

Dated: April 20, 2009.  
**Walter W. Kovalick, Jr.**,  
*Acting Regional Administrator, Region 5.*  
 [FR Doc. E9-10334 Filed 5-4-09; 8:45 am]  
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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Part 52

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

RIN: 9000-AL26

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

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

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

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

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

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

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

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

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

Washington, DC 20405, ATTN: Hada  
 Flowers.

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

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

#### SUPPLEMENTARY INFORMATION:

##### A. Background

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

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

amounts at the successful completion of  
 the design work.

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

This is not a significant regulatory  
 action and, therefore, is not subject to  
 review under Section 6(b) of Executive  
 Order 12866, Regulatory Planning and  
 Review, dated September 30, 1933. This  
 rule is not a major rule under 5 U.S.C.  
 804.

##### B. Regulatory Flexibility Act

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

##### C. Paperwork Reduction Act

The Paperwork Reduction Act does  
 not apply because the proposed changes  
 to the FAR do not impose information  
 collection requirements that require the  
 approval of the Office of Management  
 and Budget under 44 U.S.C. 3501, *et  
 seq.*

##### List of Subjects in 48 CFR Part 52

Government Procurement.

Dated: April 28, 2009.

##### Al Matera

*Director, Office of Acquisition Policy.*

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

#### PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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

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

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

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

\* \* \* \* \*

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

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

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

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

\* \* \* \* \*

(End of clause)

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

BILLING CODE 6820-EP-S

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Parts 222 and 223**

[Docket No. 0809121212-81515-01]

RIN 0648-AX20

**Endangered and Threatened Wildlife;  
Sea Turtle Conservation**

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

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

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

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

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

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

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

submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

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

**FOR FURTHER INFORMATION CONTACT:** Pasquale Scida (ph. 978-281-9208, fax 978-281-9394, e-mail [pasquale.scida@noaa.gov](mailto:pasquale.scida@noaa.gov)).

**SUPPLEMENTARY INFORMATION:**

**Background**

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

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

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