application for Payment (ASAP) that has replaced letter-of-credit. These changes would be consistent with similar changes to Section 970.5204-16 with regard to a special financial institution account, payments cleared financing arrangement, and the use of other payment mechanisms.

Paragraph (c) would be revised by replacing the word "bank" with the words "financial institution" throughout the paragraph to be consistent with similar revisions as previously stated. In the second sentence the word "revenues" would be replaced with the word "collections" to include any type of collection. Also, a provision would be added to require that the agreement among DOE, the contractor, and the financial institution incorporate all applicable requirements, as determined by the Office of CFO.

4. Section 970.3270 would be revised by establishing a section entitled Standard Financial Management Clauses, which requires that certain clauses be included in all M&O contracts, and requires that deviations have the approval of the Head of the Contracting Activity and the written concurrence of the Department's CFO.

5. Section 970.3271 would be removed and these requirements would be incorporated into Section 970.3202.

6. Section 970.5204-9 would be revised. Specifically, paragraph (a) would be revised by replacing the word "revenues" in the first sentence with the words "collections accruing to the contractor in connection with the work under this contract" to require accounting for any type of collection accruing to the contractor under the contract, and by deleting the word "fixed."

Paragraph (b) would be revised by adding language to allow for inspection and audit of accounts and records by DOE's designees, in accordance with provisions of the clause, Access to and ownership of records.

Paragraph (d) would be revised by identifying other types of information as property of the Government. In addition, the word "revenues" would be replaced with the words "collections accruing to the contractor in connection with the work under this contract" and the words "and fee accruals" would be added. Also, a reference to the Access to and ownership of records clause would be added for clarity.

Paragraph (f) would be revised by making a minor editorial change, adding the word "and" between the words "time" and "in."

7. Section 970.5204-13 would be amended by revising paragraph (d)(15) by replacing the word "bank" in the first sentence with the words "financial institution" to be consistent with similar changes to other sections regarding a financial institution account and by adding in the second sentence the words "to employees" to clarify that payments as described in this sentence are to employees.

8. Section 970.5204-15 would be revised. Specifically, paragraph (a) would be revised by replacing the words "revenues and receipts" with the word "collections" to include any type of collection. The fourth sentence would be revised to require that collections are processed and accounted for in accordance with applicable requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of the contract.

Paragraph (b) would be revised by deleting the word "fixed" in the first sentence to include any type of fee. In the second sentence the words "revenues and receipts" would be replaced with the words "collections accruing to the contractor in connection with the work under this contract * * *" to include any type of collection. The second sentence would also be revised to require the processing of and accounting for such collections in accordance with applicable requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of the contract.

Paragraph (c) would be revised by replacing the words "revenues and receipts" with the word "collections" to include any type of collection and by deleting the word "fixed" to include any type of fee. The word "commitments" would be replaced with the word "encumbrances" throughout the paragraph because appropriations are encumbered rather than committed at the contractor level. Also, the word "available" would be added throughout the paragraph where reference is made to "funds" and "collections" for clarity and consistency with the first sentence of the paragraph. In the second sentence the words "either" and "or is equal to zero" would be deleted to clarify when notice should be given to DOE in regard to the requirements of this paragraph. Additionally, for consistency with other references to the clause entitled "Termination," the word "article" in the last sentence would be replaced with the word "clause."

Paragraph (d) would be revised by replacing the word "commitment(s)" with the word "encumbrance(s)" throughout the paragraph. The words "such as Approved Funding Programs" would be added in the first sentence between the words "plans" and "or" to reflect the current terminology used for financial plans. In the second sentence the word "instruction" would be replaced with the word "directives" for consistency with the first sentence. In the third sentence the words "to use its best efforts" would be deleted to require contractor compliance with other requirements of such plans and directives. Also, the words "the authorized financial levels of" would be replaced with the words "that any limitation on" to state more clearly that such financial plans contain cost and encumbrance limitations. A typographical error would be corrected and a minor editorial change would be made in the third sentence. The word "directives" would replace the word "directive" and the word "promptly"

would be deleted between the words "to" and "notify" and inserted between the words "DOE" and "in." A typographical error would also be corrected in the note to paragraph (d) by replacing the word "provided" with the word "provide." Also, in the note the word "article" would be replaced with the word "clause" for consistency with other revised paragraphs of this section.

Paragraph (e) would be revised by replacing the word "article" with the word "clause" for consistency with other references to the clause entitled "Termination."

9. Section 970.5204-16 would be revised. Specifically, paragraph (a) would be revised by changing the language to require payment of the fixed-fee in accordance with a schedule determined by the contracting officer. The term "letter-of-credit" would be changed to "payments cleared financing arrangement" in order to implement the ASAP that has replaced letter-of-credit. In paragraph (a) of Note 2 the term "letter-of-credit" also would be changed to "payments cleared financing arrangement."

Paragraph (c) would be revised by replacing the words "special bank account" with the words "special financial institution account" throughout the paragraph. This change would permit DOE to utilize a financial institution, other than a bank, to provide services with regard to a special account. In the first sentence, the term "letter-of-credit" would be replaced with "payments cleared financing arrangement prescribed by DOE" as described in paragraph (a) above and the language would be revised to allow payment of funds, at the option of the Government, by direct payment or other payment mechanism to the contractor. Since collections are processed and accounted for in accordance with applicable requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of the contract, the second sentence of this paragraph would be deleted. In the third sentence the words "and, if applicable, fees earned" would be inserted between the words "allowable" and "under" since payment of fees earned may or may not be made from the special financial institution account. Also, an editorial correction would be made in the third sentence by replacing the word "mingled" with the word "commingled." Additionally, a typographical error would be corrected in the fourth sentence by replacing the word "on" with the word "of."

Paragraph (d) would be revised by replacing the words "special bank account" with the words "special

financial institution account" throughout the paragraph to be consistent with similar revisions as previously stated.

Paragraph (e) would be revised to include penalty provisions for unallowable costs as stated in sections 306 (b) and (i) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 256), as amended. Also, the word "voucher" would be replaced with "Statement of Costs Incurred and Claimed." Note 4 would be revised to require the inclusion of an alternative paragraph (e) in contracts with nonintegrated contractors which also includes such penalty provisions.

Paragraph (f) would be revised by deleting the word "fixed" in the first sentence. The requirement for an assignment of the contractor's rights to any "collections accruing to the contractor in connection with the work under this contract" would be added with regard to the payment by the Government to the contractor of the unpaid balance of allowable costs and fee. Under exception (B), minor changes would be made to the last sentence—"should" would change to "shall," the clause title referenced would be updated, and the last word, "and," would be deleted. Exception (D), "Claims recognizable under the clause entitled, Nuclear Hazards Indemnity Agreement," would be added to the exceptions to the requirement that contractors provide a release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under the contract. In addition, in the last sentence of paragraph (f) the words "financial institution" would replace the word "bank" to be consistent with similar revisions as previously stated.

Paragraph (i) would be revised by replacing the word "revenues" with the word "collections" in the title as well as the text of the paragraph. Also, the language would be changed to require collections, exclusive of the contractor's fee and other specified collections, not the property of the Government, to be processed and accounted for in accordance with applicable requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of the contract and, to the extent consistent with those requirements, to be deposited in the special financial institution account or otherwise made available for payment of allowable costs under the contract, unless otherwise directed by the contracting officer. In addition, the words "financial institution" would replace the word

"bank" to be consistent with similar revisions as previously stated.

10. Section 970.5204-20 would be amended by revising the introductory statement and paragraph (a). In the second sentence the words "theft" and "fraud" would be deleted and the words "loss," "mismanagement," and "misappropriation" would be added. Also, in the fourth and fifth sentences of paragraph (a) the word "internal" would be deleted before the word "controls." These changes would be incorporated for consistency. Also, in the second sentence the word "obligations" would be replaced with the word "encumbrances" and the words "and fees that are earned" would be added. The contractor cannot obligate Federal funds. It can only encumber such funds. Therefore, contractor management controls should be adopted that reasonably ensure that all encumbrances and costs incurred and fees earned under the contract are in compliance with applicable clauses, and other current terms, conditions, and intended purposes. In the second sentence the word "revenues" would be replaced with the words "collections accruing to the contractor in connection with the work under this contract" to ensure all collections are properly recorded, managed, and reported. Additionally, an editorial correction would be made by replacing the word "system" with the word "systems" in the last sentence of the paragraph.

11. Section 970.5204-XX, "Financial Management System," would be added: to require compliance with DOE policies for maintaining and administering a financial management system; to require the contractor to submit to DOE for written approval an annual plan for new financial management systems and/or subsystems and major enhancements and/or upgrades to the currently existing financial systems and/or subsystems; to require the contractor to notify DOE thirty (30) days in advance of any planned implementation of any substantial deviation from the approved plan; and, as requested by the contracting officer, to require the contractor to submit any such deviation to DOE for written approval.

12. Section 970.5204-XX, "Integrated Accounting," would be added to require compliance with DOE procedures if an integrated accounting system is used.

13. Section 970.5402-XX, "Liability with respect to Cost Accounting Standards," would be added to address M&O contractor liability for increased costs resulting from noncompliance with provisions set forth in FAR 52.230-2, "Cost Accounting Standards,"

and FAR 52.230-6, "Administration of Cost Accounting Standards."

14. Section 970.5204-XX, "Work for others funding authorization," would be added to ensure that the Government is not liable for costs incurred by a contractor performing work for others utilizing its own funding.

III. Public Comments

Interested persons are invited 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 notice. All comments received will be available for public inspection in the DOE Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. All written comments received on or before the date specified in the beginning of this notice and all other relevant information will be considered by DOE before taking final action. Comments received after that date will be considered to the extent that time allows. Any person submitting information which that person believes to be confidential and which may be exempt from public disclosure should submit one complete copy, as well as an additional copy from which the information claimed to be confidential has been deleted. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination. The Department's generally applicable procedures for handling information which has been submitted in a document and may be exempt from public disclosure are set forth in 10 CFR 1004.11.

IV. Procedural Requirements

A. Review Under Executive Order 12866

Today's 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, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

B. 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

general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; 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 draftmanship 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. DOE 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.

C. Review Under the Regulatory Flexibility Act

This 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 a significant economic impact on a substantial number of small entities. This proposed rule would only apply to M&O contractors, which are all large entities. DOE certifies that this proposed 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 requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, are imposed by today's regulatory action.

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. This proposed rule will not affect States.

F. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR Parts 1500-1508), the Department of Energy 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 (57 FR 15122, 15152, April 24, 1992) (Categorical Exclusion A6), the Department of Energy has determined that this rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment.

G. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, the Department of Energy will report to Congress promulgation of the rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(3).

List of Subjects in 48 CFR Part 970

Government procurement.

Issued in Washington, DC on November 9, 1998.

Richard H. Hopf,

Director of Procurement and Assistance Management.

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

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

1. 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, Pub. L. 95-91 (42 U.S.C. 7254).

2. Section 970.3201 is revised to read as follows:

970.3201 General.

It is the policy of the DOE to finance management and operating contracts through advance payments and the use of special financial institution accounts.

3. Section 970.3202 is amended by revising paragraphs (b) and (c) to read as follows:

970.3202 Advance payments.

* * * * *

(b) Advance payments shall be made under a payments cleared financing arrangement for deposit in a special financial institution account or, at the option of the Government, by direct payment or other payment mechanism to the contractor.

(c) Prior to providing any advance payments, the contracting officer shall enter into an agreement with the contractor and a financial institution regarding a special financial institution account where the advanced funds will be deposited by the Government. Such agreement shall:

(1) Provide that DOE shall retain title to the unexpended balance of funds in the special financial institution account including collections, if any, deposited by the contractor;

(2) Provide that the title in paragraph (c)(1) of this section shall be superior to any claim or lien of the financial institution of deposit or others; and

(3) Incorporate all applicable requirements, as determined by the Office of Chief Financial Officer.

* * * * *

4. Section 970.3270 is revised to read as follows:

970.3270 Standard financial management clauses.

(a) The following DEAR and FAR clauses are standard financial management clauses that shall be included in both integrated and nonintegrated management and operating contracts: DEAR 970.5204-9, Accounts, records, and inspection; DEAR 970.5204-15, Obligation of funds; DEAR 970.5204-16, Payments and advances; DEAR 970.5204-20, Management controls; DEAR 970.5204-XX, Liability with respect to Cost Accounting Standards; DEAR 970.5204-XX, Work for others funding authorization; FAR 52.230-2, Cost Accounting Standards; and FAR 52.230-6, Administration of Cost Accounting Standards.

(b) The following clauses are standard financial management clauses that shall be included in integrated management and operating contracts: DEAR 970.5204-XX, Financial management system; and DEAR 970.5204-XX, Integrated accounting.

(c) Any deviations from the standard financial management clauses specified in paragraphs (a) and (b) of this section require the approval of the Head of the Contracting Activity and the written concurrence of the Department's Chief Financial Officer.

5. Section 970.3271 is removed.

6. In section 970.5204-9 revise the introductory paragraph; clause title; and paragraphs (a) (including the note), (b), (d), and (f) to read as follows:

970.5204-9 Accounts, records, and inspection.

As prescribed in 970.0407 and 970.3270, insert the following clause.

Accounts, Records, and Inspection (Month and Year TBE)

(a) Accounts. The contractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting: all allowable costs incurred; collections accruing to the contractor in connection with the work under this contract, other applicable credits, and fee accruals under this contract; and the receipt, use, and disposition of all Government property coming into the possession of the contractor under this contract. The system of accounts employed by the contractor shall be satisfactory to DOE and in accordance with generally accepted accounting principles consistently applied.

Note: If the contract includes the clause for "Price Reduction for Defective Cost or Pricing Data" set forth at FAR 52.215-22, paragraph (a) above should be modified by adding the words "or anticipated to be incurred" after the words "allowable costs incurred."

(b) Inspection and audit of accounts and records. All books of account and records relating to this contract shall be subject to inspection and audit by DOE or its designees in accordance with the provisions of Clause ____, Access to and ownership of records, at all reasonable times, before and during the period of retention provided for in paragraph (d) of this clause, and the contractor shall afford DOE proper facilities for such inspection and audit.

* * * * *

(d) Disposition of records. Except as agreed upon by the Government and the contractor, all financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable, collections accruing to the contractor in connection with the work under this contract, other applicable credits, and fee accruals under this contract, shall be the property of the Government, and shall be delivered to the Government or otherwise disposed of by the contractor either as the contracting officer may from time to time direct during the progress of the work or, in any event, as the contracting officer shall direct upon completion or termination of this contract and final audit of accounts hereunder. Except as otherwise provided in this contract, including provisions of Clause ____, Access to and ownership of records, all other records in the possession of the

contractor relating to this contract shall be preserved by the contractor for a period of three years after final payment under this contract or otherwise disposed of in such manner as may be agreed upon by the Government and the contractor.

* * * * *

(f) Inspections. The DOE shall have the right to inspect the work and activities of the contractor under this contract at such time and in such manner as it shall deem appropriate.

* * * * *

7. Section 970.5204-13 is amended by revising paragraph (d)(15) to read as follows (note following paragraph (d)(15) remains unchanged):

970.5204-13 Allowable costs and fixed-fee (management and operating contracts).

* * * * *

Allowable Costs and Fixed-Fee (Management and Operating Contracts) (June 1997)

* * * * *

(d) * * *

(15) Establishment and maintenance of financial institution accounts in connection with the work hereunder, including, but not limited to, service charges, the cost of disbursing cash, necessary guards, cashiers, and paymasters. If payments to employees are made by check, facilities and arrangements for cashing checks may be provided without expense to the employees, subject to the approval of the contracting officer.

* * * * *

8. Section 970.5204-15 is revised to read as follows:

970.5204-15 Obligation of funds.

As prescribed in 970.1508(c), insert the following clause.

Obligation of Funds (Month and Year TBE)

(a) Obligation of funds. The amount presently obligated by the Government with respect to this contract is ____ dollars (\$____). Such amount may be increased unilaterally by DOE by written notice to the contractor and may be increased or decreased by written agreement of the parties (whether or not by formal modification of this contract). Estimated collections from others for work and services to be performed under this contract are not included in the amount presently obligated. Such collections, to the extent actually received by the contractor, shall be processed and accounted for in accordance with applicable requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of this contract. Nothing in this paragraph (a) is to be construed as authorizing the contractor to exceed limitations stated in financial plans established by DOE and furnished to the contractor from time to time under this contract.

(b) Limitation on payment by the Government. Except as otherwise provided in this contract and except for costs which may be incurred by the contractor pursuant to the clause entitled "Termination," or costs of

claims allowable under the contract occurring after completion or termination and not released by the contractor at the time of financial settlement of the contract in accordance with the clause entitled "Payments and Advances," payment by the Government under this contract on account of allowable costs shall not, in the aggregate, exceed the amount obligated with respect to this contract, less the contractor's fee. Unless expressly negated in this contract, payment on account of those costs excepted in the preceding sentence which are in excess of the amount obligated with respect to this contract shall be subject to the availability of

(1) Collections accruing to the contractor in connection with the work under this contract and processed and accounted for in accordance with applicable requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of this contract, and

(2) Other funds which DOE may legally use for such purpose, provided DOE will use its best efforts to obtain the appropriation of funds for this purpose if not otherwise available.

(c) *Notices—Contractor excused from further performance.* The contractor shall notify DOE in writing whenever the unexpended balance of available funds (including collections available under paragraph (a) of this clause, plus the contractor's best estimate of collections to be received and available during the ___ day period hereinafter specified, is in the contractor's best judgment sufficient to continue contract operations at the programmed rate for only ___ days and to cover the contractor's unpaid fee, and outstanding encumbrances and liabilities on account of costs allowable under the contract at the end of such period. Whenever the unexpended balance of available funds (including collections available under paragraph (a) of this clause, less the amount of the contractor's fee then earned but not paid, is in the contractor's best judgment sufficient only to liquidate outstanding encumbrances and liabilities on account of costs allowable under this contract, the contractor shall immediately notify DOE and shall make no further encumbrances or expenditures (except to liquidate existing encumbrances and liabilities), and, unless the parties otherwise agree, the contractor shall be excused from further performance (except such performance as may become necessary in connection with termination by the Government) and the performance of all work hereunder will be deemed to have been terminated for the convenience of the Government in accordance with the provisions of the clause entitled "Termination."

(d) *Financial plans; cost and encumbrance limitations.* In addition to the limitations provided for elsewhere in this contract, DOE may, through financial plans, such as Approved Funding Programs, or other directives issued to the contractor, establish controls on the costs to be incurred and encumbrances to be made in the performance of the contract work. Such plans and directives may be amended or supplemented from time to time by DOE. The contractor hereby agrees

(1) To comply with the specific limitations (ceilings) on costs and encumbrances set forth in such plans and directives,

(2) To comply with other requirements of such plans and directives, and

(3) To notify DOE promptly, in writing, whenever it has reason to believe that any limitation on costs and encumbrances will be exceeded or substantially underrun.

Note: *This paragraph (d) may be omitted in contracts which expressly or otherwise provide a contractual basis for equivalent controls in a separate clause.*

(e) *Government's right to terminate not affected.* The giving of any notice under this clause shall not be construed to waive or impair any right of the Government to terminate the contract under the provisions of the clause entitled "Termination."

9. Section 970.5204-16 is amended by: revising the introductory paragraph; clause title; clause paragraphs (a) (notes remain unchanged); last sentence of alternate paragraph (a); (c); (d) (including note 3); (e) (including note 4); adding alternate paragraph (e); revising paragraphs (f), and (i) to read as follows:

970.5204-16 Payments and advances.

As prescribed in 970.3270, insert the following clause.

Payments and Advances (Month and Year TBE)

(a) *Installments of fixed-fee.* The fixed-fee payable under this contract shall become due and payable in periodic installments in accordance with a schedule determined by the contracting officer. Fixed-fee payments shall be made by direct payment or withdrawn from funds advanced or available under this contract, as determined by the contracting officer. The contracting officer may offset against any such fee payment the amounts owed to the Government by the contractor, including any amounts owed for disallowed costs under this contract. No fixed-fee payment may be withdrawn against the payments cleared financing arrangement without prior written approval of the contracting officer.

* * * * *

(a) * * * No base fee or award fee pool amount earned payment may be withdrawn against the payments cleared financing arrangement without prior written approval of the contracting officer.

* * * * *

(c) *Special financial institution account—use.* All advances of Government funds shall be withdrawn pursuant to a payments cleared financing arrangement prescribed by DOE in favor of the financial institution or, at the option of the Government, shall be made by direct payment or other payment mechanism to the contractor, and shall be deposited only in the special financial institution account referred to in the Special Financial Institution Account Agreement, which is incorporated into this contract as Appendix _____. No part of the funds in the special financial institution account shall be commingled with any funds of the contractor

or used for a purpose other than that of making payments for costs allowable and, if applicable, fees earned under this contract or payments for other items specifically approved in writing by the contracting officer. If the contracting officer determines that the balance of such special financial institution account exceeds the contractor's current needs, the contractor shall promptly make such disposition of the excess as the contracting officer may direct.

(d) *Title to funds advanced.* Title to the unexpended balance of any funds advanced and of any special financial institution account established pursuant to this clause shall remain in the Government and be superior to any claim or lien of the financial institution of deposit or others. It is understood that an advance to the contractor hereunder is not a loan to the contractor, and will not require the payment of interest by the contractor, and that the contractor acquires no right, title or interest in or to such advance other than the right to make expenditures therefrom, as provided in this clause.

Note 3: *The following paragraph (e) shall be included in management and operating contracts with integrated contractors.*

(e) *Review and approval of costs incurred.* The contractor shall prepare and submit annually as of September 30, a "Statement of Costs Incurred and Claimed" (Cost Statement) for the total of net expenditures accrued (i.e., net costs incurred) for the period covered by the Cost Statement. The contractor shall certify the Cost Statement subject to the penalty provisions for unallowable costs as stated in sections 306(b) and (i) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 256), as amended. DOE, after audit and appropriate adjustment, will approve such Cost Statement. This approval by DOE will constitute an acknowledgment by DOE that the net costs incurred are allowable under the contract and that they have been recorded in the accounts maintained by the contractor in accordance with DOE accounting policies, but will not relieve the contractor of responsibility for DOE's assets in its care, for appropriate subsequent adjustments, or for errors later becoming known to DOE.

Note 4: *The following paragraph (e) shall be included in management and operating contracts with nonintegrated contractors.*

(e) *Certification and penalties.* The contractor shall prepare and submit a "Statement of Costs Incurred and Claimed" (Cost Statement) for the total of net expenditures incurred for the period covered by the Cost Statement. It is anticipated that this will be an annual submission unless otherwise agreed to by the contracting officer. The contractor shall certify the Cost Statement subject to the penalty provisions for unallowable costs as stated in sections 306(b) and (i) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 256), as amended.

(f) *Financial settlement.* The Government shall promptly pay to the contractor the unpaid balance of allowable costs and fee upon termination of the work, expiration of

the term of the contract, or completion of the work and its acceptance by the Government after:

- (1) Compliance by the contractor with DOE's patent clearance requirements, and
- (2) The furnishing by the contractor of:
 - (i) An assignment of the contractor's rights to any refunds, rebates, allowances, accounts receivable, collections accruing to the contractor in connection with the work under this contract, or other credits applicable to allowable costs under the contract;
 - (ii) A closing financial statement;
 - (iii) The accounting for Government-owned property required by the clause entitled "Property"; and
 - (iv) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract subject only to the following exceptions:
 - (A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by the contractor;
 - (B) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the contractor to third parties arising out of the performance of this contract; provided that such claims are not known to the contractor on the date of the execution of the release; and provided further that the contractor gives notice of such claims in writing to the contracting officer promptly, but not more than one (1) year after the contractor's right of action first accrues. In addition, the contractor shall provide prompt notice to the contracting officer of all potential claims under this clause, whether in litigation or not (see also Contract Clause ____, DEAR 970.5204-31, "Insurance—Litigation and Claims");
 - (C) Claims for reimbursement of costs (other than expenses of the contractor by reason of any indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the contractor under the provisions of this contract relating to patents; and
 - (D) Claims recognizable under the clause entitled, Nuclear Hazards Indemnity Agreement.
- (3) In arriving at the amount due the contractor under this clause, there shall be deducted, (i) any claim which the Government may have against the contractor in connection with this contract, and (ii) deductions due under the terms of this contract, and not otherwise recovered by or credited to the Government. The unliquidated balance of the special financial institution account may be applied to the amount due and any balance shall be returned to the Government forthwith.

* * * * *

(i) *Collections.* All collections accruing to the contractor in connection with the work under this contract, except for the contractor's fee and royalties or other income accruing to the contractor from technology transfer activities in accordance with this contract, shall be Government property and shall be processed and accounted for in accordance with applicable requirements imposed by the contracting officer pursuant

to the Laws, regulations, and DOE directives clause of this contract and, to the extent consistent with those requirements, shall be deposited in the special financial institution account or otherwise made available for payment of allowable costs under this contract, unless otherwise directed by the contracting officer.

* * * * *

10. Section 970.5204-20 is amended by revising the introductory statement and paragraph (a) to read as follows:

970.5204-20 Management controls.

In accordance with 970.0901 and as prescribed in 970.3270, the following clause shall be used in management and operating contracts:

Management Controls (Month and Year TBE)

(a) The contractor shall be responsible for maintaining, as an integral part of its organization, effective systems of management controls for both administrative and programmatic functions. Management controls comprise the plan of organization, methods, and procedures adopted by management to reasonably ensure that the mission and functions assigned to the contractor are properly executed; efficient and effective operations are promoted; resources are safeguarded against waste, loss, mismanagement, unauthorized use, or misappropriation; all encumbrances and costs that are incurred under the contract and fees that are earned are in compliance with applicable clauses and other current terms, conditions, and intended purposes; all collections accruing to the contractor in connection with the work under this contract, expenditures, and all other transactions and assets are properly recorded, managed, and reported; and financial, statistical, and other reports necessary to maintain accountability and managerial control are accurate, reliable, and timely. The systems of controls employed by the contractor shall be documented and satisfactory to DOE. Such systems shall be an integral part of the contractor's management functions, including defining specific roles and responsibilities for each level of management, and holding employees accountable for the adequacy of the management systems and controls in their areas of assigned responsibility. The contractor shall, as part of the internal audit program required elsewhere in this contract, periodically review the management systems and controls employed in programs and administrative areas to ensure that they are adequate to provide reasonable assurance that the objectives of the systems are being accomplished and that these systems and controls are working effectively.

* * * * *

11. Section 970.5204-XX is added to read as follows:

970.5204-XX Financial management system.

As prescribed in 970.3270, insert the following clause.

Financial Management System (Month and Year TBE)

The contractor shall maintain and administer a financial management system that includes the currently existing integrated accounting system and is suitable to provide proper accounting in accordance with DOE requirements for assets, liabilities, collections accruing to the contractor in connection with the work under this contract, expenditures, costs, and encumbrances; permits the preparation of accounts and accurate, reliable financial and statistical reports; and assures that accountability for the assets can be maintained. The contractor shall submit to DOE for written approval an annual plan for new financial management systems and/or subsystems and major enhancements and/or upgrades to the currently existing financial systems and/or subsystems. The contractor shall notify DOE thirty (30) days in advance of any planned implementation of any substantial deviation from this plan and, as requested by the contracting officer, shall submit any such deviation to DOE for written approval before implementation.

12. Section 970.5204-XX is added to read as follows:

970.5204-XX Integrated accounting.

As prescribed in 970.3270, insert the following clause.

Integrated Accounting (Month and Year TBE)

Integrated accounting procedures are required for use under this contract. The contractor's financial management system shall include an integrated accounting system that is linked to DOE's accounts through the use of reciprocal accounts and that has electronic capability to transmit monthly and year-end self-balancing trial balances to the Department's Primary Accounting System for reporting financial activity under this contract in accordance with requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of this contract.

13. Section 970.5204-XX is added to read as follows:

970.5204-XX Liability with respect to Cost Accounting Standards.

As prescribed in 970.3270, insert the following clause.

Liability With Respect to Cost Accounting Standards (Month and Year TBE)

(a) The contractor is not liable to the Government for increased costs or interest resulting from its failure to comply with the clauses of this contract entitled, "Cost Accounting Standards," and "Administration of Cost Accounting Standards," if its failure to comply with the clauses is caused by the contractor's compliance with published DOE financial management policies and procedures or other requirements established by the Department's Chief Financial Officer or Procurement Executive.

(b) The contractor is not liable to the Government for increased costs or interest resulting from its subcontractors' failure to comply with the clauses at FAR 52.230-2,

"Cost Accounting Standards," and FAR 52.230-6, "Administration of Cost Accounting Standards," if the contractor includes in each covered subcontract a clause making the subcontractor liable to the Government for increased costs or interest resulting from the subcontractor's failure to comply with the clauses; and the contractor seeks the subcontract price adjustment and cooperates with the Government in the Government's attempts to recover from the subcontractor.

14. Section 970.5204-XX is added to read as follows:

970.5204-XX Work for others funding authorization.

As prescribed in 970.3270, insert the following clause.

Work for Others Funding Authorization (Month and Year TBE)

Any uncollectible receivables resulting from the contractor utilizing contractor corporate funding for reimbursable work shall be the responsibility of the contractor, and the United States Government shall have no liability to the contractor therefor. The contractor is permitted to provide advance payment utilizing contractor corporate funds for reimbursable work to be performed by the contractor for a non-Federal entity in instances where advance payment from that entity is required under the Laws, regulations, and DOE directives clause of this contract and such advance cannot be obtained. The contractor is also permitted to provide advance payment utilizing contractor corporate funds to continue reimbursable work to be performed by the contractor for a Federal entity when the term or the funds on a Federal interagency agreement required under the Laws, regulations, and DOE directives clause of this contract have elapsed. The contractor's utilization of contractor corporate funds does not relieve the contractor of its responsibility to comply with all requirements for Work for Others applicable to this contract.

[FR Doc. 98-30386 Filed 11-17-98; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[I.D. 110998B]

Pacific Tuna Fisheries; Public Hearing

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

ACTION: Notice of public hearing.

SUMMARY: NMFS will convene a public hearing on proposed regulations necessary to implement recommendations of the Inter-American

Tropical Tuna Commission (IATTC) according to the provisions of the Tuna Conventions Act of 1950.

DATES: The public hearing will be held on December 1, 1998.

ADDRESSES: The hearing will be held at the Embassy Suites Hotel located at 601 Pacific Highway, San Diego, California 92101. Copies of proposed regulations and associated material will be available from Dr. William Hogarth, Regional Administrator, Southwest Region, NMFS, 501 Ocean Boulevard, Suite 4200, Long Beach, California 90802-4213.

FOR FURTHER INFORMATION CONTACT: Mr. Svein Fougner, Assistant Administrator for Sustainable Fisheries, Southwest Region, NMFS, 562-980-4030.

SUPPLEMENTARY INFORMATION: At its 61st meeting in June 1998, the IATTC acted to set a 1998 quota on yellowfin tuna in its regulatory area, set a quota on bigeye tuna to be implemented by prohibiting sets on floating objects once the quota is reached, prohibit the use of vessels that tend fishery aggregating devices, and prohibit at-sea transshipments of fish caught by purse seines. NMFS is requesting public comments on regulations implementing the recommendations of the IATTC, which will soon be published in the **Federal Register** with a 30-day period for public comment.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Svein Fougner at the number above at least 5 days prior to the meeting date.

Dated: November 12, 1998.

Gary C. Matlock,

*Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.*

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 981109280-8280-01; I.D. 101498F]

RIN 0648-AM03

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic States; Recreational-for-hire Fisheries; Control Date

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

ACTION: Advance notice of proposed rulemaking; consideration of a control date.

SUMMARY: This notice announces that the Gulf of Mexico Fishery Management Council (Council) is considering whether there is a need to impose additional management measures limiting entry into the recreational-for-hire (i.e., charter vessel and headboat) fisheries for reef fish and coastal migratory pelagic fish in the exclusive economic zone (EEZ) of the Gulf of Mexico and, if there is a need, what management measures should be imposed. If the Council determines that there is a need to impose additional management measures, it may initiate a rulemaking to do so. Possible measures include the establishment of a limited entry program to control participation or effort in the recreational-for-hire fisheries for reef fish and coastal migratory pelagics. If a limited entry program is established, the Council is considering November 18, 1998, as a possible control date. Consideration of a control date is intended to discourage new entry into the fisheries based on economic speculation during the Council's deliberation on the issues.

DATES: Comments must be submitted by December 18, 1998.

ADDRESSES: Comments should be directed to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619-2266; Fax: 813-225-7015.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles or Robert Sadler, 727-570-5305.

SUPPLEMENTARY INFORMATION: The recreational-for-hire fisheries for reef fish and coastal migratory pelagic fish in the EEZ of the Gulf of Mexico are