

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**48 CFR Parts 1834, 1842, and 1852**

RIN 2700-AD29

NASA Implementation of Earned Value Management (EVM)**AGENCY:** National Aeronautics and Space Administration.**ACTION:** Interim rule.

SUMMARY: This interim rule revises the NASA FAR Supplement (NFS) to implement the Federal Acquisition Regulation (FAR) EVM coverage issued in Federal Acquisition Circular (FAC) 2005-11.

DATES: *Effective date:* This interim rule is effective November 13, 2006.

Comment date: Interested parties should submit comments to NASA at the address below on or before January 12, 2007 to be considered in formulation of the final rule.

ADDRESSES: Interested parties may submit comments, identified by RIN number 2700-AD29, via the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments may also be submitted to Ken Sateriale, NASA Headquarters, Office of Procurement, Contract Management Division, Washington, DC 20546. Comments may also be submitted by e-mail to ken.sateriale@nasa.gov.

FOR FURTHER INFORMATION CONTACT: Ken Sateriale, NASA, Office of Procurement, Contract Management Division (Suite 5K86); (202) 358-0491; e-mail: ken.sateriale@nasa.gov.

SUPPLEMENTARY INFORMATION:**A. Background**

FAC 2005-11 established the requirement for EVM to be implemented on major acquisitions as defined in OMB Circular A-11. The FAR permits agencies to develop provisions and clauses for their own use as long as they are substantially the same as those provided in the FAR.

Accordingly, NASA has developed its own provision and clause, and supplemental guidance for EVM implementation. In addition to requiring the application of EVM to major acquisitions as described in OMB Circular A-11, NASA's coverage provides contract value dollar thresholds for EVM implementation.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and

Review, dated September 30, 1993. This interim rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

NASA certifies that this interim rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it merely implements the FAR EVM coverage and does not impose an economic impact beyond that addressed in the FAC 2005-11 publication of the FAR final rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104-13) is not applicable because the NFS changes do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

In accordance with 41 U.S.C. 418(d), NASA has determined that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to harmonize the NFS EVM coverage with that in the FAR which was effective on July 5, 2006. However, pursuant to Pub. L. 98-577 and FAR 1.501, NASA will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 1834, 1842, and 1852

Government procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

■ Accordingly, 48 CFR Chapter XVIII is amended as follows:

CHAPTER XVIII—[AMENDED]

■ 1. Part 1834 is added to subchapter F to read as follows:

PART 1834—MAJOR SYSTEM ACQUISITION**Subpart 1834.2—Earned Value Management System**

Sec.

1834.201 Policy.

1834.203 Solicitation provisions and contract clause.

1834.203-70 NASA solicitation provision and contract clause.

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

Subpart 1834.2—Earned Value Management System**1834.201 Policy.**

(a) Application of an Earned Value Management System (EVMS) is required for all acquisitions for development designated as major in accordance with OMB Circular A-11, and for development or production contracts and subcontracts, including those for flight and ground support requirements, and institutional requirements (facility, IT investment, etc.) as follows:

(i) For contracts and subcontracts valued at \$20M or more, and contracts and subcontracts for major acquisitions valued at less than \$20M, the EVMS shall comply with the guidelines in the ANSI/EIA-748 Standard.

(ii) For contracts and subcontracts valued at \$50M or more, the contractor shall have an EVMS that has been formally validated and accepted by the Government.

(iii) For contracts and subcontracts for other than major acquisitions valued at less than \$20M, earned value management application is optional and is a risk-based decision that is at the discretion of the program/project manager.

(iv) EVM is not required on contracts for non-developmental engineering support services, steady state operations, basic and applied research, and routine services such as janitorial services or grounds maintenance services. In these cases, application of EVM is at the discretion of the program/project manager.

(e) Contracting officers shall request the assistance of the cognizant Defense Contract Management Agency (DCMA) office in determining the adequacy of proposed EVMS plans.

1834.203 Solicitation provisions and contract clause.

The FAR EVMS solicitation provisions and contract clause are not used in NASA contracts. See 1834.203-70 for the NASA EVMS solicitation provision and contract clause.

1834.203-70 NASA solicitation provision and contract clause.

Except for the contracts identified in 1834.201(a)(iv), the contracting officer shall insert—

(a) The provision at 1852.234-1, Notice of Earned Value Management System, in solicitations for contracts for—

(1) Development or production, including flight and ground support projects, and institutional projects (facility, IT investment, etc.), with a value exceeding \$20M; and

(2) Acquisitions of any value designated as major by the project manager in accordance with OMB Circular A-11; and

(b) The clause at 1852.234-2, Earned Value Management System, in solicitations and contracts with a value exceeding \$50M that include the provision at 1852.234-1. The contracting officer shall use the clause with its Alternate I when the contract value is less than \$50M.

PART 1842—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 2. The authority citation for 48 CFR part 1842 continues to read as follows:

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

Subpart 1842.74—[Removed]

■ 3. Part 1842 is amended by removing Subpart 1842.74.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. The authority citation for 48 CFR part 1852 continues to read as follows:

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

■ 5. Sections 1852.234-1 and 1852.234-2 are added to read as follows:

1852.234-1 Notice of Earned Value Management System.

As prescribed in 1834.203-70(a), insert the following provision:

Notice of Earned Value Management System (NOV 2006)

(a) The offeror shall provide documentation that its proposed Earned Value Management System (EVMS) complies with the EVMS guidelines in the American National Standards Institute (ANSI)/Electronic Industries Alliance (EIA)-748 Standard, Earned Value Management Systems.

(b) If the offeror proposes to use a system that currently does not meet the requirements of paragraph (a) of this provision, the offeror shall submit its comprehensive plan for compliance with the EVMS guidelines to the Government for approval.

(1) The plan shall—

(i) Describe the EVMS the offeror intends to use in performance of the contract;

(ii) Distinguish between the offeror's existing management system and modifications proposed to meet the EVMS guidelines in ANSI/EIA-748;

(iii) Describe the management system and its application in terms of the EVMS guidelines;

(iv) Describe the proposed procedure for application of the EVMS requirements to subcontractors;

(v) Describe how the offeror will ensure EVMS compliance for each subcontractor

subject to the flowdown requirement in paragraph (c) whose EVMS has not been recognized by the Cognizant Federal Agency as compliant according to paragraph (a);

(vi) Provide documentation describing the process and results, including Government participation, of any third-party or self-evaluation of the system's compliance with the EVMS guidelines; and

(vii) If the value of the offeror's proposal, including options, is \$50 million or more, provide a schedule of events leading up to formal validation and Government acceptance of the Contractor's EVMS. This schedule should include progress assistance visits, the first visit occurring no later than 30 days after contract award, and a compliance review as soon as practicable. The Department of Defense Earned Value Management Implementation Guide (<https://acc.dau.mil/CommunityBrowser.aspx?id=19557>) outlines the requirements for conducting a progress assistance visit and validation compliance review.

(2) The offeror shall provide information and assistance as required by the Contracting Officer to support review of the plan.

(3) The Government will review the offeror's EVMS implementation plan prior to contract award.

(c) The offeror shall identify in its offer the major subcontractors, or major subcontracted effort if major subcontractors have not been selected, planned for application of the EVMS requirement. Prior to contract award, the offeror and NASA shall agree on the subcontractors, or subcontracted effort, subject to the EVMS requirement.

(d) The offeror shall incorporate its compliance evaluation factors for subcontractors into the plan required by paragraph (b) of this provision.

(End of provision)

1852.234-2 Earned Value Management System.

As prescribed in 1834.203-70(b) insert the following clause:

Earned Value Management System (NOV 2006)

(a) In the performance of this contract, the Contractor shall use—

(1) An Earned Value Management System (EVMS) that has been determined by the Cognizant Federal Agency to be compliant with the EVMS guidelines specified in the American National Standards Institute (ANSI)/Electronic Industries Alliance (EIA)-748 Standard, Industry Guidelines for Earned Value Management Systems (current version at the time of award) to manage this contract; and

(2) Earned Value Management procedures that provide for generation of timely, accurate, reliable, and traceable information for the Contract Performance Report (CPR) required by the contract.

(b) If, at the time of award, the Contractor's EVMS has not been determined by the Cognizant Federal Agency to be compliant with the EVMS guidelines, or the Contractor does not have an existing cost/schedule control system that is compliant with the

guidelines in the ANSI/EIA-748 Standard (current version at the time of award), the Contractor shall apply the system to the contract and shall take timely action to implement its plan to obtain compliance/validation. The Contractor shall follow and implement the approved compliance/validation plan in a timely fashion. The Government will conduct a Compliance Review to assess the contractor's compliance with its plan, and if the Contractor does not follow the approved implementation schedule or correct all resulting system deficiencies identified as a result of the compliance review within a reasonable time, the Contracting Officer may take remedial action, that may include, but is not limited to, a reduction in fee.

(c) The Government will conduct Integrated Baseline Reviews (IBRs). Such reviews shall be scheduled and conducted as early as practicable, and if a pre-award IBR has not been conducted, a post-award IBR should be conducted within 180 calendar days after contract award, or the exercise of significant contract options, or within 60 calendar days after distribution of a supplemental agreement that implements a significant funding realignment or effects a significant change in contractual requirements (e.g., incorporation of major modifications). The objective of IBRs is for the Government and the Contractor to jointly assess the Contractor's baseline to be used for performance measurement to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

(d) Unless a waiver is granted by the Cognizant Federal Agency, Contractor proposed EVMS changes require approval of the Cognizant Federal Agency prior to implementation. The Cognizant Federal Agency shall advise the Contractor of the acceptability of such changes within 30 calendar days after receipt of the notice of proposed changes from the Contractor. If the advance approval requirements are waived by the Cognizant Federal Agency, the Contractor shall disclose EVMS changes to the Cognizant Federal Agency at least 14 calendar days prior to the effective date of implementation.

(e) The Contractor agrees to provide access to all pertinent records and data requested by the Contracting Officer or a duly authorized representative. Access is to permit Government surveillance to ensure that the Contractor's EVMS complies, and continues to comply, with the EVMS guidelines referenced in paragraph (a) of this clause, and to demonstrate—

(1) Proper implementation of the procedures generating the cost and schedule information being used to satisfy the contract data requirements;

(2) Continuing application of the accepted company procedures in satisfying the CPR required by the contract through recurring program/project and contract surveillance; and

(3) Implementation of any corrective actions identified during the surveillance process.

(f) The Contractor shall be responsible for ensuring that its subcontractors, identified

below, comply with the EVMS requirements of this clause as follows:

(1) For subcontracts with an estimated dollar value of \$50M or more, the following subcontractors shall comply with the requirements of this clause.

(Contracting Officer to insert names of subcontractors or subcontracted effort).

(2) For subcontracts with an estimated dollar value of less than \$50M, the following subcontractors shall comply with the requirements of this clause except for the requirement in paragraph (b), if applicable, to obtain compliance/validation.

(Contracting Officer to insert names of subcontractors or subcontracted effort.)

(g) If the contractor identifies a need to deviate from the agreed baseline by working against an Over Target Baseline (OTB) or Over Target Schedule (OTS), the contractor shall submit to the Contracting Officer a request for approval to begin implementation of an OTB or OTS. This request shall include a top-level projection of cost and/or schedule growth, whether or not performance variances will be retained, and a schedule of implementation for the reprogramming adjustment. The Government will approve or deny the request within 30 calendar days after receipt of the request. Failure of the Government to respond within this 30-day period constitutes approval of the request. Approval of the deviation request does not constitute a change, or the basis for a change, to the negotiated cost or price of this contract, or the estimated cost of any undefinitized contract actions.

(End of clause)

(Alternate I) (NOV 2006)

As prescribed in 1834.203–70(b), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) If, at the time of award, the Contractor's EVMS has not been determined by the Cognizant Federal Agency to be compliant with the EVMS guidelines, or the Contractor does not have an existing cost/schedule control system that is compliant with the guidelines in the ANSI/EIA–748 Standard (current version at the time of award), the Contractor shall apply the system to the contract and shall take timely action to implement its plan to be compliant with the guidelines. The Government will not formally validate/accept the Contractor's EVMS with respect to this contract. The use of the Contractor's EVMS for this contract does not imply Government acceptance of the Contractor's EVMS for application to future contracts. The Government will monitor compliance through routine surveillance.

1852.242–74 through 1852.242–77 [Removed]

■ 6. Sections 1852.242–74, 1852.242–75, 1842.242–76, and 1852.242–77 are removed.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 060609159–6272–02; I.D. 060606A]

RIN 0648–AU12

Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Amendment 18

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 18 to the Pacific Coast Groundfish Fishery Management Plan (FMP). Amendment 18 responds to a court order by setting the Pacific Fishery Management Council's (Council's) bycatch minimization policies and requirements into the FMP.

DATES: Effective December 13, 2006.

ADDRESSES: Amendment 18 is available on the Council's Web site at: <http://www.pcouncil.org/groundfish/gffmp.html>.

FOR FURTHER INFORMATION CONTACT:

Yvonne deReynier (Northwest Region, NMFS), phone: 206–526–6140; fax: 206–526–6736; and e-mail: yvonne.dereynier@noaa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

The proposed and final rules for this action are accessible via the Internet at the Office of the Federal Register's Web site at: <http://www.gpoaccess.gov/fr/index.html>. The FEIS on bycatch mitigation is available on the NMFS Northwest Region Web site at: <http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/NEPA-Documents/Programmatic-EIS.cfm> and at the Council's Web site at <http://www.pcouncil.org>.

Background

Amendment 18 revised the FMP to set the Council's bycatch minimization

policies and requirements into the FMP. Amendment 18 responds to court orders in *Pacific Marine Conservation Council v. Evans*, 200 F.Supp.2d 1194 (N.D. Calif. 2002) [hereinafter *PMCC v. Evans*]. This final rule implements the following actions: require that groundfish fishery management measures take into account the co-occurrence ratios of overfished species with more abundant target stocks; require vessels that participate in the open access groundfish fisheries to carry observers if directed by NMFS; authorize the use of depth-based closed areas as a routine management measure for protecting and rebuilding overfished stocks, preventing the overfishing of any groundfish species, minimizing the incidental harvest of any protected or prohibited non-groundfish species, controlling effort to extend the fishing season, minimizing the disruption of traditional commercial fishing and marketing patterns, spreading the available recreational catch over a large number of anglers, discouraging target fishing while allowing small incidental catches to be landed, and allowing small fisheries to operate outside the normal season; update the boundary definitions of the Klamath and Columbia River Salmon Conservation Zones and Eureka nearshore area to use latitude and longitude coordinates in a style similar to that of the Groundfish Conservation Areas (GCAs); and, allow species to be identified for sorting prior to landing if there is a scientific need for those species to be separately identified upon landing.

A Notice of Availability for Amendment 18 was published on June 9, 2006 (71 FR 33432). NMFS requested comments on the amendment under the Magnuson-Stevens Act FMP amendment review provisions for a 60-day comment period, ending August 8, 2006. A proposed rule was published on June 27, 2006 (71 FR 36506), requesting public comment through August 8, 2006. During the Amendment 18 and proposed rule comment period, NMFS received two letters of comment. These letters are addressed later in the preamble to this final rule. The preamble to the proposed rule for this action provides additional background information on the fishery and on this final rule. Further detail on Amendment 18 also appears in the bycatch mitigation FEIS, referenced above under "Electronic Access." After consideration of the public comments received on the amendment, NMFS approved Amendment 18 on September 6, 2006.