

**PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

3. The authority citation for part 852 continues to read as follows:

**Authority:** 38 U.S.C. 501 and 40 U.S.C. 486(c).

**852.203–70 [Removed]**

4. Section 852.203–70 is removed.

[FR Doc. 99–14142 Filed 6–7–99; 8:45 am]

BILLING CODE 8320–01–P

**ENVIRONMENTAL PROTECTION AGENCY****48 CFR Parts 1537 and 1552**

[FRL–6353–9]

**Acquisition Regulation: Service Contracting—Avoiding Improper Personal Services Relationships**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is issuing this rule to amend the EPA Acquisition Regulation (EPAAR) (48 CFR Chapter 15) to emphasize the proper relationship between the Government and its contractors in its non-personal services contracts. The Agency recognizes that regardless of the express terms of its contracts, if a contract is administered improperly, an improper personal services relationship can be the result. This rule is designed to ensure that the manner in which contracts are administered will not create an improper employer-employee relationship.

**EFFECTIVE DATE:** July 8, 1999.

**FOR FURTHER INFORMATION CONTACT:** Jean A. Rellins, U.S. EPA, Office of Acquisition Management, (3802R), 401 M Street, SW, Washington, D.C. 20460, Telephone: (202) 564–4434.

**SUPPLEMENTARY INFORMATION:****A. Background.**

Recent Agency audits have indicated a vulnerability in the manner in which Agency contracts have been administered which could create the existence of improper personal services relationships. This rule amends the EPAAR to emphasize the proper relationship between the Government and its contractors in the Government's non-personal services contracts. The Agency recognizes that regardless of the express terms of its contracts, if a contract is administered improperly,

improper personal services relationship can be the result. Accordingly, the Agency is trying to highlight the nature of the proper relationship to ensure that the manner in which contracts are administered will not create an improper employer-employee relationship. No public comments were received.

**B. Executive Order 12866**

This rule is not a significant regulatory action for the purposes of Executive Order 12866; therefore, no review is required by the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because this rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*)

**D. Regulatory Flexibility Act**

The EPA certifies that this rule does not exert a significant economic impact on a substantial number of small entities. The requirements to contractors under the rule impose no reporting, record-keeping, or any compliance costs.

**E. Unfunded Mandates**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA),

Public Law 104–4, establishes requirements for Federal agencies to assess the impact of their regulatory actions on State, local, and tribal governments, and the private sector. This rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in one year. Any private sector costs for this action relate to paperwork requirements and associated expenditures that are far below the level established for UMRA applicability. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

**F. Executive Order 13045**

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate affect on children. If the regulatory action meets both criteria,

the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

**G. Executive Order 12875**

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

**H. Executive Order 13084**

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior

consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

### **I. National Technology Transfer and Advancement Act of 1995**

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d)(15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

### **J. Submission to Congress and the General Accounting Office**

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective July 8, 1999.

**Authority:** The provisions of this regulation are issued under 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390.

### **List of Subjects in 48 CFR Parts 1537 and 1552**

Government procurement.

Therefore, 48 CFR Chapter 15 is amended as set forth below:

1. The authority citation for Parts 1537 and 1552 continues to read as follows:

**Authority:** Sec. 205(c), 63 Stat. 390, as amended.

### **PART 1537—[AMENDED]**

2. Section 1537.110 is amended to add paragraph (g) to read as follows:

#### **1537.110 Solicitation provisions and contract clauses.**

\* \* \* \* \*

(g) To ensure that Agency contracts are administered so as to avoid creating an improper employer-employee relationship, contracting officers shall insert the contract clause at 48 CFR 1552.237-76, "Government-Contractor Relations", in all solicitations and contracts for non-personal services that exceed the simplified acquisition threshold.

### **PART 1552—[AMENDED]**

3. Add 1552.237-76 to read as follows:

#### **1552.237-76 Government-Contractor Relations.**

As prescribed in 1537.110(g), insert the following clause:

#### **Government-Contractor Relations (June 1999)**

(a) The Government and the Contractor understand and agree that the services to be delivered under this contract by the contractor to the Government are non-personal services and the parties recognize and agree that no employer-employee relationship exists or will exist under the contract between the Government and the Contractor's personnel. It is, therefore, in the best interest of the Government to afford both parties a full understanding of their respective obligations.

(b) Contractor personnel under this contract shall not:

(1) Be placed in a position where they are under the supervision, direction, or evaluation of a Government employee.

(2) Be placed in a position of command, supervision, administration or control over Government personnel, or over personnel of other Contractors under other EPA contracts, or become a part of the Government organization.

(3) Be used in administration or supervision of Government procurement activities.

(c) Employee relationship. (1) The services to be performed under this contract do not

require the Contractor or his/her personnel to exercise personal judgment and discretion on behalf of the Government. Rather the Contractor's personnel will act and exercise personal judgment and discretion on behalf of the Contractor.

(2) Rules, regulations, directives, and requirements that are issued by the U.S. Environmental Protection Agency under its responsibility for good order, administration, and security are applicable to all personnel who enter the Government installation or who travel on Government transportation. This is not to be construed or interpreted to establish any degree of Government control that is inconsistent with a non-personal services contract.

(d) Inapplicability of employee benefits. This contract does not create an employer-employee relationship. Accordingly, entitlements and benefits applicable to such relationships do not apply.

(1) Payments by the Government under this contract are not subject to Federal income tax withholdings.

(2) Payments by the Government under this contract are not subject to the Federal Insurance Contributions Act.

(3) The Contractor is not entitled to unemployment compensation benefits under the Social Security Act, as amended, by virtue of performance of this contract.

(4) The Contractor is not entitled to workman's compensation benefits by virtue of this contract.

(5) The entire consideration and benefits to the Contractor for performance of this contract is contained in the provisions for payment under this contract.

(e) Notice. It is the Contractor's, as well as, the Government's responsibility to monitor contract activities and notify the Contracting Officer if the Contractor believes that the intent of this clause has been or may be violated.

(1) The Contractor should notify the Contracting Officer in writing promptly, within \_\_\_\_\_ (to be negotiated and inserted into the basic contract at contract award) calendar days from the date of any incident that the Contractor considers to constitute a violation of this clause. The notice should include the date, nature and circumstance of the conduct, the name, function and activity of each Government employee or Contractor official or employee involved or knowledgeable about such conduct, identify any documents or substance of any oral communication involved in the conduct, and the estimate in time by which the Government must respond to this notice to minimize cost, delay or disruption of performance.

(2) The Contracting Officer will promptly, within \_\_\_\_\_ (to be negotiated and inserted into the basic contract at contract award) calendar days after receipt of notice, respond to the notice in writing. In responding, the Contracting Officer will either:

(i) Confirm that the conduct is in violation and when necessary direct the mode of further performance,

(ii) Countermand any communication regarded as a violation,

(iii) Deny that the conduct constitutes a violation and when necessary direct the mode of further performance; or

(iv) In the event the notice is inadequate to make a decision, advise the Contractor what additional information is required, and establish the date by which it should be furnished by the Contractor and the date thereafter by which the Government will respond.

[(End of Clause)]

Dated: May 14, 1999.

**Betty L. Bailey,**

*Director, Office of Acquisition Management.*

[FR Doc. 99-14066 Filed 6-7-99; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 990527145-9145-01; I.D. 052199B]

RIN 0648-AM71

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Minimum Size Limit

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

**ACTION:** Emergency interim rule; request for comments and a notice of closure.

**SUMMARY:** NMFS issues an emergency interim rule to increase the minimum size limit for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico from 15 inches (38.1 cm) to 18 inches (45.7 cm) for persons subject to the bag limit, as requested by the Gulf of Mexico Fishery Management Council (Council). In addition, NMFS closes the recreational red snapper fishery in the EEZ of the Gulf of Mexico effective 12:01 a.m., local time, August 29, 1999. The intended effect of the increase in the minimum size limit is to reduce the rate of harvest, and, thereby, extend the season for the recreational red snapper fishery. NMFS believes that an extended season will increase social and economic benefits from the red snapper fishery.

**DATES:** This rule is effective June 4, 1999 through 12:01 a.m., local time, August 29, 1999. The closure of the recreational fishery for red snapper in the EEZ of the Gulf of Mexico is effective 12:01 a.m., local time, August 29, 1999, through December 31, 1999.

**ADDRESSES:** Comments on this emergency interim rule must be mailed

to, and copies of documents supporting this action may be obtained from, the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

**FOR FURTHER INFORMATION CONTACT:** Roy Crabtree, 727-570-5305.

**SUPPLEMENTARY INFORMATION:** The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The 1996 revisions of the Magnuson-Stevens Act require NMFS to close the Gulf of Mexico recreational red snapper fishery when the recreational quota (currently 4.47 million lb)(2.03 million kg) is caught. The recreational fishery was closed on November 27 in 1997 and on September 29 in 1998. Under the existing 4-fish bag limit and 15-inch (38.1-cm) minimum size limit, NMFS, using the length-based simulation model (LSIM), projects that the 1999 quota will be caught on August 4, 1999. Consequently, under the existing bag and minimum size limits, the fishery would close at 12:01 a.m. on August 5, 1999. The Council has requested an emergency increase in the minimum size limit to reduce catch rates and extend the recreational season. The Council's request is based on testimony by representatives of the for-hire industry who believe that an extension of the season would benefit the industry. The industry, using the LSIM, specifically requested that the season be extended through August 28 by increasing the minimum size limit to 18 inches. Further, the industry specifically requested no decrease in the bag limit or increase in the minimum size limit beyond 18 inches due to a belief that such measures would significantly reduce the number of recreational fishing trips on for-hire vessels.

The Council considered several options for extending the season, including various reductions in the bag limit and various increases in the minimum size limit. However, after reviewing the LSIM analysis, the Council ultimately recommended an 18-inch (45.7-cm) size limit as the best alternative for extending the season, the means most acceptable to industry for extending the season through August 28, and a measure supported by many red snapper recreational fishermen who have agreed to comply voluntarily with

an 18 inch size limit starting on June 1 until an emergency rule can be implemented.

Using the LSIM, NMFS projects that with implementation of an 18-inch (45.7-cm) minimum size limit in early June, implementation of the proposed specifications currently under review that would establish a zero-fish bag limit for captain and crew, and voluntary compliance by many fishermen starting on June 1, the quota will be caught on or about August 28, 1999. This action will have negligible biological effects on the Gulf red snapper stock and will not adversely affect the current rebuilding schedule for this overfished stock.

Accordingly, NMFS is increasing the minimum size limit to 18-inches (45.7 cm) effective on June 4, 1999 through 12:01 a.m., local time, on August 29, 1999. The Gulf of Mexico recreational red snapper fishery will close at 12:01 a.m., local time, on August 29, 1999, and remain closed through December 31, 1999.

#### Criteria for Issuing an Emergency Rule

This emergency interim rule meets NMFS policy guidelines for the use of emergency rules (62 FR 44421, August 21, 1997), because the emergency situation results from recent, unforeseen events, or recently discovered circumstances. Also, it realizes immediate benefits from the emergency rule that outweigh the value of prior notice, opportunity for public comment, and deliberative consideration expected under the normal rulemaking process.

#### Recent, Unforeseen Events or Recently Discovered Circumstances

The Council, at its May 10-13, 1999, meeting, learned that if no action was taken, the projected closing date for the 1999 recreational red snapper season is August 5. This closure would result in roughly a 5-month closed season for the remainder of 1999. When combined with the proposed January-February closure from the red snapper regulatory amendment, the recreational red snapper fishery has the potential to be closed for nearly 7 consecutive months. For this action to be effective in reducing the rate of harvest, extending the fishing season, and preventing some of the potential economic hardships and disruptions to the recreational red snapper fishery, it should be implemented in early June. To be effective by then, an emergency interim rule is needed.

#### Immediate Benefits

A closure of the recreational fishing season for 5, or possibly 7 months, is a