

of issues, such as whether current period accounting of salvage amount is consistent with GAAP, to determine if the change could and should be made. We find that delaying this simplification proceeding for further study of an accounting change is unwarranted. Therefore, we will continue to determine the future net salvage value in the depreciation process at this time.

10. Accordingly, it is ordered, Pursuant to sections 1, 4(i), 4(j), 220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 220(b), and 403, that 43.43 of the Commission's Rules is amended, 47 CFR 43.43, to reflect the changes to our depreciation prescription process as described herein.

11. It is further ordered, That pursuant to Section 1.427(a) of the Commission's Rules, 47 CFR 1.427(a), the amendment to § 43.43 of the Commission's Rules, 47 CFR 43.43, shall be effective no later than January 1, 1994.

#### List of Subjects in 47 CFR Part 43

Communications Common Carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.  
William F. Caton,  
Acting Secretary.

#### Rule Changes

Part 43 of title 47 CFR is amended as follows:

#### PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

1. The authority citation for part 43 continues to read as follows:

**Authority:** Sec. 4, 48 Stat. 1006, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 211, 219, 220, 48 Stat. 1073, 1077, as amended; 47 U.S.C. 211, 219, 220.

2. Section 43.43 is amended by revising paragraph (c) to read as follows:

#### § 43.43 Reports of proposed changes in depreciation rates.

(c) Except as specified in paragraphs (c)(1) and (c)(2) of this section, when the change in the depreciation rate proposed for any class or subclass of plant (other than one occasioned solely by a shift in the relative investment in the several subclasses of the class of plant) amounts to twenty percent (20%) or more of the rate currently applied thereto, or when the proposed change will produce an increase or decrease of one percent (1%) or more of the aggregate depreciation charges for all depreciable plant (based on the amounts

determined in compliance with paragraph (b)(2) of this section) the carrier shall supplement the data required by paragraph (b) of this section with copies of the underlying studies, including calculations and charts, developed by the carrier to support service-life and net-salvage estimates. If a carrier must submit data of a repetitive nature to comply with this requirement, the carrier need only submit a fully illustrative portion thereof.

(1) A Local Exchange Carrier regulated under price caps, pursuant to §§ 61.41 through 61.49 of this chapter, is not required to submit the supplemental information described in paragraph (c) introductory text of this section for a specific account if: The carrier's currently prescribed depreciation rate for the specific account is derived from basic factors that fall within the basic factor ranges established for that same account; and the carrier's proposed depreciation rate for the specific account would also be derived from basic factors that fall within the basic factor ranges for the same account.

(2) Interexchange carriers regulated under price caps, pursuant to §§ 61.41 through 61.49 of this chapter, are exempted from submitting the supplemental information as described in paragraph (c) introductory text. They shall instead submit: Generation data, a summary of basic factors underlying proposed rates by account and a short narrative supporting those basic factors, including: Company plans of forecasted retirements and additions; and recent annual retirements, salvage and cost of removal.

\* \* \* \* \*

[FR Doc. 93-27080 Filed 11-3-93; 8:45 am]  
BILLING CODE 6712-01-M

#### 47 CFR Part 73

[MM Docket No. 93-111; RM-8204]

#### Radio Broadcasting Services; Reedsport, OR

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Colleen E. and Rodney B. Fafara, substitutes Channel 258C3 for Channel 258A at Reedsport, Oregon, and modifies Station KRBZ's construction permit to specify operation on the higher class channel. See 58 FR 26088, April 30, 1993. Channel 258C3 can be allotted to Reedsport in compliance with the Commission's minimum distance separation

requirements with a site restriction of 2.5 kilometers (1.6 miles) south, at coordinates North Latitude 43-40-40 and West Longitude 124-06-36, to accommodate petitioner's desired transmitter site. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** December 13, 1993.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 93-111, adopted October 7, 1993, and released October 27, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

#### PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

#### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 258A and adding Channel 258C3 at Reedsport.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93-27082 Filed 11-3-93; 8:45 am]  
BILLING CODE 6712-01-M

#### 47 CFR Part 80

[DA 93-1202]

#### Permit Type Acceptance of a 406.025 MHz Emergency Position Indicating Radio Beacon

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Order provides a waiver of the Rules to permit type acceptance of a 406.025 MHz EPIRB which does not comply with current technical requirements for type acceptance. This



action was in response to a request from Graseby Nova, Ltd. It will improve operational characteristics of the device, and thus improve emergency communications.

**EFFECTIVE DATE:** October 4, 1993.

**FOR FURTHER INFORMATION CONTACT:** Sean White, Federal Communications Commission, Washington, DC 20554 (202) 632-7175.

**SUPPLEMENTARY INFORMATION:**

**Order**

Adopted: October 4, 1993.

Released: October 12, 1993.

In the Matter of Request for waiver of the requirements in Section 80.1061(a) of the Rules to permit type acceptance of a 406.025 MHz emergency position-indicating radio beacon.

By the Chief, Private Radio Bureau.

1. Graseby Nova, Ltd. (Graseby), a manufacturer of emergency position-indicating radio beacons operating on 406.025 MHz (406 MHz EPIRBs), requests a waiver of § 80.1061(a) of the Rules, 47 CFR 80.1061(a), to permit type acceptance of a 406 MHz EPIRB which does not comply with current technical requirements for type acceptance. This action grants the requested waiver.

2. Section 80.1061(a) of the Rules requires that 406 MHz EPIRBs "must meet all the technical and performance standards contained in the Radio Technical Commission for Maritime Services document titled 'RTCM Recommended Standards for 406 MHz Satellite \* \* \* EPIRBs' (RTCM Standard) \* \* \*." Graseby requests a waiver of the requirement that 406 MHz EPIRBs have OFF/ON switches and the requirement for certain language on a label. Such a waiver would allow Graseby to submit its 406 MHz EPIRB for type acceptance for use in the United States. The United States Coast Guard (Coast Guard), the organization primarily responsible for maritime safety in the United States, supports Graseby's request.

3. Presently, the RTCM Standard requires every 406 MHz EPIRB to have a switch with two modes: OFF, the transmitter is deactivated; and ON, the transmitter is activated. Graseby's Model RT-260M 406 MHz EPIRB, however, is activated by a two position switch whose settings are "ON" and "AUTO." In the ON mode, the transmitter is activated; in the AUTO mode, the transmitter will be

automatically activated if the 406 MHz EPIRB is released from its mounting and exposed to sea water. According to Graseby, this design responds to several past incidents where 406 MHz EPIRBs have been automatically released from their mountings in emergencies, but have not transmitted because the switch was in the OFF position.<sup>2</sup>

4. Further, the design modification in the Graseby 406 MHz EPIRB appears to improve the operational characteristics of the device, and thus improves emergency communications. This modification complies with the latest draft of RTCM's update to the technical standards for 406 MHz EPIRBs,<sup>3</sup> anticipating the standards which likely will apply to 406 MHz EPIRBs in the future. The Coast Guard's support of the waiver adds considerable weight to Graseby's request.

5. The current technical standards for 406 MHz EPIRBs also require the casing labels to bear, *inter alia*, the caption "THIS TRANSMITTER IS AUTHORIZED FOR USE ONLY DURING SITUATIONS OF GRAVE AND IMMINENT DANGER." Graseby also asks for a waiver to replace this caption with a caption reading "NOT TO BE OPERATED EXCEPT IN AN EMERGENCY. IMPROPER USE CARRIES A SEVERE PENALTY."<sup>4</sup> In support of this request Graseby points out that RTCM's latest review draft of technical standards provides for use of an equivalent warning.<sup>5</sup>

6. We find Graseby's alternative caption acceptable. It is at least as clear and authoritative as the RTCM caption, and the addition of the penalty clause may enhance the prohibitive effect of the caption. Again the request is consistent with the latest draft of the RTCM standards and supported by the Coast Guard.

7. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 0.331 and 1.3 of the Commission's Rules, 47 CFR 0.331 and 1.3, that Section 80.1061(a) of the Commission's Rules, 47 CFR 80.1061(a), IS WAIVED to the extent that Graseby Nova, Ltd. may submit for type acceptance EPIRBs with the departures from the RTCM Standard for 406 MHz EPIRBs concerning OFF/ON switches

<sup>2</sup> Fax to George Dillon, FCC, from Peter Stanier, Graseby Nova, Ltd. (Graseby) at 1 (April 16, 1993).

<sup>3</sup> The draft of the updated RTCM standard requires "AUTO" and "ON" settings like the settings in Graseby's 406 MHz EPIRB. RTCM, *RTCM Paper 75-93/SC110-237: Recommended Standards for 406 MHz Satellite EPIRBs*, ¶ 2.3.1.2. (June 1993) (hereafter *RTCM Paper 75-93*).

<sup>4</sup> RTCM Standard ¶ 2.4.3.2.4. (1987).

<sup>5</sup> Fax to George Dillon, FCC, from Peter Stanier, Graseby, at 2 (April 16, 1993).

<sup>6</sup> *RTCM Paper 75-93* ¶ 2.4.3.2.2. (June 1993).

and labelling requirements described above. In all other particulars, EPIRBs submitted for type acceptance by Graseby Nova, Ltd. must conform to the standards of the Commission's Rules.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 93-27085 Filed 11-3-93; 8:45 am]

BILLING CODE 6712-01-M

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 1807, 1834, 1852, and 1870**

**Interim Changes to NASA FAR Supplement Streamlining the Major System Acquisition Process by Eliminating the Requirement for a Formal Solicitation Between Each Phase of the Procurement**

**AGENCY:** Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** NASA has revised the NASA FAR Supplement to provide for selection/down-selection between phases of a Major System Acquisition utilizing a streamline approach that eliminates the current NASA requirement to provide a new, formal solicitation for each phase of the acquisition.

**DATES:** This interim rule is effective November 4, 1993. Comments are due no later than December 20, 1993.

**ADDRESSES:** Comments should be addressed to Tom O'Toole, NASA Headquarters, Office of Procurement, Procurement Policy Division (Code HP), Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Tom O'Toole, Telephone: (202) 358-0478.

**SUPPLEMENTARY INFORMATION:**

**Background**

To streamline the Major System Acquisition process, and in particular to avoid major time lapses between phases, NASA has revised NASA FAR Supplement parts 1807, 1834, 1852, and 1870 to eliminate the requirement for a new, formal solicitation between each phase of a major system procurement. Under these procedures, each phase of the acquisition is synopsized in the Commerce Business Daily (CBD). The original synopsis must state the Government's intent to conduct a

<sup>1</sup> Radio Technical Commission for Maritime Services (RTCM), *RTCM Paper 215-87/SC 110-89, RTCM Recommended Standards for 406 MHz Satellite Emergency Position-Indicating Radiobeacons (EPIRBs)* ¶ 2.3.1.2. (1987) (hereafter *RTCM Standard*).



competition for the major system, with down-selection from among the successful contractors of the preceding phase. Proposals from other prospective offerors will be considered, and these offerors will be given all of the solicitation information necessary to compete for the next phase (e.g., the initial phase solicitation, the preceding phase contracts, the preceding phase system performance and design requirements, and all proposal preparation instructions and evaluation criteria). However, these other prospective offerors would be required to demonstrate their design and/or concept to the same level of maturity as the preceding phase contractors. An interim rule was published in the *Federal Register* on July 13, 1992 (57 FR 30909-30911). This interim rule was published to correct an unnecessarily conservative interpretation of the Competition in Contracting Act (CICA) reflected in the NASA FAR Supplement that required the issuance of a new, formal solicitation for each phase of a major system acquisition. The July 13, 1992 interim rule revised the NASA policy to permit issuance of a single solicitation for all phases of a major system acquisition. However, the interim rule also stipulated that, as a condition for issuing a single solicitation for all phases, the initial phase contracts must include a requirement for delivery of subsequent phase proposals. Public comments received on the interim rule addressed the competition and data rights issues associated with this requirement. NASA reviewed these comments and agreed that this requirement was not only procedurally complicated but was also in conflict with the full and open competition requirement in CICA. Accordingly, the interim rule has been revised and is issued with immediate implementation to ensure agency compliance with CICA. The revised interim rule prohibits any direct charge of preparation costs for a subsequent phase proposal and also prohibits establishment of a contract requirement for subsequent phase proposals. In addition, the revised interim rule incorporates solicitation and contract classes in part 1852, and a new NASA FAR Supplement subpart, 1870.5, NASA Major System Acquisition Phased Procurement Guidance. It also makes editorial changes to further clarify the policy and ensure its consistency with interim operating instructions.

#### Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this proposed coverage will

become a part, is codified in 48 CFR, chapter 18, and is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933-003-00000-1. It is not distributed to the public, either in whole or in part, directly by NASA.

#### Impact

NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. et seq.). This rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

#### List of Subjects in 48 CFR Parts 1807, 1834, 1852, 1870

Government procurement.

Tom Luedtke,

Acting Deputy, Associate Administrator for Procurement.

1. The authority citation for 48 CFR parts 1807, 1834, 1852, and 1870 continues to read as follows:

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

#### PART 1807 ACQUISITION PLANNING

##### 1807.170-1 [Amended]

2. Section 1807.170-1 is amended by revising paragraph (a) to read as follows:

##### 1807.170-1 Procurement plans requiring approval by NASA headquarters.

(a) Procurement plans shall describe the procurement, including options and later phases of the same program or project (for example, Phase C/D of a multiple phase major system acquisition). A single procurement plan may be used for all phases of a phased procurement provided the plan includes a full description of each phase in accordance with 1807.170-1 (b), (c), and (d), and no significant changes occur after plan approval to invalidate the description of the phases. If such significant changes do occur, the procurement plan shall be amended and approved at the same level as the original plan. Approval of the procurement plan and/or any amendments does not constitute authorization to proceed with the phases of a major system acquisition (see part 1834). Separate authorization must be obtained for each phase in accordance with the procedures of NMI 7120.4, "Management of Major System Programs and Projects".

\* \* \* \* \*

#### PART 1834—MAJOR SYSTEM ACQUISITION

3. Part 1834 is revised to read as follows:

##### 1834.000 Scope.

NASA's implementation of OMB Circular No. A-109, Major Systems Acquisitions, and FAR part 34 is contained in this part, subpart 1870.5, and in NASA Management Instruction (NMI) 7120.4, "Management of Major System Programs and Projects". This part addresses the procedures for the competitive acquisition of major systems. Subpart 1870.5 incorporates the NASA Major System Acquisition Phased Procurement Guidance.

##### 1834.001 Definitions.

(a) *Down-selection.* In a phased procurement, the process of selecting contractors for phases subsequent to the initial phase from among the preceding phase contractors.

(b) *Major system.* Any system that is directed at and critical to fulfilling an agency mission; entails the allocation of relatively large amount of resources; or warrants special management attention. Designation of a system as "major" is made in accordance with NASA Management Instruction (NMI) 7120.4, "Management of Major System Programs and Projects".

(c) *Phased procurement.* A program comprised of several distinct steps or phases (e.g., preliminary analysis, definition, design, and development) where the realization of program objectives requires a planned, sequential acquisition of each step or phase. The phases in a phased procurement may be acquired separately, in combination, or through a down-selection strategy.

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

##### 1834.005-1 Competition.

(a) In procurements subject to the provisions of OMB Circular No. A-109 and NMI 7120.4, or other similar phased procurements, it is NASA policy to ensure competition in the selection of contractors for award in each phase of the process not performed in-house.



(b) There are five phases in the life cycle of a NASA major system acquisition:

(1) Phase A, Preliminary Analysis, involves the analysis of alternate overall project concepts for accomplishing a proposed agency technical objective or mission.

(2) Phase B, Definition, involves the detailed study, comparative analysis, and preliminary system design of selected Phase A concepts.

(3) Phase C, design, involves the detailed system design (with mock-ups and test articles of critical systems and subsystems) of the systems design concept determined to provide the best overall system for the Government.

(4) Phase D, Development, involves final detailed design, fabrication, certification, and delivery of an operational system that meets program requirements.

(5) Phase E, Operations, involves operation and use of the system in its intended environment, continuing until the system leaves the agency inventory. This phase includes any system modifications and upgrades.

(c) The preferred approach in NASA for the acquisition of the phases of a Major System is the following:

(1) Phase A is accomplished primarily through in-house studies.

(2) Phases B, C, and D are acquired through a phased procurement process in which two or more Phase B contracts are awarded competitively and then a down-selection is made among these contractors to determine the single combined Phase C/D awardee.

(3) Phase E is normally acquired separately.

(d) Each phase of a major system acquisition not performed in-house must be synopsisized in accordance with FAR 5.201 and must include all the information required by FAR 5.207. When the phased procurement process identified in 1834.005(c)(2) is used, the synopsis for the initial competitive phase, normally Phase B, should also state the following:

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

(2) Subsequent competitions for identified follow-on phases will build on the results of previous phases.

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

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

the subsequent phase(s) will be automatically requested from these contractors.

(5) The Government intends to issue (or not issue) a new, formal solicitation(s) for subsequent phase(s). (If new solicitations are not planned, the acquisition must be identified as a "progressive competition" (see 1834.001(d), and the mechanism for providing pertinent subsequent phase proposal information (e.g., statements of work, specifications, proposal preparation instructions, and evaluation factors for award) must be described).

(6) Each subsequent phase of the acquisition will be synopsisized in the CBD.

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

(e) In addition to the information in 1834.005-1(d), the synopsis for the subsequent phases, normally a combined C/D, must identify the current phase contractors.

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

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

requirements necessary for demonstration of a design maturity equivalent to that of the preceding phase contractors.

(h) Although a key feature of the progressive competition technique is that a formal solicitation is issued for the initial phase only, a new, formal solicitation may nonetheless be required for subsequent phases. When the Government requirements or evaluation procedures change so significantly after release of the initial phase solicitation that a substantial portion of the information provided in the initial phase synopsis, solicitation, or contracts is invalidated, a new solicitation shall be issued for the next phase.

(i) Whether or not down-selection procedures are used, contracts awarded in phased procurements shall not include requirements for submission of subsequent phase proposals. Instead, proposals shall be requested through a solicitation or other appropriate mechanism (e.g., by letter when using the progressive competition technique). Priced options for preparation of subsequent phase proposals are prohibited.

(j) With one exception, both the initial and subsequent phase(s) of a major system acquisition down-selection process are considered to be full and open competition if the procedures in paragraphs (d) through (i) of this subpart are followed. If only one contractor successfully completed a given phase and no other offers are solicited for the subsequent phase, award of the subsequent phase may be made only if justified by one of the exceptions in FAR 6.302 or one of the exclusions in FAR 6.2, and only after compliance with the synopsis requirements of FAR 5.202 and 5.205, when appropriate.

(k) If offers for a subsequent phase are solicited from multiple sources (including but not necessarily limited to prior phase contractors), but only one proposal is received, the award for the subsequent phase shall be reported as a "noncompetitive procurement using competitive procedures" (see 1804.671-4(r)).

(l) Time gaps between phases should be minimized in all major system phased procurements. Accordingly, early synopsis of subsequent phase competition is encouraged. Also, when sufficient programmatic and technical information is available to all potential offerors, proposal evaluation and source selection activities need not be delayed until completion of a given phase. When appropriate, these activities should commence as early as practicable during the period of performance of a phase to



ensure the expeditious award of the succeeding phase.

#### 1834.005-170 Contract clauses.

(a) The contracting officer shall insert the clause at 1852.234-70, Phased Procurement Using Down-Selection Procedures, in solicitations and contracts for phased procurements using down-selection procedures other than the progressive competition technique described in 1834.005-1 (f) through (h). The clause shall be included in the solicitation for each phase and in all contracts except that for the final phase.

(b) The contracting officer shall insert the clause at 1852.234-71, Phased Procurement Using Progressive Competition Down-Selection Procedures, in solicitations and contracts for phased procurements using the progressive competition technique described in 1834.005-1 (f) through (h). The clause shall be included in the initial phase solicitation and all contracts except that for the final phase.

#### PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

##### 1852.234-70, 1852.234-71 [Added]

4. Part 1852 is amended by adding sections 1852.234-70 and 1852.234-71 to read as follows:

##### 1852.234-70 Phased procurement using down-selection procedures.

As prescribed in 1834.005-170(a), insert the following clause in solicitations and contracts for phased procurements using down-selection procedures other than the progressive competition technique. Phase identifications should be modified as appropriate:

##### Phased Procurement Using Down-Selection Procedures (DATE)

(a) This solicitation is for the acquisition of \_\_\_\_\_ [Insert Program titles]. This system is a major system as defined by Office of Management and Budget Circular A-109 and NASA Management Instruction (NMI) 7120.4. The acquisition will be conducted as two-phased procurement using a competitive down-selection technique between phases. In this technique, two or more contractors will be selected for Phase B. It is expected that the contractor for Phase C/D will be chosen from among these contractors after a competitive down-selection.

(b) Phase B is for the \_\_\_\_\_ [Insert purpose of phase]. NASA anticipates awarding two or more contracts for this phase. A subsequent single award will be made for Phase C/D in which the contractor will \_\_\_\_\_ [insert general phase C/D goals].

(c) The competition for Phase C/D will be based in the results of Phase B, and the award criteria for C/D will include successful completion of Phase B requirements.

(d) NASA will issue a separate, formal solicitation for Phase C/D, and all information required for preparation of Phase C/D proposals, including the final evaluation factors, will be provided at that time.

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

(f) To be considered for Phase C/D award, however, offerors must demonstrate a design maturity equivalent to that of the Phase B contractors, such demonstration to include the following Phase B deliverables upon which Phase C/D award will be based:

\_\_\_\_\_. (Insert the specific Phase B deliverables). Failure to fully and completely demonstrate the appropriate level of design maturity may render the proposal unacceptable with no further consideration for contract award.

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

(Insert draft Phase C/D evaluation factors (and subfactors and elements, if available), including demonstration of successful completion of Phase B requirements.)

(h) Although NASA intends to select the Phase C/D contractor from among the Phase B contractors and will automatically request Phase C/D proposals from only these contractors, submission of the Phase C/D proposal is not a requirement of the Phase B contract. Accordingly, the costs of preparing these proposals shall not be a direct charge to the Phase B contract or any other Government contract.

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

Phase B award—  
Phase C/D synopsis—  
Phase C/D proposal requested—  
Phase C/D proposal receipt—  
Phase C/D award—

(End of clause)

##### 1852.234-71 Phased procurement using progressive competition down-selection procedures.

As prescribed in 1834.005-170(b), insert the following clause in solicitations and contracts for phased procurements using progressive competition down-selection procedures. Phase identifications should be modified as appropriate.

##### Phased Procurement Using Progressive Competitive Down-Selection Procedures (DATE)

(a) This solicitation is for the acquisition of \_\_\_\_\_ [Insert Program title]. This system is a major system as defined by Office of Management and Budget Circular A-109 and NASA Management Instruction (NMI) 7120.4. The acquisition will be conducted as a two-phased procurement using a progressive competition down-selection technique between phases. In this technique, two or more contractors will be selected for Phase B. It is expected that the contractor for Phase C/D will be chosen from among these contractors after a competitive down-selection.

(b) Phase B is for the \_\_\_\_\_ [Insert purpose of phase]. NASA anticipates awarding two or more contracts for this phase. A subsequent single award will be made for Phase C/D in which the contractor will \_\_\_\_\_ [insert general phase C/D goals].

(c) The competition for Phase C/D will be based on the results of Phase B, and the award criteria for C/D will include successful completion of Phase B requirements.

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

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

(f) To be considered for Phase C/D award, however, offerors must demonstrate a design maturity equivalent to that of the Phase B contractors, such demonstration to include the following Phase B deliverables upon which Phase C/D award will be based:

\_\_\_\_\_. (Insert the specific Phase B deliverables). Failure to fully and completely demonstrate the appropriate level of design maturity may render the proposal unacceptable with no further consideration for contract award.

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

(Insert draft Phase C/D evaluation factors (and subfactors and elements, if available),



including demonstration of successful completion of Phase B requirements.]

(h) Although NASA intends to select the Phase C/D contractor from among the Phase B contractors and will automatically request Phase C/D proposals from only these contractors, submission of the Phase C/D proposal is not a requirement of the Phase B contract. Accordingly, the costs of preparing these proposals shall not be a direct charge to the Phase B contract or any other Government contract.

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

Phase B award—  
Phase C/D synopsis—  
Phase C/D proposal requested—  
Phase C/D proposal receipt—  
Phase C/D award—

(End of clause)

## PART 1870—NASA SUPPLEMENTARY REGULATIONS

### 1870.5 [Added]

5. and 6. Part 1870 is amended by adding subpart 1870.5, consisting of sections 1870.501, 1870.502, 1870.503, and Appendix I to 1870.503, to read as follows:

#### Subpart 1870.5—NASA Major System Acquisition Phased Procurement Guidance

1870.501 Purpose.

1870.502 Regulations.

1870.503 Major system acquisition procedures.

Appendix I to 1870.503 NASA procedures for conducting major system acquisitions.

#### Subpart 1870.5—NASA Major System Acquisition Phased Procurement Guidance

### 1870.501 Purpose.

Major system acquisitions are among NASA's largest and most visible efforts, often requiring the investment of significant Government and contractor resources. These procurements may cover several distinct program phases over a number of years. In most cases, major system acquisitions are accomplished through a phased procurement process involving competitive down-selection techniques. In this process, multiple contracts are awarded during the initial phase and a down-selection is made from among those contractors to determine succeeding phase contractors. Eventually, a single contractor will be chosen for the final phase. Because of the importance and complexity of major systems, it is imperative that the procedures for their acquisition be efficient and effective.

### 1870.502 Regulations.

The basic regulations governing major system acquisitions are OMB Circular No. A-109, NASA Management Instruction (NMI) 7120.4 ("Management of Major System Program and Projects"), and NASA FAR Supplement (NFS) 1834. In addition to these documents, detailed guidance on the planning and conduct of major system acquisitions appears at 1870.503. This last guidance is designed for use by procurement personnel and other individuals who participate in the major system acquisition process. It will also help the public understand NASA's major system acquisition policies and procedures.

### 1870.503 Major system acquisition procedures.

(a) Major system acquisition procedures are prescribed in Appendix I to this section 1870.503.

(b) NASA may reprint appendix I as a separate document, provided the following conditions are met:

(1) The issuance date ("cover date") of the procedures shall be the date of the NFS version from which the text is extracted.

(2) With the exception of availability, distribution, and other special prefatory notices, any subsequent modification in the text shall be preceded by a change to NFS 1870.503, appendix I.

(3) The following notice shall be included in the prefatory material of the document:

#### Important Notice

These procedures are a separately bound, verbatim version of NASA FAR Supplement (NFS) (48 CFR 1870.503) Section 1870.503, Appendix I. Reference to other parts of the Federal Acquisition Regulation (FAR) and the NFS will be required for complete coverage of all procurement aspects. NASA reserves the right to make changes to NFS 1870.503, Appendix I without issuing a new edition of these procedures. In the event of apparent conflict between these procedures and the NFS, the NFS shall govern.

#### Appendix I to 1870.503—NASA Procedures for Conducting Major System Acquisitions

##### 1. Introduction

(a) The acquisition of major systems presents a complex challenge for NASA. These acquisitions are among the agency's largest and often require the investment of significant Government and contractor resources over a number of years. These acquisitions are often accomplished in several distinct phases, from preliminary analysis through definition, design, development, and operation. The broad scope of programmatic activity in a major

system acquisition demands an effective and efficient acquisition strategy.

(b) There are several approaches to accomplishing these multi-phase major system acquisitions ranging from separate acquisition of each phase to competitive down-selection of combined phases. The preferred technique in NASA is use of a competitive down-selection strategy, and the preferred variation of this strategy is the "progressive competition" approach. In a progressive competition down-selection, a single formal solicitation is issued for all phases, multiple contracts are awarded for the initial phase, and a down-selection from among these contractors is conducted to determine the succeeding phase contractors. Progressive competition procedures, when properly planned and executed, facilitate the realization of the desirable goals of effective and efficient acquisition of major systems, preservation of full an open competition throughout the process, and acquisition streamlining.

(c) This appendix describes the procedures to follow when using the progressive competition technique. Although this appendix addresses progressive competition, many of these procedures are applicable to other phased procurement strategies, and unless specifically prohibited herein, should be considered for use and adapted to accommodate the particulars of these other strategies. For example, the general guidance on the synopsis requirements and acquisition planning applies to all phased procurements, and most of the down-selection procedures apply to all down-selection strategies, not just progressive competitions. Some changes in these procedures may need to be made to recognize inherent differences in strategies, such as the use of new, formal solicitation for each phase of alternative down-selection strategies.

##### 2. Definitions

(a) *Down-selection.* In a phased procurement, the process of selecting contractors for phases subsequent to the initial phase from among the preceding phase contractors.

(b) *Major system.* Any system that: is directed at and critical to fulfilling an agency mission; entails the allocation of relatively large resources; or warrants special management attention. Designation of a system as "major" must be approved in accordance with NASA Management Instruction (NMI) 7120.4, "Management of Major System Programs and Projects".

(c) *Phased procurement.* A program comprised of several distinct steps or phases (e.g., preliminary analysis, definition, design, and development) where the realization of program objectives requires a planned, sequential acquisition of each step or phase. The phases in a phased procurement may be acquired separately, in combination, or through a down-selection strategy.

(d) *Progressive competition.* A type of down-selection strategy for a phased procurement. In this method, a single solicitation is issued for all phases of the program. The initial phase contracts are awarded, and the contractors for subsequent phases are chosen through a down-selection



from among the preceding phase contractors. In each phase, progressively fewer contractors are awarded until a single contractor is chosen for the final phase. Normally, all down-selections are accomplished without issuance of a new, formal solicitation.

### 3. Phases of a Major System Acquisition

(a) As described in NMI 7120.4, there are five phases in the life cycle of a major system acquisition, three of which are normally included in a phased procurement: Phase B, Definition; Phase C, Design; and Phase D, Development. The most common approach in NASA for acquiring these phases involves two steps: (1) two (or more) competitively awarded Phase B contracts; and (2) down-selection from among the Phase B contractors to a single Phase C/D contractor. To be relevant to the predominant agency practice, the procedures in this appendix address this model. However, the focus on this model does not preclude adaptation of these procedures to suit other phase combinations.

(b) For a detailed description of the phases of a major system acquisition and their interrelationships, consult NMI 7120.4.

### 4. Planning a Progressive Competition

(a) Choice of the appropriate procurement strategy for a major system acquisition is accomplished through careful analysis of many factors. The decision to proceed with each phase separately or to use the progressive competition technique must consider, among other things, the number of viable alternative system concept approaches, the risks associated with those approaches, funding, schedule, requirements maturity, and the extent to which an offeror's ability to perform successfully in subsequent phases is tied to successful performance in prior phases.

(b) To be a candidate for a progressive competition, all considerations must play together. Of paramount importance is the need for a clear understanding and expression of program requirements and goals. Also, the planning considerations must carefully address and justify the number and content of the phases, the acquisition schedule and funding for each phase, the number of contractors for each phase, the timing of the down-selection decision, and the planned contract types for each phase.

(c) Certain factors may clearly dictate that the progressive competition technique should not be used. For example, if it is likely that NASA may introduce a design concept independent of those explored by the Phase B contractors, it is also likely that a new, formal solicitation is necessary for Phase C/D and all potential offerors should be solicited. In this circumstance, progressive competition is inappropriate. Also, if there is no direct link between successful performance in the preceding phase and successful performance in the subsequent phase, progressive competition is also inappropriate. In both of these cases, the major system acquisition phases should be procured separately without a down-selection between phases.

(d) It cannot be overemphasized that the success of a progressive competition is directly dependent on thorough planning

before initiation. Progressive competition should not be used as a rationale for initiating an acquisition that is poorly planned, not well thought out, or merely a way to meet budget or schedule pressures. The need for clear technical requirements and program goals is in no way diminished by use of progressive competition. Where requirements and goals are not clear, the progressive competition approach shall not be used.

(e) The rationale for use of progressive competition technique shall be thoroughly justified in the procurement plan or Acquisition Strategy Meeting (ASM) minutes. Because the Phase B solicitation will also lead to Phase C/D award, the decision to use the progressive competition strategy must be made prior to initiation of the Phase B procurement. Accordingly, both phases must be addressed in the initial acquisition strategy planning and documented in the procurement plan or ASM minutes.

### 5. Progressive Competition Synopsis Requirements

(a) Because of the importance of major system acquisitions, early identification of these programs to industry is encouraged. The research and development (R&D) advance notice described in FAR 5.205 is an effective tool to announce the program and identify the maximum number of qualified potential offerors. Although not required by regulation, use of R&D advance notices on major system acquisitions is strongly recommended.

(b) To ensure that a progressive competition provides for the maximum effective competition and complies with statutory and regulatory requirements for full and open competition, each phase must be synopsisized unless one of the exceptions in FAR 5.202 applies. Based on the NASA model of acquiring Phases B and C/D, this means that a separate synopsis must be issued prior to releasing the solicitation for Phase B and again prior to requesting Phase C/D proposals from the Phase B contractors. Each synopsis must contain the information required by FAR 5.207 and NFS 1834.005-1(d).

(c) Although a new, formal solicitation is normally not issued for Phase C/D under a progressive competition, the synopsis publication periods specified in FAR 5.203 still apply to the Phase C/D synopsis. In this case, the synopsis must be published at least 15 days before formally requesting the Phase C/D proposals from the Phase B contractors and at least 45 days prior to the Phase C/D proposal due date.

(d) Notwithstanding the requirement to synopsisize Phase C/D, in most cases there will not be any potential offerors for Phase C/D other than the Phase B contractors. However, proposals from other prospective offerors must be considered, and these offerors must be given all of the information necessary to compete for the next phase (e.g.: The previously issued solicitation; the preceding phase contracts; the preceding phase system performance and design requirements; all proposal preparation instructions; and evaluation factors, subfactors, and elements). To avoid schedule disruptions, early

publication of the Phase C/D synopsis is strongly encouraged. Potential offerors other than the Phase B contractors cannot be summarily dismissed solely because the program schedule did not anticipate their involvement.

(e) The following is a sample synopsis for Phase B of a progressive competition.

A-Pre-solicitation Notice: \_\_\_\_\_  
(PROGRAM NAME). NASA plans to conduct a progressive competition to define, design, develop, and produce the \_\_\_\_\_  
(PROGRAM NAME). This effort will be a full and open competition and will be acquired in two distinct phases—Phase B, Definition, requiring preliminary system design of \_\_\_\_\_  
(PROGRAM NAME) and Phase C/D, Design and Development, requiring the detailed design, fabrication and delivery of \_\_\_\_\_  
(PROGRAM NAME). Two or more Phase B awards are anticipated leading to a single Phase C/D award. A progressive competition strategy will be used with down-selection of sources between Phases B and C/D. To be eligible for Phase B award, offerors must demonstrate the experience and capability, or ability to acquire the capability, to perform both Phases B and C/D. The competition for Phase C/D will build on the results of Phase B, and the award criteria for Phase C/D will include successful completion of specified Phase B requirements. Accordingly, NASA anticipates that only the Phase B contractors will be capable of successfully competing for Phase C/D. NASA will synopsisize the Phase C/D competition in accordance with FAR 5.201 and 5.203, but does not plan to issue a new, formal solicitation. Instead, proposals will be requested from the Phase B contractors by \_\_\_\_\_  
(INDICATE METHOD OF REQUESTING PROPOSALS, E.G., A LETTER) that will include detailed proposal preparation instructions and evaluation criteria. Although a new, formal solicitation will not be issued, any responsible source may submit a proposal for Phase C/D, and these proposals will be considered by the agency. Prospective offerors for Phase C/D other than the Phase B contractors will be provided all the material furnished to the preceding phase contractors necessary to submit a proposal. To be considered for Phase C/D award, offerors must demonstrate a design maturity equivalent to that of the Phase B contractors, such demonstration to include any Phase B deliverables upon which Phase C/D award may be based. Failure to fully and completely demonstrate the appropriate level of design maturity may render the proposal unacceptable with no further consideration for contract award. NASA anticipates releasing the solicitation for Phase B on or about \_\_\_\_\_  
(DATE OF RFP RELEASE). Detailed Phase B requirements are \_\_\_\_\_  
(GIVE A SPECIFIC DESCRIPTION OF PHASE B REQUIREMENTS). It is anticipated that Phase C/D will consist of \_\_\_\_\_  
(GIVE ANTICIPATED PHASE C/D REQUIREMENTS). For further information, contact \_\_\_\_\_  
(NASA POINT OF CONTACT).

(f) The following is a sample synopsis for Phase C/D of a progressive competition.

A-Pre-solicitation Notice: \_\_\_\_\_  
(PROGRAM NAME). NASA is conducting a



progressive competition to define, design, develop, and produce the \_\_\_\_\_ (PROGRAM NAME). This effort is a full and open competition and is being acquired in two distinct phases—Phase B, Definition, requiring preliminary system design of \_\_\_\_\_ (PROGRAM NAME) and Phase C/D, Design and Development, requiring the detailed design, fabrication and delivery of \_\_\_\_\_ (PROGRAM NAME). The Phase B solicitation was described in the \_\_\_\_\_ (CITE DATE) Commerce Business Daily. Phase B contracts were awarded to \_\_\_\_\_ (CITE CONTRACTORS) on \_\_\_\_\_ (CITE AWARD DATE). A progressive competition strategy will be used with down-selection of sources from Phase B to determine the single Phase C/D contractor. The competition for Phase C/D will build on the results of Phase B, and the award criteria for Phase C/D includes successful completion of the Phase B requirements identified below. Accordingly, NASA anticipates that only the Phase B contractors will be capable of successfully competing for Phase C/D. A new, formal solicitation will not be issued for Phase C/D. Instead, proposals will be requested from the Phase B contractors by \_\_\_\_\_ (INDICATE METHOD OF REQUESTING PROPOSALS, E.G., A LETTER) that will include detailed proposal preparation instructions and evaluation criteria. However, any responsible source may submit a proposal for Phase C/D, and these proposals will be considered by the agency. Prospective offerors for Phase C/D other than the Phase B contractors will be provided all the material furnished to the preceding phase contractors necessary to submit a proposal. To be considered for Phase C/D award, offerors must demonstrate a design maturity equivalent to that of the Phase B contractors, such demonstration to include the following Phase B deliverables upon which Phase C/D award will be based: \_\_\_\_\_ (CITE SPECIFIC PHASE B DELIVERABLES). Failure to fully and completely demonstrate the appropriate level of design maturity may render the proposal unacceptable with no further consideration for contract award. NASA anticipates requesting Phase C/D on or about \_\_\_\_\_ (DATE) and proposals will be due \_\_\_\_\_ (CITE NUMBER) days thereafter. Detailed Phase C/D requirements are \_\_\_\_\_ (GIVE A SPECIFIC DESCRIPTION OF PHASE C/D REQUIREMENTS). For further information, contact \_\_\_\_\_ (CITE NASA POINT OF CONTACT).

#### 6. Progressive Competition Solicitation

(a) One of the major benefits of the progressive competition technique is that, in most circumstances, only one solicitation is used. This single solicitation not only covers the initial phase, but also all subsequent phases. That is, the solicitation for Phase B also satisfies the requirement for soliciting Phase C/D. Eliminating the need for a new, formal solicitation after the initial phase streamlines the process and should result in schedule economies. However, these savings will not be realized without proper planning. The potential for gaps between phases will still exist unless the Phase C/D down-selection is initiated during Phase B

performance, allowing enough time to complete evaluation, make selection, and negotiate and award the Phase C/D contract not later than the conclusion of Phase B.

(b) Only phased procurements using the progressive competition technique can acquire all phases of the procurement through a single formal solicitation. All other phased procurements must issue new, formal solicitations for each phase. However, merely calling a major system acquisition a progressive competition does not in itself mean that the formal initial phase solicitation is sufficient to cover all subsequent phases. Under a progressive competition, a clause substantially the same as that in 1852.234-71 must be included in the Phase B solicitation and contracts. (The clause at 1852.234-70 should be used for other types of down-selection strategies). This clause may be modified to suit the particulars of a given procurement, but it must include the information in 1834.005-170 (a) and (b) as a minimum. Failure to include any of this information may call into question the integrity of progressive competition procedures and require a new, formal solicitation for Phase C/D.

(c) Because of the significant dollar value of major system acquisitions, formal Source Evaluation Board (SEB) procedures must be used for all phases of the procurement, unless one of the exceptions in 1815.613-71(a) applies. Accordingly, a separate set of evaluation factors must be developed for each phase in a progressive competition. For the most part, these factors are developed the same way for a progressive competition as for any other NASA competitive procurement. However, there is one element inherent in the very nature of the progressive competition technique, or any other competitive down-selection strategy, that must be reflected in the evaluation factors for such procurements. Since these competitive down-selection strategies anticipate that one of the Phase B contractors will also be the Phase C/D contractor, the Phase B offerors must clearly demonstrate the ability to perform the subsequent phases. Accordingly, the evaluation factors for the Phase B award must specifically include the evaluation of the Phase B offerors' abilities to perform not only Phase B but also Phase C/D.

(d) Although a new, formal solicitation is normally not issued subsequent to the initial phase when using the progressive competition technique, this practice is not absolute in all cases. If the Government requirements or evaluation procedures change so significantly after award of the initial phase contracts such that a substantial portion of the information provided in the initial phase synopsis, solicitation, or contracts is invalidated, a new, formal solicitation for subsequent phases is required. To ensure that schedules are not compromised or the benefits of phased procurements diminished, contracting officers, beginning at phase B award, should carefully monitor the degree to which the acquisition particulars may be changing. If it appears that the procurement circumstances have changed significantly, the contracting officer should take immediate action to begin generation of a formal solicitation for the next phase of the procurement.

#### 7. Progressive Competition Initial Contracts

(a) In general, the Phase B contracts awarded in a progressive competition will look much like any other NASA contract for similar design efforts. There are certain features, however, that must be included (or must not be included) in these contracts to accommodate and authorize the continued use of this technique in the subsequent down-selection. One feature that must be included in the Phase B contracts is the clause that explains the progressive competition techniques and the plans for the down-selection. As stated in paragraph 6(b) of this appendix, a clause substantially the same as that in 1852.234-71 must be included in the Phase B contracts when using the progressive competition technique and 1852.234-70 when using other down-selection strategies.

(b) An important feature of these clauses is the paragraph indicating that the Phase C/D proposals are not a contract requirement and the costs of preparing these proposals shall not be a direct charge to the Phase B contract or any other Government contract. To be consistent with this paragraph, the Phase B contracts shall not include any requirement for delivery of Phase C/D proposals nor shall they include a remuneration mechanism for the proposals. Options for such proposal activities, priced or unpriced, are prohibited.

(c) The rationale for these prohibitions is twofold. First, making the Phase C/D proposals a contract requirement can cause significant and contentious data rights problems over which party owns the data in the proposal. Unless this issue is clearly resolved, contractors may be reluctant to provide unique or innovative information, fearing that it may be appropriated and given to a competitor. The technical objectives of the procurement would then be compromised. Second, by requiring Phase C/D proposals and paying for them, an outside offeror may successfully protest that the Phase B contractors were given an unfair competitive advantage for Phase C/D. The procurement may then no longer be considered full and open competition.

(d) In addition to including the specific contract clause discussed above, the Phase B contracts should be carefully structured to allow down-selection at a discrete performance milestone such as a significant design review or at contract completion. Such advance planning will not only avoid gaps between phases but will also eliminate unnecessary duplication of effort or the need to terminate the remaining Phase B efforts of an unsuccessful Phase C/D offeror. It is critical to remember, however, that determination of the appropriate contract structure is not made based solely on schedule or contract considerations. Rather, it is also driven by, and reflective of, programmatic technical content and objectives.

(e) For example, if the acquisition strategy calls for formal completion of Phase B effort at Preliminary Design Review (PDR), but it is not financially practical or technically necessary (for Phase C/D selection and performance purposes) to carry all Phase B contractors through PDR, the Phase B contracts should be structured with a basic



period of performance through a significant, discrete milestone before PDR with a priced option for the effort from that milestone through PDR. The down-selection would be planned for the earlier milestone, the PDR option exercised for only the winner of the down-selection, and formal Phase C/D performance initiated at completion of the PDR option. In this scenario, the earlier milestone must be carefully chosen to ensure successful accomplishment of both program technical objectives and all activities leading to completion of the down-selection process. That is, design maturity at that point must be sufficient to accommodate an informed down-selection decision leading to successful accomplishment of Phase C/D.

(f) In other program strategies, it may be both affordable and technically desirable to have all the Phase B contractors complete PDR. In these cases, the contract should be structured as a basic effort through PDR, down-selection made at that point, and Phase C/D performance beginning thereafter.

(g) Regardless of the contract structure that is appropriate given the program objectives, the schedule leading to down-selection must also be carefully crafted and followed. This schedule must allow ample time for synthesizing the Phase C/D down-selection, responding to any other offeror's intention to submit a proposal, generation of whatever information is necessary for Phase C/D proposals (e.g., final technical requirements, proposal preparation instructions, and evaluation factors), submission and evaluation of the proposals, negotiation, and award. In some cases, the earliest of these activities will commence shortly after Phase B award. However, unless these activities are planned and executed in reasonable time periods to accommodate timely Phase C/D award, many of the benefits associated with the progressive competition technique, or any other down-selection strategy, will go unrealized.

#### 8. Requesting Phase C/D Proposals

(a) Although a new, formal solicitation is normally not issued for Phase C/D when using the progressive competition technique, Phase C/D proposals must be formally requested and the offerors given all information necessary to submit a proposal. The preferred approach for requesting Phase C/D proposals is by letter. This letter shall include the following:

(1) A specific due date for the Phase C/D proposals along with a statement that FAR 52.215-10, Late Submissions, Modifications, and Withdrawals of Proposals, applies to this proposal due date.

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

(3) Final evaluation factors.

(4) Any statement of work, specification, or other contract requirements that have changed since the Phase B solicitation.

(5) All required clause changes applicable to new work effective since Phase B contract award.

(6) Any representations or certifications, if required.

(7) Any other required contract updates. (E.g., Phase C/D small and small disadvantaged subcontracting goals.)

(b) Although the exception and not the rule, there are circumstances in which a new, formal solicitation must be issued for Phase C/D. Significant changes in paragraphs 8(a) (3) and (4) of this appendix, in particular, require a careful assessment as to whether a new solicitation should be issued. Determining the significance of changes is often subjective and difficult, however. These determinations should only be made after coordinated consultation among procurement, legal, and technical personnel. Some cases will be particularly clouded, and no clear resolution of the magnitude of the changes can be made. In these instances, the issue should be resolved on the side of caution and a new, formal solicitation issued.

#### 9. Phase C/D Award

(a) As stated in paragraph 6(c) of this appendix, evaluation of Phase C/D proposals will normally be accomplished in accordance with formal SEB procedures. Phase C/D award may be made by either a new contract, or by a new work supplemental agreement to the existing Phase B contracts.

(b) Keep in mind that, no matter what is included in the original solicitation or Phase B contracts regarding the progressive competition technique, or any other alternative down-selection strategy, the Phase C/D effort is new work and not an in-scope change under the "Changes" clause, or any other clause, of the Phase B contract. If a supplemental agreement is used to implement Phase C/D, it shall cite the applicable "Phased Procurement" clause (either 1852.234-70 or 1852.234-71) included in the Phase B contracts as authority for award.

(c) Whether a new contract or new work supplemental agreement is used, the document must incorporate all applicable statutory and regulatory requirements (e.g., contract clauses) in effect as of its issuance. The Phase C/D award date is controlling and not the date of the Phase B awards.

(d) In addition, regardless of the time of Phase C/D award or the contract vehicle used to effect it, the Phase C/D period of performance should commence only upon completion of Phase B tasks.

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BILLING CODE 7510-01-M

## OFFICE OF MANAGEMENT AND BUDGET

### Office of Federal Procurement Policy

#### 48 CFR Part 9903

#### Cost Accounting Standards Board; Applicability and Thresholds for Cost Accounting Standards Coverage

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Final rule.

SUMMARY: The Office of Federal Procurement Policy, Cost Accounting

Standards Board, is revising applicability, thresholds and procedures for the application of the Cost Accounting Standards (CAS) to negotiated government contracts. This rulemaking is authorized pursuant to section 26 of the Office of Federal Procurement Policy Act. The Board is taking action on this topic in order to adjust CAS applicability requirements and dollar thresholds to levels reflecting experience with price inflation since the thresholds were last promulgated by the previous Board on September 12, 1977. The Board is also changing the criteria for determining which Standards apply at different threshold levels and the concept of what constitutes modified coverage, and, the criteria that trigger full CAS coverage.

EFFECTIVE DATE: November 4, 1993.

FOR FURTHER INFORMATION CONTACT: Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board (telephone: 202-395-3254).

#### SUPPLEMENTARY INFORMATION:

##### A. Background

On September 12, 1977, the prior Cost Accounting Standards Board (CASB) promulgated rules that exempted certain types of government contractors from the full impact of the application of the Cost Accounting Standards (CAS) to all of their otherwise CAS covered contracts and subcontracts. The regulation issued by the prior CASB, formerly part 332 of that Board's rules (4 CFR 332), entitled "Modified Contract Coverage," was designed to partially address the problem of application of CAS to smaller government contractors, as well as the application of CAS to those contractors for whom government business represented only a relatively small share of total sales volume. The impetus for the development of the concept of modified CAS coverage was the concern expressed at the time, the some business firms (principally smaller firms and non-government segments of major contractors) were avoiding bidding on government contracts because of the perceived burdens associated with the administration of CAS requirements. See Preamble A to CAS Part 332, 42 FR 45625, Sept. 12, 1977.

The previous requirement for modified CAS coverage appearing at 48 CFR 9903.201-2, entitled "Types of CAS coverage" provided:

(b) *Modified coverage.* (1) Modified coverage requires only that the contractor comply with Standard 9904.401, Consistency in Estimating, Accumulating and Reporting Costs, and Standard 9904.402, Consistency in Allocating Costs Incurred for the Same



Purpose. Modified, rather than full, CAS coverage may be applied to a covered contract of less than \$10 million awarded to a business unit that received less than \$10 million in CAS-covered contracts in the immediately preceding cost accounting period if the sum of such awards was less than 10 percent of the business unit's total sales during that period \* \* \*

Additional provisions of this section, as well as § 9903.202 of the Board's rules, entitled "Disclosure requirements," provided that certain business units that were subject to modified coverage must still file Disclosure Statements (normally required only for contractors subject to full coverage) if the business unit is a part of a larger company that has other business units that are subject to full CAS coverage. See 57 FR 14157 (Apr. 17, 1992).

The regulations providing for modified CAS coverage were originally effective on March 10, 1978. In the intervening 15 years, the dollar threshold for modified CAS coverage had not been adjusted. However, prices as measured by the consumer price index have been adjusted by over 100% during this period. Presumably the issues giving rise to the development of the concept of modified CAS coverage in 1977 have been further highlighted during this time frame. The \$10 million threshold, once considered to be the mark at which a contractor had sufficient "covered" contracts to be subject to full CAS coverage, has been eroded by the effects of inflation. This dollar threshold no longer serves as an appropriate size standard that represents a fair demarcation applicable to CAS covered contractors.

The Board is now promulgating what it believes to be appropriate adjustments in the threshold for application of modified CAS coverage to covered contractors. In so doing, the CASB has been considering two principal issues: (1) The adjustment should properly reflect the effects of inflation, and (2) the adjustment should protect the interests of the Government while lessening the need to impose administrative burdens associated with CAS coverage on affected contractors.

#### Summary of Amendments

The Board's rule provides for a full CAS coverage threshold of \$25 million (actual inflation experience rounded to the nearest five million dollar increment). This represents an increase of two-and-one-half times the previous threshold, and approximates inflation experience as measured by the consumer price index from the last

quarter of calendar year 1977 through the last quarter of 1992.

In the Board's judgment, its internal study (which is based upon data available in the Federal Procurement Data System) has indicated that this threshold should provide adequate protection to the Government in the form of cumulative contract dollars remaining subject to full CAS coverage, while significantly reducing the number of contractors that will be required to comply with the full scope of the Standards and the requirement for submission of a Disclosure Statement. The results of the Board's study have also established that this increase in the threshold applicable to modified CAS coverage should result in an approximately 45-50% decrease in the number of contractors (or contractor business segments) subject to full CAS coverage, while the corresponding reduction in CAS-covered dollars will be only 5-6% from previous levels. These results would appear to indicate that a substantial reduction in the administrative requirements associated with full CAS coverage will be achieved for a significant number of contractors, and contractor segments, with only a relatively small decrease in the cumulative dollar value of contracts that are subject to the full scope of CAS coverage.

The Board is also increasing the dollar threshold associated with the so-called "trigger contract" in order to further decrease the administrative requirements associated with the application of full CAS coverage. Pursuant to this rule, the "trigger contract" will be that contract dollar threshold (\$1 million) associated with the initiation of full CAS coverage, for a particular contractor, based on the award of a single negotiated government contract. Under rules previously in effect (see 4 CFR 331.30(b)(7) and 332, also 48 CFR 30.201-1(b)(7) and 30.201-2(b)), the trigger contract threshold was a single negotiated government contract exceeding \$500,000. Once awarded a negotiated government contract of at least this dollar magnitude in a single cost accounting period, a government contractor's segment or business unit was subject to some form of CAS coverage (either full or modified) for all subsequently awarded negotiated contracts exceeding \$100,000. Public Law 100-679 raised the threshold for individual CAS contract coverage to \$500,000 (see CAS recodification, 57 FR 14148, Apr. 17, 1992), which had the effect of eliminating the \$500,000 trigger concept. Without an amendment, the minimum individual CAS contract threshold and the initiating CAS

"trigger contract" threshold are currently one and the same. Although the Board has reestablished the "trigger contract" concept in this rule, it has limited its application exclusively to full CAS coverage. Therefore, the application of modified CAS coverage to an individual contract or subcontract will be determined without reference to the triggering contract mechanism applicable to full CAS coverage.

#### B. Additional Amendments

During the past year, information came to the Board's attention, that indicated a need for redefining the concept of modified CAS coverage. Based on this information, the Board became concerned that some government contractors, particularly those who do work for certain civilian procurement agencies, may be including specifically identifiable unallowable costs in indirect cost pools which are reflected in the billings submitted to, and reimbursements received from Federal Government contracting agencies. Conformance with the requirements of CAS 9904.405 would restrict this practice. Therefore, the Board is adding CAS 9904.405 to the modified CAS coverage requirements. In the Board's view, it is fundamental that Government contractors, engaged in cost-based contracting, be able to comply with this basic cost accounting concept in the pricing and administration of contracts of any dollar value. In addition, the Board has determined that the inclusion of CAS 9904.406, "Cost Accounting Period," in the coverage criteria for modified CAS will significantly reduce the opportunity for selection of inconsistent cost accounting periods with respect to the costing and pricing of contracts. The Board believes that the principle enunciated in Standard 9904.406 is so basic as to be a reasonable requirement for all government contracts priced on the basis of cost. The Board also believes that CAS 9904.406 provides a form of protection to contractors in that it prohibits the use of inappropriate and/or inconsistent cost accounting periods in order to minimize indirect contract costs. As was noted in both the preamble to the Advance Notice of Proposed Rulemaking on this topic (see 57 FR 47438), and the preamble to the Notice of Proposed Rulemaking (see 58 FR 18363) the Board has been considering methods by which to achieve a greater degree of balance between those who would urge it to raise and/or tighten certain CAS applicability thresholds, and those who have argued that these same thresholds should not be revised. The Board's



consideration of this issue has led to this rule that applies the requirements of CAS 9904.401, 9904.402, 9904.405 and 9904.406 to all otherwise non-exempt awards exceeding \$500,000. This now constitutes the definition of modified CAS coverage.

In addition, through this rule, the Board is hereby eliminating the alternative "10 percent or more" sales test criterion for the initiation of full CAS coverage. The Board has taken this step in order to clarify and simplify the rules with respect to the initiation of full CAS coverage. The elimination of the percent of sales test also precludes the possibility that two contractors with the same amount of covered contracts would be subject to two different levels of coverage.

The approach to the issue of full and modified CAS coverage that is being promulgated by the Board seeks to balance cost versus benefits through an adjustment in CAS thresholds that would extend the applicability of a new definition of modified CAS coverage, while providing for higher cumulative contract dollar value thresholds applicable for so-called full CAS coverage.

The Board has also determined that the exemption paragraph appearing at § 9904.201-1(b)(15) should be expanded to eliminate the requirement for a separate Cost Accounting Standards Board waiver in circumstances where the relevant procuring agency has determined to waive the requirement for submission of certified cost or pricing data. The Board believes that adequate safeguards exist within the procuring agencies with respect to this issue so as to preclude the need for the approval of individual CAS contract waivers by the Board. The elimination of this requirement should significantly ease the administrative burdens (for both the Government and contractors/subcontractors) associated with obtaining CAS coverage exemptions in those instances where the agency has already waived the requirements of the Truth in Negotiations Act, Public Law 87-653.

Finally the Board has determined to adjust the requirements for disclosure by certain otherwise modified CAS-covered business segments that are required to disclose their cost accounting practices because they are affiliated with other business segments that are subject to full CAS coverage. The Board's final rule adopts a combined \$10 million and 30% sales test for determining whether disclosure is required for these otherwise modified CAS-covered business units.

### C. Paperwork Reduction Act

The Paperwork Reduction Act, Public Law 96-511, does not apply to this rule, because this rule imposes no paperwork burden on offerors, affected contractors and subcontractors, or members of the public which requires the approval of OMB under 44 U.S.C. 3501, *et seq.* The purpose of this rule is to decrease the burdens (including paperwork) associated with the administration of the Cost Accounting Standards by covered government contractors and subcontractors.

### D. Executive Order 12866 and the Regulatory Flexibility Act

This rule serves to eliminate certain administrative requirements associated with the administration of the Cost Accounting Standards by covered government contractors and subcontractors. The economic impact on contractors and subcontractors is therefore expected to be minor. As a result, the Chairman has determined that this is not a "major rule" under the provisions of Executive Order 12866, and that a regulatory impact analysis is not required. Furthermore, this rule will not have a significant effect on a substantial number of small entities because small businesses are exempt from the application of the Cost Accounting Standards. Therefore, this rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

### E. Public Comments

This final rule is based upon the Board's Notice of Proposed Rulemaking made available for public comment in the Federal Register on April 9, 1993, 58 FR 18363. Thirty sets of comments were received, including twenty-five timely comments, and five late comments. The major comments received and the Board's actions taken in response thereto are summarized below:

**Comment:** Nineteen commenters supported the NPRM's proposal for an increased "full" CAS coverage threshold, and thirteen commenters supported elimination of the alternative "10 percent of sales" test for the initiation of full CAS coverage. Three commenters supported the addition of CAS 9904.405 to the definition of "modified" CAS coverage, and six commenters supported adding CAS 9904.406 to this definition as well. An additional seven commenters supported the Board's elimination of the need for a separate CAS waiver when an agency had already granted a waiver from the requirement to submit certified cost or

pricing data pursuant to the provisions of the Truth in Negotiations Act, Public Law 87-653. Finally, three commenters supported the Board's proposed \$1 million trigger contract for the application of full CAS coverage.

**Response:** The Board thanks the commenters for their supportive comments.

**Comment:** Four commenters recommended that the Board revise the rule to include counting only "net awards" in determining whether certain CAS thresholds are met.

**Response:** The Board does not agree with the commenters. As the Board understands the commenters' position, "net awards" refers to the total obligated value of the contract at the time of award, excluding as-yet-to-be-obligated incremental funding, and the potential value of contract options. The Board believes that CAS applicability thresholds are met when the total dollar value of the contract (including as-yet-to-be-provided incremental funding and the potential value of contract options) exceeds the appropriate thresholds. Because this appeared to be a recurring issue among some contractors, the Board is amending the definition of "net awards" in order to make it clear that incrementally-funded contracts and the potential value of contract options are to be included in determining a contractor's or subcontractor's CAS eligibility status. The Board believes that it is the value of the pricing proposal or action that gives rise to CAS applicability.

**Comment:** One commenter (the Department of Defense Office of Inspector General) strongly opposed increasing the dollar threshold (previously \$10 million) associated with the initiation of full CAS coverage. This commenter continues to believe that the \$10 million threshold was of sufficient magnitude that the requirements for full CAS coverage (including the submission of a Disclosure Statement) should continue to apply without modification. This commenter, as well as one other, also supported elimination of the "trigger contract" concept. This commenter believes that previous thresholds associated with the administration of CAS requirements (with the exception of the "10 percent of sales test") do not impose hardships or burdens on industry.

**Response:** The Board does not agree with all aspects of this comment. The Board continues to believe that the effects of inflation over the past fifteen years should be considered in determining CAS applicability thresholds. Moreover, the Board notes that its proposal results in an



approximately 45-50% decrease in the number of contractors subject to "full" CAS coverage, while reducing the coverage of covered contract dollars by only 5-6%. In the Board's view, this will allow both contractors and administering Government agencies to better focus available resources on contracts of significant dollar value.

**Comment:** Two commenters, representing government contractors, endorsed a proposal to raise the "full" CAS coverage threshold to between \$30-\$50 million. Nine similar commenters also endorsed the reinstitution of the "trigger contract" concept, but believed that it should be applied to modified, as well as, full CAS coverage. Another two commenters recommended that the trigger contract concept be reinstated at a threshold of \$2.5 million. Eight commenters further recommended the elimination of the requirement for the filing of disclosure statements for modified CAS-covered business segments that are affiliated with another business segment that is subject to full CAS coverage. Thirteen commenters opposed inclusion of CAS 9904.405 in the definition of modified coverage, and five commenters opposed including CAS 9904.406.

**Response:** The Board believes that CAS requirements and disclosure thresholds should generally be adjusted in accordance with inflationary experience. It does not consider the commenters proposed higher levels appropriate given the statutory objectives of the Board and the substantial amounts of public spending involved in covered contracts. In response to commenters' concerns previously made known to the Board after issuance of both its ANPRM and NPRM on this subject, the Board is reinstituting the "trigger contract" concept with respect to the initiation of full CAS coverage. The new trigger contract threshold is \$1 million. The Board is also adjusting the requirements for the filing of disclosure statements for certain modified CAS-covered business segments that are affiliated with another business segment that is subject to full CAS coverage. The Board respectfully disagrees with the commenters recommendations that CAS 9904.405 and 9904.406 be excluded from the definition of modified coverage. The Board continues to have serious reservations concerning administration of cost-based contract pricing and/or reimbursement arrangements with contractors that are unable to comply with these very fundamental cost accounting concepts and/or practices.

**Comment:** One commenter recommended that the Board exempt

from all CAS coverage, contracts that are awarded to "commercial companies."

**Response:** The Board continues to believe that the requirements of the Cost Accounting Standards should generally be applied to negotiated contracts that exceed certain dollar thresholds as determined by the Board, in which contract cost or price is determined through the submission of cost or pricing data. The Board does not agree that the mere existence of competition at some level of the procurement process, e.g., technical competition, should give rise to an exemption from application of the Standards, if the element of adequate price competition, as applied to the instant procurement action, is not present. The Board is amending its rules in order to modify the CAS exemption paragraph appearing at 9903.201-1(b)(15). This will serve to eliminate the requirement for a separate Cost Accounting Standards Board waiver in circumstances where the relevant procuring agency has determined to waive the requirement for submission of certified cost or pricing data. The Board believes that this amendment should assist commercial companies in cases where they would ordinarily be subject to TINA, but the requirement for submission of certified cost or pricing data has been waived by the relevant procuring agency.

#### List of Subjects in 48 CFR Part 9903

Cost accounting standards,  
Government procurement.

Allan V. Burman,

Administrator for Federal Procurement Policy  
and Chairman, Cost Accounting Standards  
Board.

For the reasons set forth in this preamble, chapter 99 of title 48 of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for part 9903 of chapter 99 of title 48 continues to read as follows:

**Authority:** Pub. L. 100-679, 402 Stat. 4056, 41 U.S.C. 422.

#### PART 9903—CONTRACT COVERAGE

##### Subpart 9903.2—CAS Program Requirements

2. Section 9903.201-1 is amended by revising paragraph (b) introductory text and paragraph (b) to read as follows:

##### 9903.201-1 CAS applicability.

\* \* \* \* \*

(b) The following categories of contracts and subcontracts are exempt from all CAS requirements:

\* \* \* \* \*

(15) Firm-fixed-price contracts and subcontracts awarded without submission of any cost data.

3. Section 9903.201-2 is amended by revising paragraphs (a) (1) and (2); removing paragraph (a)(3); and revising paragraph (b) (1) and (2) and paragraph (d) to read as follows:

##### 9903.201-2 Types of CAS coverage.

(a) \* \* \*

(1) Receive a single CAS-covered contract award of \$25 million or more; or

(2) Received \$25 million or more in net CAS-covered awards during its preceding cost accounting period, of which, at least one award exceed \$1 million.

(b) *Modified coverage.* (1) Modified CAS coverage requires only that the contractor comply with Standard 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs, Standard 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose, Standard 9904.405, Accounting for Unallowable Costs and Standard 9904.406, Cost Accounting Standard—Cost Accounting Period. Modified, rather, than full, CAS coverage may be applied to a covered contract of less than \$25 million awarded to a business unit that received less than \$25 million in net CAS-covered awards in the immediately preceding cost accounting period. It also applies to covered contracts of business units that received more than \$25 million in net CAS covered awards in the immediately preceding cost accounting period, wherein no single contract award exceeded \$1 million.

(2) If any one contract is awarded with modified CAS coverage, all CAS-covered contracts awarded to the business unit during that cost accounting period must also have modified coverage with the following exception: if the business unit receives a single CAS-covered contract award of \$25 million or more, that contract must be subject to full CAS coverage. Thereafter, any covered contract awarded in the same cost accounting period must also be subject to full CAS coverage.

\* \* \* \* \*

(d) *Subcontracts.* Subcontract awards subject to CAS require the same type of CAS coverage as would prime contracts awarded to the same business unit. In measuring total net CAS-covered awards for a year, a transfer by one segment to another shall be deemed to be a subcontract award by the transferor.

\* \* \* \* \*

4. Section 9903.201-3 is amended by revising the clause heading and



introductory text; by revising paragraphs (c) (1) and (3) in Part I of the clause; by removing Part II; by redesignating Parts III and IV as Parts II and III respectively; and revising newly designated Part II to read as follows:

#### 9903.201-3 Solicitation provisions.

#### Cost Accounting Standards Notices and Certification (November 1993)

**Note:** This notice does not apply to small businesses or foreign governments.

This notice is in three parts, identified by Roman numerals I through III.

Offerors shall examine each part and provide the requested information in order to determine Cost Accounting Standards (CAS) requirements applicable to any resultant contract.

#### I. Disclosure Statement—Cost Accounting Practices and Certification

(c) Check the appropriate box below:

☐ (1) Certificate of Concurrent Submission of Disclosure Statement.

The offeror hereby certifies that, as a part of the offer, copies of the Disclosure Statement have been submitted as follows: (i) Original and one copy to the cognizant Administrative Contracting Officer (ACO), and (ii) One copy to the cognizant contract auditor.

(Disclosure must be on Form No. CASB DS-1. Forms may be obtained from the cognizant ACO or from the looseleaf version of the Federal Acquisition Regulation.)

Date of Disclosure Statement:  
Name and Address of Cognizant ACO where filed:

The offeror further certifies that practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement.

☐ (2) \*\*\*

☐ (3) Certificate of Monetary Exemption.

The offeror hereby certifies that the offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated prime contracts and subcontracts subject to CAS totaling more than \$25 million (of which at least one award exceeded \$1 million) in the cost accounting period immediately preceding the period in which this proposal was submitted. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

#### II. Cost Accounting Standards—Eligibility for Modified Contract Coverage

If the offeror is eligible to use the modified provisions of 9903.201-2(b) and elects to do so, the offeror shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause.

☐ The offeror hereby claims an exemption from the Cost Accounting Standards clause

under the provisions of 9903.201-2(b) and certifies that the offeror is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because during the cost accounting period immediately preceding the period in which this proposal was submitted, the offeror received less than \$25 million in awards of CAS-covered prime contracts and subcontracts, or the offeror did not receive a single CAS-covered award exceeding \$1 million. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

**Caution:** An offeror may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a CAS-covered contract of \$25 million or more or if, during its current cost accounting period, the offeror has been awarded a single CAS-covered prime contract or subcontract of \$25 million or more.

5. Section 9903.201-4 is amended by revising paragraph (c)(1) to read as follows:

#### 9903.201-4 Contract clauses.

(c) *Disclosure and Consistency of Cost Accounting Practices.* (1) The contracting officer shall insert the clause set forth below, Disclosure and Consistency of Cost Accounting Practices, in negotiated contracts when the contract amount is over \$500,000 but less than \$25 million, and the offeror certifies it is eligible for and elects to use modified CAS coverage (see 9903.201-2, unless the clause prescribed in paragraph (d) of this subsection is used).

#### 9903.202 Disclosure requirements.

6. Section 9903.202-1 is amended by revising paragraphs (b) (1) and (2) paragraph (c) to read as follows:

#### 9903.202-1 General requirements.

(b) \*\*\*  
(1) Any business unit that is selected to receive a CAS-covered contract or subcontract of \$25 million or more shall submit a Disclosure Statement before award.

(2) Any company which, together with its segments, received net awards of negotiated prime contracts and subcontracts subject to CAS totaling more than \$25 million in its most recent cost accounting period, of which, at least one award exceeded \$1 million, must submit a Disclosure Statement before award of its first CAS-covered contract in the immediately following cost accounting period. However, if the first CAS-covered contract is received within 90 days of the start of the cost accounting period, the contractor is not required to file until the end of 90 days.

(c) When a Disclosure Statement is required, a separate Disclosure

Statement must be submitted for each segment whose costs included in the total price of any CAS-covered contract or subcontract exceed \$500,000, unless (i) The contract or subcontract is of the type or value exempted by 9903.201-1 or (ii) In the most recently completed cost accounting period the segment's CAS-covered awards are less than 30 percent of total segment sales for the period and less than \$10 million.

#### Subpart 9903.3—CAS Rules and Regulations

7. Section 9903.301 is amended by revising the definition for Net Awards to read as follows:

#### § 9903.301 Definitions.

*Net awards*, as used in this chapter, means the total value of negotiated CAS-covered prime contract and subcontract awards, including the potential value of contract options, received during the reporting period minus cancellations, terminations, and other related credit transactions.

[FR Doc. 93-27111 Filed 11-3-93; 8:45 am]  
BILLING CODE 3110-01-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 675

[Docket No. 921185-3021; I.D. 110193A]

#### Groundfish of the Bering Sea and Aleutian Islands Area

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

**ACTION:** Closure.

**SUMMARY:** NMFS is closing the directed fishery for Atka mackerel in the Central Aleutian District (statistical area 542) of the Aleutian Islands subarea in the Bering Sea and Aleutian Islands area (BSAI). This action is necessary to prevent exceeding the Atka mackerel total allowable catch (TAC) in the Central Aleutian District.

**EFFECTIVE DATE:** 12 noon, Alaska local time (A.l.t.), November 1, 1993, until 12 midnight, A.l.t., December 31, 1993.

**FOR FURTHER INFORMATION CONTACT:** Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907-586-7228.



**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The Atka mackerel TAC specified for the Central Aleutian District was established by a revision to the final 1993 initial specifications of groundfish in the BSAI (58 FR 37660, July 13, 1993) and later augmented from the reserve (58 FR 50856, September 29, 1993) to 27,000 metric tons (mt). The directed

fishery in the Central Aleutian District opened on August 11, 1993 (58 FR 43297, August 16, 1993).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(a)(8), that the Atka mackerel TAC in the Central Aleutian District soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 26,500 mt, with consideration that 500 mt will be taken as incidental catch in directed fishing for other species in the Central Aleutian District. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Central Aleutian District, effective from

12 noon, A.L.T., November 1, 1993, until 12 midnight, A.L.T., December 31, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

#### Classification

This action is taken under § 675.20.

#### List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 1, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93-27075 Filed 11-1-93; 2:15 pm]

BILLING CODE 3510-22-M