6. It is further ordered that pursuant to sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303(r), Part 1 of the Commission's Rules is AMENDED as set forth in the Rule Changes, effective upon publication in the Federal Register. These rule changes are procedural rules and relieve restrictions on electronic comment filers. We therefore find that the rule amendments should be made effective upon publication. *See* 5 U.S.C. 553(d)(1).

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154, 207, 303 and 309(j) unless otherwise noted.

2. Section 1.419 is amended by revising paragraph (e) to read as follows:

§ 1.419 Form of comments and replies; number of copies.

* * * * *

(e) Comments and replies and other documents filed in electronic form by a party represented by an attorney shall include the name and mailing address of at least one attorney of record. Parties not represented by an attorney that file comments and replies and other documents in electronic form shall provide their name and mailing address.

[FR Doc. 98–27885 Filed 10–20–98; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1817, 1834, and 1852

Phased Acquisitions

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This is a final rule amending the NASA FAR Supplement (NFS) to revise its existing coverage on phased acquisitions and down-selections to reflect changes in NASA Procedures and Guidance (NPG) 7120.5A, NASA Program and Project Management Processes and Requirements. In addition, the revision also includes: relocation of the NFS coverage from Part 1834, Major System Acquisition, to 1817, Special Contracting Methods, to more accurately reflect the subject matter; and editorial revisions to the text and associated contract clauses to eliminate redundancies and improve readability. All of these changes are considered non substantive in that they do not affect the existing phased acquisition/down-selection procedures.

DATES: This rule is effective October 21, 1998.

ADDRESSES: Kenneth A. Sateriale, NASA Headquarters Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Sateriale, (202) 3580491.

SUPPLEMENTARY INFORMATION:

Background

NPG 7120.5A, NASA Program and Project Management Processes and Requirements, is the primary internal document governing NASA program management. Revision A supersedes the previous version. The revision includes new terminology that makes obsolete some references, such as program phase designations and definitions, in the NFS coverage on phased acquisitions. Editorial and administrative changes to the NFS are required to ensure complete compatibility with the revised NPG.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) since the changes do no more than align NFS terminology to that in Agency internal documents and make editorial revisions to delete redundancies and improve readability. The rule does not impose any reporting or record keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1817, 1834, and 1852

Government procurement.

Tom Luedtke,

Acting Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1817, 1834, and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1817, 1834, and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1817—SPECIAL CONTRACTING METHODS

Subpart 1817.73 [Added]

2. Subpart 1817.73 is added to read as follows:

Subpart 181734.730 Phased Acquisition

181734.7300 Definitions.
1817.7301 Down-selctions in phased acquisitions.
1817.7301–1 Pre-solicitation planning.
1817.7301–2 Evaluation factors.
1817.7301–3 Down-selection milestones.
1817.7301–4 Synopsis.
1817.7301–5 Progressive competition.
1817.7302 Contract clauses.

Subpart 1817.73—Phased Acquisition

1817.7300 Definitions.

(a) *Down-selection.* In a phased acquisition, the process of selecting contractors for later phases from among the preceding phase contractors.

(b) *Phased Acquisition.* An incremental acquisition implementation comprised of several distinct phases where the realization of program/project objectives requires a planned, sequential acquisition of each phase. The phases may be acquired separately, in combination, or through a down-selection strategy.

(c) *Progressive Competition.* A type of down-selection strategy for a phased acquisition. In this method, a single solicitation is issued for all phases of the program. The initial phase contracts are awarded, and the contractors for subsequent phases are expected to be chosen through a down-selection from among the preceding phase contractors. In each phase, progressively fewer contracts are awarded until a single contractor is chosen for the final phase. Normally, all down-selections are accomplished without issuance of a new, formal solicitation.

1817.7301 Down-selections in phased acquisitions.

1817.7301–1 Pre-solicitation planning.

(a) The rationale for the use of the down-selection technique shall be thoroughly justified in the acquisition planning requirement. Because the initial phase solicitation will also lead to subsequent phase award(s), the decision to use a downselection strategy must be made prior to release of the initial solicitation. Accordingly, all phases must be addressed in the initial acquisition strategy planning and documented in the acquisition plan or ASM minutes.

(b) If there is no direct link between successful performance in the preceding

phase and successful performance in a subsequent phase, down-selection is inappropriate. In this case, the phases should be contracted for separately without a down-selection.

(c) With one exception, both the initial and subsequent phase(s) of an acquisition down-selection process are considered to be full and open competition if the procedures in 1817.7301–4 and 1817.7301–5 (if using the progressive competition technique) are followed. If only one contractor successfully completed a given phase and no other offers are solicited for the subsequent phase, award of the subsequent phase may be made only if justified by one of the exceptions in FAR 6.302 or one of the exclusions in FAR 6.2, and only after compliance with the synopsis requirements of FAR 5.202 and 5.205 and 1804.570–2.

1817.7301–2 Evaluation factors.

A separate set of evaluation factors must be developed for each phase in a down-selection competition. Since these competitive down-selection strategies anticipate that a preceding phase contractor will be the subsequent phase contractor, the evaluation factors for initial phase award must specifically include evaluation of the offerors' abilities to perform all phases.

1817.7301–3 Down-selection milestones.

(a) When sufficient programmatic and technical information is available to all potential offerors, proposal evaluation and source selection activities need not be delayed until completion of a given phase. These activities should commence as early as practicable. The initial phase contracts should be structured to allow for down-selection at a discrete performance milestone (e.g., a significant design review or at contract completion) of a design maturity sufficient to allow for an informed selection decision. This will avoid time gaps between phases and eliminate unnecessary duplication of effort.

(b) The appropriate contract structure must reflect program technical objectives as well as schedule considerations. For example, if a two-phased acquisition strategy calls for formal completion of initial phase effort at Preliminary Design Review (PDR), but it is not financially practical or technically necessary for subsequent phase award and performance to carry all initial phase contractors through PDR, the initial phase contracts should be structured with a basic period of performance through a significant, discrete milestone before PDR with a priced option for effort from that milestone to PDR. The downselection would occur at the earlier milestone, the PDR option exercised only for the down-selection winner, and the subsequent phase performance begun at the completion of the PDR option.

1817.7301–4 Synopsis.

(a) Each phase of a phased acquisition not performed in-house must be synopsized in accordance with FAR 5.201 and must include all the information required by FAR 5.207. Time gaps between phases should be minimized by early synopsis of subsequent phase competition. The synopsis for the initial competitive phase should also state the following:

(1) The Government plans to conduct a phased acquisition involving a competitive down-selection process. (Include a description of the process and the phases involved.)

(2) Competitions for identified subsequent phases will build on the results of previous phases.

(3) The award criteria for subsequent phases will include demonstrated completion of specified previous phase requirements.

(4) The Government expects that only the initial phase contractors will be capable of successfully competing for the subsequent phase(s). Proposals for the subsequent phase(s) will be requested from these contractors.

(5) The Government intends to issue (or not issue) a new, formal solicitation(s) for subsequent phase(s). If new solicitations are not planned, the acquisition must be identified as a ''progressive competition'' (see 1817.7301–5), and the mechanism for providing pertinent subsequent phase proposal information (e.g., statements of work, specifications, proposal preparation instructions, and evaluation factors for award) must be described.

(6) Each subsequent phase of the acquisition will be synopsized in accordance with FAR 5.201 and 5.203.

(7) Notwithstanding the expectation that only the initial phase contractors will be capable of successfully competing for the subsequent phase(s), proposals from all responsible sources submitted by the specified due date will be considered. In order to contend for subsequent phase awards, however, such prospective offerors must demonstrate a design maturity equivalent to that of the prior phase contractors. Failure to fully and completely demonstrate the appropriate level of design maturity may render the proposal unacceptable with no further consideration for contract award.

(b) In addition to the information in paragraph (a) of this section, the synopsis for the subsequent phase(s) must identify the current phase contractors.

1817.7301–5 Progressive competition.

(a) To streamline the acquisition process, the preferred approach for NASA phased acquisitions is the ''progressive competition'' down-selection technique in which new, formal solicitations are not issued for phases subsequent to the initial phase. Subsequent phase proposals are requested by less formal means, normally by a letter accompanied by the appropriate proposal preparation and evaluation information.

(b) When using the progressive competition technique, if a prospective offeror other than one of the preceding phase contractors responds to the synopsis for a subsequent phase and indicates an intention to submit a proposal, the contracting officer shall provide to that offeror all the material furnished to the preceding phase contractors necessary to submit a proposal. This information includes the preceding phase solicitation, contracts, and system performance and design requirements, as well as all proposal preparation instructions and evaluation factors. In addition, the prospective offeror must be advised of all requirements necessary for demonstration of a design maturity equivalent to that of the preceding phase contractors.

(c) A key feature of the progressive competition technique is that a formal solicitation is normally not required. However, when the Government requirements or evaluation procedures change so significantly after release of the initial phase solicitation that a substantial portion of the information provided in the initial phase synopsis, solicitation, or contracts is no longer valid, a new solicitation shall be issued for the next phase.

(d) Subsequent phase proposals should be requested by a letter including the following:

(1) A specified due date for the proposals along with a statement that the late proposal information in paragraph (c)(3) of FAR 52.215–1, Instructions to Offerors—Competitive Acquisition, applies to the due date.

(2) Complete instructions for proposal preparation, including page limitations, if any.

(3) Final evaluation factors.

(4) Any statement of work, specifications, or other contract requirements that have changed since the initial solicitation.

(5) All required clause changes applicable to new work effective since the preceding phase award.

(6) Any representations or certifications, if required.

(7) Any other required contract updates (e.g., small and small disadvantaged business goals).

(e) Certain factors may clearly dictate that the progressive competition technique should not be used. For example, if it is likely that NASA may introduce a design concept independent of those explored by the preceding phase contractors, it is also likely that a new, formal solicitation is necessary for the subsequent phase and all potential offerors should be solicited. In this circumstance, progressive competition is inappropriate.

1817.7302 Contract clauses.

(a) The contracting officer shall insert the clause at 1852.217–71, Phased Acquisition Using Down-Selection Procedures, in solicitations and contracts for phased acquisitions using down-selection procedures other than the progressive competition technique described in 1817.7301–5. The clause may be modified as appropriate if the acquisition has more than two phases. The clause shall be included in the solicitation for each phase and in all contracts except that for the final phase.

(b) The contracting officer shall insert the clause at 1852.217–72, Phased Acquisition Using Progressive Competition Down-Selection Procedures, in solicitations and contracts for phased acquisitions using the progressive competition technique described in 1817.7301–5. The clause may be modified as appropriate if the acquisition has more than two phases. The clause shall be included in the initial phase solicitation and all contracts except that for the final phase.

PART 1834—MAJOR SYSTEM ACQUISITION

1834.003 [Amended]

3. Section 1834.003(a) is revised to read as follows:

1834.003 Responsibilities.

(a) NASA's implementation of OMB Circular No. A–109, Major Systems Acquisitions, and FAR Part 34 is contained in this part and in NASA Policy Directive (NPD) 7120.4, ''Program/Project Management,'' and NASA Procedures and Guidance (NPG) 7120.5, '' NASA Program and Project Management Processes and Requirements''.

1834.70 [Removed]

4. Subpart 1834.70 is removed.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.217–71 and 1852.217–72 [Added]

5. Sections 1852.217–71 and 1852.217–72 are added to read as follows:

1852.217–71 Phased acquisition using down-selection procedures.

As prescribed in 1817.7302(a), insert the following clause:

Phased Acquisition Using Down-Selection Procedures (Insert Month and Year of Federal Register Publication)

(a) This solicitation is for the acquisition of _____ [insert Program title]. The acquisition will be conducted as a two-phased procurement using a competitive down-selection technique between phases. In this technique, two or more contractors will be selected for Phase 1. It is expected that the single contractor for Phase 2 will be chosen from among these contractors after a competitive down-selection.

(b) Phase 1 is for the _____ [insert purpose of phase]. Phase 2 is for _____ [insert general Phase 2 goals].

(c) The competition for Phase 2 will be based on the results of Phase 1, and the award criteria for Phase 2 will include successful completion of Phase 1 requirements.

(d) NASA will issue a separate, formal solicitation for Phase 2 that will include all information required for preparation of proposals, including the final evaluation factors.

(e) Phase 2 will be synopsized in the Commerce Business Daily (CBD) in accordance with FAR 5.201 and 5.203 unless one of the exceptions in FAR 5.202 applies. Notwithstanding NASA's expectation that only the Phase 1 contractors will be capable of successfully competing for Phase 2, all proposals will be considered. Any other responsible source may indicate its desire to submit a proposal by responding to the Phase 2 synopsis, and NASA will provide that source a solicitation.

(f) To be considered for Phase 2 award, offerors must demonstrate a design maturity equivalent to that of the Phase 1 contractors. This, demonstration shall include the following Phase 1 deliverables upon which Phase 2 award will be based: _____ [(insert the specific Phase 1 deliverables]. Failure to fully and completely demonstrate the appropriate level of design maturity may render the proposal unacceptable with no further consideration for contract award.

(g) The following draft Phase 2 evaluation factors are provided for your information. Please note that these evaluation factors are not final, and NASA reserves the right to change them at any time up to and including the date upon which Phase 2 proposals are solicited.

[Insert draft Phase 2 evaluation factors (and subfactors and elements, if available), including demonstration of successful completion of Phase 1 requirements.]

(h) Although NASA will request Phase 2 proposals from Phase contractors, submission of the Phase 2 proposal is not a requirement of the Phase 1 contract. Accordingly, the costs of preparing these proposals shall not be a direct charge to the Phase 1 contract or any other Government contract.

(i) The anticipated schedule for conducting this phased procurement is provided for your information. These dates are projections only and are not intended to commit NASA to complete a particular action at a given time. [Insert dates below].

Phase 1 award—
Phase 2 synopsis—
Phase 2 proposal requested—
Phase 2 proposal receipt—
Phase 2 award—

(End of clause)

1852.217–72 Phased acquisition using progressive competition down-selection procedures.

As prescribed in 1817.7302(b), insert the following clause:

Phased Acquisition Using Progressive Competition Down-Selection Procedures (Insert Month and Year of Federal Register Publication)

(a) This solicitation is for the acquisition of _____ [insert Program title]. The acquisition will be conducted as a two-phased procurement using a progressive competition down-selection technique between phases. In this technique, two or more contractors will be selected for Phase

1. It is expected that the single contractor for Phase 2 will be chosen from among these contractors after a competitive down-selection.

(b) Phase 1 is for the _____ [insert purpose of phase]. Phase 2 is for _____ [insert general Phase 2 goals].

(c) The competition for Phase 2 will be based on the results of Phase 1, and the award criteria for Phase 2 will include successful completion of Phase 1 requirements.

(d) NASA does not intend to issue a separate, formal solicitation for Phase 2. Instead, Phase 2 proposals will be requested from the Phase 1 contractors by means of _____ [indicate method of requesting proposals, e.g., by a letter]. All information required for preparation of Phase 2 proposals, including the final evaluation criteria and factors, will be provided at that time.

(e) Phase 2 will be synopsized in the Commerce Business Daily (CBD) in accordance with FAR 5.201 and 5.203 unless one of the exceptions in FAR 5.202 applies. Notwithstanding NASA's expectation that only the Phase 1 contractors will be capable of successfully competing for Phase 2, all proposals will be considered. Any other responsible source may indicate its desire to submit a proposal by responding to the Phase 2 synopsis, and NASA will provide that source to all the material furnished to the Phase 1 contractors that is necessary to submit a proposal.

(f) To be considered for Phase 2 award, offerors must demonstrate a design maturity equivalent to that of the Phase 1 contractors.

This, demonstration shall include the following Phase 1 deliverables upon which Phase 2 award will be based: _____ [insert the specific Phase 1 deliverables]. Failure to fully and completely demonstrate the appropriate level of design maturity may render the proposal unacceptable with no further consideration for contract award.

(g) The following draft Phase 2 evaluation factors are provided for your information. Please note that these evaluation factors are not final, and NASA reserves the right to change them at any time up to and including the date upon which Phase 2 proposals are requested. Any such changes in evaluation factors will not necessitate issuance of a new, formal solicitation for Phase 2.

[Insert draft Phase 2 evaluation factors (and subfactors and elements, if available), including demonstration of successful completion of Phase 1 requirements.]

(h) Although NASA will request Phase 2 proposals from Phase 1 contractors, submission of the Phase 2 proposal is not a requirement of the Phase 1 contract. Accordingly, the costs of preparing these proposals shall not be a direct charge to the Phase 1 contract or any other Government contract.

(i) The anticipated schedule for conducting this phased procurement is provided for your information. These dates are projections only and are not intended to commit NASA to complete a particular action at a given time. [Insert dates below].

Phase 1 award—
Phase 2 synopsis—
Phase 2 proposal requested—
Phase 2 proposal receipt—
Phase 2 award—

(End of clause)

1852.234–70 and 1852.234–71 [Removed]

6. Sections 1852.234–70 and 1852.234–71 are removed.

[FR Doc. 98–28240 Filed 10–20–98; 8:45 am]
BILLING CODE 7510–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 216, 227, and 600

[I.D. 091498A]

Atlantic Pelagic Fishery; Marine Mammals; Endangered and Threatened Fish and Wildlife; Public Workshops

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

ACTION: Notice of public workshops.

SUMMARY: NMFS announces the dates and locations of four additional workshops for longline vessel operators scheduled during 1998. NMFS held one workshop on October 9, 1998, in New Bedford, MA. Additional workshops will be held through February 1999, to meet requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Endangered Species Act (ESA), and the Marine Mammal Protection Act (MMPA). The purpose of the workshops is to educate longliners on avoidance, handling, and release techniques for marine mammals and sea turtles and to provide information and receive feedback on different management options in the pelagic longline fishery.

DATES: The workshop dates are:

1. October 23, 1998, 9 a.m. to 5 p.m., Montauk, NY.
2. November 19, 1998, 9 a.m. to 5 p.m., Nags Head Beach, NC.
3. December 11, 1998, 9 a.m. to 5 p.m., Charleston, SC.
4. December 17, 1998, 9 a.m. to 5 p.m., Barnegat Light, NJ.

Workshop dates for 1999 will be announced in the **Federal Register** once they are scheduled.

ADDRESSES: The workshop locations are:

1. Montauk—Firehouse, 12 Flamingo Avenue, Montauk, NY 11954.
2. Nags Head Beach–-Comfort Inn South, 8031 Old Oregon Inlet Road, Nags Head Beach, NC 27959.
3. Charleston–-NMFS Charleston Laboratories, 219 Fort Johnson Road, Charleston, SC 29412.
4. Barnegat Light-–Firehouse, West 10th Street (corner of West 10th Street and Central Avenue), Barnegat Light, NJ 08006.

Workshop locations for 1999 will be announced in the **Federal Register** once they are scheduled.

FOR FURTHER INFORMATION CONTACT: Rebecca Lent, 301–713–2347, Cathy Eisele, 301–713–2322, or Therese Conant, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Introduction

NMFS will conduct workshops with owners/operators in the pelagic longline fishery throughout the Northeast and Mid-Atlantic. The purpose of the workshop is threefold: To supplement information gathered in a survey of fishery participants to evaluate alternatives for a comprehensive management system for pelagic longline fishery; to implement the recommendations of the NMFS Biological Opinion to hold workshops for vessel operators in order to reduce mortality of incidentally caught sea turtles; and to meet the requirements of the Atlantic Offshore Cetacean Take Reduction Team to hold workshops to educate pelagic longline vessel operators on marine mammal release and avoidance techniques.

Background

1. Section 304 of the Magnuson-Stevens Act requires NMFS to evaluate the feasibility of implementing changes to the management system for the Atlantic pelagic longline fishery. These requirements include (1) forming a pelagic longline advisory panel (Longline AP) to assist in the collection and evaluation of information relevant to future management of the fishery; (2) preparing a report evaluating the feasibility of implementing a comprehensive management system for the pelagic longline fishery, including consideration of limited access and individual fishing quota systems; and (3) conducting a survey and holding workshops with affected fishery participants to gather input on future management of the fishery.

NMFS formed the Longline AP in April 1997 and, with the assistance of the Longline AP, prepared a report to Congress outlining the feasibility of implementing several types of comprehensive management systems (''Study of the Feasibility of Implementing a Comprehensive Management System for the Pelagic Longline Fishery for Atlantic HMS,'' December 30, 1997). NMFS hereby gives notice of the first of a series of workshops that will be held with pelagic longline fishery participants to gather input on the feasibility of implementing a comprehensive management system for the fishery. The portion of the workshop dealing with endangered species and marine mammals will be conducted by NMFS personnel. The portion of the workshop evaluating alternatives for a comprehensive management system will be conducted by non-NMFS staff from the University of Hawaii and the University of Maryland.

The Longline AP identified the following seven areas of concern that should be considered in evaluating a future management system for the pelagic longline fishery: Overfished stocks; effects of international fisheries; effort control; bycatch reduction; the need to evaluate discrete gear harvests on a range of species; the need to improve communication among managers, the public, and the fishery; and reliance on historical data that may be inadequate. Management systems considered in the report to Congress are as follows: Open access; limited access to the shark and swordfish and bigeye, albacore, yellowfin, and skipjack tunas fisheries; and individual quota programs. One purpose of the workshops is to solicit input from fishery participants regarding the areas