effort to ensure that the regulation: specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that this rule meets the requirements of sections 2(a) and 2(b) of Executive Order 12778.

G. Public Hearing Determination

DOE has concluded that this proposed rule does not involve any significant issues of law or fact. Therefore, consistent with 5 U.S.C. 553, DOE has not scheduled a public hearing.

List of Subjects in 48 CFR Parts 933 and 970

Government procurement.

Issued in Washington, D.C. on February 24, 1995.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set forth in the preamble, chapter 9 of title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 933—PROTESTS, DISPUTES, AND APPEALS

1. The authority citation for part 933 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c)

933.170 [Removed]

2. Section 933.170 is removed.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

3. The authority citation for part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254), sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420) and sec. 1534 of the Department of Defense Authorization Act, 1986, Pub. L. 99–145 (42 U.S.C. 7256a), as amended.

4. At 970.5204–22, revise paragraph (a) of the clause to read as follows:

970.5204–22 Contractor purchasing system.

(a) The contractor shall develop, implement, and maintain formal policies, practices and procedures to be used in the award of subcontracts consistent with DEAR 970.71. The contractor's purchasing system and methods shall be fully documented, consistently applied, and acceptable to

DOE in accordance with DEAR 970.7102. The contractor's purchasing performance will be evaluated against agreed-upon criteria in accordance with the performance criteria and measures clause(s) set forth elsewhere in this contract. DOE reserves the right at any time to require that the contractor submit for approval any or all purchases under this contract. The Contractor shall not purchase any item or service the purchase of which is expressly prohibited by the written direction of DOE and shall use such special and directed sources as may be expressly required by the DOE contracting officer.

. . . .

970.7101 [Amended]

5. Section 970.7101 is amended by removing paragraphs (c) and (d).

970.7102 [Amended]

6. Section 970.7102 is amended at: paragraph (a) to remove the parenthetical at the end of the paragraph; paragraph (b)(3) by removing the words "to assure that management and operating contractors implement DOE policies and requirements as defined in this subpart, in accordance with the contractor's accepted system and methods" and adding in its place the words "pursuant to FAR 44.2"; and paragraph (b)(4) by removing "Subpart 944.3 and 970.7108" and adding in its place "970.7103."

970.7103 [Revised]

7. Section 970.7103 is revised to read as follows: 970.7103 Contractor purchasing system.

The following shall apply to the purchasing systems of management and operating contractors:

(a) The objective of a management and operating contractor's purchasing system is to deliver to its customers on a timely basis those best value products and services necessary to accomplish the purposes of the Government's contract. To achieve this objective, contractors are expected to use their experience, expertise and initiative consistent with this subpart.

(b) The purchasing systems and methods used by management and operating contractors shall be welldefined, consistently applied, and shall follow purchasing practices appropriate for the requirement and dollar value of the purchase. It is anticipated that purchasing practices and procedures will vary among contractors and according to the type and kinds of purchases to be made.

(c) Contractor purchases are not Federal procurements, and are not directly subject to the Federal Acquisition Regulation. Nonetheless, certain Federal laws, Executive Orders, and regulations may affect contractor purchasing, as required by statute, regulation, or contract terms and conditions.

(d) Contractor purchasing systems shall identify and apply the best in commercial purchasing practices and procedures (although nothing precludes the adoption of Federal procurement practices and procedures) to achieve system objectives. Where specific requirements do not otherwise apply, the contractor purchasing system shall provide for appropriate measures to ensure:

(1) Acquisition of quality products and services at fair and reasonable prices;

(2) Use of capable and reliable subcontractors who either:

(i) Have track records of successful past performance, or

(ii) Can demonstrate a current superior ability to perform;

(3) Minimization of acquisition leadtime and administrative costs of purchasing;

(4) Use of effective competitive techniques;

(5) Reduction of performance risks associated with subcontractors, and facilitation of quality relationships which can include techniques such as partnering agreements, ombudsmen, and alternative disputes procedures.

(6) Use of self-assessment and benchmarking techniques to support continuous improvement in purchasing;

(7) Maintenance of the highest professional and ethical standards; and

(8) Maintenance of file documentation appropriate to the value of the purchase and which is adequate to establish the propriety of the transaction and the price paid.

970.7104 through 970.7104–47, 970.7106, 970.7107 [Removed]

8. Sections 970.7104 through 970.7104–47 970.7106, and 970.7107 are removed.

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