

Dated: April 20, 2009.
Walter W. Kovalick, Jr.,
Acting Regional Administrator, Region 5.
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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[**FAR Case 2008-015; Docket 2009-0015;**
Sequence 1]

RIN: 9000-AL26

Federal Acquisition Regulation; FAR Case 2008-015, Payments Under Fixed-Price Architecture and Engineering Contracts

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

ACTION: Proposed rule with request for
 comments.

SUMMARY: The Civilian Agency
 Acquisition Council (CAAC) and the
 Defense Acquisition Regulations
 Council (DARC) propose to amend the
 Federal Acquisition Regulation (FAR) to
 revise the withholding-of-payment
 requirements under FAR clause 52.232-
 10, Payments Under Fixed-Price
 Architect-Engineer Contracts.

DATES: Interested parties should submit
 written comments to the Regulatory
 Secretariat on or before July 6, 2009 to
 be considered in the formulation of a
 final rule.

ADDRESSES: Submit comments
 identified by FAR case 2008-015 by any
 of the following methods:

- Regulations.gov: <http://www.regulations.gov>.

Submit comments via the Federal
 eRulemaking portal by inputting "FAR
 Case 2008-015" under the heading
 "Comment or Submission". Select the
 link "Send a Comment or Submission"
 that corresponds with FAR Case 2008-
 015. Follow the instructions provided to
 complete the "Public Comment and
 Submission Form". Please include your
 name, company name (if any), and
 "FAR Case 2008-015" on your attached
 document.

- Fax: 202-501-4067.
- Mail: General Services
 Administration, Regulatory Secretariat
 (VPR), 1800 F Street NW, Room 4041,

Washington, DC 20405, ATTN: Hada
 Flowers.

Instructions: Please submit comments
 only and cite FAR case 2008-015 in all
 correspondence related to this case. All
 comments received will be posted
 without change to <http://www.regulations.gov>, including any
 personal and/or business confidential
 information provided.

FOR FURTHER INFORMATION CONTACT Ms.
 Meredith Murphy, Procurement
 Analyst, at (202) 208-6925 for
 clarification of content. For information
 pertaining to status or publication
 schedules, contact the Regulatory
 Secretariat at (202) 501-4755. Please
 cite FAR case 2008-015.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Regulation
 (FAR) 52.232-10, Payments under
 Fixed-Price Architecture-Engineer
 Contracts, currently requires the
 contracting officer to withhold 10% of
 the amounts due on each voucher;
 however, payment may be made in full
 during any month in which the
 contracting officer determines the
 performance to be satisfactory. The
 Government retains the withhold
 amount until the contracting officer
 determines that the work has been
 satisfactorily completed. The
 contracting officer may release excess
 withhold amounts to the contractor
 when it is determined that work is
 substantially complete and when the
 contracting officer determines that the
 amount retained is in excess of the
 amount adequate for the protection of
 the Government's interests.

This rule proposes to revise FAR
 52.232-10 to permit contracting officers
 to use their judgment regarding the
 amount of payment withhold to apply
 under fixed-price architecture-engineer
 contracts (based on an assessment of the
 contractor's performance under the
 contract) so that the withhold amount
 will be applied at the level necessary to
 protect the Government's interests. This
 is in contrast to the current requirement
 that contracting officers withhold 10
 percent on all payments. Thus, the rule
 proposes to revise paragraphs (b) and (c)
 of the contract clause at FAR 52.232-10
 to state that the contracting officer may
 (rather than shall) withhold up to 10
 percent of the payment amount due and
 that the amount of withhold shall be
 determined based upon the contractor's
 performance record. The rule also
 makes several related editorial changes
 including one that clarifies that the
 contractor will be paid any unpaid
 balance due to include withhold

amounts at the successful completion of
 the design work.

This case originated from a
 recommendation in the Small Business
 Administration's Regulatory Review and
 Reform (r3) initiative. The current
 withholding provisions negatively
 impact the cash flow of architect-
 engineer contractors and may, in some
 instances, result in the withholding of
 amounts that exceed reasonable
 amounts to protect the Government's
 interests.

This is not a significant regulatory
 action and, therefore, is not subject to
 review under Section 6(b) of Executive
 Order 12866, Regulatory Planning and
 Review, dated September 30, 1993. This
 rule is not a major rule under 5 U.S.C.
 804.

B. Regulatory Flexibility Act

The Councils do not expect this
 proposed rule to have a significant
 economic impact on a substantial
 number of small entities within the
 meaning of the Regulatory Flexibility
 Act, at 5 U.S.C. 601, *et seq.*, because the
 rule does not impose any additional
 requirements on small businesses. There
 are approximately 230,000 architect-
 engineer firms, many of which are small
 businesses. This rule actually eases the
 impact on such firms. Therefore, an
 Initial Regulatory Flexibility Analysis
 has not been performed. We invite
 comments from small businesses and
 other interested parties. The Councils
 will consider comments from small
 entities concerning the affected FAR
 Part 52 in accordance with 5 U.S.C. 610.
 Interested parties must submit such
 comments separately and should cite 5
 U.S.C. 601, *et seq.* (FAR Case 2008-015)
 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does
 not apply because the proposed changes
 to the FAR 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.*

List of Subjects in 48 CFR Part 52

Government Procurement.

Dated: April 28, 2009.

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Director, Office of Acquisition Policy.

Therefore, DoD, GSA, and NASA
 propose to amend 48 CFR part 52 as set
 forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR
 part 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 52.232–10 by revising the date of the clause; by revising the last sentence or paragraph (a), and by revising paragraphs (b) and (c) to read as follows:

52.232–10 Payments under Fixed-Price Architect-Engineer Contracts.

* * * * *

PAYMENTS UNDER FIXED-PRICE ARCHITECT-ENGINEER CONTRACTS (DATE)

(a) * * * The estimates, along with any supporting data required by the Contracting Officer, shall be prepared by the Contractor and submitted along with its voucher.

(b) After receipt of each substantiated voucher the Government shall pay the voucher as approved by the Contracting Officer or authorized representative. The Contracting Officer may require a withhold of up to 10 percent of the amounts due under paragraph (a) of this clause in order to protect the Government's interest and ensure satisfactory completion of the contract. The amount of withhold shall be determined based upon the contractor's performance record under this contract. Whenever the Contracting Officer determines that the work is substantially complete and that the amount retained is in excess of the amount adequate for the protection of the Government, the Contracting Officer may release the excess amount to the Contractor.

(c) Upon satisfactory completion by the Contractor and final acceptance by the Contracting Officer of all design work done by the Contractor under the "Statement of Architect-Engineer Services", the Contractor will be paid the unpaid balance of any money due for design work under the statement, including all withheld amounts.

* * * * *

(End of clause)

[FR Doc. E9–10351 Filed 5–4–09; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No. 0809121212–81515–01]

RIN 0648–AX20

Endangered and Threatened Wildlife; Sea Turtle Conservation

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: The National Marine Fisheries Service (NMFS) currently requires the use of chain-mat modified dredge gear in the Atlantic sea scallop fishery south of 41°9.0' North latitude from May 1 through November 30 each year. This gear is necessary to help reduce mortality and injury to endangered and threatened sea turtles captured in this fishery and to conserve sea turtles listed under the Endangered Species Act (ESA). This proposed action would make minor modifications to the current requirements by clarifying where on the dredge the chain mat should be hung; by excluding the sweep from the requirement that the side of each opening in the chain mat be less than or equal to 14 inches (35.5 cm); and by adding definitions of the sweep and the diamonds, which are terms used to describe parts of the scallop dredge gear. Any incidental take of threatened sea turtles in Atlantic sea scallop dredge gear in compliance with the gear modification requirements and all other applicable requirements will be exempted from the ESA prohibition against takes. NMFS is requesting public comment on this action, the focus of which is the minor modifications described here. NMFS is not accepting public comment on the existing chain mat requirements through this proposed rule.

DATES: Comments on the proposed rule must be received by 5 p.m. EST on June 4, 2009.

ADDRESSES: Written comments on this action, identified by RIN 0648–AX20, may be submitted by any one of the following methods:

- *Electronic submissions:* Submit all electronic public comments via the Federal eRulemaking portal at <http://www.regulations.gov>.
- *Fax:* 978–281–9394, ATTN: Sea Turtle Conservation Measures, Proposed Rule.
- *Mail:* Mary A. Colligan, Assistant Regional Administrator for Protected Resources, NMFS, Northeast Region, 55 Great Republic Drive, Gloucester, MA 01930, Attn: Sea Turtle Conservation Measures, Proposed Rule.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not

submit confidential business information or otherwise sensitive or protected information.

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, WordPerfect, or Adobe PDF file formats only.

Copies of the Draft Supplemental Environmental Assessment/Regulatory Impact Review can be obtained from <http://www.nero.noaa.gov/nero/regs/com.html> listed under the Electronic Access portion of this document or by writing to Pasquale Scida, NMFS, Northeast Region, 55 Great Republic Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT:

Pasquale Scida (ph. 978–281–9208, fax 978–281–9394, e-mail pasquale.scida@noaa.gov).

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) sea turtles are listed as endangered. The loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) sea turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico that are listed as endangered. Kemp's ridley, hawksbill, loggerhead, and green sea turtles are hard-shelled sea turtles.

Under the ESA and its implementing regulations, taking sea turtles under NMFS's jurisdiction, even incidentally, is prohibited, with exceptions identified at 50 CFR 223.206. The incidental take, both lethal and non-lethal, of loggerhead, Kemp's ridley, and unidentified hard-shelled sea turtles as a result of scallop dredging has been observed in the Atlantic sea scallop fishery (Northeast Fisheries Science Center (NEFSC) Fisheries Sampling Branch (FSB), Observer Database). In addition, a non-lethal take of a green sea turtle has been observed in this fishery (NEFSC FSB, Observer Database) and one unconfirmed take of a leatherback sea turtle was reported during the experimental fishery to test the chain-mat modified gear (DuPaul *et al.*, 2004).

Sea turtles caught in scallop dredge gear often suffer injuries. The most commonly observed injury is damage to the carapace. The exact causes of these injuries are unknown, but most likely appear to be from being struck by the