FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–2000; MM Docket No. 99–121; RM–9552]

Radio Broadcasting Services; Eagle Nest, New Mexico

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial of.

SUMMARY: The Commission denies the request of Mountain West Broadcasting to allot Channel 284C2 to Eagle Nest, New Mexico, finding that it is not a community for allotment purposes. *See* 64 FR 18872, April 16, 1999. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–121, adopted September 22, 1999, and released October 1, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Federal Communications Commission.

John A. Karousos,

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

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DEPARTMENT OF ENERGY

48 CFR Parts 909 and 970

RIN 1991–AB52

Acquisition Regulations; Purchasing by DOE Management and Operating Contractors From Contractor Affiliated Sources

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) is proposing to amend its acquisition regulations by altering its coverage on organizational conflicts of interest and purchases by DOE's management and operating contractors from affiliated entities to protect the Department when DOE's management and operating contractors are involved in teaming arrangements or mergers or acquisitions and with respect to the award and administration of affiliated transactions.

DATES: Written comments on the proposed rulemaking must be received on or before close of business November 12, 1999.

ADDRESSES: Comments (3 copies) should be addressed to: Robert M. Webb, U.S. Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Robert M. Webb at (202) 586–8264.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Section by Section Analysis.
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 12612.
G. Review Under the Unfunded Mandates Reform Act of 1995.

I. Background

The purpose of this proposed rulemaking is to provide additional guidance to DOE contracting officers with respect to organizational conflicts of interest considerations in the award and administration of DOE's management and operating contracts. Specifically, this proposed rule would: (1) require contracting officers to acquire an organizational conflicts of interest disclosure from all members of a proposing ''team;'' (2) require the identification and treatment of organizational conflicts of interest issues prior to the contracting officer's consent to merger, sale or novation involving a management and operating contractor or its parent; and (3) clarify existing rules with respect to transactions between management and operating contractors and affiliated entities.

DOE regulations already recognize the risks associated with management and operating contractors doing business with affiliates. It is specifically discussed at 970.7105. The necessity of providing notice of a proposed transaction with an affiliate is covered at 970.7109. The clause at 970.5204–22 requires that the M&O contractor comply with 970.7105.

However, in recent years the matter has become complex as a result of increased incidence of corporate mergers and acquisitions and the teaming of organizations as offerors under a DOE contract. For example, as a result of a management and operating contractor's merger with the corporate parent of an existing subcontractor, the new prime contractor could be put in the position of administering a preexisting subcontract with its affiliate. Similarly, if award of a management and operating contractor were to go to a ''team,'' one participant, not the contractor of record, could be an affiliate of a pre-existing subcontractor. In both of these situations, the subcontract would exist before the merger or contract award that would give rise to the potential conflict of interest in the administration of the subcontract.

Without the changes proposed in this rulemaking, the cognizant operations office involved would not have the necessary information to assure that these two situations are recognized and treated. As a result, DOE's interests may not be protected by the management and operating contractor's administration of such subcontracts. This rule is intended to provide the contracting officer with complete information on potential organizational conflicts with respect to mergers and acquisitions and teaming arrangements to allow their identification and mitigation.

Further, the proposed rule would modify existing coverage which governs the transacting of business by management and operating contractors with affiliated entities. The Department recognizes that M&O contractors may appropriately acquire specialized services or purchase goods from affiliated organizations. This rulemaking proposes to revise the Department's acquisition regulation to identify and clarify these situations.

The first situation involves an affiliate with special or unique scientific expertise or facilities (e.g., test facilities) of use to the M&O in the performance of some portion of the contract. In this case, the affiliate transaction would be accomplished through an intercompany transaction at cost with no fee. The second situation arises when the affiliate sells goods in the commercial market for which the M&O contractor has a need. In this second case, the affiliate may receive the award only after competition and under terms and conditions that are consistent with arms length negotiations.

The organizational conflict of interest clause at 952.209–72 prevents entities affiliated with the prime from proposing on subcontracts. This prohibition was established to address the potential for