

Section	Remove	Add
970.5232–2(e)(2)(iv)(B) in the last sentence 970.5232–3(d) in the second sentence 970.5232–3(j) in the last sentence	“contractor” “Clause __,” “Penalties for Unallowable costs;”	“Contractor” “Clause 970.5204–3,” “Penalties for Unallowable Costs;”

21. In the table below, for each section indicated in the left column, remove the word indicated in the right column from where it appears in the section:

Section	Remove
970.2201–1–2(a)(1)(ii)	“48 CFR”
970.2671–2	“48 CFR”
970.2672–3	“48 CFR”
970.2673–2	“48 CFR”
970.5226–1 introductory text	“48 CFR”
970.5226–2 introductory text	“48 CFR”
970.5226–3 introductory text	“48 CFR”
970.5232–5(b) in two places	“FAR”

[FR Doc. 2010–13678 Filed 6–8–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF HOMELAND SECURITY

48 CFR Parts 3015, 3016, and 3052

[Docket No. DHS–2010–0045]

RIN 1601–AA43

Revision of Department of Homeland Security Acquisition Regulation; Limitations on Subcontracting in Emergency Acquisitions (HSAR Case 2009–005)

AGENCY: Office of the Chief Procurement Officer, DHS.

ACTION: Proposed rule with requests for comments.

SUMMARY: The Department of Homeland Security (DHS) is proposing to amend its Homeland Security Acquisition Regulation (HSAR) to implement a statutory requirement limiting the use of subcontractors on cost-reimbursement type contracts entered into by the Department to facilitate the response to or recovery from a natural disaster or act of terrorism or other man-made disaster.

DATES: Comments and related material submitted electronically must be submitted to the Federal eRulemaking Portal <http://www.regulations.gov> on or before August 9, 2010. Comments and related material submitted by mail must reach the Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Legislation Branch at the address shown below on or before August 9, 2010 to be considered in the formation of the final rule.

ADDRESSES: You may submit comments identified by DHS docket number DHS–2010–0045, using any one of the following methods:

(1) *Via the internet at Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments and use docket number DHS–2010–0045.

(2) By mail to the Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Legislation Branch, Attn: Jeremy Olson, 245 Murray Drive, Bldg. 410 (RDS), Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: Jeremy Olson, Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Legislation Branch, (202) 447–5197.

SUPPLEMENTARY INFORMATION:

- I. Request for Comments
- II. Background
- III. Discussion of Proposed Rule
- IV. Regulatory Requirements
 - A. Executive Order 12866 (Regulatory Planning and Review)
 - B. Small Entities
 - C. Collection of Information

I. Request for Comments

Interested persons are invited to participate in this rulemaking by submitting comments and related materials. Comments and related materials should be organized by HSAR Part, and indicate the specific section that is being commented on. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. See **ADDRESSES** above for information on how to submit comments. If you submit comments by mail, please submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. You may submit comments either by mail or via the internet as identified in the **ADDRESSES** section above; but to avoid duplication DHS requests that you submit comments and materials by only one method. If you would like DHS to acknowledge receipt of comments submitted by mail, please enclose a self-addressed, stamped postcard or envelope. DHS will consider all comments and material received during the comment period.

Viewing comments and documents: To view comments and read background

documents related to this rulemaking, go to <http://www.regulations.gov>, which contains relevant instructions under the FAQs tab on the home page.

II. Background

Section 692 of the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA), Public Law 109–295, 120 Stat. 1394, 1409 (Oct. 4, 2006), establishes a limitation on subcontracting for cost-reimbursement type contracts above the simplified acquisition threshold entered into to facilitate the response to or recovery from a natural disaster or act of terrorism or other man-made disaster. Congress enacted this limitation based on findings that excessive tiering of subcontractors under disaster recovery cost-reimbursement type contracts leads to inflated overhead charges and poor prime contractor oversight over subcontractor work. In order to implement the statutory requirement, DHS proposes to amend the Homeland Security Acquisition Regulation (HSAR) to add implementing policy.

III. Discussion of Proposed Rule

The proposed rule would revise 48 CFR part 3015, Contracting by Negotiation; part 3016, Types of Contracts; and part 3052, Solicitation Provisions and Contract Clauses, to limit the use of subcontractors by prime contractors on certain DHS acquisitions above the simplified acquisition threshold (as defined by section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403) (currently \$100,000)), unless DHS determines that such requirements are not feasible or practicable. The authority to determine whether or not the subcontracting requirements are not feasible or practicable rests one level above the contracting officer. This determination may be made on the basis of analysis of information provided by an offeror seeking a DHS contract or the contracting officer may prepare a recommended Determination & Finding for review and approval by the deciding official.

Contracts to be covered by the proposed regulation are those awarded in response to or recovery from: (1) A major disaster or emergency declared by the President under Title IV or Title V of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as

amended (42 U.S.C. 5121–5207) (*see* <http://www.fema.gov/news/disasters.fema#sev2> for a list of declarations); (2) An uncontrolled fire or fire complex, threatening such destruction as would constitute a major disaster, and for which the Federal Emergency Management Agency has approved a fire management assistance declaration in accordance with regulatory criteria at 44 CFR 204.21 (*see* <http://www.fema.gov/news/disasters.fema#sev2> for a list of declarations); or (3) An incident for which the National Operations Center (NOC), through the National Response Coordination Center (NRCC), coordinates the activation of the appropriate Emergency Support Functions and the Secretary of Homeland Security has designated a Federal Resource Coordinator (FRC) to manage Federal resource support. Each of these three types of declarations is discussed below.

Stafford Act Major Disaster or Emergency Declaration

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207 (The Stafford Act), and its implementing regulations at 44 CFR part 206, set forth a process for a Governor to request the President to declare a major disaster or emergency. *Key points of the process are set forth below:*

- If an event is beyond the combined response capabilities of the State and affected local governments; and
- If, based on the findings of a joint Federal-State-local Preliminary Damage Assessment (PDA), the damage is of sufficient severity and magnitude to warrant assistance under the Stafford Act. In a particularly fast-moving or clearly devastating disaster, there may be an expedited declaration, and the PDA may be deferred until after the declaration.
- The President may direct emergency assistance without a Governor's request if an incident occurs that involves a subject area that is exclusively or preeminently the responsibility of the United States. The President will consult the Governor of any affected State, if practicable.
- FEMA may provide accelerated Federal assistance and support where necessary to save lives, prevent human suffering, or mitigate severe damage, even in the absence of a specific request. (The Governor of the affected State will be consulted if practicable, but this consultation shall not delay or impede the provision of such rapid assistance.)

Fire Management Assistance Declarations

A request for a fire management assistance declaration is made by the Governor of a State to FEMA while a fire is burning uncontrolled. FEMA develops a Regional summary and approves or denies the State's request based on:

- The conditions that existed at the time of the State's request;
 - Whether or not the fire or fire complex threatens such destruction as would constitute a major disaster.
- There are four criteria FEMA uses to evaluate the threat posed by a fire or fire complex:*
- Threat to lives and improved property, including threats to critical facilities/infrastructure, and critical watershed areas;
 - Availability of State and local firefighting resources;
 - High fire danger conditions, as indicated by nationally accepted indices such as the National Fire Danger Ratings System; and
 - Potential major economic impact.
- After rendering a determination, FEMA notifies the State.

Designation of Federal Resource Coordinator in Non-Stafford Act Situations

The Department of Homeland Security (DHS) sometimes takes action to support a Federal department or agency that has requested DHS assistance in handling a disaster that falls under the requesting department or agency's jurisdiction. Key operational units that may be activated include the National Response Coordination Center (NRCC), Regional Response Coordination Center (RRCC), and Joint Field Office (JFO).

Federal departments and agencies routinely manage the response to incidents under their statutory or executive authority that do not require the assistance of other Federal agencies. When a Federal entity with primary responsibility and authority for handling an incident requires assistance, that agency may request DHS coordination of Federal multiagency assistance. In such cases, DHS coordinates assistance using the procedures and structures within the *National Response Framework*. Generally, the requesting agency funds the participation of other Federal departments and agencies in accordance with provisions of the Economy Act unless other pertinent authorities exist. To initiate Federal-to-Federal support, the requesting agency submits a request for assistance to the DHS Executive

Secretary via the National Operations Center (NOC). Requests include a summary of the situation, types and amount of resources needed, financial information, and any other appropriate details.

Upon approval of the request, the Secretary of Homeland Security issues an operations order to the NOC. The NOC, through the NRCC, coordinates the activation of the appropriate Emergency Support Functions. The Secretary of Homeland Security designates a Federal Resource Coordinator (FRC) to manage Federal resource support. In circumstances requiring extraordinary coordination, the Secretary may appoint a Principal Federal Official to serve as his or her representative in the field.

The requesting agency designates a senior official to work in coordination with the FRC as part of the Unified Coordination Group to identify and define specific support requirements. The requesting agency also provides comptrollers to the NRCC, RRCC, and JFO, as appropriate, to oversee financial management activities. An RRCC may be fully or partially activated to facilitate the deployment of resources until a JFO is established. Facilities, such as mobilization centers, may be established to accommodate personnel, equipment, and supplies. Federal agencies provide resources under interagency reimbursable agreements or their own authorities.

Although the Department considered establishment of separate disaster declaration standards applicable only to section 692, it was determined not to be feasible or practicable. Declaration of a disaster under such separate 692 standards would likely confuse the public in the circumstance where the President or other recognized officials did not make a declaration for the same incident under the Stafford Act or other pre-existing authority.

The limitations proposed for this amendment to the HSAR are in addition to, and do not replace, the Federal Acquisition Regulation (FAR) limitations on pass-through charges at FAR 15.408(n).

IV. Regulatory Requirements

A. Executive Order 12866 (Regulatory Planning and Review)

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866. The Office of Management and Budget has not reviewed it under that Order. This proposed rule is not a major rule under 5 U.S.C. 804.

B. Small Entities

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule does not duplicate, overlap, or conflict with other federal rules.

We do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the RFA because the rule is limited to cost reimbursement acquisitions in support of response to or recovery from declared disasters. During FY 2008, although there were 141 declared disasters, the Federal Procurement Data System (FPDS) indicates that only 73 cost-type contract actions were awarded by DHS in response to declared disasters. Only 31 separate contractors received these awards with 10 of these being small entities. We reviewed the NAICS (North American Industry Classification System) codes for these 10 small entities and found these small entities are not concentrated in any one industry and represent a relatively diverse cross section of the economy. For example, these small entities operate within NAICS code 541611 “Administrative Management and General Management Consulting Services,” NAICS code 721211 “RV (Recreational Vehicle) Parks and Campgrounds,” NAICS code 423210 “Furniture Merchant Wholesalers,” and NAICS code 221122 “Electric Power Distribution.” The number of actions and the number of impacted contractors are very small proportions of the contracts awarded by the federal government and of the number of federal contractors. It is not anticipated that the rule would significantly affect the total number of cost reimbursement acquisitions awarded to small entities.

When considering the economic impact of rulemakings, the RFA requires consideration of only the direct costs of a regulation on small entities that are required to comply with the regulation. Because the requirements of the clause promulgated by this rule includes requirements only for prime contractors, we believe the primary direct cost of this rule is the proposed requirement for submittal of information to DHS regarding the extent of subcontracting that is anticipated under a prime contract. We acknowledge that the

limitation on subcontracting imposed by Section 692 of PKEMRA could have a distributional effect of shifting some of the work from subcontractors to prime contractors. However, distributional impacts of a rule across the economy are not considered an “economic impact” for the purposes of the RFA. For these reasons, DHS certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. DHS invites comments from small entities and other interested parties concerning the affected HSAR Parts 3015, 3016 and 3052. Such comments should be submitted separately and should cite 5 U.S.C. 601, *et seq.* (HSAR Case 2009–005). Commenters should note that section 692 of PKEMRA was explicit in describing what types of contracts are within the scope of this rule and the maximum amount of subcontracting that would be allowed in these circumstances once this rule becomes effective. Consequently, there are no alternatives to the requirements of this rule that accomplish the stated objectives of section 692 of PKEMRA.

C. Collection of Information

The Paperwork Reduction Act (Pub. L. 104–13) applies to this proposed rule because the proposed rule contains information collection requirements. Accordingly, the Department will submit a change request reflecting the amended estimate for the affected burdens concerning this proposed rule to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

Annual Reporting Burden:

Public reporting burden for this collection of information is estimated to average 4.20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

Respondents: 219.

Responses per respondent: 1.67.

Total annual responses: 365.

Preparation hours per response: 4.2.

Total response burden hours: 1,533.

Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than August 9, 2010. See **ADDRESSES** above for information on how to submit comments. If you submit comments by mail, please submit them in an unbound format, no larger than 8½; by 11 inches, suitable for copying and electronic filing. You may submit

comments either by mail or via the Internet as identified in the **ADDRESSES** section above; but to avoid duplication DHS requests that you submit comments and materials by only one method. If you would like DHS to acknowledge receipt of comments submitted by mail, please enclose a self-addressed, stamped postcard or envelope. DHS will consider all comments and material received during the comment period. We may change this proposed rule in view of comments submitted. Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the HSAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requester may obtain a copy of the justification from the Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Legislation Branch, *Attn:* Jeremy Olson, 245 Murray Drive, Bldg. 410 (RDS), Washington, DC 20528. Please cite OMB Control Numbers 1600–0005, Offeror submissions and 1600–0003, Contractor submissions, HSAR Case 2009–005, Limitations on Subcontracting in Emergency Acquisitions, in all correspondence.

List of Subjects in 48 CFR Parts 3015, 3016, and 3052

Government procurement.

Richard K. Gunderson,

*Acting Chief Procurement Officer,
Department of Homeland Security.*

Accordingly, DHS proposes to amend (HSAR) 48 CFR parts 3015, 3016 and 3052 as follows:

1. The authority citation for 48 CFR parts 3015, 3016 and 3052 is revised to read as follows:

Authority: 5 U.S.C. 301–302, 41 U.S.C. 418b (a) and (b), 41 U.S.C. 414, 48 CFR part 1, subpart 1.3, and DHS Delegation Number 0700.

PART 3015—CONTRACTING BY NEGOTIATION

2. Add subpart 3015.4 consisting of section 3015.404–3 to read as follows:

Subpart 3015.4—Contract Pricing**3015.404–3 Subcontracting pricing considerations.**

(d) For proposal submissions subject to limitations on subcontracting in accordance with (HSAR) 48 CFR 3016.370, Limitations on subcontracting in emergency acquisitions, the contracting officer shall require offerors to submit sufficient evidence to permit a determination that the offeror will or will not award subcontracts that exceed 65 percent of the cost (excluding indirect costs and fee) of the contract or the cost of any individual task or delivery order in accordance with (HSAR) 48 CFR 3016.370 and 3052.216–75.

PART 3016—TYPES OF CONTRACTS

3. Add subpart 3016.3 consisting of sections 3016.307 and 3016.370 to read as follows:

Subpart 3016.3—Cost-Reimbursement Contracts**3016.307 Contract clauses and solicitation provisions.**

(a) The contracting officer shall insert the clause at (HSAR) 48 CFR 3052.216–75, Limitations on Subcontracting in Emergency Acquisitions, in solicitations, contracts, task orders, and delivery orders that are cost reimbursement and exceed the simplified acquisition threshold if the action is entered into to facilitate response to or recovery from:

(1) A major disaster or emergency declared by the President under Title IV or Title V of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121–5207) (*see* <http://www.fema.gov/news/disasters.fema#sev2> for a list of declarations);

(2) An uncontrolled fire or fire complex, threatening such destruction as would constitute a major disaster, and for which the Federal Emergency Management Agency has approved a fire management assistance declaration in accordance with regulatory criteria at 44 CFR 204.21 (*see* <http://www.fema.gov/news/disasters.fema#sev2> for a list of declarations); or

(3) An incident for which the National Operations Center (NOC), through the National Response Coordination Center (NRCC), coordinates the activation of the appropriate Emergency Support Functions and the Secretary of Homeland Security has designated a Federal Resource Coordinator (FRC) to manage Federal resource support.

(b) The contracting officer shall insert the provision at (HSAR) 48 CFR

3052.216–76, Proposal Information on Limitations on Subcontracting in Emergency Acquisitions, in solicitations for cost reimbursement contracts, task orders, and delivery orders expected to exceed the simplified acquisition threshold if the action will be entered into to facilitate response to or recovery from:

(1) A major disaster or emergency declared by the President under Title IV or Title V of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121–5207) (*see* <http://www.fema.gov/news/disasters.fema#sev2> for a list of declarations);

(2) An uncontrolled fire or fire complex, threatening such destruction as would constitute a major disaster, and for which the Federal Emergency Management Agency has approved a fire management assistance declaration in accordance with regulatory criteria at 44 CFR 204.21 (*see* <http://www.fema.gov/news/disasters.fema#sev2> for a list of declarations); or

(3) An incident for which the National Operations Center (NOC), through the National Response Coordination Center (NRCC), coordinates the activation of the appropriate Emergency Support Functions and the Secretary of Homeland Security has designated a Federal Resource Coordinator (FRC) to manage Federal resource support.

3016.370 Limitations on subcontracting in emergency acquisitions.

(a) A prime contractor under a cost reimbursement contract or a task or delivery order shall not subcontract more than 65 percent of the cost (exclusive of indirect costs and fee) of the action except as provided in paragraph (b) of this subsection, if the dollar value of the action is above the simplified acquisition threshold and if the action is entered into to facilitate response to or recovery from:

(1) A major disaster or emergency declared by the President under Title IV or Title V of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121–5207) (*see* <http://www.fema.gov/news/disasters.fema#sev2> for a list of declarations);

(2) An uncontrolled fire or fire complex, threatening such destruction as would constitute a major disaster, and for which the Federal Emergency Management Agency has approved a fire management assistance declaration in accordance with regulatory criteria at 44 CFR 204.21 (*see* <http://www.fema.gov/news/disasters.fema#sev2> for a list of declarations); or

(3) An incident for which the National Operations Center (NOC), through the National Response Coordination Center (NRCC), coordinates the activation of the appropriate Emergency Support Functions and the Secretary of Homeland Security has designated a Federal Resource Coordinator (FRC) to manage Federal resource support.

(b) The prohibition on subcontracting in paragraph (a) of this subsection does not apply if a determination is made that it is not feasible or practicable to apply it to a contract action or class of contract actions. The contracting officer shall prepare this determination and findings (D&F) using the format found in 48 CFR 3001.704. Review and approval of the D&F shall be one-level above the contracting officer unless a higher authority is established by the HCA.

(c) For purposes of establishing the percent of cost of work of the contract or task or delivery order, *see* 48 CFR 3052.216–75.

PART 3052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Add sections 3052.216–75 and 3052.216–76 to subpart 3052.2 to read as follows:

3052.216–75 Limitations on subcontracting in emergency acquisitions.

As prescribed in (HSAR) 48 CFR 3016.307(a) insert the following clause in solicitations, orders and contracts:

LIMITATIONS ON SUBCONTRACTING IN EMERGENCY ACQUISITIONS

(TBD 2010)

Section 692 of the Department of Homeland Security Appropriations Act, Fiscal Year 2007, limits the use of subcontractors by prime contractors on certain cost reimbursement acquisitions entered into with the Department of Homeland Security and its Components.

(a) This acquisition is a cost reimbursement action subject to the limitations of section 692 for a requirement to facilitate the response to or recovery from:

(1) A major disaster or emergency declared by the President under Title IV or Title V of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121–5207) (*see* <http://www.fema.gov/news/disasters.fema#sev2> for a list of declarations);

(2) An uncontrolled fire or fire complex, threatening such destruction as would constitute a major disaster, and for which the Federal Emergency Management Agency has approved a fire management assistance declaration in accordance with regulatory criteria at 44 CFR 204.21 (*see* <http://www.fema.gov/news/disasters.fema#sev2> for a list of declarations); or

(3) An incident for which the National Operations Center (NOC), through the

National Response Coordination Center (NRCC), coordinates the activation of the appropriate Emergency Support Functions and the Secretary of Homeland Security has designated a Federal Resource Coordinator (FRC) to manage Federal resource support.

(b) The Contractor agrees that in performance of the contract, no more than 65 percent of the contract cost, excluding indirect costs incurred by the Contractor and fee paid to the Contractor, will be subcontracted. If this clause is included only in an individual task or delivery order or is made applicable only to certain task or delivery orders, this limit applies only to such task or delivery order(s) and not to the entire contract.

(c) For purposes of this clause, the percentage of cost shall be calculated by determining all costs exclusive of indirect costs and fee being incurred by the Contractor, and comparing this value to the total dollars the Contractor allocates to subcontractors.

(d) The Contractor shall notify the Contracting Officer in writing annually, on the anniversary date of contract award, the total cost (less indirect costs and fee) it has incurred for the previous 12-month period and the total subcontracted cost during the same period. If the percentage of costs incurred by its subcontractors exceeds 65 percent, the Contractor's notification shall include a description of the reason(s) the percentage of subcontracted cost exceeded 65 percent and a plan for becoming compliant with the requirements of this clause.

(e) If the Contractor expects at any time that compliance with these limits is not practicable or feasible, it shall submit a written request for waiver to the Contracting Officer with supporting rationale.

(f) The requirements of this clause remain in effect unless the Contracting Officer provides notification to the Contractor that compliance with these limits has been excused in accordance with (HSAR) 48 CFR 3016.370(b), or until the Contracting Officer provides notification that the requirements of this clause are no longer in force.

(g) In addition to any other remedy available to the government, the Contractor's ability to remain compliant with the terms of this clause may be included in past performance evaluations performed by Government personnel and considered by the Government when making future award decisions and failure to comply with its terms may result in disallowance of certain incurred costs.

(h) Nothing in this clause shall be construed as superseding or nullifying other terms or conditions of the contract including those associated with socioeconomic goals and consent to subcontract requirements.

(End of Clause)

3052.216–76 Proposal information on limitations on subcontracting in emergency acquisitions.

As prescribed in (HSAR) 48 CFR 3016.307(b) insert the following provision in solicitations:

PROPOSAL INFORMATION ON LIMITATIONS ON SUBCONTRACTING IN EMERGENCY ACQUISITIONS

(TBD 2010)

(a) The contract or order that is expected to be awarded based on this solicitation will include the clause at (HSAR) 48 CFR 3052.216–75, in which the Contractor agrees that in performance of that contract or order, no more than 65 percent of the cost, excluding indirect costs and fee, will be subcontracted.

(b) The proposal shall include acceptable evidence of the offeror's ability to satisfy this requirement. For purposes of this evidence, the percentage of cost shall be calculated by determining all costs, exclusive of indirect costs and fee, being proposed by the offeror and comparing this value to the total cost the offeror plans to subcontract. Upon contract award and during contract performance, this percentage of costs shall be calculated similarly based on costs incurred by the Contractor and amounts awarded to its subcontractors.

(c) If the offeror expects that compliance with these limits is not practicable or feasible, it shall include a written request for waiver in its offer along with supporting rationale. Offerors are hereby notified that an offer conditioned on acceptance of the waiver may not be considered for award, at the discretion of the Contracting Officer.

(End of Provision)

[FR Doc. 2010–13801 Filed 6–8–10; 8:45 am]

BILLING CODE 4910–9B–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2009–0077; 92220–1113–0000; ABC Code: C3]

RIN 1018–AW63

Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of Sonoran Pronghorn in Southwestern Arizona

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule: reopening of the public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on our February 4, 2010, proposed rule to reestablish the Sonoran pronghorn (*Antilocapra americana sonoriensis*) in southwestern Arizona. We proposed to reestablish the Sonoran pronghorn under section 10(j) of the Endangered Species Act of 1973, as amended (Act), and to classify that reestablished population as a nonessential experimental population (NEP). The

proposed rule provided a plan for establishing the NEP and provided for allowable legal incidental taking of Sonoran pronghorn within the defined NEP area. A draft environmental assessment (EA) on this proposed action was also made available for comment. This action will provide all interested parties with an additional opportunity to submit comments on the proposed rule to reestablish Sonoran pronghorn into southwest Arizona and its accompanying draft EA. Information previously submitted need not be resubmitted as it has already been incorporated into the public record and will be fully considered in the final rule.

DATES: To allow us adequate time to consider and incorporate submitted information into our review, comments and information must be submitted on or before July 9, 2010.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, *Attn:* FWS–R2–ES–2009–0077; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT:

Curtis McCasland, Refuge Manager, Cabeza Prieta National Wildlife Refuge, 1611 North Second Avenue, Ajo, AZ 85321; by telephone (520–387–6483) or by facsimile (520–387–5359). If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On February 4, 2010, we published a proposed rule to reestablish the Sonoran pronghorn, a federally listed endangered mammal, into its historical habitat in King Valley, Kofa National Wildlife Refuge (Kofa NWR), in Yuma County, and to the Barry M. Goldwater Range—East (BMGR–E), in Maricopa County, in southwestern Arizona (75 FR 5732). At this time, we are reopening the public comment period for the proposed NEP and draft EA for a period of 30 days. For more information on the biology, habitat, and range of the Sonoran pronghorn, please refer to our previous proposed rule published in the **Federal Register** on February 4, 2010 (75 FR 5732).

Public Comments

We, the U.S. Fish and Wildlife Service (Service), published a proposed