

proposed to issue a SIP call for this provision.

On February 10, 2014, WDEQ submitted to EPA SIP revisions that included the removal of the problematic language in WAQSR Chapter 3, section 2(d), as well as updates to the State's incorporation by reference (IBR) of federal regulations. The State's IBR updates will be acted upon in a separate rulemaking.

III. Wyoming Revisions and EPA Analysis

Under CAA section 107, states have the primary authority and responsibility to develop and implement SIPs that provide for attainment, maintenance, and enforcement of the National Ambient Air Quality Standards and meet other CAA requirements. Pursuant to CAA section 110(k), EPA has the authority and responsibility to review state SIP submissions to assure that they meet all applicable requirements. CAA section 110(l) prohibits EPA from approving a SIP revision that (among other things) would interfere with any applicable requirement of the CAA. In this instance, the State has elected to revise its existing SIP by editing a previously approved provision that created exemptions from otherwise applicable emission limitations in the SIP.

The State made two edits to WAQSR Chapter 3, section 2(d). Notably, the sentence that read "This limitation shall not apply during a reasonable period of warmup following a cold start or where undergoing repairs and adjustment following malfunction" was struck from the provision.

We consider this change sufficient to correct the provision's inadequacy and to meet the requirements of the CAA.³ As a result of the removal of the problematic language from WAQSR Chapter 3, section 2(d), the improper exemptions from the emissions limitation contained within this provision will no longer be available to sources. EPA's proposed approval is also consistent with CAA section 110(l) because approval will not interfere with any applicable requirement of the CAA. Specifically, removal of the exemptions will not relax the existing emission limitation in the SIP and will in fact be more protective. Furthermore, this revision will render the revised emissions limitation consistent with the requirements of the CAA for SIP provisions by making it continuously

applicable and more enforceable. Therefore, we are proposing to approve the removal of this language from the provision.⁴

Wyoming also added language to WAQSR Chapter 3, section 2(d) clarifying that the provision applies to both stationary and portable diesel engines. EPA finds no issue with this clarifying language and therefore proposes to approve this change as well.

IV. EPA's Proposed Action

We are proposing to approve the revisions to WAQSR Chapter 3, section 2(d) of the Wyoming SIP, as reflected in the State's February 10, 2014 submission.

V. Statutory and Executive Orders Review

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 USC 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 USC 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999); is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 USC 272 note) because application of those requirements would be inconsistent with the CAA; and,

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Greenhouse gases, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 24, 2014.

Shaun L. McGrath,
Regional Administrator.

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DEPARTMENT OF EDUCATION

48 CFR Parts 3401, 3403, 3404, 3405, 3406, 3407, 3408, 3409, 3411, 3413, 3414, 3415, 3416, 3417, 3419, 3422, 3425, 3427, 3428, 3430, 3431, 3432, 3433, 3434, 3437, 3439, 3442, 3444, 3447, 3448, and 3452

[Docket ID ED-2013-OCFO-0078]

RIN 1890-AA18

Department of Education Acquisition Regulation

AGENCY: Office of the Chief Financial Officer, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to modify the Department of Education Acquisition Regulation (EDAR) in order to update it to accurately implement the current Federal Acquisition Regulation (FAR) and Department policies.

DATES: The Department must receive your comments on or before September 15, 2014.

³ For a more in-depth discussion on the inadequacy of WAQSR Chapter 3, section 2(d), see our proposed SIP call at 78 FR 12533, February 22, 2013.

⁴ We note that if we finalize our proposed approval of this revision to the Wyoming SIP, it will have the effect of mooted our proposed SIP call regarding this provision.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to www.regulations.gov to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under “Are you new to the site?”

- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these proposed regulations, address them to Roscoe Price, U.S. Department of Education, 400 Maryland Avenue SW., Room 7172, PCP, Washington, DC 20202-4200.

Privacy Note: The Department’s policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT:

Roscoe Price, U.S. Department of Education, 400 Maryland Avenue SW., Room 7172, PCP, Washington, DC 20202-4200. Telephone: (202) 245-6222 or by email: Roscoe.Price@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

The Department invites you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, the Department urges you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

The Department invites you to assist us in complying with the specific requirements of Executive Order 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits

while preserving the effective and efficient administration of the Department’s programs and activities.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You may also inspect the comments in person in Room 7172, Potomac Center Plaza, 550 12th Street SW., Washington, DC, between 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to any individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

The uniform regulation for the procurement of supplies and services by Federal Departments and Agencies, the FAR, was promulgated on September 19, 1983 (48 FR 42102). The FAR is codified in title 48, chapter 1, of the Code of Federal Regulations. The Department promulgated the EDAR to implement the FAR on May 23, 1988 (53 FR 19119).

The EDAR (title 48, chapter 34 of the Code of Federal Regulations) is prescribed under 5 U.S.C. 301 and the general authorization in FAR 1.301. The last revision of the EDAR was published in the **Federal Register** on March 8, 2011 (76 FR 12796).

Significant Proposed Regulations

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory changes that are technical or otherwise minor in effect.

These proposed regulations would amend the EDAR as follows:

SUBCHAPTER A—GENERAL

PART 3401—ED ACQUISITION REGULATION SYSTEM

FAR: FAR Part 1 (Federal Acquisition Regulations System) sets forth the purpose, authority, and structure of the FAR, authorizes agency FAR supplements and deviations from the FAR, and discusses career development, contracting authority, and responsibilities.

Current Regulations: The current EDAR contains delegations for deviation approvals that do not reflect optimal business operations. The current regulations do not correctly identify the individuals responsible for approving delegations and do not set forth procedures for obtaining approval of a deviation. The current regulations reflect numbering that has been changed by recent changes to the FAR.

Proposed Regulations: In subpart 3401.4, “Deviations,” the proposed regulations would revise sections 3401.403 (Individual deviations) and 3401.404 (Class deviations) to designate the Head of the Contracting Activity (HCA) as the approving official for individual deviations and the Senior Procurement Executive (SPE) as the approving official for class deviations. The proposed regulations would also add section 3401.470 (Procedures) to provide procedures for requesting deviations from the FAR or the EDAR.

In subpart 3401.6, “Career Development, Contracting Authority, and Responsibilities,” the proposed regulations would redesignate section 3401.670 as section 3401.604-70 and would further redesignate sections 3401.670-1, 3401.670-2, and 3401.670-3 as sections 3401.604-70.1, 3401.604-70.2, and 3401.604-70.3, respectively, to be consistent with the new FAR 1.604.

Reasons: On March 16, 2011, section 1.604 was added to the FAR. This proposed change would update the EDAR to be consistent with the FAR numbering scheme. Also, the proposed change would identify the correct position for approving individual and class deviations as well as establish the procedures required for approval of deviations from the FAR or the EDAR.

PART 3403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

FAR: FAR Part 3 (Improper Business Practices and Personal Conflicts of Interest) regulates standards of conduct, gratuities to Government personnel, reports of suspected antitrust violations, contingent fees, and contracts with Government employees or organizations owned or controlled by them.

Current Regulations: The current EDAR requires Department personnel to report violations of the gratuities clause, antitrust violations, and misrepresentation or violation of the covenant against contingent fees.

Proposed Regulations: The Department is proposing to add section 3403.104-7 to identify the SPE as the agency head for the purposes of FAR 3.104-7(d)(2)(ii)(B) and to add section 3403.204, revise section 3403.602, and add sections 3403.7 and 3403.9 to identify the SPE as the agency head’s designee for the purposes of FAR 3.204, 3.602, 3.704, 3.705, 3.905, and 3.906.

Reasons: The proposed revisions identify the official delegated the authority to provide exceptions and sign determinations identified in FAR 3.1, 3.2, 3.6, 3.7, and 3.9.

PART 3404—ADMINISTRATIVE MATTERS

FAR: FAR Part 4 (Administrative Matters) sets forth requirements for contract execution, documentation, retention, and reporting.

Current Regulations: The current EDAR does not address this FAR part.

Proposed Regulations: The Department proposes to add PART 3404, “ADMINISTRATIVE MATTERS,” to SUBCHAPTER A to consist of subpart 3404.7 and section 3404.770 to prescribe the use of clause 3452.204–70, “Maintenance and Retention of Government-Owned/Contractor-Held Federal Records” in all solicitations and contracts where contractors are in possession of Federal records.

Reasons: This addition is necessary to provide contractors guidance on the handling of Federal records, often containing personally identifiable information, both during and after performance of contracts.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 3405—PUBLICIZING CONTRACT ACTIONS

FAR: FAR Part 5 (Publicizing Contract Actions) sets forth requirements for publicizing actions in each phase of the acquisition process and the mandatory time required for actions to be published prior to action being taken by the Government.

Current Regulations: The current EDAR sets forth specific statutory authorities provided to Federal Student Aid (FSA).

Proposed Regulations: The Department is proposing to add subpart 3405.4 to identify the SPE as the agency head’s designee for the purposes of FAR 5.404–1(a) and (b).

Reasons: The proposed revision identifies the official responsible for releasing long range estimates for the Department.

PART 3406—COMPETITION REQUIREMENTS

FAR: FAR Part 6 (Competition Requirements) regulates how agencies compete various contract actions.

Current Regulations: The current EDAR states that this part of the FAR does not apply to modular contracting performed by the Performance Based Organization (PBO) as a result of statutorily provided authority.

Proposed Regulations: The proposed changes would add subpart 3406.2 and section 3406.302–1 to identify the HCA as the agency head for the purposes of FAR 6.202 and 6.302–1(b)(4); would add section 3406.302–2 to identify the SPE as the agency head’s designee for the purposes of FAR 6.302–2(d)(2); would add section 3406.302–7 to identify the Secretary as having the exclusive authority to approve all public interest determinations for the purposes of FAR 6.302–7(c); and would revise section 3406.501 to designate Competition Advocates for each contracting activity.

Reasons: The proposed change would identify the agency head for the purposes of FAR 6.2 and 6.3 and the agency head’s designee for the purposes of FAR 6.3, except to reserve public interest determinations for the Secretary of Education, and would identify the Competition Advocates for each Contracting Activity mandated in FAR 6.5.

PART 3407—ACQUISITION PLANNING

FAR: FAR Part 7 (Acquisition Planning) sets forth requirements for presolicitation activities that must be addressed by the

Government, identifies analysis of requirements for contractor versus Government performance, and identifies how to determine if work is inherently Governmental.

Current Regulations: The current EDAR does not address this part of the FAR.

Proposed Regulations: The Department proposes to add PART 3407, “ACQUISITION PLANNING,” to SUBCHAPTER B to consist of subpart 3407.1 to identify the SPE as the agency head’s designee for the purposes of FAR 7.103.

Reasons: The proposed changes to the regulations would add the authority for promulgating the regulation and would clearly identify the appropriate official for making determinations under FAR 7.1.

PART 3408—REQUIRED SOURCES OF SUPPLIES AND SERVICES

FAR: FAR Part 8 (Required Sources of Supplies and Services) mandates certain sources and details how agencies must use those sources.

Current Regulations: The current EDAR requires a printing clause in subpart 3408.8 (Acquisition of Printing and Related Supplies) and addresses paperwork reduction in PART 3427.

Proposed Regulations: The proposed changes would revise section 3408.870 to clarify when the printing clause at 3452.208–71 is required.

Reasons: The proposed changes would update the EDAR to reflect mandatory use of the printing clause at 3452.208–71 in all solicitations and contracts where printing is anticipated.

PART 3409—CONTRACTOR QUALIFICATIONS

FAR: FAR Part 9 (Contractor Qualifications) prescribes policies, standards, and procedures for determining whether prospective contractors are responsible.

Current Regulations: The current EDAR identifies procedures for Debarment and Suspension and prescribes procedures for identifying conflicts of interest.

Proposed Regulations: The Department proposes to add subpart 3409.2 and amend subparts 3409.4 and 3409.5 by adding sections 3409.405, 3409.405–1, 3409.405–2, 3409.406–1, 3409.407–1, and 3409.503, respectively, to identify the SPE as the agency head’s designee for the purposes of FAR 9.202(a)(1), 9.206–1(b), 9.405(a), 9.405(d)(3), 9.405–1, 9.405–2, 9.406–1(c), 8.407–1(d), and 9.503.

Reasons: The proposed changes would update the EDAR to identify the SPE as the agency head’s designee for the purposes of FAR 9.202(a)(1), 9.206–1(b), 9.405(a), 9.405(d)(3), 9.405–1, 9.405–2, 9.406–1(c), 8.407–1(d), and 9.503.

PART 3411—DESCRIBING AGENCY NEEDS

FAR: FAR Part 11 (Describing Agency Needs) includes sections on developing requirements documents, performance schedules, approaching liquidated damages, and variations in quantity.

Current Regulations: The current EDAR does not address this part of the FAR.

Proposed Regulations: The Department proposes to add PART 3411, “DESCRIBING

AGENCY NEEDS,” to SUBCHAPTER B to consist of subpart 3411.1 and 3411.5. The proposed addition would identify the HCA as the agency head for the purposes of FAR 11.103(a) and 11.501(d).

Reasons: The proposed changes to the regulations would update the EDAR to identify the appropriate official for making determinations under FAR 11.103(a) and 11.501(d).

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 3413—SIMPLIFIED ACQUISITION PROCEDURES

FAR: FAR Part 13 (Simplified Acquisition Procedures) allows and describes streamlined ways of purchasing goods and services below the simplified acquisition threshold.

Current Regulations: The EDAR currently sets out FSA’s authority to use simplified acquisition methods for commercial items at any value and noncommercial items up to \$1 million.

Proposed Regulations: The Department proposes to add subpart 3413.2 and amend subpart 3413.3 to identify the SPE as the agency head for the purposes of FAR 13.201(g)(1) and 13.305–3(a).

Reasons: The proposed changes to the regulations would clearly identify the appropriate official for making determinations under FAR 13.201(g)(1) and 13.305–3(a).

PART 3414—SEALED BIDDING

FAR: FAR Part 14 (Sealed Bidding) describes the rules and requirements for using sealed bidding as a method of acquisition.

Current Regulations: The current EDAR identifies the HCA as the official authorized to make determinations under FAR 14.407–3.

Proposed Regulations: The Department proposes to revise subpart 3414.4 to identify the HCA as the agency head for the purposes of FAR 14.404–1(c), 14.407–3, and 14.407–4.

Reasons: The proposed changes to the regulations would clearly identify the appropriate official for making determinations under FAR 14.404–1(c), 14.407–3, and 14.407–4.

PART 3415—CONTRACTING BY NEGOTIATION

FAR: FAR Part 15 (Contracting by Negotiation) sets forth procedures for acquiring goods and services through negotiated procurement.

Current Regulations: The current EDAR contains the process for submitting unsolicited proposals and implements the use of a two-phase procurement.

Proposed Regulations: The Department proposes to add section 3415.204 to identify the SPE as the agency head’s designee for the purposes of FAR 15.204(e).

Reasons: The proposed change to the regulation would clearly identify the appropriate official for making determinations under FAR 15.204(e).

PART 3416—TYPES OF CONTRACTS

FAR: FAR Part 16 (Types of Contracts) describes the various contract types and

consideration in determining the type of contract to use for a particular acquisition.

Current Regulations: The current EDAR incorrectly states that an award term that is earned is affected by unilateral modification.

Proposed Regulations: The Department proposes to revise section 3416.470(f)(2) to require bilateral contract modification to extend a contract for an earned award term period.

Reasons: This revision of section 3416.470(f)(2) would correct the error in the current EDAR.

PART 3417—SPECIAL CONTRACTING METHODS

FAR: FAR Part 17 (Special Contracting Methods) includes requirements for options and interagency acquisitions under the Economy Act.

Current Regulations: The current EDAR includes requirements for options and the use of Modular Contracting.

Proposed Regulations: The Department proposes to add section 3417.208 to prescribe the appropriate use of clauses 3452.17–70, “Evaluation of Options to Include Award Terms,” and 3452.17–71, “Option to Extend the Term of an Award Term Contract.” Additionally, the Department proposes to add section 3417.104 and subpart 3417.6 to identify the SPE and Assistant Secretary for the Office of Management as the agency head for the purposes of FAR 17.104(b) and 17.602, respectively.

Reasons: The changes are necessary to prescribe when to include specific option-related clauses regarding Award Term Contracting and to clearly identify the appropriate official for making determinations under FAR 17.104(b) and 17.602.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 3419—SMALL BUSINESS PROGRAMS

FAR: FAR Part 19 (Small Business Programs) describes requirements for and availability of contracting preference programs for small businesses.

Current Regulations: The current regulations identify regulatory flexibilities afforded to FSA.

Proposed Regulations: The Department proposes to add section 3419.505 and subpart 3419.8 to include section 3419.810 to identify the SPE as the agency head for the purposes of FAR 19.505 and 19.810, respectively. The Department proposes to add section 3419.812 in subpart 3419.8 to identify the HCA as the agency head for the purposes of FAR 19.812(d). Additionally, the Department proposes to add section 3419.70 to prescribe when to include clause 3452.219–70 in commercial item procurements.

Reasons: The changes would clearly identify the appropriate official for making determinations under FAR 19.5 and 19.8 and include a clause to provide favorable price evaluation treatment for socioeconomic subcategories for which the Department has historically failed to meet prime award goals.

PART 3422—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

FAR: FAR Part 22 (Application of Labor Laws to Government Acquisitions) describes various laws, policies, and prohibitions governing Federal acquisition.

Current Regulations: The current regulations explain that the five-year limitation in the Service Contract Act of 1965, as amended (Service Contract Act), applies to each period of the contract individually, not to the cumulative period of base and option years, and that accordingly no Department contract will have a base or option period longer than five years.

Proposed Regulations: The Department proposes to amend PART 3422, “APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS,” to add section 3422.406–8 to identify the SPE as the agency head’s designee for the purposes of FAR 22.406–8(d) and to add sections 3422.604–2, 3422.803, 3422.807, 3422.1305, 3422.1310, 3422.1403, and 3422.1408 to identify the SPE as the agency head for the purposes of FAR 22.604–2(b)(1), 22.803(c), 22.807(a)(1), 22.1305, 22.1310(a)(1)(ii) and (a)(2), 22.1403, and 22.1408, respectively. The Department proposes to add section 3422.302 to identify the HCA as the agency head for the purposes of FAR 22.302(c) and to add section 3422.406–9 to identify the HCA as the authority to suspend contract payments pursuant to FAR 22.406–9(b). Additionally, the Department proposes to add section 3422.406–8 to identify the Chief of the Contracting Office as the responsible party for conducting labor standards investigations as prescribed in FAR 22.406–8(a).

Reasons: The proposed changes to the regulations would clearly identify the appropriate official for making determinations or decisions under FAR 22.302(c), 22.406–8(a), 22.406–8(d), 22.406–9(b), 22.604–2(b)(1), 22.803(c), 22.807(a)(1), 22.1305, 22.1310, 22.1403, and 22.1408.

PART 3425—FOREIGN ACQUISITION

FAR: FAR Part 25 (Foreign Acquisition) implements the Buy American Act.

Current Regulations: The current EDAR designates the HCA as the approving official for determinations relating to the Buy American Act.

Proposed Regulations: The Department proposes to amend PART 3425, “FOREIGN ACQUISITIONS,” to add sections 3425.103, 3425.105, and 3425.202 to delegate authority to the HCA make the determinations prescribed in FAR 25.103(a), 25.105(a)(1) and 25.202(a)(1). The Department proposes to add section 3425.204 to identify the HCA as the agency head for the purposes of FAR 25.204(b) and to add section 3425.1001 to identify the SPE as the agency head for the purposes of FAR 25.1001(a)(2)(iii).

Reasons: The Department has previously identified the approving official for one of the subparts in FAR 25; this change would clearly identify the appropriate official for making determinations under FAR 25.103(a), 25.105(a)(1), 25.202(a)(1), 25.204(b), and 25.1001(a)(2)(iii).

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 3427—PATENTS, DATA, AND COPYRIGHTS

FAR: FAR Part 27 (Patents, Data, and Copyrights) regulates patents, copyrights, rights in data, and foreign license and technical agreements under Federal contracts.

Current Regulations: The current EDAR includes in this part prescriptions for clauses on publication and publicity, advertising of awards, and paperwork reduction.

Proposed Regulations: The Department proposes to add subpart 3427.3 consisting of section 3427.303 to identify the SPE as the agency head’s designee for the purposes of FAR 27.303.

Reasons: The proposed change to the regulation would clearly identify the appropriate official for making determinations under FAR 27.303.

PART 3428—BONDS AND INSURANCE

FAR: FAR Part 28 (Bonds and Insurance) regulates the appropriate use and requirements for bonds and insurance under Federal contracts.

Current Regulations: The current EDAR includes in this part a prescription for a clause specifying when insurance is mandatory.

Proposed Regulations: The Department proposes to add subpart 3428.1 (Bonds and Other Financial Protections) to include section 3428.101–1 and subpart 3428.2 to include section 3428.203–7 to identify the SPE as the agency head’s designee for the purposes of FAR 28.101–1(c) and 28.203–7. The Department proposes to add section 3428.106–6 to identify the HCA as the agency head’s designee for the purposes of FAR 28.106–6(c). The Department proposes to add section 3428.203 to identify the Assistant Inspector General for Investigations as the appropriate official to receive evidence of possible criminal or fraudulent activities by an individual surety.

Reasons: The proposed change to the regulations would clearly identify the appropriate official for making determinations under FAR 28.101–1(c), 28.106–6(c), and 28.203–7 and to identify the official for receiving evidence under FAR 28.203.

PART 3430—COST ACCOUNTING STANDARDS ADMINISTRATION

FAR: FAR Part 30 (Cost Accounting Standards Administration) includes sections on the administration of contractor financial systems and responsibility for disclosure.

Current Regulations: The current EDAR does not address this part of the FAR.

Proposed Regulations: The Department proposes to add PART 3430, “COST ACCOUNTING STANDARDS ADMINISTRATION,” to include section 3430.201–5 to identify the SPE as the head of the agency for the purposes of FAR 30.201–5(a) and (b).

Reasons: The proposed change to the regulation would clearly identify the appropriate official for making determinations under FAR 30.201–5.

PART 3431—CONTRACT COST PRINCIPLES AND PROCEDURES

FAR: FAR Part 31 (Contract Cost Principles and Procedures) includes sections regulating costs under contracts with commercial, educational, and nonprofit organizations.

Current Regulations: The current EDAR does not address this part of the FAR.

Proposed Regulations: The Department proposes to add PART 3431, “CONTRACT COST PRINCIPLES AND PROCEDURES,” to add subpart 3431.1 consisting of section 3431.101 to identify the SPE as the agency head’s designee for the purposes of FAR 31.101 and add subpart 3431.2 to include section 3431.205–6 to identify the HCA as the agency head’s designee for the purposes of FAR 31.295–6(g)(3).

The Department proposes to add section 3431.205–70 to prescribe the use of clause 3452.231–70 (Food Costs) to prohibit the use of contract funds to procure food unless authorized by the Contracting Officer (CO) in advance. The Department proposes to add section 3431.205–71 to prescribe the use of clause 3452.231–71 (Travel Costs) to prohibit the use of contract funds to pay for noncontractor travel unless authorized by the Contracting Officer in advance.

The Department proposes to add section 3431.205–72 to prescribe the clause at 3452.231–72 (Clearance of Conferences/ Meetings) that requires Department contractors arranging conferences on behalf of the Department to seek the services of the Department’s Event Services office or agreement from that office that the services may be subcontracted.

Reasons: The proposed changes to the regulations would clearly identify the appropriate official for making determinations under FAR 31.101 and 31.205–6. The added clauses are required to ensure adequate control over contract funds for use to pay for noncontractor travel and meals and for Department conferences.

PART 3432—CONTRACT FINANCING

FAR: FAR Part 32 (Contract Financing) regulates the types of financing the Government may make available to contractors, including advance payments.

Current Regulations: The current EDAR designates the HCA as the official authorized to authorize types of financing in subpart 3432.4 (Advance Payments) and section 3432.705–2 (Clauses for Limitation of Cost or Funds), which prescribes the use of clause 3452.232–70 (Limitation of Cost or Funds) and the provision in clause 3452.232–71 (Incremental Funding).

Proposed Regulations: The Department proposes to add subparts 3432.0, 3432.1, 3432.2, and 3432.9 to PART 3432, “CONTACT FINANCING.” Sections 3432.006–1, 3432.006–4, and 3432.114 would identify the SPE as the agency head for the purposes of FAR 32.006–1, 32.006–4, and 32.114, respectively. The Department proposes to add section 3432.006–3 to identify Department personnel responsibilities and procedures that must be followed when there is any suspected instance of fraud involved in payment requests.

The Department proposes to add sections 3432.201, 3432.703–3, and 3432.906 to

identify the HCA as the agency head for the purposes of FAR 32.201, 32.703–3(b), and 32.906(a), respectively. The Department proposes to add section 3432.006–2 to define the “Remedy Coordination Official.”

The Department proposes to add section 3432.902 to define “delivery date” as the date on which products and services are deemed received.

Reasons: The addition of section 3432.902 would provide clarification to potential vendors that may make delivery of products or services after 4:30 p.m., that those deliveries will be deemed to be received the next business day.

The other proposed changes would identify the appropriate officials that have been designated to make determinations under various subparts of FAR 32 and identify the appropriate official and procedure to report requests for payments based on fraud.

PART 3433—PROTESTS, DISPUTES, AND APPEALS

FAR: FAR Part 33 (Protests, Disputes, and Appeals) regulates the Government’s actions when a protest is filed with the agency or the Government Accountability Office (GAO) and when disputes occur under contracts.

Current Regulations: The current EDAR designates the HCA as the official authorized to approve a determination to continue with performance after receipt of a protest.

Proposed Regulations: The Department proposes to revise section 3433.103 to identify the Competition Advocate for the contracting activity as having responsibility for the independent review required by FAR 33.103(d)(4).

The Department proposes to add section 3433.103(f)(1) and 3433.103(f)(3) to identify the HCA as having responsibility for approving any determination to proceed with the contract award for protests filed and received before award and to continue performance after the receipt of an agency protest after award. We further clarify that in those cases where the Contracting Officer (CO) is also the HCA, the determination must be approved by the SPE. The Department proposes to add section 3433.104 to require contracting activities to seek guidance from the Office of the General Counsel (OGC) before taking action in response to a GAO protest. The Department proposes to add section 3433.203 to identify the SPE as the agency head for the purposes of FAR 33.203(b).

The Department proposes to add section 3433.211 to require the Contracting Officer to obtain assistance, as appropriate, from OGC prior to issuing a final decision.

Reasons: The Department proposes to revise section 3433.103 to clarify that there are two contracting activities, each with its own Competition Advocate. The Department proposes to add section 3433.104 to identify the HCA as having the responsibility for determining if work should begin after a protest has been received. The Department proposes to add section 3433.203 to identify the SPE as the agency head for the purposes of FAR 33.203. The Department proposes to add section 3433.211 to require the Contracting Officer to confer with the OGC,

when appropriate, prior to issuing any final determination.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING**PART 3434—MAJOR SYSTEM ACQUISITION**

FAR: FAR Part 34 (Major System Acquisition) describes acquisition policies and procedures for use in acquiring major systems consistent with OMB Circular No. A–109. FAR Part 34 also describes the use of an Earned Value Management System in acquisitions designated as major acquisitions consistent with OMB Circular A–11, Part 7.

Current Regulations: The current EDAR does not address this part of the FAR.

Proposed Regulations: The Department proposes to add PART 3434, “MAJOR SYSTEM ACQUISITION.” Section 3434.003 would identify the SPE as the agency head’s designee for the purposes of FAR 34.003(a). The Department proposes to add section 3434.003(b) to identify the SPE as the agency head for the purposes of FAR 34.003(c) and the acquisition executive for the purposes of OMB Circular No. A–109. Section 3434.005–6 would identify the SPE as the agency head’s designee for the purposes of FAR 34.005–6.

Reasons: These changes would identify the appropriate officials that have been designated to make determinations under various subparts of FAR 34.

PART 3437—SERVICE CONTRACTING

FAR: FAR Part 37 (Service Contracting) regulates various types of service contracts and performance-based acquisition.

Current Regulations: The EDAR currently contains section 3437.270 (Services of Consultants Clauses), which prescribes the use of clause 3452.237–70 (Services of Consultants) in all cost-reimbursement contracts and solicitations. This clause requires the contractor to obtain the Contracting Officer’s written approval to use certain consultants under a cost-type contract.

Proposed Regulations: The Department proposes to revise subpart 3437.2 and add section 3437.601 to subpart 3437.6. Proposed section 3437.204 would identify the HCA as the agency head for the purposes of FAR 37.204. The Department proposes to revise section 3437.270 to provide clarification on when the Contracting Officer must use clause 3452.237–70 (Services of Consultants). The Department proposes to add section 3437.601 to establish the Department’s policy that all new service contracts be performance-based unless approved by the Departmental Competition Advocate.

Reasons: These changes would clearly identify the official responsible for approving advisory contracts, clarify that the Services of Consultants clause is not applicable to FSA contracts, and establish the minimum requirements to be contained in any new service contract.

PART 3439—ACQUISITION OF INFORMATION TECHNOLOGY

FAR: FAR Part 39 (Acquisition of Information Technology) regulates the acquisition of information technology.

Current Regulations: The current EDAR contains multiple information technology initiatives and standards requirements for Internet Protocol Version 6 and security requirements.

Proposed Regulations: The Department proposes to remove section 3439.701 from subpart 3439.70 because the section is no longer needed. A FAR clause has been established to fulfill its purpose.

Reasons: Current section 3439.701 has been replaced by a FAR clause and is obsolete.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 3442—CONTRACT ADMINISTRATION AND AUDIT SERVICES

FAR: FAR Part 42 (Contract Administration and Audit Services) requires use of a contractor performance information system and contract monitoring; it also governs other contract administration functions.

Current Regulations: The current EDAR contains sections on contract monitoring and the accessibility of meetings, conferences, and seminars to persons with disabilities.

Proposed Regulations: The Department proposes to add subparts 3442.6 and 3442.7 and to revise section 3442.7101 in subpart 3442.71. We would add section 3442.602 to identify the SPE as the agency head's designee for the purposes of FAR 42.602(a) and add section 3443.703–2 to identify the HCA as the agency head's designee for the purposes of FAR 42.703–2(b). Additionally, the Department proposes to revise section 3442.7101 to clarify that the use of clause 3452.242–73 (Accessibility of meetings, conferences, and seminars to persons with disabilities) is mandatory in all solicitations and contracts where conferences are contemplated.

Reasons: The current regulation is general in the application of the accessibility clause, and the proposed changes would clearly identify the appropriate official for making determinations under FAR 42.302.

PART 3444—SUBCONTRACTING POLICIES AND PROCEDURES

FAR: FAR Part 44 (Subcontracting Policies and Procedures) includes sections that govern contracts requiring the Government's consent to subcontract, the review of a contractor's purchasing system, and subcontracts under commercial item purchases.

Current Regulations: The current EDAR does not address this part of the FAR.

Proposed Regulations: The Department proposes to add PART 3444, "SUBCONTRACTING POLICIES AND PROCEDURES." Section 3444.302 would identify the SPE as the head of the agency for the purposes of FAR 44.302(a).

Reasons: The proposed change to the regulation would clearly identify the appropriate official for making determinations under FAR 44.302.

PART 3447—TRANSPORTATION

FAR: FAR Part 47 (Transportation) includes sections regulating transportation-related services, transportation in supply contracts, and transportation by U.S. flag carriers and vessels.

Current Regulations: The current EDAR includes in section 3447.701 a foreign travel provision for when the Contracting Officer must use clause 3452.247–70 (Foreign travel).

Proposed Regulations: The Department proposes to revise 3447.701 to clarify that the Contracting Officer must insert clause 3452.247–70 (Foreign Travel) in all solicitations and resultant cost reimbursement contracts where foreign travel is contemplated.

Reasons: This change would clarify when the Contracting Officer must use clause 3452.247–70.

PART 3448—VALUE ENGINEERING

FAR: FAR Part 48 (Value Engineering) includes sections that identify the appropriate sharing methodologies for proposals that would generate savings on the instant acquisition through which a value engineering proposal is submitted, as well as sharing of savings on collateral contracts.

Current Regulations: The current EDAR does not address this part of the FAR.

Proposed Regulations: The Department proposes to add PART 3448, "VALUE ENGINEERING." Proposed sections 3448.102 and 3448.201 would delegate to the HCA, without power of redelegation, the authority regarding the exemptions prescribed in FAR 48.102(g) and 48.201(a)(6), respectively.

Reasons: The proposed regulations would clearly identify the appropriate official for making exemption determinations under FAR 48.102(g) and 48.201(a)(6), respectively.

SUBCHAPTER H—CLAUSES AND FORMS

PART 3452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

FAR: FAR Part 52 (Solicitation Provisions and Contract Clauses) is the part of the FAR containing all FAR provisions and clauses required or recommended for inclusion in solicitations and contracts, as prescribed in the preceding parts of the FAR.

Current Regulations: The current EDAR includes in PART 3452, "SOLICITATION PROVISIONS AND CONTRACT CLAUSES," text for 30 provisions and clauses, all of which are prescribed in the preceding parts of the EDAR.

Proposed Regulations: The Department proposes to add section 3452.204–70 to implement guidance provided by the National Archives and Records Administration consistent with the requirements of the Department; revise section 3452.216–71(e) to require bilateral modifications rather than unilateral Government modifications in cases of earned award term periods; add section 3452.217–70 to include the evaluation of award term periods; add section 3452.219–70 to allow evaluations to include socioeconomic categories; add section 3452.231–70 to preclude the procurement of food under a cost reimbursement contract unless authorized in advance by the CO; add section 3452.231–71 to identify invitational travel as an unallowable cost; add section 3431.231–72 to require contractors to work with the Event Services staff to establish any hotel contracts; and remove section 3452.239–70.

Additionally, the Department proposes to add subpart 3452.3, consisting of section

3452.301 (Solicitation provisions and contract clauses (Matrix)), a clause matrix.

Reasons: The proposed changes to this part of the EDAR are consistent with the changes to the prescriptive language in the preceding parts and would update the provisions and clauses to more accurately reflect current regulations and policy. Section 3452.239–70 would be removed because it is obsolete. The addition of a clause matrix in section 3452.301 would provide an easy reference point for Contracting Officers to check.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

We are issuing these proposed regulations only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that these proposed regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department’s programs and activities.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum on “Plain Language in Government Writing” require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity and create a barrier to contracting with the Department?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections?
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could the Department do to make the proposed regulations easier to understand and access?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The proposed regulations would update the EDAR; they would not directly regulate any small entities. As a result, a regulatory flexibility analysis is not required and none has been prepared.

Paperwork Reduction Act of 1995

These proposed regulations do not contain any information collection requirements.

Intergovernmental Review

These regulations are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

In accordance with section 441 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

(Catalog of Federal Domestic Assistance Number does not apply.)

List of Subjects in 48 CFR Parts 3401, 3403, 3404, 3405, 3406, 3407, 3408, 3409, 3411, 3413, 3414, 3415, 3416, 3417, 3419, 3422, 3425, 3427, 3428, 3430, 3431, 3432, 3433, 3434, 3437, 3439, 3442, 3444, 3447, 3448, and 3452

Government procurement.

Dated: June 30, 2014.

Arne Duncan,
Secretary of Education.

Accordingly, the Secretary proposes to amend title 48 of the Code of Federal Regulations, chapter 34 as follows:

PART 3401—ED ACQUISITION REGULATION SYSTEM

- 1. The authority citation for part 3401 continues to read as follows:

Authority: 5 U.S.C. 301 and 20 U.S.C. 1018a.

- 2. Section 3401.403 is revised to read as follows:

3401.403 Individual deviations.

An individual deviation from the FAR or the EDAR must be approved by the HCA.

- 3. Section 3401.404 is revised to read as follows:

3401.404 Class deviations.

A class deviation from the FAR or the EDAR must be approved by the Senior Procurement Executive (SPE).

- 4. Section 3401.470 is added to read as follows:

3401.470 Procedures.

(a) The HCA must submit to the SPE a written request for each deviation from the FAR or the EDAR. Each request for a deviation must include:

- (1) The nature of the deviation requested, including whether it is an individual or class deviation.
- (2) The FAR or EDAR regulation from which the deviation is requested.
- (3) The circumstances under which the deviation would be used.
- (4) The effect intended by the deviation.
- (5) The expiration date recommended for the deviation.
- (6) All pertinent documentation supporting the request.

(b) The Contracting Officer must include in the contract file a copy of each authorized deviation that pertains to the acquisition.

Sections 3401.670, 3401.670–1, 3401.670–2, and 3401.670–3. [Redesignated as 3401.604–70, 3401.604–70.1, 3401.604–70.2, and 3401.604–70.3]

- 5. Sections 3401.670, 3401.670–1, 3401.670–2, and 3401.670–3 are redesignated as sections 3401.604–70, 3401.604–70.1, 3401.604–70.2, and 3401.604–70.3, respectively.

PART 3403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

- 6. The authority citation for part 3403 continues to read as follows:

Authority: 5 U.S.C. 301.

- 7. Sections 3403.104 and 3403.104–7 are added to read as follows:

3403.104 Procurement integrity.**3403.104-7 Violations or possible violations.**

(d)(2)(ii)(B) The SPE is the agency head for the purposes of FAR 3.104-7(d)(2)(ii)(B).

■ 8. Section 3403.204 is added to read as follows:

3403.204 Treatment of violations.

(a) The SPE is the agency head's designee for the purposes of FAR 3.204.

■ 9. Section 3403.602 is revised to read as follows:

3403.602 Exceptions.

The SPE is the agency head's designee for the purposes of FAR 3.602.

■ 10. Subpart 3403.7 is added to read as follows:

Subpart 3403.7—Voiding and Rescinding Contracts

Sec.

3403.704 Policy.

3403.705 Procedures.

Subpart 3403.7—Voiding and Rescinding Contracts**3403.704 Policy.**

(a) The SPE is the agency head's designee for the purposes of FAR 3.704.

3403.705 Procedures.

(a) The SPE is the agency head's designee for the purposes of FAR 3.705.

■ 11. Subpart 3403.9 is added to read as follows:

Subpart 3403.9—Whistleblower Protections for Contractor Employees

Sec.

3403.905 Procedures for investigating complaints.

3403.906 Remedies.

Subpart 3403.9—Whistleblower Protections for Contractor Employees**3403.905 Procedures for investigating complaints.**

(c) The SPE is the agency head's designee for the purposes of FAR 3.905.

3403.906 Remedies.

(a) The SPE is the agency head's designee for the purposes of FAR 3.906.

■ 12. A new part 3404 is added to subchapter A to read as follows:

PART 3404—ADMINISTRATIVE MATTERS**3404.7—Contractor Records Retention**

Sec.

3404.770 Contract clause.

Authority: 5 U.S.C. 301; 40 U.S.C. 121(c); and 41 U.S.C. 3102.

Subpart 3404.7—Contractor Records Retention**3404.770 Contract clause.**

The Contracting Officer must insert the clause at 3452.204-70, Maintenance and Retention of Government-Owned/ Contractor-Held Federal Records, in all solicitations and contracts where contractors are in possession of Federal records.

PART 3405—PUBLICIZING CONTRACT ACTIONS

■ 13. The authority citation for part 3405 continues to read as follows:

Authority: 5 U.S.C. 301 and 20 U.S.C. 1018a.

■ 14. Subpart 3405.4 is added to read as follows:

Subpart 3405.4—Release of Information

Sec.

3405.404 Release of long-range acquisition estimates.

3405.404-1 Release procedures.

Subpart 405.4—Release of Information**3405.404 Release of long-range acquisition estimates.****3405.404-1 Release procedures.**

(a) The SPE is the agency head's designee for the purposes of FAR 5.404-1(a).

(b) The SPE is the agency head for the purposes of FAR 5.404-1(b).

PART 3406—COMPETITION REQUIREMENTS

■ 15. The authority citation for part 3406 continues to read as follows:

Authority: 5 U.S.C. 301; 41 U.S.C. 418(a) and (b); and 20 U.S.C. 1018a.

■ 16. Subpart 3406.2 is added to read as follows:

Subpart 3406.2—Full and Open Competition After Exclusion of Sources

Sec.

3406.202 Establishing or maintaining alternate sources.

Subpart 3406.2—Full and Open Competition After Exclusion of Sources**3406.202 Establishing or maintaining alternate sources.**

The HCA is the agency head for the purposes of FAR 6.202.

■ 17a. Sections 3406.302, 3406.302-1, and 3406.302-2 are added to read as follows:

3406.302 Circumstances permitting other than full and open competition.**3406.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.**

(b)(4) The HCA is the agency head for the purposes of FAR 6.302-1(b)(4).

3406.302-2 Unusual and compelling urgency.

(d)(2) The SPE is the agency head's designee for the purposes of FAR 6.302-2(d)(2).

■ 17b. Section 3406.302-7 is added to read as follows:

3406.302-7 Public interest.

The authority to approve the determination prescribed in FAR 6.302-7(c) is reserved for the Secretary of Education.

■ 18. Section 3406.501 is revised to read as follows:

3406.501 Requirement.

The Competition Advocate for the Department and Contracts and Acquisitions Management (CAM) is the Deputy Director, CAM. The Competition Advocate for Federal Student Aid (FSA) is the Director, Strategic Initiatives.

■ 19. A new part 3407 is added to subchapter B to read as follows:

PART 3407—ACQUISITION PLANNING**Subpart 3407.1—Acquisition Plans**

Sec.

3407.103 Agency-head responsibilities.

Authority: 5 U.S.C. 301.

Subpart 3407.1—Acquisition Plans**3407.103 Agency-head responsibilities.**

The SPE is the agency head's designee for the purposes of FAR 7.103.

PART 3408—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 20. The authority citation for part 3408 continues to read as follows:

Authority: 5 U.S.C. 301, unless otherwise noted.

■ 21. Section 3408.870 is revised to read as follows:

3408.870 Printing clause.

The Contracting Officer must insert the clause at 3452.208-71 (Printing) in all solicitations and contracts for services where printing is anticipated.

PART 3409—CONTRACTOR QUALIFICATIONS

■ 22. The authority citation for part 3409 continues to read as follows:

Authority: 5 U.S.C. 301.

■ 23. Subpart 3409.2 is added to read as follows:

Subpart 3409.2—Qualifications Requirements

Sec.
3409.202 Policy.
3409.206 Acquisitions subject to qualification requirements.
3409.206–1 General.

Subpart 3409.2—Qualifications Requirements

3409.202 Policy.

(a)(1) The SPE is the agency head's designee for the purposes of FAR 9.202(a)(1).

3409.206 Acquisitions subject to qualification requirements.

3409.206–1 General.

(b) The SPE is the agency head's designee for the purposes of FAR 9.206–1(b).

■ 24a. Sections 3409.405, 3409.405–1, and 3409.405–2 are added to read as follows:

3409.405 Effect of listing.

(a) The SPE is the agency head's designee for the purposes of FAR 9.405(a).

(d)(3) The SPE is the agency head's designee for the purposes of FAR 9.405(d)(3).

3409.405–1 Continuation of current contracts.

(a) The SPE is the agency head's designee for the purposes of FAR 9.405–1.

3409.405–2 Restrictions on subcontracting.

(a) The SPE is the agency head's designee for the purposes of FAR 9.405–2.

■ 24b. Section 3409.406–1 is added to read as follows:

3409.406–1 General.

(c) The SPE is the agency head's designee for the purposes of FAR 9.406–1(c).

■ 24c. Section 3409.407–1 is added to read as follows:

3409.407–1 General.

(d) The SPE is the agency head's designee for the purposes of FAR 9.407–1(d).

■ 25. Section 3409.503 is revised to read as follows:

3409.503 Waiver.

The SPE is the agency head's designee for the purposes of FAR 9.503.

■ 26. In subchapter B, a new part 3411 is added to read as follows:

PART 3411—DESCRIBING AGENCY NEEDS

Subpart 3411.1—Selecting and Developing Requirements Documents

Sec.
3411.103 Market acceptance.

Subpart 3411.5—Liquidated Damages

Sec.
3411.501 Policy.

Authority: 5 U.S.C. 301 and 20 U.S.C. 1018a.

Subpart 3411.1—Selecting and Developing Requirements Documents

3411.103 Market acceptance.

(a) The HCA is the agency head for the purposes of FAR 11.103(a).

Subpart 3411.5—Liquidated Damages

3411.501 Policy.

(d) The HCA is the agency head for the purposes of FAR 11.501(d).

PART 3413—SIMPLIFIED ACQUISITION PROCEDURES

■ 27. The authority citation for part 3413 continues to read as follows:

Authority: 5 U.S.C. 301 and 20 U.S.C. 1018a.

■ 28. Subpart 3413.2 is added to read as follows:

Subpart 3413.2—Actions At or Below the Micro-Purchase Threshold

Sec.
3413.201 General.

Subpart 3413.2—Actions At or Below the Micro-Purchase Threshold

3413.201 General.

(g)(1) The SPE is the agency head for the purposes of FAR 13.201(g)(1).

■ 29. Sections 3413.305 and 3413.305–3 are added to read as follows:

3413.305 Imprest funds and third party drafts.

3413.305–3 Conditions for use.

(a) The SPE is the agency head for the purposes of FAR 13.305–3(a).

PART 3414—SEALED BIDDING

■ 30. The authority citation for part 3414 continues to read as follows:

Authority: 5 U.S.C. 301.

■ 31. Subpart 3414.4 is revised to read as follows:

Subpart 3414.4—Opening of Bids and Award of Contract

Sec.
3414.404 Rejection of bids.
3414.404–1 Cancellation of invitations after opening.

3414.407 Mistakes in bids.
3414.407–3 Other mistakes disclosed before award.
3414.407–4 Mistakes after award.

Subpart 3414.4—Opening of Bids and Award of Contract

3414.404 Rejection of bids.

3414.404–1 Cancellation of invitations after opening.

(c) The HCA is the agency head for the purposes of FAR 14.404–1(c).

3414.407 Mistakes in bids.

3414.407–3 Other mistakes disclosed before award.

The HCA is the agency head for the purposes of making any determination called for by FAR 14.407–3.

3414.407–4 Mistakes after award.

The HCA is the agency head for the purposes of making any determination called for by FAR 14.407–4.

PART 3415—CONTRACTING BY NEGOTIATION

■ 32. The authority citation for part 3415 continues to read as follows:

Authority: 5 U.S.C. 301 and 20 U.S.C. 1018a.

■ 33. Section 3415.204 is added to read as follows:

3415.204 Contract format.

(e) The SPE is the agency head's designee for the purposes of FAR 15.204(e).

PART 3416—TYPES OF CONTRACTS

■ 34. The authority citation for part 3416 continues to read as follows:

Authority: 5 U.S.C. 301 and 20 U.S.C. 1018a.

■ 35. In section 3416.470, paragraph (f)(2) is revised to read as follows:

3416.470 Award-term contracting.

* * * * *

(f) * * *

(2) The extension of the contract as a result of an earned award term period is affected by a bilateral contract modification.

* * * * *

PART 3417—SPECIAL CONTRACTING METHODS

■ 36. The authority citation for part 3417 continues to read as follows:

Authority: 31 U.S.C. 1535 and 20 U.S.C. 1018a.

■ 37. Subpart 3417.1 is added to read as follows:

Subpart 3417.1—Multi-year Contracting

Sec.
3417.104 General.

Subpart 3417.1—Multi-year Contracting**3417.104 General.**

(b) The SPE is the agency head for the purposes of FAR 17.104(b).

■ 38. Section 3417.208 is added to read as follows:

3417.208 Solicitation provisions and contract clauses.

(c) Insert a clause substantially the same as the clause at 3452.17–70, Evaluation of Options to Include Award Terms and 3452.17–71, Option to Extend the Term of an Award Term Contract, in solicitations and contracts when the conditions at FAR 3417.208(c) exist and the use of an Award Term incentive is contemplated.

■ 39. Subpart 3417.6 is added to read as follows:

Subpart 3417.6—Management and Operating Contracts

Sec.
3417.602 Policy.

Subpart 3417.6—Management and Operating Contracts**3417.602 Policy.**

(a) The Assistant Secretary for the Office of Management is the agency head for the purposes of FAR 17.602.

PART 3419—SMALL BUSINESS PROGRAMS

■ 40. The authority citation for part 3419 continues to read as follows:

Authority: 5 U.S.C. 301 and 20 U.S.C. 1018a.

■ 41. Section 3419.505 is added to read as follows:

3419.505 Rejecting Small Business Administration recommendations.

(d) The SPE is the agency head for the purposes of FAR 19.505.

■ 42. Section 3419.70 is added to read as follows:

3419.70 Socioeconomic goals.

When the Department has been unable to meet its goal for prime contractor awards in one or more socioeconomic categories in any of the last five fiscal years, the Contracting Officer may insert a clause substantially the same as 3452.219–70 in any procurement for a Commercial Item conducted under FAR Part 12 or 13 when the award is low price, technically acceptable.

■ 43. Subpart 3419.8 is added to read as follows:

Subpart 3419.8—Contracting with the Small Business Administration

Sec.
3419.810 SBA appeals.
3419.812 Contract administration.

Subpart 3419.8—Contracting with the Small Business Administration**3419.810 SBA appeals.**

(a) The SPE is the agency head for the purposes of FAR 19.810.

3419.812 Contract administration.

(d) The HCA is the agency head for the purposes of FAR 19.812(d).

PART 3422—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

■ 44. The authority citation for part 3422 continues to read as follows:

Authority: 5 U.S.C. 301 Subpart 3422.10—Service Contract Act of 1965, as Amended

■ 45a. Subparts 3422.3, 3422.4, 3422.6, and 3422.8 are added to read as follows:

Subpart 3422.3—Contract Work Hours and Safety Standards Act

Sec.
3422.302 Liquidated damages and overtime pay.

Subpart 3422.4—Labor Standards for Contracts Involving Construction

Sec.
3422.406 Administration and enforcement.
3422.406–8 Investigations.
3422.406–9 Withholding from or suspension of contract payments.

Subpart 3422.6—Walsh-Healy Public Contracts Act

Sec.
3422.604 Exemptions.
3422.604–2 Regulatory exemptions.

Subpart 3422.8—Equal Employment Opportunity

Sec.
3422.803 Responsibilities.
3422.807 Exemptions.

Subpart 3422.3—Contract Work Hours and Safety Standards Act**3422.302 Liquidated damages and overtime pay.**

(c) The HCA is the agency head for the purposes of FAR 22.302(c).

Subpart 3422.4—Labor Standards for Contracts Involving Construction**3422.406 Administration and enforcement.****3422.406–8 Investigations.**

(a) The Chief of the Contracting Office is responsible for conducting labor standards investigations as prescribed in FAR 22.406–8(a).

(d) The SPE is the agency head's designee for the purposes of FAR 22.406–8(d).

3422.406–9 Withholding from or suspension of contract payments.

(b) The authority to suspend contract payments pursuant to FAR 22.406–9(b) is delegated, without power of redelegation, to the HCA.

Subpart 3422.6—Walsh-Healy Public Contracts Act**3422.604 Exemptions.****3422.604–2 Regulatory exemptions.**

(b)(1) The SPE is the agency head for the purposes of FAR 22.604–2(b)(1).

Subpart 3422.8—Equal Employment Opportunity**3422.803 Responsibilities.**

(c) The SPE is the agency head for the purposes of FAR 22.803(c).

3422.807 Exemptions.

(a)(1) The SPE is the agency head for the purposes of FAR 22.807(a)(1).

■ 45b. Add a heading for subpart 3422.10 to read as follows:

Subpart 3422.10—Service Contract Labor Standards

Sections 3422.1002 and 3422.1002–1 [Designated as subpart 3422.10].

■ 45c. Designate sections 3422.1002 and 3422.1002–1 as subpart 3422.10.

■ 45d. Subparts 3422.13 and 3422.14 are added to read as follows:

Subpart 3422.13—Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans

Sec.
3422.1305 Waivers.
3422.1310 Solicitation provision and contract clauses.

Subpart 3422.14—Employment of Workers with Disabilities

Sec.
3422.1403 Waivers.
3422.1408 Contract clause.

Subpart 3422.13—Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans**3422.1305 Waivers.**

The SPE is the agency head for the purposes of FAR 22.1305.

3422.1310 Solicitation provision and contract clauses.

The SPE is the agency head for the purposes of FAR 22.1310(a)(1)(ii) and (a)(2).

Subpart 3422.14—Employment of Workers with Disabilities**3422.1403 Waivers.**

The SPE is the agency head for the purposes of FAR 22.1403.

3422.1408 Contract clause.

The SPE is the agency head for the purposes of FAR 22.1408.

PART 3425—FOREIGN ACQUISITION

■ 46. The authority citation for part 3425 continues to read as follows:

Authority: 5 U.S.C. 301.

■ 47. Revise subpart 3425.1 to read as follows:

Subpart 3425.1—Buy American Act—Supplies

Sec.

3425.103 Exceptions.

3425.105 Determining reasonableness of cost.

Subpart 3425.1—Buy American Act—Supplies**3425.103 Exceptions.**

(a) The authority to make the determination prescribed in FAR 25.103(a) is delegated, without power of redelegation, to the HCA.

3425.105 Determining reasonableness of cost.

(a)(1) The authority to make the determinations prescribed in FAR 25.105(a)(1) is delegated, without power of redelegation, to the HCA.

■ 48. Add subparts 3425.2 and 3425.10 to read as follows:

Subpart 3425.2—Buy American Act—Construction Materials

Sec.

3425.202 Exceptions.

3425.204 Evaluating offers of foreign construction material.

Subpart 3425.10—Additional Foreign Acquisition Regulations

Sec.

3425.1001 Waiver of right to examination of records.

Subpart 3425.2—Buy American Act—Construction Materials**3425.202 Exceptions.**

(a)(1) The authority to make the determination prescribed in FAR 25.202(a)(1) is delegated, without power of redelegation, to the HCA.

3425.204 Evaluating offers of foreign construction material.

(b) The HCA is the agency head for the purposes of FAR 25.204(b).

Subpart 3425.10—Additional Foreign Acquisition Regulations**3425.1001 Waiver of right to examination of records.**

(a)(2)(iii) The SPE is the agency head for the purposes of FAR 25.1001(a)(2)(iii).

PART 3427—PATENTS, DATA, AND COPYRIGHTS

■ 49. The authority citation for part 3427 continues to read as follows:

Authority: 5 U.S.C. 301.

■ 50. Add subpart 3427.3 to read as follows:

Subpart 3427.3—Patent Rights under Government Contracts

Sec.

3427.303 Contract clauses.

Subpart 3427.3—Patent Rights under Government Contracts**3427.303 Contract clauses.**

The SPE is the agency head's designee for the purposes of FAR 27.303.

PART 3428—BONDS AND INSURANCE

■ 51. The authority citation for part 3428 continues to read as follows:

Authority: 5 U.S.C. 301.

■ 52. Add subpart 3428.1 to read as follows:

Subpart 3428.1—Bonds and Other Financial Protections

Sec.

3428.101 Bid guarantees.

3428.101-1 Policy on use.

3428.106-6 Furnishing information.

Subpart 3428.1—Bonds and Other Financial Protections**3428.101 Bid guarantees.****3428.101-1 Policy on use.**

(c) The SPE is the agency head's designee for the purposes of FAR 28.101-1(c).

3428.106-6 Furnishing information.

(c) The HCA is the agency head's designee for the purposes of FAR 28.106-6(c).

■ 53. Add subpart 3428.2 to read as follows:

Subpart 3428.2—Sureties and Other Securities for Bonds

Sec.

3428.203 Acceptability of individual surety.

3428.203-7 Exclusion of individual sureties.

Subpart 3428.2—Sureties and Other Securities for Bonds**3428.203 Acceptability of individual surety.**

(g) Evidence of possible criminal or fraudulent activities by an individual surety must be referred to the Assistant Inspector General for Investigations.

3428.203-7 Exclusion of individual sureties.

The SPE is the agency head's designee for the purposes of FAR 28.203-7.

■ 54. A new part 3430 is added to subchapter E to read as follows:

PART 3430—COST ACCOUNTING STANDARDS ADMINISTRATION**Subpart 3430.2—CAS Program Requirements**

Sec.

3430.201 Contract requirements.

3430.201-5 Waiver.

Authority: 5 U.S.C. 301; 40 U.S.C. 121(c); and 41 U.S.C. 3102.

Subpart 3430.2—CAS Program Requirements**3430.201 Contract requirements.****3430.201-5 Waiver.**

(a) The SPE is the head of the agency for the purposes of FAR 30.201-5(a) and (b).

■ 55. A new part 3431 is added to subchapter E to read as follows:

PART 3431—CONTRACT COST PRINCIPLES AND PROCEDURES**Subpart 3431.1—Applicability**

Sec.

3431.101 Objectives.

Subpart 3431.2—Contracts with Commercial Organizations

Sec.

3431.205 Selected costs.

3431.205-6 Compensation for personal services.

3431.205-70 Noncontractor meals.

3431.205-71 Noncontractor travel.

3452.205-72 Clearance of conferences/meetings.

Authority: 5 U.S.C. 301; 40 U.S.C. 121(c); and 41 U.S.C. 3102.

Subpart 3431.1—Applicability**3431.101 Objectives.**

The SPE is the agency head's designee for the purposes of FAR 31.101.

Subpart 3431.2—Contracts with Commercial Organizations

3431.205 Selected costs.

3431.205–6 Compensation for personal services.

(g)(3) The HCA is the agency head's designee for the purposes of FAR 31.205–6(g)(3).

3431.205–70 Noncontractor meals.

Insert the clause at 3452.231–70 (Food Costs) in solicitations and contracts that include meetings/conferences where personnel other than Federal or contractor employees will participate.

3431.205–71 Noncontractor travel.

Insert the clause at 3452.231–71 (Travel Costs) in solicitations and contracts where meetings/conferences where personnel other than Federal or contractor employees will participate.

3431.205–72 Clearance of conferences/meetings.

Insert the clause at 3452.231–72 (Clearance of Conferences/Meetings) in solicitations and contracts where meetings/conferences are contemplated to be arranged by the contractor.

PART 3432—CONTRACT FINANCING

■ 56. The authority citation for part 3432 continues to read as follows:

Authority: 5 U.S.C. 301.

■ 57. Add subparts 3432.0, 3432.1, and 3432.2 to read as follows:

Subpart 3432.0—Scope of Part

Sec.

3432.006 Reduction or suspension of contract payments upon finding of fraud.

3432.006–1 General.

3432.006–2 Definitions.

3432.006–3 Responsibilities.

3432.006–4 Procedures.

Subpart 3432.1—Noncommercial Item Purchase Financing

Sec.

3432.114 Unusual contract financing.

Subpart 3432.2—Commercial Item Purchase Financing

Sec.

3432.201 Statutory authority.

Subpart 3432.0—Scope of Part

3432.006 Reduction or suspension of contract payments upon finding of fraud.

3432.006–1 General.

The SPE is the agency head for the purposes of FAR 32.006–1.

3432.006–2 Definitions.

“Remedy Coordination Official” means the SPE.

3432.006–3 Responsibilities.

(b) Department personnel must report immediately and in writing any apparent or suspected instance where the contractor's request for advance, partial, or progress payments is based on fraud. The report must be made to the Contracting Officer and the Assistant Inspector General for Investigations. The report must outline the events, acts, or conditions which indicate the apparent or suspected violation and include all pertinent documents. The Assistant Inspector General for Investigations must investigate, as appropriate. If appropriate, the Office of the Inspector General will provide a report to the SPE.

3432.006–4 Procedures.

The SPE is the agency head for the purposes of FAR 32.006–4.

Subpart 3432.1—Noncommercial Item Purchase Financing

3432.114 Unusual contract financing.

The SPE is the agency head for the purposes of FAR 32.114.

Subpart 3432.2—Commercial Item Purchase Financing

3432.201 Statutory authority.

The HCA is the agency head for the purposes of FAR 32.201.

■ 58. Add sections 3432.703 and 3432.703–3 to read as follows:

3432.703 Contract funding requirements.

3432.703–3 Contracts crossing fiscal years.

(b) The HCA is the agency head for the purposes of FAR 32.703–3(b).

■ 59. Add subpart 3432.9 to read as follows:

Subpart 3432.9—Prompt Payment

Sec.

3432.902 Definitions.

3432.906 Making payments.

Subpart 3432.9—Prompt Payment

3432.902 Definitions.

Delivery Date. The date on which a product or service is deemed received by the Government. Delivery of any product or service after 4:30 p.m. local time will be deemed to have been received on the next calendar day for the purpose of computing the prompt payment date.

3432.906 Making payments.

(a) *General.* The HCA is the agency head for the purposes of FAR 32.906(a).

PART 3433—PROTESTS, DISPUTES, AND APPEALS

■ 60. The authority citation for part 3433 continues to read as follows:

Authority: 5 U.S.C. 301.

■ 61. Revise section 3433.103 to read as follows:

3433.103 Protests to the agency.

(d)(4) The independent review as described in FAR 33.103(d)(4) must be performed by the Competition Advocate for the contracting activity.

(f) *Action upon receipt of protest.*

(1) For protests filed with the Department and received before award, the contracting office must first obtain the advice of the Office of the General Counsel when determining to proceed with the contract award. The determination must be approved by the HCA. In those cases where the Contracting Officer is also the HCA, the determination must be approved by the SPE.

(3) For protests filed with the Department and received after award, the Contracting Officer must first obtain the advice of OGC before determining that continued performance is justified. The determination must be approved by the HCA. In those cases where the Contracting Officer is also the HCA, the determination must be approved by the SPE.

■ 62. Add section 3433.104 to read as follows:

3433.104 Protests to GAO.

(a) *General procedures.* Contracting activities must consult OGC for guidance before taking any actions in response to a protest to GAO.

■ 63. Add subpart 3433.2 to read as follows:

Subpart 3433.2—Disputes and Appeals

Sec.

3433.203 Applicability.

3433.211 Contracting Officer's decision.

Subpart 3433.2—Disputes and Appeals

3433.203 Applicability.

The SPE is the agency head for the purposes of FAR 33.203(b).

3433.211 Contracting Officer's decision.

Prior to issuing a Contracting Officer's final decision, the Contracting Officer should obtain assistance, when appropriate, from the Office of the General Counsel.

■ 64. A new part 3434 is added to subchapter F to read as follows:

PART 3434—MAJOR SYSTEM ACQUISITION**Subpart 3434.0—General**

Sec.
3434.003 Responsibilities.
3434.005 General requirements.
3434.005–6 Full production.

Authority: 5 U.S.C. 301.

Subpart 3434.0—General**3434.003 Responsibilities.**

(a) The SPE is the agency head's designee for the purposes of FAR 34.003(a).

(b) The SPE is the agency head for the purposes of FAR 34.003(c) and the acquisition executive for the purposes of OMB Circular No. A–109.

3434.005 General requirements.**3434.005–6 Full production.**

The SPE is the agency head's designee for the purposes of FAR 34.005–6.

PART 3437—SERVICE CONTRACTING

■ 65. The authority citation for part 3437 continues to read as follows:

Authority: 5 U.S.C. 301 and 20 U.S.C. 1018a.

■ 66. Revise subpart 3437.2 to read as follows:

Subpart 3437.2—Advisory and Assistance Services

Sec.
3437.204 Guidelines for determining availability of personnel.
3437.270 Services of consultants clause.

Subpart 3437.2—Advisory and Assistance Services**3437.204 Guidelines for determining availability of personnel.**

The HCA is the agency head for the purposes of FAR 37.204.

3437.270 Services of consultants clause.

The Contracting Officer must insert the clause at 3452.237–70 (Services of consultants) in all solicitations and resultant cost-reimbursement contracts for consultant services that do not provide services to FSA.

■ 67. Add section 3437.601 to read as follows:

3437.601 General.

It is the Department's policy that all new service contracts be performance-based, with clearly defined deliverables and performance standards. Any deviations from this policy must be fully justified in writing and approved by the Departmental Department's Competition Advocate.

PART 3439—ACQUISITION OF INFORMATION TECHNOLOGY

■ 68. The authority citation for part 3439 continues to read as follows:

Authority: 5 U.S.C. 301 and 20 U.S.C. 1018a.

Section 3439.701 [Removed]

■ 69. Remove section 3439.701.

PART 3442—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 70. The authority citation for part 3442 continues to read as follows:

Authority: 5 U.S.C. 301.

■ 71. Subpart 3442.6 is added to read as follows:

Subpart 3442.6—Corporate Administrative Contracting Officer

Sec.
3442.602 Assignment and location.

Subpart 3442.6—Corporate Administrative Contracting Officer**3442.602 Assignment and location.**

The SPE is the agency head's designee for the purposes of FAR 42.602(a).

■ 72. Subpart 3442.7 is added to read as follows:

Subpart 3442.7—Indirect Cost Rates

Sec.
3442.703 General.

3442.703–2 Certificate of indirect costs.**Subpart 3442.7—Indirect Cost Rates****3442.703 General.****3442.703–2 Certificate of indirect costs.**

(b) The HCA is the agency head's designee for the purposes of FAR 42.703–2(b).

■ 73. Revise section 3442.7101 to read as follows:

3442.7101 Policy and clause.

(b) The Contracting Officer must insert the clause at 3452.242–73 (Accessibility of meetings, conferences, and seminars to persons with disabilities) in all solicitations and contracts where conferences are contemplated.

■ 74. A new part 3444 is added to subchapter G to read as follows:

PART 3444—SUBCONTRACTING POLICIES AND PROCEDURES**Subpart 3444.3—Contractor's Purchasing System Reviews**

Sec.
3444.302 Requirements.

Authority: 5 U.S.C. 301.

Subpart 3444.3—Contractor's Purchasing System Reviews**3444.302 Requirements.**

(a) The SPE is the head of the agency for the purposes of FAR 44.302(a).

PART 3447—TRANSPORTATION

■ 75. The authority citation for part 3447 continues to read as follows:

Authority: 5 U.S.C. 301.

■ 76. Section 3447.701 is revised to read as follows:

3447.701 Foreign travel clause.

The Contracting Officer must insert the clause at 3452.247–70 (Foreign travel) in all solicitations and resultant cost reimbursement contracts where foreign travel is contemplated.

■ 77. A new part 3448 is added to subchapter G to read as follows:

PART 3448—VALUE ENGINEERING**Subpart 3448.1—Policies and Procedures**

Sec.
3448.102 Policies.

Subpart 3448.2—Contract Clauses

Sec.
3448.201 Clauses for supply or service contracts.

Authority: 5 U.S.C. 301.

Subpart 3448.1—Policies and Procedures**3448.102 Policies.**

(a) The authority to grant exemptions prescribed in FAR 48.102(a), or to extend future contract savings or sharing pursuant to FAR 48.102(g), is delegated, without power of redelegation, to the HCA.

Subpart 3448.2—Contract Clauses**3448.201 Clauses for supply or service contracts.**

The authority to determine exemptions prescribed in FAR 48.201(a)(6) is delegated, without power of redelegation, to the HCA.

PART 3452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 78. The authority citation for part 3452 continues to read as follows:

Authority: 5 U.S.C. 301.

■ 79. Add section 3452.204–70 to read as follows:

3452.204–70 Maintenance and retention of government-owned/contractor-held Federal records.

As prescribed in 3404.7001, insert the following clause:

Maintenance and Retention of Government-Owned/Contractor-Held Federal Records (April 2012)

(a) Government-Owned/Contractor-Held Federal Records. "Government-Owned/Contractor-Held Federal Records" include all records or data, regardless of format or media, created or produced under this contract, whether or not provided to the Government as a contract deliverable, that document contractor-operated Government activities and programs. Government-Owned/Contractor-Held Federal records may not include those Contractor records that relate exclusively to the contractor's internal business or are of a general nature not specifically related to the performance of work under the contract or to the underlying Government activity/program. The contractor's general policies, procedures, etc., that apply to the general conduct of its business do not fall under the purview of this clause. When in doubt, the Contractor must seek the Contracting Officer's determination as to which records are subject to this clause.

(b) Records Maintenance and Retention. The contractor must create, maintain, safeguard, and ensure final disposition of all Government-Owned/Contractor-Held Federal records generated in connection with this contract in accordance with the Federal Records Act, (44 U.S.C. Chapters 21, 29, 31, 33), National Archives and Records Administration (NARA) regulations (36 CFR parts 1220-1239), Records Management and the NARA-approved records disposition schedules including the Department's Records Retention and Disposition Schedules (OM:6-106, 11/16/2007) and the Department's Records and Information Management Program (OM:6-103, 01/30/2007). Maintenance of Government Owned/Contractor-Held Federal records, includes, but is not limited to, storage in accordance with NARA storage requirements (regardless of whether stored in contractor-owned or leased space), retrievability, and ensuring final disposition, including secure transfer of Federal records to a NARA-approved facility in a media neutral format and manner acceptable to NARA and the Department at the time of transfer. As directed by the Contracting Officer, the contractor must obtain prior approval from the Contracting Officer to destroy or remove records subject to this clause.

(c) Segregation of Records. The contractor must ensure that Government-Owned/Contractor-Held Federal records are segregated from company-owned records and from

nonrecord materials. This clause operates independently from and is not intended to affect, or be affected by, the contractor records provisions contained in FAR subpart 4.7 and the clauses referenced therein.

(d) Coordination with Records Manager. The contractor, through the Contracting Officer, must coordinate with the Program Records Officer (PRO) and the Department's Records Officer (RO), on matters requiring advice, such as marking and segregating such records, or technical assistance in all areas of management pertaining to such records.

(e) Contract Completion or Termination. Upon contract completion or termination, the contractor must ensure final disposition of all Government-Owned/Contractor-Held Federal records to a Federal Record Center, NARA, to a successor contractor, its designee, or other destinations, as directed by the Contracting Officer. Contractor is responsible for the secure disposition of records, which include but is not limited to, the secure transport and temporary housing of all records.

(f) Inspection and Audit. All Government-Owned/Contractor-Held Federal records are subject to inspection, copying and audit by the Government or its designee(s) at all reasonable times to ensure records are maintained in accordance with applicable records management laws and regulations. The contractor must afford the Government or its designee(s) reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the Contracting Officer, the contractor must deliver such records to a location specified by the Contracting Officer.

(g) Applicability. This clause applies to all Government-Owned/Contractor-Held Federal records maintained by the contractor without regard to the date or origination of such records including all records acquired from a predecessor contractor.

(h) Subcontracts. The contractor must include the requirements of this clause in all subcontracts awarded in association with this contract.

■ 80. In section 3452.216-71, revise paragraph (e) of the award-term clause to read as follows:

3452.216-71 Award-Term.

* * * * *

(e) The contract term or ordering period requires bilateral modification to reflect the ATRB's decision to award and the contractor's agreement to accept an Award Term. If the contract term or ordering period has one year remaining,

the operation of the contract Award Term feature will cease and the contract term or ordering period will not extend beyond the maximum term stated in the contract.

* * * * *

■ 81. Add section 3452.217-70 to read as follows:

3452.217-70 Evaluation of options to include award terms.

As prescribed in 3417.208(c), insert a provision substantially the same as the following:

EVALUATION OF OPTIONS TO INCLUDE AWARD TERMS (MAY 2013)

This solicitation includes four optional periods of performance and up to four award terms. In accordance with the clause at 3452.216.71, award terms must immediately follow the period in which the award term is earned, thereby pushing out remaining option periods each time an award term is earned. By identifying prices in Schedule B for periods of performance, the offeror agrees that subject prices apply to either the option periods of performance, or award terms, as appropriate.

Except when it is determined not to be in the Government's best interest, the Government will evaluate offers for award purposes by adding the total price for all options and potential award term periods to the total price of the basic requirement. Evaluation of options and award terms will not obligate the Government to exercise the options, nor extend the award term if the conditions at EDAR 3416.470(f) apply.

Schedule B

- CLIN 0001 Base period of performance
CLIN 0002 Base + one year (option or award term)
CLIN 0003 Base + two years (option or award term)
CLIN 0004 Base + three years (option or award term)
CLIN 0005 Base + four years (option or award term)
CLIN 0006 Base + five years (option or award term)
CLIN 0007 Base + six years (option or award term)
CLIN 0008 Base + seven years (option or award term)
CLIN 0009 Base + eight years (option)
[END OF CLAUSE]

■ 82. Add section 3452.219-70 to read as follows:

3452.219-70 Evaluation preference—targeted socioeconomic categories.

EVALUATION PREFERENCE—TARGETED SOCIOECONOMIC CATEGORIES (MAY 2013)

As prescribed in 3419.70, insert a provision substantially the same as the following:

This clause is to be read in harmony with any other evaluation clause incorporated. Preference provided under this clause takes precedence and all other clauses for the evaluation of offers hereby incorporate the

preference of the targeted socioeconomic categories contained herein.

In order to help meet its socioeconomic goals, Offerors are advised that the Department of Education has identified this acquisition as one that has an evaluation preference for Historically Underutilized Business Zone (HUBZone) small businesses and Service-Disabled Veteran-Owned small businesses (SDVOSB). For evaluation purposes only, quotes received from HUBZone or SDVOSB small businesses will be reduced by 10 percent. Once reduced, all quotes or offers received as a result of this solicitation will be evaluated for award and award will be made to that offeror or quoter that offers the lowest evaluated price, technically acceptable solution.
[END OF CLAUSE]

■ 83. Add section 3452.231–70 to read as follows:

3452.231–70 Food costs.

As prescribed in 3431.205–70, insert a provision substantially the same as the following:

FOOD COSTS (MAY 2013)

No food may be provided under this contract or in association with this contract unless consent is provided below. The cost of food under this contract is unallowable unless the contractor receives written consent from the Contracting Officer prior to the incurrence of the cost. If the contractor wishes to be reimbursed for a food cost, there must be a request in writing at least 21 days prior to the day that costs would be incurred. The contractor must include in its request the following: the purpose of the event at which the food will be served, why the food is integral to fulfill a Government requirement in the contract, and the proposed costs. The lack of a timely response from the Contracting Officer must not constitute constructive acceptance of the allowability of the proposed charge. Fill-in Consent is hereby given to the contractor to _____

[END OF CLAUSE]

■ 84. Add section 3452.231–71 to read as follows:

3452.231–71 Travel costs.

As prescribed in 3431.205–71, insert a provision substantially the same as the following:

TRAVEL COSTS (MAY 2013)

No invitational travel (defined as: Official Government travel conducted by a non-Federal employee in order to provide a “Direct Service” [i.e., presenting on a topic, serving as a facilitator, serving on a Federal Advisory Committee Act, or advising in an area of expertise] to the Government) may be provided under this contract or in association with this contract unless consent is provided below. The cost of invitational travel under this contract is unallowable unless the contractor receives written consent from the Contracting Officer prior to the incurrence of the cost. If the contractor wishes to be reimbursed for a cost related to invitational travel, a request must be in writing at least 21 days prior to the day that costs would be incurred. The contractor must include in its request the following: Why the invitational travel cost is integral to fulfill a Government requirement in the contract, and the proposed cost that must be in accordance with Federal Travel Regulations. The lack of a timely response from the Contracting Officer must not constitute constructive acceptance of the allowability of the proposed charge.

Consent is hereby given to the contractor to _____

[END OF CLAUSE]

■ 85. Add section 3452.231–72 to read as follows:

3452.231–72 Clearance of conferences/ meetings.

As prescribed in 3431.205–72, insert a provision substantially the same as the following:

CLEARANCE OF CONFERENCES/ MEETINGS (MAY 2013)

Any hotel/venue contract that the Contractor negotiates must be reviewed by and receive concurrence from an Event Services Team member prior to final agreement. The Event Services staff can be contacted at (202) 401–3679 or *event.services@ed.gov*.
Comps: The Contractors’ efforts to obtain comps on behalf of the Department will focus primarily on meeting rooms, audio-visual equipment, etc. The Contractor does *not* have authority to negotiate or accept room upgrades for Department or Contractor staff.

Dual Compensation: Contractors are prohibited from receiving compensation from

both the Department and any other source for conference planning performed pursuant to the terms of this Contract. If the vendor receives any compensation from another source as a result of conference services performed for the Department, the Contractor will report this compensation to the Contracting Officer and offset its invoice to the Department in an equal amount.
[END OF CLAUSE]

Section 3452.239–70 [Removed]

■ 86. Remove section 3452.239–70.

■ 87. Add subpart 3452.3, to read as follows:

Subpart 3452.3—Provision and Clause Matrix

Sec.

3452.301 Solicitation provisions and contract clauses (Matrix).

Subpart 3452.3—Provision and Clause Matrix

3452.301 Solicitation provisions and contract clauses (Matrix).

(a) The following matrix provides a summary of provisions and clauses contained in the EDAR and their appropriate use. For each provision or clause listed, the matrix provides—

(1) Whether incorporation by reference is or is not authorized (see FAR 52.102);

(2) The section of the Uniform Contract Format (UCF) in which it is to be located, if it is used in an acquisition that is subject to the UCF;

(3) Its number;

(4) The citation of the EDAR text that prescribes its use; and

(5) Its title.

(b) Because the matrix does not provide sufficient information to determine the applicability of a provision or clause in the “required-when-applicable” and “optional” categories, contracting officers must refer to the EDAR text (cited in the matrix) that prescribes its use and the specific circumstances of the requirement being procured.

KEY

Type of contract	Contract purpose
P or C = Provision or Clause IBR = Is Incorporation by Reference Authorized? UCF = Uniform Contract Format Section, When Applicable FP SUP = Fixed-Price Supply CR SUP = Cost-Reimbursement Supply FP R&D = Fixed-Price Research & Development CR R&D = Cost-Reimbursement Research & Development FP SVC = Fixed-Price Service CR SVC = Cost-Reimbursement Service FP CON = Fixed-Price Construction CR CON = Cost-Reimbursement Construction T&M LH = Time & Materials/Labor Hours LMV = Leasing of Motor Vehicles	R = Required. A = Required when Applicable. O = Optional.

KEY—Continued

Type of contract	Contract purpose
COM SVC = Communication Services DDR = Dismantling, Demolition, or Removal of Improvements A&E = Architect-Engineering FAC = Facilities IND DEL = Indefinite Delivery TRN = Transportation SAP = Simplified Acquisition Procedures (excluding micro-purchases) UTL SVC = Utility Services CI = Commercial Items	

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PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	U C F	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	TM LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
3452.201-70 Contracting Officer's Representative (COR).	3401.670-3	C	N	H	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
3452.202-1 Definitions — Department of Education.	3402.201	C	Y	I	R	R	A	R	R	R		R	R	R	R		R	R	R	R		R	
3452.204-70 Maintenance and Retention of Government-Owned/Contractor-Held Federal Records.	3404.7001	C	N	I	A	A	A	A	A	A			A		A								
3452.208-71 Printing.	3408.870	C	Y				A	A	A	A			A		A								
3452.208-72 Paperwork Reduction Act.	3408.871	C	Y	I			A	A	A	A			A		A								
3452.209-70 Conflict of interest certification.	3409.507-1	P	N	K			R	R	R	R			R		R								
3452.209-71 Conflict of interest.	3409.507-2	C	N	I			R	R	R	R			R		R								
3452.215-70 Release of restricted data.	3415.209	P	Y	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
3452.216-70 Additional cost principles.	3416.307(b)	C	Y	I		A		A		A		A											
3452.216-71 Award-Term.	3416.470	C	N	H	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	A

3452.217-70 Evaluation of options to include award terms.	3417.208(c)	P	N	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
3452.219-70 Evaluation Preference - Targeted Socioeconomic Categories	3419.70	C	N	B			A	A	A	A			A	A	A							A	
3452.224-70 Release of information under the Freedom of Information Act.	3424.203	C	Y	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
3452.224-71 Notice about research activities involving human subjects.	3424.170	P	N	H			A	A	A	A			A		A								
3452.224-72 Research activities involving human subjects.	3424.170	C	Y	H			A	A	A	A			A		A								
3452.227-70 Publication and publicity.	3427.409	C	Y	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
3452.227-71 Advertising of awards.	3427.409	C	Y	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
3452.227-72 Use and nondisclosure agreement.	3427.409	C	N	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	A	R
3452.227-73 Limitations on the use or disclosure of Government-furnished information marked with restrictive legends.	3427.409	C	Y	I			A	A	A	A			A		A							A	
3452.228-70 Required insurance.	3428.311-2	C	Y	I		R		R		R		R											
3452.231-70 Food Costs	3431.205-70	C	N	I			A	A	A	A			A		A						A		A
3452.231-71 Travel Costs	3431.205-71	C	N	I			A	A	A	A			A		A						A		A

3452.231-73 Clearance of Conferences/Meetings	3431.205-73	C	N	I			A	A	A	A			A		A					A				A		
3452.232-70 Limitation of cost or funds.	3432.705-2	C	N	I		A		A		A			A													
3452.232-71 Incremental funding.	3432.705-2	P	N	I		A		A		A			A													
3452.237-70 Services of consultants.	3437.270	C	N	I				A		A					A											
3452.237-71 Observance of administrative closures.	3437.170	C	Y	H			R	R	R	R					R											
3452.239-71 Notice to offerors of Department security requirements.	3439.702	P	N	I			A	A	A	A	A	A	A		A		A						A		A	
3452.239-72 Department security requirements.	3439.702	C	Y	I			A	A	A	A	A	A	A		A		A						A		A	
3452.239-73 Federal desktop core configuration (FDCC) compatibility.	3439.703	C	Y	H			A	A	A	A	A	A	A		A		A						A		A	
3452.242-70 Litigation and claims.	3442.7001	C	Y	I		R		R		R			R													
3452.242-71 Notice to the Government of delays	3442.7002	C	Y	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
3452.242-73 Accessibility of meetings, conferences, and seminars to persons with disabilities.	3442.7101(b)	C	Y	I			A	A	A	A			A		A											
3452.243-70 Key personnel.	3443.107	C	N	H		A		A		A			A													
3452.247-70 Foreign travel.	3447.701	C	Y	I		A		A		A			A													

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 130702585-4484-01]

RIN 0648-BD42

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Special Management Zones for Five Delaware Artificial Reefs

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

ACTION: Proposed rule; extension of comment period.

SUMMARY: NMFS extends for 15 days the comment period on the proposed rule to implement special management zones for five Delaware artificial reefs.

DATES: The deadline for written comments on the proposed rule published on June 19, 2014 (79 FR 35141), is extended from August 4, 2014, to August 19, 2014.

ADDRESSES: You may submit comments, identified NOAA-NMFS-2014-0060, by any of the following methods:

- *Federal e-rulemaking portal:* Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0060 click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- *Mail and Hand Delivery:* John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on SMZ Measures."

Instructions: Comments sent by any other method, to any other address or

individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Copies of the Environmental Assessment and Initial Regulatory Flexibility Analysis (EA/IRFA) and other supporting documents for the Special Management Zones measures are available from Paul Perra, NOAA/NMFS, Sustainable Fisheries Division, 55 Great Republic Drive, Gloucester, MA 01930. The Special Management Zone measures document is also accessible via the Internet at: <http://www.nero.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Paul Perra, Fishery Policy Analyst, (978) 281-9153.

SUPPLEMENTARY INFORMATION: The Delaware Fish and Wildlife Department (DFW) requested that the Mid-Atlantic Fishery Management Council designate five artificial reef sites, currently permitted by the U.S. Corps of Engineers in the Exclusive Economic Zone (EEZ), as Special management Zones (SMZs) under the regulations implementing the Council's Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP). The SMZ request noted that the DFW has received complaints from hook-and-line anglers regarding fouling of their fishing gear in commercial pots and lines on ocean reef sites for more than 10 years. It also noted that the U.S. Fish and Wildlife Service (FWS) Sportfish Restoration Program had notified DFW that these gear conflicts are not consistent with the objectives of the

Sportfish Restoration Program, which provides funding for the building and maintenance of the artificial reefs. In order to comply with the goals of the Sportfish Restoration Program, the FWS is requiring that state artificial reef programs be able to limit gear conflicts by state regulations in state waters or by SMZs for sites in the EEZ.

After considering the DFW request, the Council recommended that all five artificial reefs be established as SMZs through a regulatory amendment. The action, as proposed, would allow only hook-and-line and spear fishing (including the taking of fish by hand) in the artificial reef designated areas, and these measures should be implemented with a 500-yard (457.2-m) enforcement buffer around each artificial reef site. In response to the Council's recommendation, NMFS developed a Draft Environmental Assessment and a proposed rule to implement the SMZs measures, as recommended by the Council, published in the **Federal Register** on June 19, 2014, (79 FR 35141), with a 45-day comment period that closes August 4, 2014.

Summer flounder, scup, and black sea bass are managed jointly by the Council and Atlantic States Marine Fisheries Commission. The comment period on the proposed rule is scheduled to close on August 4, 2014, the day before the start of the next meeting of the Commission, and a week before the next Council meeting. In order to provide further opportunity for the Commission and Council to formulate comments, and give more opportunity for the public to review and provide comments on the proposed rule to implement SMZs for five Delaware artificial reefs, NMFS is extending the comment period on the proposed rule until August 19, 2014.

Dated: July 11, 2014.

Samuel D. Rauch III,
Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.

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