



**ENVIRONMENTAL PROTECTION AGENCY**

6560-50-P

**48 CFR Part 1516 and 1552**

**[EPA-HQ-OARM-2013-0149; FRL-9908-87-OARM]**

**EPAAR Clause for Ordering by Designated Ordering Officers**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed Rule.

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**SUMMARY:** The Environmental Protection Agency (EPA) amends the EPA Acquisition Regulation (EPAAR) to update policy, procedures, and contract clauses. The proposed rule updates the *Ordering—By Designated Ordering Officers* clause and corresponding prescription.

**DATES:** Comments must be received on or before [INSERT DATE 30 days from date of publication in the FEDERAL REGISTER].

**ADDRESSES:** Submit your comments, identified by Docket ID No.

**EPA-HQ-OARM-2013-0149**, by one of the following methods:

- [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.
- Email: [valentino.thomas@epa.gov](mailto:valentino.thomas@epa.gov)
- Mail: **EPA-HQ-OARM-2013-0149**, OEI Docket, Environmental Protection Agency, 2822T, 1200 Pennsylvania Ave, NW, Washington, DC 20460. Please include a total of three (3) copies.
- Hand Delivery: EPA Docket Center-Attention OEI Docket, EPA West, Room B102, 1301 Constitution Ave, NW, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. **EPA-HQ-OARM-2013-0149**. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket, and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment, and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov), or in hard copy at the Office of Environmental Information (OEI) Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC.

The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1752. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Thomas Valentino, Policy, Training, and Oversight Division, Office of Acquisition Management (3802R), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: 202-564-4522; e-mail address: [valentino.thomas@epa.gov](mailto:valentino.thomas@epa.gov) .

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

1. *Submitting CBI.* Do not submit this information to EPA through [www.regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI, and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
- Follow directions -The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or

section number.

- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

## **II. Background**

The subject clause is currently codified in the EPAAR as the April 1984 basic clause without any alternates. The basic clause only contemplates order issuance prior to receiving formal input from the contractor. On December 21, 1989, a class deviation was issued to prescribe an alternate to the clause that provides for negotiating the terms and conditions of a task/delivery order prior to order issuance. There are several benefits to negotiation prior to order issuance: The Government is not charged directly for the time involved in negotiations and the associated costs are part of bid and proposal costs which are indirect charges spread across all Government contracts; it allows for more accurate pricing for the order, and it enables the Government to hold the Contractor to negotiated requirements as soon as the order is issued. As a result, the subject clause and corresponding prescription are being updated to add the 1989 class deviation. Because the class deviation provides several benefits that the basic clause does not, it will be designated as the basic

form of the Ordering clause, and the previous basic form is being re-designated as Alternate I. In addition, the EPAAR 1516.505(a) subject clause prescription is being updated accordingly.

### **III. Proposed Rule**

This proposed rule updates the EPAAR 1516.505(a) clause prescription, and amends EPAAR 1552.216-72 to add an alternate version to the *Ordering—By Designated Ordering Officers* clause.

### **IV. Statutory and Executive Order Reviews**

#### **A. Executive Order 12866: Regulatory Planning and Review**

This action is not a “significant regulatory action” under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and therefore, not subject to review under the EO.

#### **B. Paperwork Reduction Act**

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. No information is collected under this action.

#### **C. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.**

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute; unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today’s final rule on small entities, “small entity” is defined as: (1) A small business that meets the definition of a small business found in the Small

Business Act and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action revises a current EPAAR provision and does not impose requirements involving capital investment, implementing procedures, or record keeping. This rule will not have a significant economic impact on small entities.

#### **D. Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Local, and Tribal governments and the private sector.

This rule contains no Federal mandates (under the regulatory provisions of the Title II of the UMRA) for State, Local, and Tribal governments or the private sector. The rule imposes no enforceable duty on any State, Local or Tribal governments or the private sector. Thus, the rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

#### **E. Executive Order 13132: Federalism**

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by State and Local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects 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.”

This rule does not have federalism implications. It will not have substantial direct effects 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 as specified in Executive Order 13132.

**F. Executive Order 13175: Consultation and Coordination With Indian Tribal**

**Governments**

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This rule does not have tribal implications as specified in Executive Order 13175.

**G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks**

Executive Order 13045, entitled “Protection of Children from Environmental Health and Safety Risks” (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be economically significant as defined under Executive Order 12886, and (2) concerns an environmental health or safety risk that may have a proportionate effect on children. This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions on environmental health or safety risks.

**H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use**

This proposed rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution of Use” (66 FR 28335 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

**I. National Technology Transfer and Advancement Act of 1995 (NTTAA)**

Section 12(d) (15 U.S.C 272 note) of NTTA, Public Law 104-113, directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

**J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations**

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment.

This proposed rulemaking does not involve human health or environmental affects.

**List of Subjects in 48 CFR Parts 1516 and 1552**

Government procurement.

Dated: June 21, 2013.

John R. Bashista,  
Director, Office of Acquisition Management.

Therefore, 48 CFR Chapter 15 is proposed to be amended as set forth below:

**PART 1516-TYPES OF CONTRACTS**

1. The authority citation for 48 CFR parts 1516 is revised to read as follows:

**Authority:** 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

2. Revise 1516.505(a) as follows:

**1516.505 Contract clauses.**

(a) The Contracting Officer shall insert the clause in 1552.216-72, *Ordering—By Designated Ordering Officers*, or a clause substantially similar to the subject clause, in indefinite delivery/indefinite quantity type solicitations and contracts. The Contracting Officer shall insert Alternate I when formal input from the Contractor will not be obtained prior to order issuance.

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**PART 1552-SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

3. The authority citation for 48 CFR part 1552 continues to read as follows:

**Authority:** 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

4. Revise 1552.216-72 to read as follows:

**1552.216-72 Ordering—by designated ordering officers.**

As prescribed in 1516.505(a), insert the subject clause, or a clause substantially similar to the subject clause, in indefinite delivery/indefinite quantity type solicitations and contracts.

ORDERING—BY DESIGNATED ORDERING OFFICERS (\_\_\_\_ 2013)

(a) The Government will order any supplies and services to be furnished under this contract by issuing task/delivery orders on Optional Form 347, or an agency prescribed form, from \_\_\_\_\_ through \_\_\_\_\_. In addition to the Contracting Officer, the following individuals are authorized ordering officers.

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(b) A Standard Form 30 will be the method of amending task/delivery orders.

(c) The Contractor shall acknowledge receipt of each order by having an authorized company officer sign either a copy of a transmittal letter or signature block on page 3 of the task/delivery order, depending upon which is provided, within \_\_\_\_\_ calendar days of receipt.

(d) Prior to the placement of any task/delivery order, the Contractor will be provided with a proposed Performance Work Statement/Statement of Work and will be asked to respond with detailed technical and cost proposals within \_\_\_\_\_ calendar days or less. The technical proposal will delineate the Contractor's interpretation for the execution of the PWS/SOW, and the pricing proposal will be the Contractor's best estimate for the hours, labor categories and all costs associated with the execution. The proposals are subject to negotiation. The Ordering Officer and the Contractor shall reach agreement on all the material terms of each order prior to the order being issued.

(e) Each task/delivery order issued will incorporate the Contractor's technical and cost proposals as negotiated with the Government, and will have a ceiling price which the contractor shall not exceed. When the Contractor has reason to believe that the labor payment and support costs for the order which will accrue in the next thirty (30) days will bring total cost to over 85 percent of the ceiling price specified in the order, the Contractor shall notify the Ordering Officer.

(f) Under no circumstances will the Contractor start work prior to the issue date of the task/delivery order unless specifically authorized to do so by the Ordering Officer. Any verbal authorization will be confirmed in writing by the Ordering Officer or Contracting Officer within \_\_\_\_\_ calendar days.

(End of clause)

*Alternate I.* As prescribed in 1516.505(a), insert the subject clause, or a clause substantially similar to the subject clause, in indefinite delivery/indefinite quantity contracts when formal input from the Contractor will not be obtained prior to order issuance.

(a) The Government will order any supplies and services to be furnished under this contract by

issuing task/delivery orders on Optional Form 347, or any agency prescribed form, from \_\_\_\_\_ through \_\_\_\_\_. In addition to the Contracting Officer, the following individuals are authorized ordering officers:

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(b) A Standard Form 30 will be the method of amending task/delivery orders.

(c) The Contractor shall acknowledge receipt of each order and shall prepare and forward to the Ordering Officer within \_\_\_\_\_ calendar days the proposed staffing plan for accomplishing the assigned task within the period specified.

(d) If the Contractor considers the estimated labor hours or specified work completion date to be unreasonable, the Contractor shall promptly notify the Ordering Officer and Contracting Officer in writing within \_\_\_\_\_ calendar days, stating why the estimated labor hours or specified completion date is considered unreasonable.

(e) Each task/delivery order will have a ceiling price, which the Contractor may not exceed. When the Contractor has reason to believe that the labor payment and support costs for the order, which will accrue in the next thirty (30) days, will bring total cost to over 85 percent of the ceiling price specified in the order, the Contractor shall notify the Ordering Officer.

(f) Paragraphs (c), (d), and (e) of this clause apply only when services are being ordered.

(End of clause)

Editorial Note: This document was received by the Office of the Federal Register on March 26, 2014.

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