

SUPPLEMENTARY INFORMATION:**A. Background**

DoD published an interim DFARS rule at 69 FR 35532 on June 25, 2004, to implement Section 331 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136). Section 331 amended 10 U.S.C. 2465 to permit the award of contracts for firefighting functions at military installations or facilities, for periods of one year or less, if the functions would otherwise have to be performed by members of the armed forces who are not readily available by reason of a deployment. DoD received no comments on the interim rule. Therefore, DoD has adopted the interim rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because application of the rule is limited to firefighting functions at military installations or facilities for periods of one year or less, when members of the armed forces are not readily available to perform the functions due to a deployment.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 237

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR Part 237, which was published at 69 FR 35532 on June 25, 2004, is adopted as a final rule without change.

[FR Doc. 04-27347 Filed 12-14-04; 8:45 am]

BILLING CODE 5001-08-P

DEPARTMENT OF ENERGY**48 CFR Parts 909 and 970**

RIN 1991-AB64

Acquisition Regulation: Work for Others

AGENCY: Department of Energy.

ACTION: Interim final rule with request for comment.

SUMMARY: The Department of Energy (DOE) is amending the Department of Energy Acquisition Regulation (DEAR) to provide policy and procedures regarding work for non-DOE entities performed by DOE contractors who manage and operate DOE-owned or -leased facilities. The regulation is also being revised to make an administrative change concerning debarment and suspension officials. The contractor requirements previously found in DOE Order 481.1B, "Work for Others (Non-Department of Energy Funded Work)," are being relocated to the DEAR to ensure that authorization to perform non-DOE funded work is provided by DOE in a consistent and uniform manner. No other change in the DOE's Work for Others policy is being made.

DATES: Effective Date: January 14, 2005.

Comment Date: Interested persons may submit comments on this interim final rule by January 14, 2005.

ADDRESSES: This rule is available and comments may be submitted on line at <http://www.regulations.gov>. Comments may be submitted electronically to richard.langston@hq.doe.gov. Comments may be mailed to Richard Langston, Mail Code ME-61, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 or phone (202) 287-1339.

FOR FURTHER INFORMATION CONTACT: Andrew Geary, U.S. Department of Energy, Office of Procurement and Assistance Management, ME-62, 1000 Independence Avenue, SW., Washington, DC 20585 at (202) 287-1507 or electronically at andrew.geary@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

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II. Section-by-Section Analysis.

III. Procedural Requirements.

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B. Review Under Executive Order 12988.

C. Review Under the Regulatory Flexibility Act.

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G. Review Under the Unfunded Mandates Reform Act of 1995.

H. Review Under the Treasury and General Government Appropriations Act, 1999.

I. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996.

J. Review Under Executive Order 13211.

K. Review Under the Treasury and General Government Appropriations Act, 2001.

L. Approval by the Office of the Secretary of Energy.

I. Background

DOE, including the National Nuclear Security Administration (NNSA), owns or sponsors major scientific research and development, and manufacturing facilities throughout the United States that are managed and operated by contractors. DOE permits these contractors to perform non-DOE work for other Federal agencies and non-Federal entities on a fully reimbursable basis when such work is authorized by law and the work requires DOE's unique technologies and capabilities.

Performance of this work is conducted under DOE's Work for Others Program. The Work for Others Program makes available for use special or unique services or facilities that are otherwise unavailable in the private sector. The Work for Others Program requires that funding for Work for Others projects be provided by a non-DOE sponsor. Performance of this work has allowed DOE and its management and operating contractors to assist other Federal agencies in accomplishing their missions and has provided assistance to non-Federal entities to solve complex and challenging technological issues.

DOE allows such work to be conducted by contractors provided that:

- (1) DOE's laboratories and facilities do not compete directly with the domestic private sector;

- (2) The acceptance and performance of work complies with applicable statutes and regulations;

- (3) Work is fully funded by the non-DOE entity requesting work to be performed; and,

- (4) The work to be performed is consistent with or complimentary to DOE missions and the missions of the facility where the work will be performed.

The purpose of this rule is to establish a uniform contract clause that will provide authority to DOE's management and operating contractors to perform fully reimbursable work under the terms and conditions set forth in their contracts.

This rule amends Part 970 of the DEAR which governs DOE contracts with entities that manage and operate DOE-owned or -leased facilities. The rule applies to contracts when the contractor performs fully reimbursable

work for other Federal agencies and non-Federal entities and does not relate to the expenditure of DOE's appropriated funds. Neither 5 U.S.C. 553 nor 41 U.S.C. 418b require publication of a notice of proposed rulemaking prior to the publication of today's final rule. Nevertheless, comments on today's rule will be accepted. DOE will consider all comments and, if appropriate, may modify the rule.

DOE is also making a technical amendment to 48 CFR Part 909 to identify an NNSA official as the debarment and suspension official for NNSA contracts.

II. Section-by-Section Analysis

DOE is amending the DEAR as follows:

1. Section 909.403 is being amended to identify a separate debarment and suspension official for contracts awarded by the NNSA.

2. Section 970.1707 is being added to provide information regarding DOE's Work for Others Program including:

(i) A general definition of the program and its activities;

(ii) The purpose for the program;

(iii) Specified requirements that must be satisfied prior to the acceptance and performance of work for others activities; and,

(iv) An instruction directing use of a uniform clause.

3. A standard contract clause is added at 970.5217-1 for use in DOE contracts to authorize the performance of work for non-DOE entities by DOE management and operating contractors and to establish specific conditions under which this work can be approved and performed. These conditions include ensuring that:

(i) DOE's laboratories and facilities do not compete directly with the domestic private sector;

(ii) The acceptance and performance of work complies with applicable statutes and regulations;

(iii) Work is fully funded by the non-DOE entity requesting work to be performed; and,

(iv) The work to be performed is consistent with or complimentary to DOE missions and the missions of the facility where the work will be performed.

III. 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 rule is not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB).

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 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. DOE has completed the required review and determined that, to the extent permitted by law, these regulations meet the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

This rule has been reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment and that is likely to have significant economic impact on a substantial number of small entities. Neither 5 U.S.C. 553 nor 41 U.S.C. 418b requires that today's interim final rule be proposed for public comment. Accordingly, no regulatory flexibility analysis has been prepared for this rulemaking.

D. Review Under Paperwork Reduction Act

Section 970.5217-1(g) of this rule will require contractors performing work for others to submit an annual report concerning such work. That reporting requirement is subject to review and approval of the OMB pursuant to the Paperwork Reduction Act, 44 U.S.C. 3105 *et seq.* As provided in OMB's regulations implementing the Act, DOE published a separate notice in the **Federal Register**, on February 27, 2004, 69 FR 6910, inviting public comment on the collection of information, after which it would submit the collection of information to OMB for approval pursuant to 5 CFR 1320.10. The public comment period for that notice closed April 27, 2004, and no comments were received. OMB granted approval for this information collection and assigned it a clearance number of 1910-5125.

E. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR Parts 1500-1508), DOE has established regulations for its compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Pursuant to Appendix A of Subpart D of 10 CFR Part 1021, DOE has determined that today's regulatory action is strictly procedural (Categorical Exclusion A-6). Accordingly, neither an environmental impact statement nor an environmental assessment is required.

F. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

G. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires a Federal agency to perform a detailed

assessment of costs and benefits of any rule imposing a Federal Mandate with costs to State, local or tribal governments, or to the private sector, of \$100 million or more in any single year. This rulemaking does not impose a Federal mandate on State, local or tribal governments or on the private sector.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277), requires Federal agencies to issue a Family Policymaking Assessment for any rule or policy that may affect family well-being. This rule will have no impact on family well being.

I. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, DOE will report to Congress promulgation of this 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).

J. Review Under Executive Order 13211

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001), requires Federal agencies to prepare and submit to the OIRA a Statement of Energy Effects for any significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001, 44 U.S.C. 3516, note, provides for agencies to review most disseminations

of information to the public under implementing guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

L. Approval by the Office of the Secretary of Energy

The Office of the Secretary of Energy has approved issuance of this interim final rule.

List of Subjects in 48 CFR Parts 909 and 970

Government procurement.

Issued in Washington, DC, on December 8, 2004.

Richard H. Hopf,

Director, Office of Procurement and Assistance Management, Office of Management, Budget and Evaluation/Chief Financial Officer, Department of Energy.

Robert C. Braden, Jr.,

Director, Office of Acquisition and Supply Management, National Nuclear Security Administration.

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

PART 909—CONTRACTOR QUALIFICATIONS

■ 1. The authority citation for part 909 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.*; 41 U.S.C. 418b; 50 U.S.C. 2401 *et seq.*

■ 2. Section 909.403 is revised to read as follows:

909.403 Definitions.

In addition to the definitions set forth at FAR 9.403, the following definitions apply to this subpart:

Debarring Official. The Debarring Official for DOE contracts is the Director, Office of Procurement and Assistance Management, DOE, or designee. The Debarring Official for NNSA contracts is the Director, Office of Acquisition and Supply Management, NNSA, or designee.

Suspending Official. The Suspending Official for DOE contracts is the Director, Office of Procurement and Assistance Management, DOE, or designee. The Suspending Official for NNSA contracts is the Director, Office of Acquisition and Supply Management, NNSA, or designee.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

■ 3. The authority citation for part 970 continues to read as follows:

Authority: 42 U.S.C. 2201, 2282a, 2282b, 2282c; 42 U.S.C. 7101 *et seq.*; 41 U.S.C. 418b; 50 U.S.C. 2401 *et seq.*

■ 4. Subpart 970.17 is amended by adding sections 970.1707 through 970.1707-4 to read as follows:

Subpart 970.17—Special Contracting Methods

970.1707 Work for others.

970.1707-1 Scope.

Pursuant to Section 33 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2053), DOE is authorized to make its facilities available to other Federal and non-Federal entities (sponsors) for the conduct of certain research and development and training activities. Pursuant to the Economy Act of 1932, as amended (31 U.S.C. 1535), or other applicable authority, other Federal entities may request DOE to conduct work. DOE has implemented these and other statutory authorities and requirements in its Work for Others Program. DOE's internal procedures governing the Work for Others Program are described in DOE Order 481.1C, WORK FOR OTHERS (NON-DEPARTMENT OF ENERGY FUNDED WORK).

970.1707-2 Purpose.

The purpose of DOE's Work for Others Program is to:

(a) Provide access for non-DOE entities to highly specialized or unique DOE facilities, services, or technical expertise, when private facilities are inadequate;

(b) Increase research and development interactions among DOE's management and operating contractors and industry in order to transfer DOE technologies to industry for further development or commercialization;

(c) Maintain facility core competencies;

(d) Enhance the science and technology capabilities at DOE facilities; and,

(e) Provide assistance to other Federal agencies and non-Federal entities in accomplishing goals that may otherwise be unattainable and to avoid the possible duplication of effort at Federal facilities.

970.1707-3 Terms governing work for others.

(a) DOE's internal review and approval procedural requirements for

individual work for others agreements are set forth in DOE Order 481.1C (as supplemented by DOE Manual 481.1-1A for agreements with non-Federal entities), which may be amended from time to time, and such other guidance as may be issued by DOE. Contracting officers must ensure that the contractor's procedures for its operations are consistent with DOE's procedural requirements.

(b) A contractor may perform work for other Federal or non-Federal sponsors only if:

- (1) The contractor is authorized by contract clause to perform such work;
- (2) The work is not directly funded by DOE appropriations and is fully reimbursed by the sponsor;
- (3) The DOE Contracting Officer or authorized designee approves the work in advance; and,
- (4) The work is performed in accordance with DOE policies, procedures and directives applicable to the contract.

(c) Contracting officers must ensure that the requesting Federal entity certifies that:

(1) The interagency agreement with DOE complies with the Economy Act of 1932 (31 U.S.C. 1535) and other applicable statutory authorities and 48 CFR 6.002, which prohibits the use of an Interagency Agreement for the purpose of avoiding the competition requirements of the Federal Acquisition Regulation; and,

(2) The work to be performed will not place the DOE contractor in direct competition with the domestic private sector.

970.1707-4 Contract clause.

Insert the clause at 970.5217-1, Work for Others Program (Non-DOE Funded Work), in any contract that may involve work under the Work for Others Program, pursuant to 970.1707-3(b).

■ 5. Subpart 970.52 is amended by adding section 970.5217-1 to read as follows:

970.5217-1 Work for Others Program.

As prescribed in 48 CFR (DEAR) 970.1707-4 insert the following clause:

WORK FOR OTHERS PROGRAM (NON-DOE FUNDED WORK) (JAN 2005)

(a) *Authority to Perform Work for Others.* Pursuant to the Economy Act of 1932, as amended (31 U.S.C. 1535), and the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*) or other applicable authority, the Contractor may perform work for non-DOE entities (sponsors) on a fully reimbursable basis in accordance with this clause.

(b) *Contractor's Implementation.* The Contractor must draft, implement, and

maintain formal policies, practices, and procedures in accordance with this clause, which must be submitted to the Contracting Officer for review and approval.

(c) *Conditions of Participation in Work for Others Program.* The Contractor:

(1) Must not perform Work for Others activities that would place it in direct competition with the domestic private sector;

(2) Must not respond to a request for proposals or any other solicitation from another Federal agency or non-Federal organization that involves direct comparative competition, either as an offeror, team member, or subcontractor to an offeror; however, the Contractor may, following notification to the Contracting Officer, respond to Broad Agency Announcements, Financial Assistance solicitations, and similar solicitations from another Federal Agency or non-Federal organizations when the selection is based on merit or peer review, the work involves basic or applied research to further advance scientific knowledge or understanding, and a response does not result in direct, comparative competition;

(3) Must not commence work on any Work for Others activity until a Work for Others proposal package has been approved by the DOE Contracting Officer or designated representative;

(4) Must not incur project costs until receipt of DOE notification that a budgetary resource is available for the project, except as provided in 48 CFR 970.5232-6;

(5) Must ensure that all costs associated with the performance of the work, including specifically all DOE direct costs and applicable surcharges, are included in any Work for Others proposal;

(6) Must maintain records for the accumulation of costs and the billing of such work to ensure that DOE's appropriated funds are not used in support of Work for Others activities and to provide an accounting of the expenditures to DOE and the sponsor upon request;

(7) Must perform all Work for Others projects in accordance with the standards, policies, and procedures that apply to performance under this contract, including but not limited to environmental, safety and health, security, safeguards and classification procedures, and human and animal research regulations;

(8) May subcontract portion(s) of a Work for Others project; however, the Contractor must select the subcontractor and the work to be subcontracted. Any subcontracted work must be in direct support of the DOE contractor's performance as defined in the DOE approved work for others proposal package; and,

(9) Must maintain a summary listing of project information for each active Work for Others project, consisting of:

- (i) Sponsoring agency;
- (ii) Total estimated costs;
- (iii) Project title and description;
- (iv) Project point of contact; and,
- (v) Estimated start and completion dates.

(d) *Negotiation and Execution of Work for Others Agreement.* (1) When delegated authority by the Contracting Officer, the Contractor may negotiate the terms and

conditions that will govern the performance of a specific Work for Others project. Such terms and conditions must be consistent with the terms, conditions, and requirements of the Contractor's contract with DOE. The Contractor may use DOE-approved contract terms and conditions as delineated in DOE Manual 481.1-1A or terms and conditions previously approved by the responsible Contracting Officer or authorized designee for agreements with non-Federal entities. The Contractor must not hold itself out as representing DOE when negotiating the proposed Work for Others agreement.

(2) The Contractor must submit all Work for Others agreements to the DOE Contracting Officer for DOE review and approval. The Contractor may not execute any proposed agreement until it has received notice of DOE approval.

(e) *Preparation of Project Proposals.* When the Contractor proposes to perform Work for Others activities pursuant to this clause, it may assist the project sponsor in the preparation of project proposal packages including the preparation of cost estimates.

(f) *Work for Others Appraisals.* DOE may conduct periodic appraisals of the Contractor's compliance with its Work for Others Program policies, practices and procedures. The Contractor must provide facilities and other support in conjunction with such appraisals as directed by the Contracting Officer or authorized designee.

(g) *Annual Work for Others Report.* The Contractor must provide assistance as required by the Contracting Officer or authorized designee in the preparation of a DOE Annual Summary Report of Work for Others Activities under the contract.

[FR Doc. 04-27418 Filed 12-14-04; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

Docket No. 031124287-4060-02; I.D. 120904A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels 60 feet (18.3 m) Length Overall and Longer Using Hook-and-line Gear in the Bering Sea and Aleutian Islands

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels 60 feet (18.3 m) length overall (LOA) and longer using hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is