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## DEPARTMENT OF ENERGY

### 10 CFR Part 1023

48 CFR Parts 901, 902, 903, 904, 906, 907, 908, 909, 911, 914, 915, 916, 917, and 952

RIN 1991-AB81

### (General Provisions) Contract Appeals and the Acquisition Regulation: General, Acquisition Planning, and Contracting Methods and Contract Types

**AGENCY:** Department of Energy.

**ACTION:** Final rule.

**SUMMARY:** The Department of Energy (DOE) is amending the Department of Energy Acquisition Regulation (DEAR) regulations on Acquisition Planning, and Contracting Methods and Contract Types to make changes to conform to the Federal Acquisition Regulation (FAR), remove out-of-date coverage, and update references. Today's rule does not alter substantive rights or obligations under current law.

**DATES:** *Effective Date:* March 14, 2011.

**FOR FURTHER INFORMATION CONTACT:** Barbara Binney at (202) 287-1340 or by e-mail, [barbara.binney@hq.doe.gov](mailto:barbara.binney@hq.doe.gov).

#### SUPPLEMENTARY INFORMATION:

I. Background

II. Discussion

III. Procedural Requirements

- A. Review Under Executive Order 12866
- B. Review Under Executive Order 12988
- C. Review Under the Regulatory Flexibility Act
- D. Review Under the Paperwork Reduction Act
- E. Review Under the National Environmental Policy Act
- F. Review Under Executive Order 13132
- G. Review Under the Unfunded Mandates Reform Act of 1995
- H. Review Under the Treasury and General Government Appropriations Act, 1999
- I. Review Under Executive Order 13211

J. Review Under the Treasury and General Government Appropriations Act, 2001

K. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996

L. Approval by the Office of the Secretary of Energy

#### I. Background

This final rule amends the Department of Energy Acquisition Regulation (DEAR) and the DOE regulation at 10 CFR part 1023 which implements DOE's contract appeals procedures. DEAR subchapters A, B, and C have outdated sections that need to be updated for consistency with the Civilian Board of Contract Appeals (CBCA) provisions of Section 847 of the National Defense Authorization Act for Fiscal Year 2006, Public Law 109-163, and provisions of the FAR and the Title 41, chapter 102—Federal Management Regulation. DOE is implementing these provisions but they are not yet reflected in the DEAR.

DOE is also removing regulations in 10 CFR part 1023 that have been made obsolete by the establishment of the CBCA within the General Services Administration. DOE has already adjusted its internal procedures to address the CBCA jurisdiction.

With the amended changes to Subchapters A, B, and C, the DEAR would conform to the FAR, the Title 41, chapter 101—Federal Property Management Regulation, and the Federal Management Regulation. The purpose of this rule is to update the existing DEAR to conform it to the FAR. Changes are to DEAR parts 901, 902, 903, 904, 906, 907, 908, 909, 911, 914, 915, 916, 917, and 952. No changes are being made to DEAR parts 905, 910, and 912 at this time. None of today's conforming changes are substantive or of a nature to cause any significant expense for DOE or its contractors.

#### II. Discussion

DOE published a notice of proposed rulemaking on July 1, 2010 (75 FR 38042), with a public comment period ending on August 2, 2010. DOE received no comments.

DOE amends the 10 CFR part 1023 as follows:

1. DOE removes from the regulation 10 CFR part 1023 made obsolete by the termination of the Energy Board of Contract Appeals and the establishment of the Civilian Board of Contract

Appeals. Section 847 of the National Defense Authorization Act for Fiscal Year 2006, Public Law 109-163 established within the General Services Administration the Civilian Board of Contract Appeals and terminates authority for the Energy Board of Contract Appeals.

DOE amends the DEAR as follows:

2. Section 901.101 is revised to add "(Chapter 1 of Title 48 of the Code of Federal Regulations (CFR))" to provide the citation to the FAR's CFR chapter.

3. Section 901.102 is removed and redesignated as 901.103 to conform to the FAR. It also is revised to add "Senior" before "Procurement Executive" and to clarify that there are two Senior Procurement Executives, one for the National Nuclear Security Administration (NNSA) and the other for the rest of the Department of Energy (DOE). The section is further revised to add a reference to the more recent and separate delegation for the NNSA Senior Procurement Executive from the Administrator of the NNSA, and update citation references to the United States Code.

4. Section 901.103 is redesignated as 901.104. That section is also revised to clarify that the DEAR applies to NNSA acquisitions.

5. Section 901.104-1 is redesignated as 901.105-1. That section is revised to add the CFR citation and the Web site reference for the electronic CFR.

6. Section 901.104-2 is redesignated as 901.105-2. In addition, it is moved to update the cite in paragraph (b) from 1.104-2(b) to 1.105-2(b) to conform to the FAR.

7. Section 901.104-3 is redesignated as 901.105-3 which is revised to add the Web site reference to view the electronic DEAR.

8. Section 901.105 is redesignated as 901.106. The title of the redesignated 901.106 is revised to read "OMB approval under the Paperwork Reduction Act" to conform to the FAR. In addition, the Office of Management and Budget (OMB) acronym is spelled out. The paragraph is further revised to remove the redundant FAR text and the reference to canceled OMB control number 1910-5103.

9. Section 901.301-70 paragraph (a) is revised to add a reference to the Federal Management Regulation to conform to the FMR. The paragraph is also revised to state that the Department of Energy

Acquisition Guide provides procedural guidance for the acquisition community and provides the Web link to the guide.

10. Subpart 901.6 is revised to add "Career Development," to the title of this subpart.

11. Section 901.601 paragraph (a) is revised to add the contracting authority for NNSA. This paragraph explains the authorities for the Senior Procurement Executives for DOE and NNSA. Paragraph (b) is revised to clarify that both of the Senior Procurement Executives have been authorized to perform functions set forth at FAR 1.601(b).

12. Section 901.602-3 is revised to clarify that the Senior Procurement Executives are authorized to ratify unauthorized commitments.

13. Section 901.603 is revised by adding references to DOE Order 361.1B, Acquisition Career Management Program and DOE Order 541.1B, Appointment of Contracting Officers and Contracting Officer Representatives, or their respective successor orders.

14. Part 902 is revised by adding subpart 902.1 consisting of 902.101, Definitions, to define the "Agency Head or Head of the Agency", the "Department of Energy", and the "Senior Procurement Executive" and by removing 902.200 in its entirety and adding the clause instruction at 902.201 to conform to the FAR.

15. Section 903.303 is amended in paragraph (a) to add "Senior" before "Procurement Executive".

16. Subpart 903.4 Contingent Fees is amended at 903.405 to revise the section heading.

17. Section 903.405 is revised to delete the reference to use Standard Form 119, which is outdated, but retains the direction that the chief of the contracting office seek review by counsel before initiating appropriate action.

18. Section 903.603 in paragraph (a) removes the first occurrence of "FAR".

19. Subpart 903.7—Voiding and Rescinding Contracts is added to state only the Head of the Contracting Activity can determine whether a contract is voided or rescinded.

20. Subpart 903.10—Contractor Code of Business Ethics and Conduct is added to conform with the FAR.

21. Section 903.1004 Contract clauses, paragraph (b)(2)(ii) is added to instruct the contracting officer to insert the DOE Web site address <http://ig.energy.gov/hotline.htm> in paragraph (b)(3) of the 48 CFR 52.203-14 clause, Display of Hotline Poster(s).

22. Section 904.7001 is amended by removing the last sentence which contained the definitions of

"contractor," "contract," and "special nuclear material."

23. Section 904.7002 is amended by adding three definitions of terms that were previously described in the last sentence of section 904.7001.

24. Section 906.102 paragraph (d)(4) is rewritten to clarify the use of competitive selection procedures for the award of research proposals in accordance with Subpart 917.73 and FAR Part 35.

25. Section 906.102 paragraph (d)(5) is rewritten to clarify the use of competitive selection procedures for award of program opportunity notices for commercial demonstrations in accordance with Subpart 917.72.

26. Section 906.501 is revised to add the NNSA role in delegating authority for appointment of the agency and contracting activity competition advocates, and removing the last sentence referencing procedural guidance in internal directives.

27. Part 907 is removed and reserved, pursuant to Federal Acquisition Circular 2005-09 which revised FAR Subpart 7.3 to be consistent with OMB Circular A-76 (Revised), Performance of Commercial Activities, dated May 29, 2003.

28. Section 908.7107 on the procurement of industrial alcohol is amended by revising this section to reflect current Alcohol and Tobacco Tax and Trade Bureau, Department of Treasury regulations.

29. Sections 909.400(a), 909.400(b), and 909.401 are amended by adding "National Nuclear Security Administration (NNSA)" after "DOE".

30. Section 909.401 is amended by removing "10 CFR part 1036." and adding in its place "2 CFR part 901." to update the citation.

31. Part 909 is amended by adding to section 909.405 Effect of listing, by identifying the debarment exception authority for NNSA in paragraph (e) and by adding references to NNSA and the Excluded Parties List System (EPLS) in paragraphs (f) through (h), which supplement FAR 9.405.

32. Section 909.406-2 is amended in paragraph (c) by adding "DOE and NNSA" and revising punctuation in paragraphs (c)(1) and (d)(1).

33. Section 909.406-3(a)(1) is amended in the first sentence, by removing "both the Deputy Assistant Secretary for Procurement and Assistance Management" and adding in its place "the appropriate Senior Procurement Executive" to correct the title of the official and by removing "1010.217(b), Cooperation with the Inspector General." and adding in its

place "1010.103, Reporting Wrongdoing."

34. Consistent with FAR 9.404, section 909.406-3(a)(2) is amended in paragraph (2) by revising punctuation; in subparagraph (iv) by adding "or other identifying number for an individual" as identifying information to be provided in a debarment referral; in subparagraphs (v) and (vii) adding "and NNSA's"; and in subparagraph (vi) removing "Board of Contract Appeals; and" and adding in its place "Civilian Board of Contract Appeals or other fact-finding body; and".

35. Section 909.406-3(b)(2) is amended in the third sentence by removing "refer the matter to the Energy Board of Contract Appeals" and adding in its place "appoint, and refer the matter to, a Fact-Finding Official".

36. Section 909.406-3(b)(3) is amended in the first sentence by removing "therefor".

37. Section 909.406-3(b)(4) is amended in the second through the fourth sentences by removing reference to the Energy Board of Contract Appeals and by adding in its place a reference to the Fact-Finding Official.

38. Section 909.406-3(d)(4) is amended in the third through fifth sentences by removing reference to the Energy Board of Contract Appeals and adding in its place a reference to the Fact-Finding Official.

39. Section 909.406-70(b) is amended in the third sentence, after "respondent" by removing the rest of the sentence.

40. Section 909.407 adds a new section heading.

41. Consistent with FAR 9.404, section 909.407-3 is amended in paragraph (e)(1)(vii) by removing mention of GSA and by adding EPLS to update the name of the listing.

42. Section 915.201 is amended by revising the section heading.

43. Section 915.305(d) is amended to remove "48 CFR (DEAR)" in the second sentence.

44. Sections 915.404-2 paragraph (a)(1) in two places; 915.404-2-70 paragraphs (a)(1) and (a)(2); 915.404-4-70-4 paragraph (a); and 915.404-4-70-7 paragraph (b) are amended by removing the dollar values and adding the reference to 48 CFR 15.403-4(a)(1).

45. Section 915.404-4(c)(4)(i) is amended by removing "profit and fees" and adding "price and fee".

46. Section 915.404-4-70-2 is amended by renumbering the table in paragraph (d) to conform to the DOE Form 42.20.23, Weighted Guidelines.

47. Section 915.404-4-72 is amended by removing "916.404-2" and adding "916.405-2" to update the reference to conform to FAR 16.405-2.

48. Section 916.203–4(d)(2) is amended by removing “(FAR)”.

49. Section 916.307 is amended by adding a paragraph (a) which provides direction to the contracting officer to modify paragraph (a) of clause 48 CFR 52.216–7 by adding the phrase “as supplemented by subpart 931.2 of the DEAR” after “FAR subpart 31.2”.

50. Section 917.602 is amended to remove “that” in the second sentence of paragraph (c) and adding in its place “than”.

51. Section 917.7301–1 is amended by removing paragraphs (c) and (d). This information is internal guidance and has been moved to DOE’s Acquisition Guide.

52. Section 917.7401 is amended by adding in the first paragraph before the first sentence, “The acquisition of real estate requires the involvement of a DOE Certified Realty Specialist, as specified at 917.7402.” This amendment adds clarity to the processes of the DEAR and conforms to DOE Order 430.1B.

53. Section 917.7401(b) is amended by removing paragraph (b) in its entirety and adding in its place, “(b) Lease for which DOE will reimburse the contractor for the pre-approved costs incurred under the lease.” This adds clarity to the DEAR and conforms to DOE Order 430.1B.

54. Section 917.7402 is amended in the first sentence by changing the punctuation; and in paragraph (b) adding “acquisition option considerations with the best” between the words “cost,” and “acquisition method” and removing “and property appraisal reports; and” and adding in its place “property appraisal reports, and include the review and approval by the applicable DOE Certified Realty Specialist in accordance with DOE Order 430.1B, or its successor version; and”. This adds clarity to the DEAR and conforms to the DOE Order 430.1B.

55. Section 917.7402(c)(2) and (4) is amended in paragraph (c)(2) by adding “approved by a DOE Certified Realty Specialist” and in paragraph (c)(4) by removing “and regulations applicable to real estate management.” and adding in its place “, regulations, and the DOE Order 430.1B, or its successor version, applicable to real estate acquisition.” This adds clarity to the DEAR and conforms to the DOE Order 430.1B.

56. Section 917.7402(d) is amended by adding that any real property actions require the involvement of the applicable DOE Certified Realty Specialist.

57. Section 917.7403 is amended in the title by removing “Application.” and adding in its place “Contract clause.”; by

removing “48 CFR” before the clause number; by adding “, Acquisition of Real Property,” after “952.217–70”; by removing “or” and adding in its place “including”; and by adding “of real property” after “contractor acquisitions”.

58. Section 952.202–1 is amended to remove the included definitions and to direct contracting officers to supplement clause 48 CFR 52.202–1 by inserting paragraph (c). These changes are made to conform to revised part 902.

59. Clause 952.204–2 and provision 952.204–73 are amended to encourage contractors to submit information through the use of the online tool and to send a copy of standard form 328 to the contracting officer.

60. Clause 952.204–71 is amended in paragraph (b) by adding “which may involve making unclassified information about nuclear technology available to sensitive foreign nations” after “subcontracts”. This phrase is added to provide clarity for subcontractor flow down pursuant to DEAR 904.404(d)(3).

61. Clause 952.217–70 is amended in subparagraph (a)(2) by removing this subparagraph in its entirety and adding in its place “(2) Lease for which the Department of Energy will reimburse the incurred costs of the lease as a reimbursable contract cost”. This change is made to add clarity on reimbursements for leases.

62. Throughout, sections are amended by removing “FAR” and adding “48 CFR”, by removing “DEAR” and adding “48 CFR”, and by updating other CFR citations or changing punctuation.

### III. Procedural Requirements

#### A. Review Under Executive Order 12866

Today’s regulatory action has been determined not to be a “significant regulatory action” under Executive Order 12866, “Regulatory Planning and Review,” (58 FR 51735, October 4, 1993). Accordingly, this rule is not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

#### B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, “Civil Justice Reform,” 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification

and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the United States Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or if it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

#### C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that an agency prepare an initial regulatory flexibility analysis for any regulation for which a general notice or rulemaking is required, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). This rule updates references in the DEAR that apply to public contracts and does not impose any additional requirements on small businesses. Today’s rule does not alter any substantive rights or obligations and, consequently, today’s rule will not have a significant cost or administrative impact on contractors, including small entities. On the basis of the foregoing, DOE certifies that this rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE’s certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

#### D. Review Under the Paperwork Reduction Act

This final rule does not impose a collection of information requirement subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Existing burdens

associated with the collection of certain contractor data under the DEAR have been cleared under OMB control number 1910–4100.

*E. Review Under the National Environmental Policy Act*

DOE has concluded that promulgation of this rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR part 1021, subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule is categorically excluded from NEPA review because the amendments to the DEAR are strictly procedural (categorical exclusion A6). Therefore, today's rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

*F. Review Under Executive Order 13132*

Executive Order 13132, 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order requires agencies to have an accountability process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined today's rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

*G. Review Under the Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires a Federal agency to perform a written assessment of costs and benefits of any rule imposing a Federal mandate with costs to State, local or Tribal governments, or to the private sector, of \$100 million or more. This rule does not

impose any Federal mandate on State, local or Tribal governments or on the private sector.

*H. Review Under the Treasury and General Government Appropriations Act, 1999*

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277), requires Federal agencies to issue a Family Policymaking Assessment for any rulemaking or policy that may affect family well-being. This rule will have no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

*I. Review Under Executive Order 13211*

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to Office of Information and Regulatory Affairs of the Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

*J. Review Under the Treasury and General Government Appropriations Act, 2001*

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's rule under the OMB

and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

*K. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996*

As required by 5 U.S.C. 801, the Department will report to Congress promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(3).

*L. Approval by the Office of the Secretary of Energy*

Issuance of today's rule has been approved by the Office of the Secretary.

**List of Subjects**

*10 CFR Part 1023*

Administrative practice and procedure, Claims, Equal access to justice, Government contracts, Government procurement, Lawyers.

*48 CFR Parts 901, 902, 903, 904, 906, 907, 908, 909, 911, 914, 915, 916, 917, and 952*

Government procurement.

Issued in Washington, DC, on January 13, 2011.

**Patrick M. Ferraro,**

*Acting Director, Office of Procurement and Assistance Management, Department of Energy.*

**Joseph F. Waddell,**

*Director, Office of Acquisition and Supply Management, National Nuclear Security Administration.*

For the reasons set out in the preamble, the Department of Energy amends Chapter X of Title 10 and Chapter 9 of Title 48 of the Code of Federal Regulations as set forth below.

**TITLE 10—ENERGY**

**PART 1023—[REMOVED]**

- 1. Under the authority of Section 847 of the National Defense Authorization Act for Fiscal Year 2006, Public Law 109–163, 10 CFR chapter X is amended by removing part 1023.

**TITLE 48—FEDERAL ACQUISITION REGULATIONS SYSTEM**

- 2. Authority citations continue to read as follows:
  - a. For parts 901, 903, 904, 906, 908, 909, 914, 915, 916, and 917, the authority citation continues to read as follows:

**Authority:** 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

■ b. For parts 911 and 952 the authority citations continue to read as follows:

**Authority:** 42 U.S.C. 2201; 2282a; 2282b; 2282c; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

## PART 901—FEDERAL ACQUISITION REGULATIONS SYSTEM

### Subpart 901.1—Purpose, Authority, Issuance

#### 901.101 [Amended]

■ 3. Section 901.101 is amended by adding “(Chapter 1 of Title 48 of the Code of Federal Regulations (CFR))” at the end of the sentence.

**901.102, 901.103, 901.104, 901.104–1, 901.104–2, 901.104–3, and 901.105 [Redesignated as 901.103, 901.104, 901.105, 901.105–1, 901.105–2, 901.105–3, and 901.106]**

■ 4. Redesignate sections 901.102, 901.103, 901.104, 901.104–1, 901.104–2, 901.104–3, and 901.105 as sections 901.103, 901.104, 901.105, 901.105–1, 901.105–2, 901.105–3, and 901.106, respectively.

■ 5. Newly redesignated section 901.103 is revised to read as follows:

#### 901.103 Authority.

The DEAR and amendments thereto are issued by the Senior Procurement Executives of the Department of Energy (DOE) and the National Nuclear Security Administration (NNSA). The DOE Senior Procurement Executive delegation is pursuant to a delegation from the Secretary of Energy in accordance with the authority of section 644 of the Department of Energy Organization Act (42 U.S.C. 7254), section 205(c) of the Federal Property and Administrative Services Act of 1949, as amended, (40 U.S.C. 121(c)(2)), and other applicable laws. The NNSA Senior Procurement Executive delegation is pursuant to a delegation from the Administrator of the NNSA, in accordance with section 3212 of the National Nuclear Security Administration Act (50 U.S.C. 2402), section 205(c) of the Federal Property and Administrative Services Act of 1949, as amended, (40 U.S.C. 121(c)(2)), and other applicable laws.

#### 901.104 [Amended]

■ 6. Newly redesignated 901.104 is amended by adding “and NNSA” after the acronym “DOE.”

■ 7. Revise newly redesignated 901.105–1 to read as follows:

#### 901.105–1 Publication and code arrangement.

(a) The DEAR and its subsequent changes are published in the **Federal**

**Register**, cumulative form in the Code of Federal Regulations (CFR), and Government Printing Office’s Electronic CFR at <http://ecfr.gpoaccess.gov>.

(b) The DEAR is issued as Chapter 9 of Title 48 of the CFR.

#### 901.105–2 [Amended]

■ 8. Amend newly redesignated 901.105–2(b) by removing “(FAR)” before “48” and removing “1.104–2(b)” and adding in its place “1.105–2(b)”.

#### 901.105–3 [Amended]

■ 9. Amend newly redesignated 901.105–3 by adding “or viewed on line at <http://ecfr.gpoaccess.gov> or at <http://management.energy.gov/DEAR.htm>” at the end of the sentence.

■ 10. Revise newly redesignated 901.106 to read as follows:

#### 901.106 OMB approval under the Paperwork Reduction Act.

The Office of Management and Budget (OMB) control number for the collection of information under 48 CFR chapter 9 is 1910–4100.

### Subpart 901.3—Agency Acquisition Regulations

■ 11. Section 901.301–70 is revised to read as follows:

#### 901.301.70 Other issuances related to acquisition.

(a) In addition to the FAR and DEAR, there are other issuances which deal with acquisition. Among these are the Federal Property Management Regulation, the Federal Management Regulation, the DOE Property Management Regulation, and DOE Directives. The Department also maintains the DOE Acquisition Guide (“the Guide”), which has procedural guidance for the acquisition community. The DOE Acquisition Guide serves this purpose by identifying relevant internal standard operating procedures to be followed by both procurement and program personnel who are involved in various aspects of the acquisition process. The Guide also is intended to be a repository of best practices found throughout the agency that reflect specific illustrations of techniques which might be helpful to all readers. The Guide is at [http://management.energy.gov/policy\\_guidance/Acquisition\\_Guide.htm](http://management.energy.gov/policy_guidance/Acquisition_Guide.htm).

### Subpart 901.6—Career Development, Contracting Authority, and Responsibilities

■ 12. The heading of subpart 901.6 is revised to read as set forth above.

■ 13. Section 901.601 is revised to read as follows:

#### 901.601 General.

(a) Contracting authority for DOE vests in the Secretary of Energy, and for NNSA in the Administrator.

(1) The Secretary has delegated this authority to the DOE Senior Procurement Executive. The DOE Senior Procurement Executive has redelegated this authority to the DOE Heads of Contracting Activities (HCA). These delegations are formal written delegations containing specific dollar limitations and conditions. Each DOE HCA, in turn, makes formal contracting officer appointments for its contracting activity.

(2) Contracting authority for NNSA vests in the Under Secretary for Nuclear Security, also known as the NNSA Administrator. The NNSA Administrator has delegated this authority, with specific dollar limitations and conditions to the NNSA Senior Procurement Executive. The NNSA Senior Procurement Executive has redelegated this authority to the NNSA Head of the Contracting Activities (HCA). Each NNSA HCA in turn makes formal contracting officer appointments for its contracting activity.

(b) The Senior Procurement Executives have been authorized, without power of redelegation, to perform the functions set forth at 48 CFR 1.601(b) regarding the assignment of contracting functions and responsibilities to another agency, and the creation of joint or combined offices with another agency to exercise acquisition functions and responsibilities.

■ 14. Section 901.602–3 is amended by revising paragraph (b)(2), and removing from paragraph (b)(3), the term “Procurement Executive” and adding in its place “DOE and NNSA Senior Procurement Executives”.

The revision reads as follows:

#### 901.602–3 Ratification of unauthorized commitments.

(b)(2) The Senior Procurement Executives are authorized to ratify unauthorized commitments.

\* \* \* \* \*

■ 15. Sections 901.603, 901.603–1, and 901.603–70 are added to subpart 901.6 to read as follows:

#### 901.603 Selection, appointment, and termination of appointment.

##### 901.603–1 General.

The DOE Order 361.1B, Acquisition Career Management Program, or its

successor order, sets forth the requirements and responsibilities for the DOE and NNSA Acquisition Career Development Program.

**901.603–70 Appointment of contracting officers and contracting officer's representatives.**

See the DOE Order 541.1B, Appointment of Contracting Officers and Contracting Officer Representatives, or its successor order, for procedures on the appointment of contracting officers and contracting officer's representatives.

■ 16. Part 902 is revised to read as follows:

**PART 902—DEFINITIONS OF WORDS AND TERMS**

Sec.

**Subpart 902.1—Definitions**

902.101 Definitions.

**Subpart 902.2—Definitions Clause**

902.201 Contract clause.

*Authority:* 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

**Subpart 902.1—Definitions**

**902.101 Definitions.**

*Agency Head* or *Head of the Agency* means—

(1) For the Department of Energy (DOE)—

- (i) The Secretary;
- (ii) The Deputy Secretary; or
- (iii) Under Secretaries of the

Department of Energy.

(2) For the National Nuclear Security Administration (NNSA) the Administrator, also known as the Under Secretary of Nuclear Security.

*Department of Energy (DOE)* means, as used in the DEAR, the Department of Energy and includes the National Nuclear Security Administration (NNSA), unless otherwise specified.

*Senior Procurement Executive* means for the Department of Energy, the Director, Office of Procurement and Assistance Management and for the National Nuclear Security Administration, the Director, Office of Acquisition and Supply Management.

**Subpart 902.2—Definitions Clause**

**902.201 Contract clause.**

Insert the clause at 952.202–1, Definitions, in solicitation and contracts that exceed the simplified acquisition threshold.

**PART 903—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST**

**903.303 [Amended]**

■ 17. Section 903.303 is amended by:

- a. Adding “Senior” before “Procurement Executive” in the first sentence of paragraph (a); and
  - b. Removing “FAR” from the first sentence, both occurrences, and adding in its place “48 CFR”.
- 18. Section 903.405 is revised to read as follows:

**903.405 Misrepresentations or violations of the Covenant Against Contingent Fees.**

(b) Before the Chief of the Contracting Office initiates appropriate action, the action shall be reviewed by Legal Counsel.

**903.603 [Amended]**

- 19. Section 903.603 is amended by:
  - a. Removing the first occurrence of “FAR” in paragraph (a); and
  - b. Removing “FAR” at its second occurrence in the first sentence and adding in its place “48 CFR”.
- 20. Add a new subpart 903.7 consisting of 903.700 to read as follows:

**Subpart 903.7—Voiding and Rescinding Contracts**

**903.700 Scope of subpart.**

The HCA is the designee for determining whether to void or rescind a contract. This authority is nondelegable.

■ 21. Add a new subpart 903.10 consisting of 903.1004 to read as follows:

**Subpart 903.10—Contractor Code of Business Ethics and Conduct**

**903.1004 Contract clauses.**

(b)(2)(ii) Insert the DOE Web site address <http://ig.energy.gov/hotline.htm> in paragraph (b)(3) of the 48 CFR 52.203–14 clause, Display of Hotline Poster(s).

**PART 904—ADMINISTRATIVE MATTERS**

**904.404 [Amended]**

■ 22. Section 904.404 is amended by removing “FAR” in paragraph (d)(1) in the last sentence and adding in its place “48 CFR”.

**904.804 [Amended]**

■ 23. Section 904.804–1 is amended by removing “FAR” in paragraph (a) and adding in its place “48 CFR”.

**904.7001 [Amended]**

■ 24. Section 904.7001 is amended by removing “as defined in 10 CFR part 710” from the first sentence and removing the last sentence in its entirety.

■ 25. Section 904.7002 is amended by adding in alphabetical order new

definitions for “contract”, “contractor”, and “special nuclear material” to read as follows:

**904.7002 Definitions.**

*Contract* means the prime contract and the subcontract at any tier.

\* \* \* \* \*

*Contractor* means the contractor and the subcontractor at any tier.

\* \* \* \* \*

*Special nuclear material* means special nuclear material as defined in 10 CFR 710.5(a).

**PART 906—COMPETITION REQUIREMENTS**

■ 26. Section 906.102 is amended in paragraph (d)(1) by removing “FAR Subpart” and adding in its place “48 CFR subpart”, and revising paragraphs (d)(4) and (d)(5) to read as follows:

**906.102 Use of competitive procedures.**

(d) \* \* \*

(4) Program research and development announcements shall follow the competitive selection procedures for the award of research proposals in accordance with subpart 917.73 and 48 CFR part 35.

(5) Program opportunity notices for commercial demonstrations shall follow the competitive selection procedures for award of these proposals in accordance with subpart 917.72.

**906.202 [Amended]**

■ 27. Section 906.202 is amended by removing “FAR” in paragraph (b)(1) and adding in its place “48 CFR”.

**906.304 [Amended]**

■ 28. Section 906.304 is amended by removing “FAR” in paragraph (c)(2) and adding in its place “48 CFR”.

■ 29. Section 906.501 is revised to read as follows:

**906.501 Requirement.**

The Secretary of Energy and NNSA Administrator have delegated the authority for appointment of the agency and contracting activity competition advocates to the respective DOE and NNSA Senior Procurement Executives. The Senior Procurement Executives have redelegated authority to the Head of the Contracting Activity to appoint contracting activity competition advocates.

**PART 907—[REMOVED AND RESERVED]**

■ 30. Under the authority of 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*, Part 907 is removed and reserved.

**PART 908—REQUIRED SOURCES OF SUPPLIES AND SERVICES****908.7106 [Amended]**

- 31. Section 908.7106 is amended by removing “FAR” in paragraph (b) and adding in its place “48 CFR part”.
- 32. Section 908.7107 is revised to read as follows:

**908.7107 Procurement and use of industrial alcohol.**

(a) This section covers the procurement of industrial alcohol by DOE or authorized contractors and the applicable policies and delegations of authority to submit industrial alcohol user application to procure and use tax-free alcohol or specially denatured spirits. To the fullest extent practicable, industrial alcohol for use by DOE or its contractors shall be procured on a tax-free basis.

(b) The procurement of tax-free alcohol or specially denatured spirits shall be conducted in accordance with the regulations, policy, and procedures of the Alcohol and Tobacco Tax and Trade Bureau (TTB), of the Department of Treasury. The applicable TTB regulations and forms may be accessed at the following Web site: <http://www.ttb.gov/foia/err.shtml#regulations>. For further information, contact the Alcohol and Tobacco Tax and Trade Bureau, Director, National Revenue Center, 550 Main St., Suite 8002, Cincinnati, OH 45202-5215 or toll free at 1-877-882-3277.

(c) The applying office should coordinate, as necessary, with the local State Alcohol Control Board, or its equivalent, to obtain the appropriate State license.

(1) *Tax-free alcohol.* TTB regulations relating to the procurement and use of alcohol free of tax, by Government agencies, are set forth in 27 CFR Part 22, subpart N, §§ 22.171 to 22.176.

(2) *Specially denatured spirits.* TTB regulations relating to the acquisition and use of alcohol free of tax, by Government agencies, are set forth in 27 CFR Part 20, subpart N, §§ 20.241 to 20.245.

(d) For the user permits to procure and use tax-free alcohol and specially denatured spirits submit the application on the TTB Form 5150.22, “Application for Industrial Alcohol User Permit,” (or the current TTB form). When permits are no longer required, they should be forwarded to the Alcohol and Tobacco Tax and Trade Bureau for cancellation. Industrial alcohol procured by use of the TTB form referred to in this subsection shall be used exclusively on DOE work.

(e) The Senior Procurement Executive (SPE) has the authority to sign the TTB application, Form 5150.22. The SPE may delegate this authority to sign the application to specifically named DOE personnel. Requests for new authorizations or changes to existing authorizations shall be submitted by letter to the SPE. A copy of the TTB approved permit shall be sent to the SPE.

(f) Abandoned and forfeited alcohol which has come into the custody or control of a Federal agency may be obtained by following the procedure set forth in the FMR at 41 CFR part 102-41.

**PART 909—CONTRACTOR QUALIFICATIONS****909.400 [Amended]**

- 33. Section 909.400 is amended:
  - a. In paragraph (a), by adding “and National Nuclear Security Administration (NNSA)”;
  - b. In paragraph (a), by adding “and, NNSA”, after “DOE”;
  - c. In paragraph (b), by adding “and NNSA” after “DOE”.

**909.401 [Amended]**

- 34. Section 909.401 is amended by:
  - a. Adding “and NNSA”; after “DOE”; and
  - b. Removing “10 CFR part 1036.” and adding in its place “2 CFR part 901.”
- 35. Section 909.405 is revised to read as follows:

**909.405 Effect of listing.**

(e) The Department of Energy may not solicit offers from, award contracts to or consent to subcontracts with contractors debarred, suspended, or proposed for debarment unless the Senior Procurement Executive makes a written determination justifying that there is a compelling reason for such action in accordance with 48 CFR 9.405(a). For NNSA, the Head of the Contracting Activity (HCA) makes the written determination justifying the compelling reason.

(f) DOE or NNSA may disapprove or not consent to the selection (by a contractor) of an individual to serve as a principal investigator, as a project manager, in a position of responsibility for the administration of Federal funds, or in another key personnel position, if the individual is listed in the Excluded Parties List System (EPLS).

(g) DOE or NNSA shall not conduct business with an agent or representative of a contractor if the agent’s or representative’s name is listed in the EPLS.

(h) DOE or NNSA shall review the EPLS before conducting a pre-award

survey or soliciting proposals, awarding contracts, renewing or otherwise extending the duration of existing contracts, or approving or consenting to the award, extension, or renewal of subcontracts.

**909.406-2 [Amended]**

- 36. Section 909.406-2 is amended by adding “DOE and NNSA” in paragraph (c) introductory text, first sentence, after “The”.

- 37. Section 909.406-3 is amended by:
  - a. Removing from the first sentence in paragraph (a)(1), “both the Deputy Assistant Secretary for Procurement and Assistance Management” and adding in its place “the appropriate Senior Procurement Executive”; and removing, “§ 1010.217(b), Cooperation with the Inspector General.” and adding in its place “§ 1010.103, Reporting Wrongdoing.”;
  - b. Removing the colon at the end of the introductory text of paragraph (a)(2) and adding in its place “—”;
  - c. Adding “or other identifying number for an individual” in paragraph (a)(2)(iv) after “Number”;
  - d. Adding “and NNSA’s” in paragraph (a)(2)(v) after “DOE’s”;
  - e. Removing “Board of Contract Appeals; and” in paragraph (a) (2)(vi) and adding in its place “Civilian Board of Contract Appeals or other fact-finding body; and;”;
  - f. Adding “and NNSA” in paragraph (a)(2) (vii) after “DOE”;
  - g. Removing “refer the matter to the Energy Board of Contract Appeals” in paragraph (b)(2) third sentence and adding in its place “appoint, and refer the matter to, a Fact-Finding Official”;
  - h. Removing “therefor” in paragraph (b)(3) first sentence; and
  - i. Revising paragraphs (b)(4) and (d)(4) to read as follows:

**909.406-3 Procedures.**

\* \* \* \* \*

(b) \* \* \*

(4) *Fact-finding conference.* The purpose of a fact-finding conference under this section is to provide the respondent an opportunity to dispute material facts through the submission of oral and written evidence; resolve facts in dispute; and provide the Debarring Official with findings of fact based, as applicable, on adequate evidence or on a preponderance of the evidence. The fact-finding conference shall be conducted in accordance with rules consistent with 48 CFR 9.406-3(b). The Fact-Finding Official will notify the affected parties of the schedule for the hearing. The Fact-Finding Official shall deliver written findings of fact to the Debarring Official (together with a

transcription of the proceeding, if made) within a certain time period after the hearing record closes as specified by the Fact-Finding Official. The findings shall resolve any disputes over material facts based upon a preponderance of the evidence, if the case involves a proposal to debar, or on adequate evidence, if the case involves a suspension. Since convictions or civil judgments generally establish the cause for debarment by a preponderance of the evidence, there usually is no genuine dispute over a material fact that would warrant a fact-finding conference for those proposed debarments based on convictions or civil judgments.

(d) *Debarring Official's decision.* (4) The Debarring Official's final decision shall be based on the administrative record. In those actions where additional proceedings are necessary as to disputed material facts, written findings of fact shall be prepared and included in the final decision. In those cases where the contractor has requested and received a fact-finding conference, the written findings of fact shall be those findings prepared by the Fact-Finding Official. Findings of fact shall be final and conclusive unless, within 15 days of receipt of the findings, the Department or the respondent requests reconsideration, or unless set aside by a court of competent jurisdiction. The Fact-Finding Official shall be provided a copy of the Debarring Official's final decision.

**909.406-70 [Amended]**

■ 38. Section 909.406-70 is amended by removing the words "and, if a fact-finding conference under 909.406-3(b)(4) is pending (as in the case of a request for reconsideration of a suspension, where the proposed debarment is the subject of a fact-finding conference), a copy of the disposition shall be transmitted to the Energy Board of Contract Appeals" in paragraph (b), third sentence.

**909.407-3 [Amended]**

■ 39. Section 909.407-3 is amended by revising paragraph (e)(1)(vii) to read as follows:

**909.407-3 Procedures.**

\* \* \* \* \*

- (e) \* \* \*
- (1) \* \* \*

(vii) A statement that the respondent's name and address will be added to the EPLS; and

\* \* \* \* \*

**909.400, 909.403, 909.406, 909.407 [Amended]**

■ 40. In the table below, for each section indicated in the left column, remove the word indicated in the middle column from where it appears in the section, and add the word in the right column:

Section	Remove	Add
909.400(c) .....	"FAR" .....	"48 CFR"
909.403 .....	"FAR" .....	"48 CFR"
909.406-2(d)(1) .....	"FAR" .....	"48 CFR"
909.406-70(a) .....	"FAR" .....	"48 CFR"
909.407-3(b)(2) .....	"FAR" .....	"48 CFR"
909.407-3(e)(1)(v) ..	"FAR" .....	"48 CFR"

**PART 911—DESCRIBING AGENCY NEEDS**

**911.600 [Amended]**

■ 41. Section 911.600 is amended by removing "FAR" and adding in its place "48 CFR part".

**PART 914—SEALED BIDDING**

**914.404, 914.407, 914.502 [Amended]**

■ 42. In the table below, for each section indicated in the left column, remove the word indicated in the middle column from where it appears in the section, and add the word in the right column:

Section	Remove	Add
914.404-1 .....	"FAR" .....	"48 CFR"
914.407-3(e) in 3 places.	"FAR" .....	"48 CFR"
914.407-4 in 2 places.	"FAR" .....	"48 CFR"
914.502(c) .....	"FAR" .....	"48 CFR"

**PART 915—CONTRACTING BY NEGOTIATION**

■ 43. Section 915.201 is amended by revising the section heading to read as follows:

**915.201 Exchanges with industry before receipt of proposals.**

\* \* \* \* \*

**915.305 [Amended]**

■ 44. Section 915.305(d) is amended by removing "48 CFR (DEAR)" in the second sentence.

**915.404-2 [Amended]**

■ 45. Section 915.404-2 is amended by removing "\$500,000" in paragraph (a)(1), in two places, and adding in its place "the threshold stated at 48 CFR 15.403-4(a)(1)."

**915.404-2-70 [Amended]**

■ 46. Section 915.404-2-70 is amended by:

(a) Removing "\$500,000" in paragraph (a)(1), and adding in its place "The threshold stated at 48 CFR 15.403-4(a)(1)"; and

(b) Removing "\$1,000,000" in paragraph (a)(2), and adding in its place "Twice the threshold at 48 CFR 15.403-4(a)(1) for requiring cost or pricing data".

**915.404-4 [Amended]**

■ 47. Section 915.404-4(c)(4)(i) is amended in the first sentence by removing "profit and fees" and adding in its place "price and fee".

■ 48. Section 915.404-4-70-2 paragraph (d) is revised to read as follows:

**915.404-4-70-2 Weighted guidelines system.**

\* \* \* \* \*

(d) The factors set forth in the following table are to be used in determining DOE profit objectives. The factors and weight ranges for each factor shall be used in all instances where the weighted guidelines are applied.

Profit factors	Weight ranges (percent)
I. Contractor Effort (Weights applied to cost):	
a. Material acquisitions:	
(1) Purchased parts .....	1 to 3.
(2) Subcontracted items .....	1 to 4.
(3) Other materials .....	1 to 3.
b. Labor skills:	
(1) Technical and managerial:	
(a) Scientific .....	10 to 20.
(b) Project management/administration.	8 to 20.
(c) Engineering .....	8 to 14.
(2) Manufacturing .....	4 to 8.
(3) Support services .....	4 to 14.
c. Overhead:	
(1) Technical and managerial	5 to 8.
(2) Manufacturing .....	3 to 6.
(3) Support services .....	3 to 7.
d. Other direct costs .....	3 to 8.
e. G&A (General Management) expenses.	5 to 7.
II. Contract Risk (type of contract-weights applied to total cost of items 4.a. thru 4.e.).	0 to 8.
III. Capital Investment (Weights applied to the net book value of allocable facilities).	5 to 20.
IV. Independent Research and Development:	
a. Investment in IR&D program (Weights applied to allocable IR&D costs).	5 to 7.
b. Developed items employed (Weights applied to total of profit \$ for items 4.a. thru 4.e.).	0 to 20.
V. Special Program Participation (Weights applied to total of Profit \$ for items 4.a. thru 4.e.).	-5 to +5.
VI. Other Considerations (Weights applied to total of Profits \$ for items 4.a. thru 4.e.).	-5 to +5.



Profit factors	Weight ranges (percent)
VII. Productivity/Performance (special computation).	(N/A).

**915.404-4-70-4 [Amended]**

■ 49. Section 915.404-4-70-4 is amended by removing “\$500,000” in paragraph (a), and adding in its place

“the threshold stated at 48 CFR 15.403-4(a)(1)”.

**915.404-4-70-7 [Amended]**

■ 50. Section 915.404-4-70-7 is amended by removing “\$500,000” in paragraph (b), and adding in its place “the threshold stated at 48 CFR 15.403-4(a)(1)”.

**915.404-4-72 [Amended]**

■ 51. Section 915.404-4-72 is amended by removing “916.404-2” in paragraph (a), and adding in its place “916.405-2”.

**915.207, 915.404 [Amended]**

■ 52. In the table below, for each section indicated in the left column, remove the word indicated in the middle column from where it appears in the section, and add the word in the right column:

Section	Remove	Add
915.207-70(e)(2)	“FAR”	“48 CFR”
915.207-70(f)(2)(i)	“FAR”	“48 CFR”
915.207-70(f)(5)	“FAR”	“48 CFR”
915.404-2(a)(1) in the first sentence	“FAR”	“48 CFR”
915.404-4(c)(4)(i)	“FAR”	“48 CFR”
915.404-4(d)	“FAR”	“48 CFR”
915.404-4-70	“FAR”	“48 CFR”
915.404-4-70-2(a)	“FAR”	“48 CFR”
915.404-4-70-3, in the last sentence	“FAR”	“48 CFR”
915.404-4-71-1(a) in the introductory text	“DOE to”	“DOE to”

**PART 916—TYPES OF CONTRACTS**

**916.203 [Amended]**

■ 53. Section 916.203-4(d)(2) is amended by removing “(FAR)”.

**916.307 [Amended]**

■ 54. Section 916.307 is amended by:  
 ■ a. Adding a new paragraph (a) to read set forth below; and  
 ■ b. By removing “FAR” in paragraph (g) and adding in its place “48 CFR”.

**916.307 Contract clauses.**

(a) When contracting with a commercial organization, modify paragraph (a) of the clause at 48 CFR 52.216-7 by adding the phrase “as supplemented by subpart 931.2 of the DEAR” after “FAR subpart 31.2.”

\* \* \* \* \*

**PART 917—SPECIAL CONTRACTING METHODS**

**917.602 [Amended]**

■ 55. Section 917.602 is amended by removing “that” in the second sentence of paragraph (c) and adding in its place “than”.

**917.7200 [Amended]**

■ 56. Section 917.7200 is amended by removing “non nuclear” in paragraph (a) and adding in its place “nonnuclear”.

**917.7301 [Amended]**

■ 57. Section 917.7301-1 is amended by removing paragraphs (c) and (d).  
 ■ 58. Section 917.7401 is amended by adding a new sentence at the beginning of the introductory text and by revising paragraph (b) to read as follows:

**917.7401 General.**

The acquisition of real estate requires the involvement of a DOE Certified Realty Specialist, as specified at 917.7402. \* \* \*

\* \* \* \* \*

(b) Lease for which DOE will reimburse the contractor for the pre-approved costs incurred under the lease.

\* \* \* \* \*

■ 59. Section 917.7402 is amended by:  
 ■ a. Removing the colon from the end of the introductory text and adding in its place “—”;

■ b. Revising paragraphs (b), (c)(2) and (4); and

■ c. Adding a new paragraph (d).

The revisions and addition read as follows:

**917.7402 Policy.**

\* \* \* \* \*

(b) Acquisitions shall be justified, with documentation which describes the need for the acquisitions, general requirements, cost, acquisition option considerations with the best acquisition method to be used, site investigation reports, site recommended for selection, property appraisal reports, and include the review and approval by the applicable DOE Certified Realty Specialist in accordance with DOE Order 430.1B, or its successor version; and

(c) \* \* \*

(2) May exceed a one-year term, when the lease is for special purpose space funded by no-year appropriations and approved by a DOE Certified Realty Specialist. \* \* \*

(4) Shall be consistent with Government laws, regulations, and the

DOE Order 430.1B, or its successor version, applicable to real estate acquisition.

(d) Any real property actions require the involvement of the applicable DOE Certified Realty Specialist.

■ 60. Section 917.7403 is revised to read as follows:

**917.7403 Contract clause.**

The clause at 952.217-70, Acquisition of Real Property, shall be included in contracts including modifications where contractor acquisitions of real property are expected to be made.

**PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 61. Section 952.202-1 is revised to read as follows:

**952.202-1 Definitions.**

As prescribed in 902.201, insert the clause at 48 CFR 52.202-1, Definitions, in all contracts. The following shall be added to the clause as paragraph (c):

(c) When a solicitation provision or contract clause uses a word or term that is defined in the Department of Energy Acquisition Regulation (DEAR) (48 CFR chapter 9), the word or term has the same meaning as the definition in 48 CFR 902.101 or the definition in the part, subpart, or section of 48 CFR chapter 9 where the provision or clause is prescribed in effect at the time the solicitation was issued, unless an exception in (a) applies.

■ 62. Section 952.204-2 is amended by:  
 ■ a. Revising the date of the clause; and

■ b. Adding in paragraph (j)(1) after the first sentence, two new sentences to read as follows:

**952.204-2 Security.**

\* \* \* \* \*

**SECURITY MAR 2011**

\* \* \* \* \*

(j) \* \* \*  
 (1) \* \* \* Contractors are encouraged to submit this information through the use of the online tool at <https://foci.td.anl.gov>. When completed the Contractor must print and sign one copy of the SF 328 and submit it to the Contracting Officer. \* \* \*

\* \* \* \* \*

■ 63. Section 952.204-71 is amended by revising the clause date and paragraph (b) to read as follows:

**952.204-71 Sensitive foreign nations controls.**

\* \* \* \* \*

**SENSITIVE FOREIGN NATIONS CONTROLS MAR 2011**

\* \* \* \* \*

(b) The provisions of this clause shall be included in any subcontracts which may involve making unclassified information about nuclear technology available to sensitive foreign nations.

\* \* \* \* \*

■ 64. Section 952.204-73 is amended by:

- a. Revising the date of the provision; and
- b. Adding two new sentences at the end of paragraph (a)(1).

The revision and addition reads as follows:

**952.204-73 Facility clearance.**

\* \* \* \* \*

**FACILITY CLEARANCE MAR 2011**

(a) \* \* \*  
 (1) \* \* \* Contractors are encouraged to submit this information through the use of the online tool at <https://foci.td.anl.gov>. When completed the Contractor must print and sign one copy of the SF 328 and submit it to the Contracting Officer.

\* \* \* \* \*

**952.209-72 [Amended]**

■ 65. Section 952.209-72 is amended by removing “48 CFR” in the introductory text.

**952.217-70 [Amended]**

■ 66. Section 952.217-70 is amended by revising the date of the clause and paragraph (a)(2) to read as follows:

**952.217-70 Acquisition of real property.**

\* \* \* \* \*

**ACQUISITION OF REAL PROPERTY MAR 2011**

\* \* \* \* \*

(a) \* \* \*  
 (2) Lease for which the Department of Energy will reimburse the incurred costs as a reimbursable contract cost.

\* \* \* \* \*

**952.204, 952.215, 952.216 [Amended]**

■ 67. In the table below, for each section indicated in the left column, remove the word indicated in the middle column from where it appears in the section, and add the word in the right column:

Section	Remove	Add
952.204-2(e) in the first sentence	“the information:”	“the information—”
952.204-2(g) in the first sentence	“means:”	“means—”
952.204-2(h)(2)(i) in the first sentence	“A review must:”	“a review must—”
952.204-2(h)(2)(iii) in the first sentence	“including those: (a)”	“including those—(A)”
952.204-2(h)(2)(iv)	“10 CFR Part 707.4”	“10 CFR 707.4”
952.204-2(h)(2)(iv)	“10 CFR Part 707”	“10 CFR part 707”
952.204-2(h)(2)(vi) in the introductory text	“authorization:”	“authorization—”
952.204-2(l) in five places	“Subcontractor”	“subcontractor”
952.204-2(l) in the second sentence	“Subcontractors”	“subcontractors”
952.204-2(l) in the second sentence	“DEAR 952.204-73”	“48 CFR 952.204-73”
952.215-70(a) in the second sentence	“DEAR 970.5203-3”	“48 CFR 970.5203-3”
952.216-7	“FAR”	“48 CFR”
952.216-15 Alternate	“FAR”	“48 CFR”

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. FAA-2011-0054; Directorate Identifier 2010-CE-070-AD; Amendment 39-16582; AD 2011-01-53]

RIN 2120-AA64

**Airworthiness Directives; PIAGGIO AERO INDUSTRIES S.p.A Model PIAGGIO P-180 Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** The FAA is correcting an airworthiness directive (AD) that published in the **Federal Register**. That AD applies to the products listed above. The Piaggio service bulletin number specified in the Alternative Methods of Compliance (AMOCs) section is incorrect. This document corrects that error. In all other respects, the original document remains the same.

**DATES:** This final rule is effective February 11, 2011. The effective date for AD 2011-01-53 remains January 24, 2011.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and

other information. The address for the Docket Office (phone: 800-647-5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

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**SUPPLEMENTARY INFORMATION:** Airworthiness Directive 2011-01-53, amendment 39-16582 (76 FR 4056, January 24, 2011), currently requires an immediate functional test of the fuselage drain holes, and requires sending a report of the results to the FAA. The AD also allows, with noted exceptions, for