

of the Port or Coast Guard Patrol Commander.

(d) *Effective period*: This rule is effective from 10 a.m. on June 5, 2004 until 7 p.m. on June 6, 2004.

Dated: May 19, 2004.

Keith B. Janssen,

Lieutenant Commander, U.S. Coast Guard, Captain of the Port, Charleston, South Carolina.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 36, and 53

[FAR Notice 2004-N2]

Federal Acquisition Regulation; Supplemental Information to FAR Case 2000-608 for the Certification of the Regulatory Flexibility Act Statement for the New Standard Form 330, Architect-Engineer Qualifications (Consolidated Form)

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of supplemental information.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) have agreed on this supplemental information to the final rule, FAR Case 2000-608, New Consolidated Form for Selection of Architect-Engineer Contractors, published in the **Federal Register** at 68 FR 69227, December 11, 2003. This notice provides additional factual basis that applies only to the Regulatory Flexibility Act statement in the final rule. All other information remains unchanged.

DATES: *Effective Date:* June 1, 2004.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia Davis, Procurement Analyst, at (202) 219-0202. Please cite FAR Notice 2004-N2.

SUPPLEMENTARY INFORMATION:

A. Background

This notice provides additional factual basis for the certification to the Regulatory Flexibility Act statement provided in the final rule published in the **Federal Register** on December 11, 2003. This final rule amends the Federal Acquisition Regulation (FAR) by replacing the Standard Forms (SFs) 254 and 255 with the new streamlined SF 330. The SFs 254 and 255 have changed little since their introduction in 1975, although the variety of Architect-Engineer (A-E) services has greatly expanded and new technologies have dramatically changed the way A-E firms do business. The SF 330 merges the SFs 254 and 255 into a single streamlined form, expands essential information about qualifications and experience, reflects current A-E disciplines, experience types and technology, eliminates information of marginal value, permits limitations on submission length, and facilitates electronic usage. This rule's intent was to improve the A-E evaluation process. We published a notice on January 7, 2004, to change the effective date from January 12, 2004 to June 8, 2004.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to the final rule that was published in the **Federal Register** at 68 FR 69227, December 11, 2003. This **Federal Register** notice is prepared to further support the Councils' earlier determination that this rule does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. The following information serves as the additional factual basis to support the certification in the final rule version:

An Initial Regulatory Flexibility Act analysis was not performed because the proposed rule did not have a significant economic impact on a substantial number of small entities. After analyzing public comments, the Councils determined that this regulation would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. The Councils continue this determination and are now preparing this factual basis to support our earlier determination and to expand our discussion of the effects of the rule on small businesses. No small businesses specifically complained about the Regulatory Flexibility Act certification.

The purpose of the SFs 254 and 255 has been to present A-E firms' qualifications for consideration in the

award of Federal contracts. The Brooks A-E Act requires evaluation and selection of A-E firms based on qualifications including past performance prior to negotiating price. This rule amends the Federal Acquisition Regulation (FAR) by replacing the SFs 254 and 255 with the new streamlined SF 330. The SFs 254 and 255 have changed little since their introduction in 1975, although the variety of A-E services has greatly expanded and new technologies have dramatically changed the way A-E firms do business. The SF 330 merges the SFs 254 and 255 into a single streamlined form, expands essential information about qualifications and experience, reflects current A-E disciplines, experience types and technology, eliminates information of marginal value, permits limitations on submission length, and facilitates electronic usage. This rule's intent is to improve the A-E evaluation process.

Overall the SF 330 requires less information than the SFs 254 and 255, benefiting all businesses, especially small businesses. The following information has been deleted:

- Duplication of data on number of personnel by discipline.
- Work currently being performed for Federal agencies.
- List of all offices, their telephone numbers and the number of personnel in each.
- Revenue information for each of the last 5 years (now the last 3 years).
- Number of projects for each profile code.
- Thirty example projects (required on the SF 254).
- Profile of a firm's project experience expressed in specific dollar amounts (replaced with revenue ranges).

Part I of the SF 330 is focused more on small businesses than the SF 255 because of its emphasis on the specific team of key individuals who will execute the contract requirements, rather than overall corporate experience. This important change is less of a barrier for new businesses (*i.e.*, small businesses). New businesses need to demonstrate competency in their areas of expertise as required by the Brooks A-E Act.

Currently, there are approximately 23,000 small A-E firms registered in the Central Contractor Registration (CCR) system that could apply for Federal Government A-E contracts. Of the one hundred and eighteen commenters, there were no specific objections to the Regulatory Flexibility Act statement. There were 7 small businesses and associations representing small businesses out of the 118 commenters

that identified some burden issues associated with the SF 330, such as the burden associated with converting automated databases. The rule does not require small businesses to maintain a database and it also does not require them to purchase software to fill out the form. Many firms have done so in the past for their convenience. There are at least seven firms that will continue to offer value added SF 330 software packages. These packages are available at varying prices based on their capabilities and some are being offered at very affordable prices. Once companies invest the initial cost for a software package, it is believed that the benefits will outweigh the initial cost. However, as stated earlier, this rule does not require the purchase of a software package to fill out the SF 330. The Government provides three formats of the SF 330 at no cost. The Government has added a Microsoft Word version of the form at the GSA website of Government forms, as a result of requests from A-E firms since the final rule was published.

Seven software companies were contacted in order to conduct a cost analysis on a sampling of the available software packages. The results of the analysis are provided below.

- For a small firm with one user, the cost ranges from \$249 to \$3,540 for SF 330 software with database backup, technical support and upgrades (provided by most software suppliers).
- For a small firm with one user, two companies offer SF 330 software "light" versions (no database backup) at a cost of \$165 to \$199.

One of the software companies claims to have sold between 750 to 1,000 SF 330 software packages to small businesses in the \$400 range. From the analysis above, it is clear that there are reasonably priced software packages available for small firms that wish to invest in a value added software package.

The fact that the form is changed, means some changes will be needed in A-E firms' databases if they elect to continue using databases. It was brought to our attention that these indirect effects will happen. We did adjust the final rule version of the form to make it easier for firms, including small businesses, to perform database maintenance, and for the software companies who will be creating and marketing their updated software versions.

A comment addressing databases stated that this process might cost hundreds of hours researching projects dating back 5 years because the SFs 254 and 255 are coded by discipline,

function and profile codes, which were all changed on the SF 330. This is not an accurate statement. Projects are not coded by any of these parameters on the SF 255, and only by profile codes on the SF 254. The same profile codes and function codes are available on the final version of the SF 330 that were used with the SF 254, and additional profile codes and function codes (disciplines) were added, based on industry requests, to update the forms for advances in the A-E industry. These new codes are optional; firms need not use them. A firm that decides it is to the firm's advantage to use the new codes may do so. The firm can go back and reclassify all of its old projects, or only use the new codes selectively.

One commenter stated that requiring 10 sample projects (that best illustrate the team's qualifications) could put a smaller firm at a disadvantage. This requirement was not changed from the SF 255. There is no additional burden because firms have to provide/maintain this information using either the old forms or the SF 330.

A small disadvantaged business commenter said, "We agree with the Council's general goals for creating a new form. The existing 254/255 forms are in need of an update. The proposed SF 330 has merit; it is shorter, the format is computer-friendly, and there is greater opportunity to clearly define the roles and experiences of key staff and sub-consultants." This commenter also raised concerns related to the proposed cost in terms of database conversion. We believe many of these were resolved as a result of such public comments and are reflected in the final version of the SF 330.

Another small business comment was that we limited competition by stressing "team experience." Agencies have had the ability to evaluate team experience, which can be an important aspect of the A-E selection process. The old forms were not always clear about who worked on what project. The new form makes it clearer. However, agencies are not required to favor team experience, although team experience can be a way to demonstrate competency. One of the commenters addressed the requirement for an organizational chart and feels that this requirement is a positive one for small businesses. The commenter stated, "As a minority business, we are frequently asked to participate in proposal development in order to meet a requirement for minority business participation, but then are never included in the actual project. Requiring the definition of the role of each sub-consultant enhances our chance of obtaining substantive meaningful work.

This requirement is tremendously supportive of small businesses."

In addition to the indirect discretionary burdens of database software conversion, there are also paperwork burdens connected with filling out the forms. We did point out in the Paperwork Reduction Act statement in the proposed rule published at 66 FR 53314, October 19, 2001, that the estimated burden hours to complete the new form were going to dramatically increase in comparison to the old forms. This was a result of the SFs 254 and 255 burden hours being grossly underestimated, and we discussed this in the proposed rule. We received some comments on this but not all small businesses commented on the Paperwork Reduction Act. Based on the public comments, some changes were made to reduce the burden, as outlined in this supplemental information.

There are no additional reporting or recording requirements for firms under this rule. As stated earlier, firms will now provide less information. In addition, firms will now use one streamlined form instead of two outdated forms. The burden hours associated with the Paperwork Reduction Act for SF 330 have increased (see OMB Information Collection 9000-0157.) This is due to the fact that the old forms were drastically underestimated and the SF 330 has been estimated using realistic criteria.

There are no known significant alternatives that will accomplish the objectives of the rule. No alternatives were proposed during the public comment period other than not changing the SFs 254 and 255. This is not an alternative because these forms are out of date, and not adequate for the Federal Government needs. We have extended the effective date from January 12, 2004 to June 8, 2004, to provide industry, especially small businesses more time to prepare for this change.

The interagency committee that developed the SF 330 determined that maintaining the existing SFs 254 and 255 with little or no change was not a feasible alternative. SFs 254 and 255 have changed little since their introduction in 1975, and updating and streamlining were long overdue. The forms do not reflect current A-E services, technologies and professional disciplines. The forms do not reflect current Federal A-E procurement practices, such as the predominant use of indefinite delivery contracts and the emphasis in selections on team experience. Consolidation of the forms was warranted since the SF 254 is rarely used alone in current A-E selections, but

instead as a supplement to the SF 255. The forms contain duplicate information (such as the number of personnel by discipline on both the SFs 254 and 255) and information of marginal value (such as current Federal projects). More emphasis was needed on professional qualifications and relevant example projects, the two most important selection criteria. And finally, the current forms were not optimally designed for electronic usage. Minor revisions to the SFs 254 and 255 would not have fulfilled these many objectives.

The interagency committee realized that changing the SFs 254 and 255 to a new form would require transition effort and costs. But the committee was also certain that, after the transition period, the final SF 330 would be more streamlined than the SFs 254 and 255, and would require considerably less effort for firms to complete.

The public comments on the draft form, including those submitted by small businesses, were carefully considered by the committee in developing the final form. As a result, the final form contains many simplifications that reduce the burden on firms, such as the reinstatement of existing profile code and function code descriptions, the elimination of page numbers, the elimination of photos, the elimination of fees earned on past projects, and simplification of the matrix of key personnel involvement in the example projects. Small businesses cannot be exempted from use of the new form or from completion of certain portions of the form. This form is used for competitive acquisition of A-E services and all firms, including small businesses, must be considered on a uniform basis.

List of Subjects in 48 CFR Parts 1, 36, and 53

Government procurement.

Dated: May 25, 2004.

Laura Auletta,

Director, Acquisition Policy Division.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 052004D]

Atlantic Highly Migratory Species; Shark Fishing Season

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

ACTION: Fishing season notification.

SUMMARY: NMFS notifies eligible participants of the opening and closing dates for the commercial Atlantic large coastal, small coastal, and pelagic shark fisheries for the 2004 second semiannual fishing season.

DATES: The fishery opening for LCS in the Gulf of Mexico region is effective July 1, 2004, through 11:30 p.m., local time, August 15, 2004, and the closure is effective 11:30 p.m., local time, August 15, 2004, through December 31, 2004.

The fishery opening for large coastal sharks (LCS) in the South Atlantic region is effective July 1, 2004, through 11:30 p.m., local time, September 30, 2004, and the closure is effective 11:30 p.m., local time, September 30, 2004, through December 31, 2004.

The fishery opening for small coastal sharks (SCS) in all regions, pelagic sharks, blue sharks, and porbeagle sharks is effective July 1, 2004, through December 31, 2004, unless otherwise modified or superseded through publication of a closure notification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz at (phone) 301-713-2347 or (fax) 301-713-1917.

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), finalized in 1999, and Amendment 1 to the HMS FMP, finalized in 2003, are implemented by regulations at 50 CFR part 635.

Available Quota

On December 24, 2003 (68 FR 74746), NMFS announced that the 2004 annual landings quotas for LCS and SCS were established at 1,017 metric tons (mt) dressed weight (dw) (2,242,078.2 lb dw) for LCS and 454 mt dw (1,000,888.4 lb dw) for SCS. The 2004 quota levels for

pelagic, blue, and porbeagle sharks were established at 488 mt dw (1,075,844.8 lb dw), 273 mt dw (601,855.8 lb dw), and 92 mt dw (202,823.2 lb dw), respectively. These quotas were split equally between the two 2004 fishing seasons.

The LCS semiannual quotas were further split, consistent with § 635.27(b)(1)(iii), between three fishing regions. Without accounting for any under- or overharvests, the 2004 regional semiannual LCS quota levels are: Gulf of Mexico - 213.6 mt dw (470,902.6 lb dw); South Atlantic - 274.6 mt dw (605,383.2 lb dw); and North Atlantic - 20.3 mt dw (44,753.4 lb dw).

On May 13, 2004 (69 FR 26540), NMFS published a proposed rule that would change the North Atlantic LCS quota split for the semiannual seasons from an equal split among the seasons to a 20/80 split between the first and second seasons, respectively. The comment period on that proposed rule closed on May 28, 2004. Thus, the LCS semiannual quota stated above for this region may change. As such, NMFS will announce the LCS closing date for the North Atlantic region when the final rule publishes, which is expected to occur before the start of the fishing season on July 1, 2004.

In 2003, the second semiannual fishing season quota for ridgeback LCS was set at 424 mt dw (934,750.4 lb dw) and for non-ridgeback LCS was set at 498 mt dw (1,097,890.8 lb dw). As of February 2004, approximately 338 mt dw (745,155 lb dw) ridgeback LCS and 408 mt dw (899,477 lb dw) non-ridgeback LCS had been reported landed. This constitutes an underharvest for the 2003 second semiannual fishing season for the entire LCS complex of approximately 175.7 mt dw (387,348.2 lb dw). This underharvest, consistent with § 635.27(b)(1)(iii) and (vi), will be split between the regions as follows: Gulf of Mexico - 73.8 mt dw (162,699.5 lb dw); South Atlantic - 94.9 mt dw (209,216.5 lb dw); and North Atlantic - 7 mt dw (15,432.2 lb dw). Thus, the 2004 second semiannual fishing season LCS quotas for the Gulf of Mexico and South Atlantic regions are 287.4 mt dw (633,602 lb dw) and 369.5 mt dw (814,599.7 lb dw), respectively. Additionally, the North Atlantic region will have 7 mt dw (15,432.2 lb dw) added to its semiannual quota once the above-mentioned proposed rule is finalized.

As with the LCS semiannual quotas, the SCS semiannual quotas were split, consistent with § 635.27(b)(1)(iv), among three fishing regions. Without accounting for any under- or