

expects the economic impact of this proposal to be so minimal that a full regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT (44 FR 11040; February 26, 1979) is unnecessary. We conclude this because of the infrequent operation of the draw.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of the proposal to be minimal the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket where indicated in the ADDRESSES section.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g); section 117.255 also issued under the authority of Pub. L. 102-587, 106 Stat. 5039.

2. In § 117.317 paragraph (f) is revised to read as follows:

§ 117.317 Okeechobee Waterway.

* * * * *

(f) Florida East Coast Railroad bridge, mile 38, at Port Mayaca.

(1) The draw is not constantly tended.

(2) The bridge is normally in the fully open position displaying flashing green lights to indicate that vessels may pass.

(3) When a train approaches the bridge it will stop and a crewmember will observe the waterway for approaching vessels, which will be allowed to pass. Upon manual signal, the bridge lights will go to flashing red, and the horn will sound four blasts, pause, then repeat four blasts, then the draw will lower and lock, providing scanning equipment reveals nothing under the span.

(4) After the train has cleared, the draw will open, and the lights will return to flashing green.

* * * * *

Dated: July 26, 1995.

Roger T. Rufe, Jr.,

*Rear Admiral, U.S. Coast Guard, Commander,
Seventh Coast Guard District.*

[FR Doc. 95-20361 Filed 8-16-95; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1516 and 1552

[FRL-5277-5]

Acquisition Regulation; Cost-Sharing Contracts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to add coverage to the EPA Acquisition Regulation (EPAAR) on cost-sharing contracts. This rule is necessary to provide Contracting Officers guidance for awarding and administering cost-sharing contracts.

DATES: Written comments on this proposed rule must be received on or before October 16, 1995.

ADDRESSES: Comments should be addressed to the Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, attn: Paul Schaffer (Mail Code 3802F). Comments may also be transmitted electronically by electronic mail (e-mail) to

Schaffer.paul @ epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments will also be accepted on disk in Wordperfect in 5.1 file format or ASCII file format. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on the proposed rule may be filed online at many Federal Deposit Libraries.

FOR FURTHER INFORMATION CONTACT: Paul Schaffer at (202) 260-9032.

SUPPLEMENTARY INFORMATION:

A. Background

Cost-sharing applies only to contracts awarded by EPA in which the Government and contractor agree to share in the costs of a project. Cost-sharing is relevant when a contractor has the opportunity to acquire technology, expertise or other benefits which will enable the contractor to profit after contract completion. Generally, potential benefits to the contractor are less likely where basic research is involved and the extent of commercial application is unknown.

B. Executive Order 12866

This proposed rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, no review is required at the Office of Information and Regulatory Affairs within OMB.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not propose any information collection requirements which would require the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Regulatory Flexibility Act

The EPA certifies this proposed rule does not exert a significant economic impact on a substantial number of small entities. The proposed rule primarily establishes EPA policies and internal procedures for awarding and administering cost sharing contracts. The proposed contract clause will require small entities to maintain records for costs claimed as its cost share.

Most small entities should presently be compiling information in their accounting systems for all costs incurred under cost reimbursable contracts in order to monitor financial progress under a contract. Any adjustments to existing accounting systems should require only minimal cost and effort. The EPA certifies this

rule will have no significant impact on small entities. Therefore, no regulatory flexibility analysis has been prepared.

E. Unfunded Mandates

This proposed rule will not impose unfunded mandates on state or local entities, or others.

List of Subjects in 48 CFR Parts 1516 and 1552

Government procurement, Solicitation provisions and contract clauses.

For the reasons set out in the preamble, Chapter 15 of Title 48 Code of Federal Regulations is proposed to be amended as set forth below:

1. The authority citation for Parts 1516 and 1552 continues to read as follows:

Authority: Sec 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

2. Section 1516.303 is added to read as follows:

1516.303 Cost-sharing contracts.

1516.303-71 Definition.

Cost-sharing is a generic term denoting any situation where the Government does not fully reimburse a contractor for all allowable costs necessary to accomplish the project under the contract. This term encompasses cost-matching and cost-limitations, in addition to cost-sharing. Cost-sharing does not include usual contractual limitations such as indirect cost ceilings in accordance with FAR 42.707, or ceilings on travel or other direct costs. Cost-sharing contracts may be required as a result of Congressional mandate.

1516.303-72 Policy.

(a) The Agency shall use cost-sharing contracts where the principal purpose is ultimate commercialization and utilization of technologies by the private sector. There should also be a reasonable expectation of future economic benefits for the contractor and the Government beyond the Government's contract.

(b) Cost-sharing may be accomplished by a contribution to either direct or indirect costs, provided such costs are reasonable, allocable and allowable in accordance with the cost principles of the contract. Allowable costs which are absorbed by the contractor as its share of contract costs may not be charged directly or indirectly to the Agency or the Federal government.

(c) Unsolicited proposals will be considered on a case-by-case basis by the Contracting Officer as to the appropriateness of cost-sharing.

1516.303-73 Types of cost-sharing.

(a) Cost-sharing may be accomplished in various forms or combinations. These include, but are not limited to: cash outlays, real property or interest therein, personal property or services, cost matching, or other in-kind contributions.

(b) In-kind contributions represent non-cash contributions provided by the performing contractor which would normally be a charge against the contract. While in-kind contributions are an acceptable method of cost-sharing, should the booked costs of property appear unrealistic, the fair market value of the property shall be determined pursuant to 1516.303-74.

(c) In-kind contributions may be in the form of personal property (equipment or supplies) or services which are directly beneficial, specifically identifiable and necessary for the performance of the contract. In-kind contributions must meet all of the following criteria before acceptance.

(1) Be verifiable from the contractor's books and records;

(2) Not be included as contributions under any other Federal contract;

(3) Be necessary to accomplish project objectives;

(4) Provide for types of charges that would otherwise be allowable under applicable Federal cost principles appropriate to the contractor's organization; and

(5) Not be paid for by the Federal Government under any contract, agreement or grant.

1516.303-74 Determining the value of in-kind contributions.

In-kind contributions accepted from a contractor will be addressed on a case-by-case basis provided the established values do not exceed fair market values.

(a) Where the Agency receives title to donated land, building, equipment or supplies and the property is not fully consumed during performance of the contract, the Contracting Officer should establish the property's value based on the contractor's booked costs (i.e., acquisition cost less depreciation, if any) at the time of donation. If the booked costs reflect unrealistic values when compared to current market conditions, the Contracting Officer may establish another appropriate value if supported by an independent appraisal of the fair market value of the donated property or property in similar condition and circumstances.

(b) The Contracting Officer will monitor reports of in-kind costs as they are incurred or recognized during the contract period of performance to determine that the value of in-kind

services does not exceed fair market values.

(c) The value of any services or the use of personal or real property donated by a contractor should be established when necessary in accordance with generally accepted accounting policies and Federal cost principles.

1516.303-75 Amount of cost-sharing.

(a) Contractors should contribute a reasonable amount of the total project cost covered under the contract. The ratio of cost participation should correlate to the apparent advantages available to performers and the proximity of implementing commercialization, i.e., the higher the potential for future profits, the higher the contractor's share should be.

(b) Fee will not be paid to the contractor or any member of the contractor team (subcontractors and consultants) which has a substantial and direct interest in the contract, or is in a position to gain long term benefits from the contract. A vulnerability the Contracting Officer should consider in reviewing a prime contractor's request for consent to subcontract is whether subcontractors under prime cost-sharing contracts have a significant direct interest in the contract to gain long-term benefits from the contract.

(c) The Contracting Officer, with the input of technical experts, may consider the following factors in determining reasonable levels of cost sharing:

(1) The availability of the technology to competitors;

(2) Improvements in the contractor's market share position;

(3) The time and risk necessary to achieve success;

(4) If the results of the project involve patent rights which could be sold or licensed;

(5) If the contractor has non-Federal sources of funds to include as cost participation; and

(6) If the contractor has the production and other capabilities to capitalize the results of the project.

(d) A contractor's cost participation can be provided by other subcontractors with which it has contractual arrangements to perform the contract as long as the contractor's cost-sharing goal is met.

1516.303-76 Fee on cost-sharing contracts by subcontractors.

(a) Subcontractors under prime cost-sharing contracts who do not have a significant direct interest in the contract or who are not in a position to gain long-term benefits from the contract may earn a fee.

(b) Contracting Officers should be alert to a potential vulnerability for the

Government under cost-sharing contracts when evaluating proposed subcontractors or consenting to a subcontract during contract administration, where the subcontractor is a wholly-owned subsidiary of the prime. The vulnerability consists of the subsidiary earning a large amount of fee, which could be returned to the prime through stock dividends or other intercompany transactions. This could circumvent the objective of a cost-sharing contract.

1516.303-77 Administrative requirements.

(a) The initial Procurement Request shall reflect the total estimated cost of the cost-sharing contract. The face page of the contract award shall indicate the total estimated cost of the contract, the Contractor's share of the cost, and the Government's share of the cost.

(b) The manner of cost-sharing and how it is to be accomplished shall be set forth in the contract. Additionally, contracts which provide for cost-sharing shall require the contractor to maintain records adequate to reflect the nature and extent of their cost-sharing as well as those costs charged the Agency. Such records may be subject to an Agency audit.

3. Section 1516.307 is amended to add paragraph (c) to read as follows:

1516.307 Contract clauses.

* * * * *

(c) The Contracting Officer shall insert the clause at 1552.216-75, Estimated Cost and Cost-Sharing, in solicitations and contracts where the total incurred costs are shared by the contractor on a straight percentage basis. The Contracting Officer may develop other clauses, as appropriate, following the same approach, but reflecting different cost-sharing arrangements negotiated on specific contract actions.

4. Subpart 1516.3 is amended by adding section 1516.370 to read as follows:

1516.370 Solicitation provision.

The solicitation document shall state whether any cost-sharing is required, and may set forth a target level of cost-sharing. Although technical considerations are normally most important, the degree of cost-sharing may be considered in a selection decision when cost becomes a determinative factor in a selection decision.

5. Part 1552 is amended to add section 1552.216-75 to read as follows:

1552.216-75 Estimated cost and cost-sharing.

As prescribed in 1516.307(c), insert a clause to read substantially the same as follows:

Estimated Cost and Cost-Sharing (Aug 1995)

(a) The total estimated cost of performing the work under this contract is \$_____. The Contractor's share of this cost shall not exceed \$_____. The Government's share of this cost shall not exceed \$_____.

(b) For performance of the work under the contract, the Contractor shall be reimbursed for not more than _____ percent of the cost of performance determined to be allowable under the Allowable Cost and Payment clause. The remaining balance of allowable cost shall constitute the Contractor's share.

(c) Fee shall not be paid to the prime contractor under this cost-sharing contract.

(d) The Contractor shall maintain records of all costs incurred and claimed for reimbursement as well as any other costs claimed as part of its cost share. Those records shall be subject to audit by the Government.

(e) Costs contributed by the Contractor shall not be charged to the Government under any other contract, grant or agreement (including allocation to other contracts as part of an independent research and development program) nor be included as contributions under any other Federal contract.

(End of Clause)

Dated: August 9, 1995.

Jeanette L. Brown,

Acting Director, Office of Acquisition Management.

[FR Doc. 95-20230 Filed 8-16-95; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 95-65; Notice 1]

RIN 2127-AF72

Federal Motor Vehicle Safety Standards; Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments; correction.

SUMMARY: On July 24, 1995, NHTSA published a document requesting comments about devices that remove water and other contaminants from air brake systems. The agency has since learned that the docket number in the heading of that document is incorrect. (60 FR 37864) Today's document corrects the docket number to read

“[Docket No. 95-65; Notice 1]”. The July 24, 1995 document had read “[Docket No. 95-57; Notice 1]”.

EFFECTIVE DATE: The correction to the July 24, 1995 document is effective on August 17, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-5274).

Issued on August 11, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95-20346 Filed 8-16-95; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[I.D. 081195A]

Summer Flounder Fishery; Notice of Availability; Amendment 7

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

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NMFS issues this notice to advise the public that the Mid-Atlantic Fishery Management Council (Council) has submitted Amendment 7 to the Fishery Management Plan for Summer Flounder (FMP) for Secretarial review and is requesting comments from the public. The Amendment would revise the fishing mortality rate reduction schedule for summer flounder. Copies of the Amendment may be obtained from the Council (see ADDRESSES).

DATES: Comments must be received on or before October 10, 1995.

ADDRESSES: Send comments to Dr. Andrew Rosenberg, Regional Director, National Marine Fisheries Service, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930-3799. Mark the outside of the envelope “Comments on Summer Flounder Plan.”

Copies of Amendment 7, the environmental assessment and the regulatory impact review are available from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115,