



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1501, 1504, 1509, 1515, 1516, 1517, 1519, 1535, 1552 and 1553

[EPA-HQ-OARM-2017-0126; FRL 9960-62-OARM]

Administrative Amendments to Environmental Protection Agency Acquisition Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing a final rule to amend the Environmental Protection Agency Acquisition Regulation (EPAAR) to make administrative updates, corrections and minor edits. EPA does not anticipate any adverse comments.

DATES: This rule is effective on **[Insert date 60 days after date of publication in the Federal Register]** without further notice, unless EPA receives adverse comment by **[Insert date 30 days after date of publication in the Federal Register]**. If EPA receives adverse comment, we will publish a timely withdrawal in the Federal Register informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. **EPA-HQ-OARM-2017-0126**, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment

and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Julianne Odend'hal, Office of Acquisition Management (Mail Code 3802R), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: 202-564-5218; email address: Odend'hal.Julianne@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Why is EPA Using a Direct Final Rule?

EPA is publishing this rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. The EPAAR is being amended to make administrative changes including updates, corrections and minor edits. None of these changes are substantive or of a nature to cause any significant expense for EPA or its contractors. If EPA receives adverse comment, we will publish a timely withdrawal in the Federal Register informing the public that the rule will not take effect. Any parties interested in commenting must do so at this time.

II. Does This Action Apply to Me?

This action applies to contractors who have or wish to have contracts with the EPA.

III. What Should I Consider as I Prepare My Comments for EPA?

A. *Submitting CBI.* Do not submit this information to EPA through <https://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.

B. 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.

IV. Background

EPAAR Parts 1501, 1504, 1509, 1515, 1516, 1517, 1519, 1535, 1552 and 1553 are being amended to make administrative changes including updates, corrections and minor edits.

V. Final Rule

This direct final rule amends the EPAAR to make the following changes: (1) EPAAR 1501.603-1 is amended to remove outdated policy reference “chapter 8 of the EPA “Contracts Management Manual”” and to add in its place “the EPA Acquisition Guide (EPAAG) subsection 1.6.4”; (2) EPAAR 1504.804-5 is amended to remove outdated policy reference “Unit 42 of the EPA Acquisition Handbook” and to add in its place “the EPA Acquisition Guide (EPAAG) subsection 4.8.1”; (3) EPAAR 1509.507-1(a)(1) is amended to clarify the FAR reference by removing “(FAR) 48 CFR” and adding in its place “FAR”; (4) EPAAR 1515.404-473(a) is amended to remove “except those identified in EPAAR (48 CFR) 1516.404-273(b)” and to add in its place “except those otherwise identified in the EPAAR” because the EPAAR reference no longer exists; (5) EPAAR 1516.301-70 is amended to clarify the FAR reference by removing “48 CFR” and adding in its place “in FAR”; (6) EPAAR 1516.406(b) is amended to correct the EPAAR reference by removing “clause” and adding in its place “provision”; (7) EPAAR 1517.208 is amended to include a prescription for 48 CFR 1552.217-70 by adding a new paragraph (a) stating that the Contracting Officer shall insert the provision at 1552.217-70, Evaluation of Contract Options, in solicitations containing options, and re-designating existing paragraphs (a) through (g) as paragraphs (b) through (h); (8) EPAAR part 1519 is amended to correct an office title by removing “Office of Small Business Programs (OSBP)” and “OSBP”, and adding in their place “Office of Small and Disadvantaged Business Utilization (OSDBU)” and “OSDBU” respectively wherever they appear in part 1519; (9) EPAAR 1535.007(a), (b) and

(c) are amended to clarify the EPAAR references by adding “the provision at”; (10) EPAAR 1552.209-71 Alternate I introductory text is amended to add “(SEP 1998)”; (11) EPAAR 1552.209-73 Alternate I introductory text is amended to add “(JAN 2015)”; (12) EPAAR 1552.211-74 Alternate I and II introductory texts are amended to add “(APR 1984)” and Alternate III and IV introductory texts are amended to add “(DEC 2014)”; (13) EPAAR 1552.216-72 Alternate I introductory text is amended to add “(JUL 2014)”; (14) EPAAR 1552.216-75 introductory text and the ending text are amended to correct the EPAAR references by removing “clause” and adding in their place “provision”; (15) EPAAR 1552.217-76 clause title is amended to add “(MAR 1984)”; (16) EPAAR 1552.217-77 introductory text is amended by removing “1517.208(g)” and adding in its place “1517.208(h)”; (17) EPAAR 1552.219-70(b) and (d) are amended to correct an office title by removing “Office of Small Business Programs (OSBP)” and “OSBP”, and adding in their place “Office of Small and Disadvantaged Business Utilization (OSDBU)” and “OSDBU” respectively; (18) EPAAR 1552.219-71(f)(2)(v) and (k) are amended to correct an office title by removing “Office of Small Business Programs (OSBP)” and adding in its place “Office of Small and Disadvantaged Business Utilization (OSDBU)”, and 1552.219-71(k) is amended to update the address to Office of Small and Disadvantaged Business Utilization, U.S. Environmental Protection Agency, William Jefferson Clinton North Building, Mail Code 1230A, 1200 Pennsylvania Avenue NW, Washington, DC 20450, Telephone: (202) 566-2075, Fax: (202) 566-0266; (19) EPAAR 1552.223-71 is amended by removing the following website addresses: “<http://www.epa.gov/oppt/greenmeetings/>”, “<http://www.epa.gov/greenpower/join/purchase.htm>”, “<http://www.epa.gov/epawaste/conserve/smm/wastewise/>”, “<http://www.epa.gov/foodrecoverychallenge/>”, and “<http://www.epa.gov/dfe/>” and adding the

following addresses to replace them respectively: “<https://www.epa.gov/p2/green-meetings>”, “<https://www.epa.gov/greenpower/green-power-partnership-basic-program-information>”, “<https://www.epa.gov/smm/wastewise>”, <https://www.epa.gov/sustainable-management-food/food-recovery-challenge-frc>”, and “<https://www.epa.gov/saferchoice/history-safer-choice-and-design-environment>”; (20) EPAAR 1552.227-76 Alternate I introductory text is amended to add “(JAN 2015)”; (21) EPAAR 1552.242-70(a) is amended to update the address to U.S. Environmental Protection Agency, Manager, Financial Analysis and Oversight Service Center, Mail Code 3802R, Policy, Training, and Oversight Division, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; and (22) EPAAR 1553.213 is amended to remove “1553.213 Small purchases and other simplified purchase procedures.” and to add in its place “1553.213 Simplified acquisition procedures.” to conform to the FAR.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is exempt from review by the Office of Management and Budget (OMB) because it is limited to matters of agency organization.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the PRA because it does not contain any information collection activities.

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.

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any

significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This action amends the EPAAR to make administrative changes including updates, corrections, and minor edits. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action 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.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this action. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communication between EPA and Tribal governments, EPA specifically solicits additional comment on this rule from Tribal officials.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act of 1995

This rulemaking does not involve technical standards.

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

Executive Order 12898 (59 FR 7629, (February 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 final 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.

K. Congressional Review

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

List of Subjects in 48 CFR Parts 1501, 1504, 1509, 1515, 1516, 1517, 1519, 1535, 1552 and 1553

Government procurement.

Dated: May 22, 2017.

Kimberly Y. Patrick,

Director, Office of Acquisition Management.

For the reasons stated in the preamble, 48 CFR parts 1501, 1504, 1509, 1515, 1516, 1517, 1519, 1535, 1552 and 1553 are amended as set forth below:

PART 1501—GENERAL

1. The authority citation for part 1501 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.

2. Revise section 1501.603-1 to read as follows:

1501.603-1 General.

EPA Contracting Officers shall be selected and appointed and their appointments terminated in accordance with the Contracting Officer warrant program specified in EPA Acquisition Guide (EPAAG) subsection 1.6.4.

PART 1504—ADMINISTRATIVE MATTERS

3. The authority citation for part 1504 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); 41 U.S.C. 418b.

4. Revise section 1504.804-5 to read as follows:

1504.804-5 Detailed procedures for closing out contract files.

In addition to those procedures set forth in FAR 4.804-5, the contracting office shall, before final payment is made under a cost reimbursement type contract, verify the allowability, allocability, and reasonableness of costs claimed. Verification of total costs incurred should be obtained from the Office of Audit through the Financial Analysis and Oversight Service Center in the form of a final audit report. Similar verification of actual costs shall be made for other contracts when cost incentives, price redeterminations, or cost-reimbursement elements are involved. Termination

settlement proposals shall be submitted to the Financial Analysis and Oversight Service Center for review by the Office of Audit as prescribed by FAR 49.107. All such audits will be coordinated through the cost advisory group in the contracting office. Exceptions to these procedures are the quick close-out procedures as described in FAR 42.708 and EPA Acquisition Guide (EPAAG) subsection 4.8.1.

PART 1509—CONTRACTOR QUALIFICATIONS

5. The authority citation for part 1509 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

6. Amend section 1509.507-1 by revising paragraph (a)(1) to read as follows:

1509.507-1 Solicitation provisions.

(a) * * *

(1) Include the information prescribed in FAR 9.507-1;

* * * * *

PART 1515—CONTRACTING BY NEGOTIATION

7. The authority citation for part 1515 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.

8. Amend section 1515.404-473 by revising paragraph (a) to read as follows:

1515.404-473 Limitations.

(a) In addition to the limitations established by statute (see FAR 15.404-4(b)(4)(i)), no administrative ceilings on profits or fees shall be established, except those otherwise identified in the EPAAR.

* * * * *

PART 1516—TYPES OF CONTRACTS

9. The authority citation for part 1516 continues to read as follows:

Authority: 5 U.S.C. 301 and 41 U.S.C. 418b.

10. Revise section 1516.301-70 to read as follows:

1516.301-70 Payment of fee.

The policy of EPA for cost-reimbursement, term form contracts is to make provisional payment of fee (i.e. the fixed fee on cost-plus-fixed-fee type contracts or the base fee on cost-plus-award-fee type contracts) on a percentage of work completed basis, when such a method will not prove detrimental to proper contract performance. Percentage of work completed is the ratio of the direct labor hours performed in relation to the direct labor hours set forth in the contract in clause 48 CFR 1552.211-73, Level of Effort—Cost Reimbursement Contract. Provisional payment of fee will remain subject to withholding provisions, such as in FAR 52.216-8, Fixed Fee.

11. Amend section 1516.406 by revising paragraph (b) to read as follows:

1516.406 Contract clauses.

* * * * *

(b) The Contracting Officer shall insert the provision at 48 CFR 1552.216-75, Base Fee and Award Fee Proposal, in all solicitations which contemplate the award of cost-plus-award-fee contracts. The Contracting Officer shall insert the appropriate percentages.

* * * * *

PART 1517—SPECIAL CONTRACTING METHODS

12. The authority citation for part 1517 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.

13. Revise section 1517.208 to read as follows:

1517.208 Solicitation provisions and contract clauses.

(a) The Contracting Officer shall insert the provision at 48 CFR 1552.217-70, Evaluation of Contract Options, in solicitations containing options.

(b) The Contracting Officer shall insert the clause at 48 CFR 1552.217-71, Option to Extend the Term of the Contract—Cost-Type Contract, when applicable.

(c) The Contracting Officer shall insert the clause at 48 CFR 1552.217-72, Option to Extend the Term of the Contract—Cost-Plus-Award-Fee Contract, when applicable.

(d) The Contracting Officer shall insert the clause at 48 CFR 1552.217-73, Option for Increased Quantity—Cost-Type Contract, when applicable.

(e) The Contracting Officer shall insert the clause at 48 CFR 1552.217-74, Option for Increased Quantity—Cost-Plus-Award-Fee Contract, when applicable.

(f) The Contracting Officer shall insert the clause at 48 CFR 1552.217-75, Option to Extend the Effective Period of the Contract—Time and Materials or Labor Hour Contract, when applicable.

(g) The Contracting Officer shall insert the clause at 48 CFR 1552.217-76, Option to Extend the Effective Period of the Contract—Indefinite Delivery/Indefinite Quantity Contract, when applicable.

(h) The Contracting officer shall insert the clause at 48 CFR 1552.217-77, Option to Extend the Term of the Contract—Fixed Price, when applicable.

14. Revise part 1519 to read as follows:

PART 1519—SMALL BUSINESS PROGRAMS

Subpart 1519.2—Policies

Sec.

1519.201 Policy.

1519.201-71 Director of the Office of Small and Disadvantaged Business Utilization.

1519.201-72 Small business specialists.

1519.202-5 [Reserved]

1519.203 Mentor-protégé.

1519.204 [Reserved]

Subpart 1519.5—Set-Asides for Small Business

1519.501 Review of acquisitions.

1519.503 Class set-aside for construction.

Subpart 1519.6—[Reserved]

Subpart 1519.7—The Small Business Subcontracting Program

1519.705-2 Determining the need for a subcontract plan.

1519.705-4 Reviewing the subcontracting plan.

1519.705-70 Synopsis of contracts containing Pub. L. 95-507 subcontracting plans and goals.

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

Subpart 1519.2—Policies

1519.201 Policy.

Each program's Assistant or Associate Administrator shall be responsible for developing its socioeconomic goals on a fiscal year basis. The goals shall be developed in collaboration with the supporting Chiefs of Contracting Offices (CCOs) or Regional Acquisition Managers (RAMs), the assigned Small Business Specialist (SBS), and the Office of Small and Disadvantaged Business Utilization (OSDBU). The goals will be based on advance procurement plans and past performance. The goals shall be submitted to the Director of OSDBU, at least thirty (30) days prior to the start of the fiscal year.

1519.201-71 Director of the Office of Small and Disadvantaged Business Utilization.

The Director of the Office of Small and Disadvantaged Business Utilization (OSDBU)

provides guidance and advice, as appropriate, to Agency program and contracts officials on small business programs. The OSDBU Director is the central point of contact for inquiries concerning the small business programs from industry, the Small Business Administration (SBA), and the Congress; and shall advise the Administrator and staff of such inquiries as required. The OSDBU Director shall represent the Agency in the negotiations with the other Government agencies on small business programs matters.

1519.201-72 Small business specialists.

(a) Small Business Specialists (SBSs) shall be appointed in writing. Regional SBSs will normally be appointed from members of staffs of the appointing authority. The appointing authorities for regional SBSs are the RAMs. The SBSs for EPA headquarters, Research Triangle Park (RTP), and Cincinnati shall be appointed by the OSDBU Director. The SBS is administratively responsible directly to the appointing authority and, on matters relating to small business programs activities, receives technical guidance from the OSDBU Director.

(b) A copy of each appointment and termination of all SBSs shall be forwarded to the OSDBU Director. In addition to performing the duties outlined in paragraph (c) of this section that are normally performed in the activity to which assigned, the SBS shall perform such additional functions as may be prescribed from time to time in furtherance of overall small business programs goals. The SBS may be appointed on either a full- or part-time basis; however, when appointed on a part-time basis, small business duties shall take precedence over collateral responsibilities.

(c) The SBS appointed pursuant to paragraph (a) of this section shall perform the following duties as appropriate:

(1) Maintain a program designed to locate capable small business sources for current and

future acquisitions;

(2) Coordinate inquiries and requests for advice from small business concerns on acquisition matters;

(3) Review all proposed solicitations in excess of the simplified acquisition threshold, assure that small business concerns will be afforded an equitable opportunity to compete, and, as appropriate, initiate recommendations for small business set-asides, or offers of requirements to the Small Business Administration (SBA) for the 8(a) program, and complete EPA Form 1900-37, "Record of Procurement Request Review," as appropriate;

(4) Take action to assure the availability of adequate specifications and drawings, when necessary, to obtain small business participation in an acquisition. When small business concerns cannot be given an opportunity on a current acquisition, initiate action, in writing, with appropriate technical and contracting personnel to ensure that necessary specifications and/or drawings for future acquisitions are available;

(5) Review proposed contracts for possible breakout of items or services suitable for acquisition from small business concerns;

(6) Participate in the evaluation of a prime contractor's small business subcontracting programs;

(7) Assure that adequate records are maintained, and accurate reports prepared, concerning small business participation in acquisition programs;

(8) Make available to SBA copies of solicitations when so requested; and

(9) Act as liaison with the appropriate SBA office or representative in connection with matters concerning the small business programs including set-asides.

1519.202-5 [Reserved]

1519.203 Mentor-protégé.

(a) The contracting officer shall insert the clause at 48 CFR 1552.219-70, Mentor-Protégé Program, in all contracts under which the contractor has been approved to participate in the EPA Mentor-Protégé Program.

(b) The contracting officer shall insert the provision at 48 CFR 1552.219-71, Procedures for Participation in the EPA Mentor-Protégé Program, in all solicitations valued at \$500,000 or more which will be cost-plus-award-fee or cost-plus fixed-fee contracts.

1519.204 [Reserved]

Subpart 1519.5—Set-Asides for Small Business

1519.501 Review of acquisitions.

(a) If no Small Business Administration (SBA) representative is available, the Small Business Specialist (SBS) shall initiate recommendations to the contracting officer for small business set-asides with respect to individual acquisitions or classes of acquisitions or portions thereof.

(b) When the SBS has recommended that all, or a portion, of an individual acquisition or class of acquisitions be set aside for small business, the contracting officer shall:

(1) Promptly concur in the recommendation; or

(2) Promptly disapprove the recommendation, stating in writing the reasons for disapproval.

If the contracting officer disapproves the recommendation of the SBS, the SBS may appeal to the appropriate appointing authority, whose decision shall be final.

1519.503 Class set-aside for construction.

(a) Each proposed acquisition for construction estimated to cost between \$10,000 and \$1,000,000 shall be set-aside for exclusive small business participation. Such set-asides shall be

considered to be unilateral small business set-asides, and shall be withdrawn in accordance with the procedure of FAR 19.506 only if found not to serve the best interest of the Government.

(b) Small business set-aside preferences for construction acquisitions in excess of \$1,000,000 shall be considered on a case-by-case basis.

Subpart 1519.6—[Reserved]

Subpart 1519.7—The Small Business Subcontracting Program

1519.705-2 Determining the need for a subcontract plan.

One copy of the determination required by FAR 19.705-2(c) shall be placed in the contract file and one copy provided to the Director of the Office of Small and Disadvantaged Business Utilization.

1519.705-4 Reviewing the subcontracting plan.

In determining the acceptability of a proposed subcontracting plan, the contracting officer shall obtain advice and recommendations from the Office of Small and Disadvantaged Business Utilization, which shall in turn coordinate review by the Small Business Administration Procurement Center Representative (if any).

1519.705-70 Synopsis of contracts containing Pub. L. 95-507 subcontracting plans and goals.

The synopsis of contract award, where applicable, shall include a statement identifying the contract as one containing Public Law 95-507 subcontracting plans and goals.

PART 1535—RESEARCH AND DEVELOPMENT CONTRACTING

15. The authority citation for part 1535 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

16. Revise section 1535.007 to read as follows:

1535.007 Solicitations.

(a) Contracting officers shall insert the provision at 48 CFR 1552.235-73, Access to Federal Insecticide, Fungicide, and Rodenticide Act Confidential Business Information, in all solicitations when the contracting officer has determined that EPA may furnish the contractor with confidential business information which EPA had obtained from third parties under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 *et seq.*).

(b) Contracting officers shall insert the provision at 48 CFR 1552.235-75, Access to Toxic Substances Control Act Confidential Business Information, in all solicitations when the contracting officer has determined that EPA may furnish the contractor with confidential business information which EPA had obtained from third parties under the Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*).

(c) Contracting officers shall insert the provision at 48 CFR 1552.235-81, Institutional Oversight of Life Sciences Dual Use Research of Concern-Representation, when notified in the Advance Procurement Plan (APP) or by an EPA funding/requesting office, in accordance with the Institutional Oversight of Life Sciences Dual Use Research of Concern (iDURC) EPA Order 1000.19, Policy and Procedures for Managing Dual Use Research of Concern, in solicitations that will result in a contract under which EPA funding will be used by the recipient to conduct or sponsor “life sciences research”.

PART 1552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

17. The authority citation for part 1552 continues to read as follows:

Authority: 5 U.S.C. 301 and 41 U.S.C. 418b.

18. Amend section 1552.209-71 by revising the introductory text in Alternate I to read as follows:

1552.209-71 Organizational conflicts of interest.

* * * * *

Alternate I (SEP 1998). Contracts for other than Superfund work shall include Alternate I in this clause in lieu of paragraph (e).

* * * * *

19. Amend section 1552.209-73 by revising the introductory text in Alternate I to read as follows:

1552.209-73 Notification of conflicts of interest regarding personnel.

* * * * *

Alternate I (JAN 2015). Contracts for other than Superfund work shall include Alternate I in this clause in lieu of paragraph (d).

* * * * *

20. Amend section 1552.211-74 by revising the introductory text in Alternates I through IV to read as follows:

1552.211-74 Work assignments.

* * * * *

Alternate I (APR 1984). As prescribed in 1511.011-74(b)(1), modify the existing clause by adding the following paragraph (f) to the basic clause:

* * * * *

Alternate II (APR 1984). As prescribed in 1511.011-74(b)(1), modify the existing clause by adding the following paragraph (f) to the basic clause:

* * * * *

Alternate III (DEC 2014). As prescribed in 1511.011-74(b)(2), modify the existing clause by adding the following paragraph (f) to the basic clause:

* * * * *

Alternate IV (DEC 2014). As prescribed in 1511.011-74(b)(2), modify the existing clause by adding the following paragraph (f) to the basic clause:

* * * * *

21. Amend section 1552.216-72 by revising the introductory text in Alternate I to read as follows:

1552.216-72 Ordering—by designated ordering officers.

* * * * *

Alternate I (JUL 2014). 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.

* * * * *

1552.216-75 [Amended]

22. Amend section 1552.216-75 by:

a. Removing, in the introductory text, the text “clause” and adding the text “provision” in its place; and

b. Removing the words “(End of clause)” and adding the words “(End of provision)” in its place.

1552.217-76 [Amended]

23. Amend section 1552.217-76 by adding the clause date “(MAR 1984)” after the clause title.

1552.217-77 [Amended]

24. Amend the introductory text of section 1552.217-77 by removing the text “1517.208(g)” and adding the text “1517.208(h)” in its place.

25. Revise section 1552.219-70 to read as follows:

1552.219-70 Mentor-Protégé Program.

As prescribed in 1519.203(a), insert the following clause:

MENTOR-PROTÉGÉ PROGRAM ([insert abbreviated MONTH YEAR 60 days after date of publication in the Federal Register])

(a) The Contractor has been approved to participate in the EPA Mentor-Protégé Program. The purpose of the Program is to increase the participation of small disadvantaged businesses (SDBs) as subcontractors, suppliers, and ultimately as prime contractors; establish a mutually beneficial relationship with SDBs and EPA's large business prime contractors (although small businesses may participate as Mentors); develop the technical and corporate administrative expertise of SDBs which will ultimately lead to greater success in competition for contract opportunities; promote the economic stability of SDBs; and aid in the achievement of goals for the use of SDBs in subcontracting activities under EPA contracts.

(b) The Contractor shall submit an executed Mentor-Protégé agreement to the Contracting Officer, with a copy to the Office of Small and Disadvantaged Business Utilization (OSDBU) or the Small Business Specialist, within thirty (30) calendar days after the effective date of the contract. The Contracting Officer will notify the Contractor within thirty (30) calendar days from its submission if the agreement is not accepted.

(c) The Contractor as a Mentor under the Program agrees to fulfill the terms of its agreement(s) with the Protégé firm(s).

(d) If the Contractor or Protégé firm is suspended or debarred while performing under an

approved Mentor-Protégé agreement, the Contractor shall promptly give notice of the suspension or debarment to the OSDBU and the Contracting Officer.

(e) Costs incurred by the Contractor in fulfilling their agreement(s) with the Protégé firm(s) are not reimbursable on a direct basis under this contract.

(f) In an attachment to Individual Subcontract Reports (ISR), the Contractor shall report on the progress made under their Mentor-Protégé agreement(s), providing:

(1) The number of agreements in effect; and

(2) The progress in achieving the developmental assistance objectives under each agreement, including whether the objectives of the agreement have been met, problem areas encountered, and any other appropriate information.

(End of clause)

26. Revise section 1552.219-71 to read as follows:

1552.219-71 Procedures for Participation in the EPA Mentor-Protégé Program.

As prescribed in 1519.203(b), insert the following provision:

PROCEDURES FOR PARTICIPATION IN THE EPA MENTOR-PROTÉGÉ PROGRAM (**[insert abbreviated MONTH YEAR 60 days after date of publication in the Federal Register]**)

(a) This provision sets forth the procedures for participation in the EPA Mentor-Protégé Program (hereafter referred to as the Program). The purpose of the Program is to increase the participation of concerns owned and/or controlled by socially and economically disadvantaged individuals as subcontractors, suppliers, and ultimately as prime contractors; to establish a mutually beneficial relationship between these concerns and EPA's large business prime contractors (although small businesses may participate as Mentors); to develop the technical and corporate administrative expertise of these concerns, which will ultimately lead to greater

success in competition for contract opportunities; to promote the economic stability of these concerns; and to aid in the achievement of goals for the use of these concerns in subcontracting activities under EPA contracts. If the successful offeror is accepted into the Program they shall serve as a Mentor to a Protégé firm(s), providing developmental assistance in accordance with an agreement with the Protégé firm(s).

(b) To participate as a Mentor, the offeror must receive approval in accordance with paragraph (h) of this section.

(c) A Protégé must be a concern owned and/or controlled by socially and economically disadvantaged individuals within the meaning of section 8(a)(5) and (6) of the Small Business Act (15 U.S.C. 637(a)(5) and (6)), including historically black colleges and universities. Further, in accordance with Public Law 102-389 (the 1993 Appropriation Act), for EPA's contracting purposes, economically and socially disadvantaged individuals shall be deemed to include women.

(d) Where there may be a concern regarding the Protégé firm's eligibility to participate in the program, the protégé's eligibility will be determined by the contracting officer after the SBA has completed any formal determinations.

(e) The offeror shall submit an application in accordance with paragraph (k) of this section as part of its proposal which shall include as a minimum the following information.

(1) A statement and supporting documentation that the offeror is currently performing under at least one active Federal contract with an approved subcontracting plan and is eligible for the award of Federal contracts;

(2) A summary of the offeror's historical and recent activities and accomplishments under any disadvantaged subcontracting programs. The offeror is encouraged to include any initiatives

or outreach information believed pertinent to approval as a Mentor firm;

(3) The total dollar amount (including the value of all option periods or quantities) of EPA contracts and subcontracts received by the offeror during its two preceding fiscal years. (Show prime contracts and subcontracts separately per year);

(4) The total dollar amount and percentage of subcontract awards made to all concerns owned and/or controlled by disadvantaged individuals under EPA contracts during its two preceding fiscal years.

(5) The number and total dollar amount of subcontract awards made to the identified Protégé firm(s) during the two preceding fiscal years (if any).

(f) In addition to the information required by paragraph (e) of this section, the offeror shall submit as a part of the application the following information for each proposed Mentor-Protégé relationship:

(1) Information on the offeror's ability to provide developmental assistance to the identified Protégé firm and how the assistance will potentially increase contracting and subcontracting opportunities for the Protégé firm.

(2) A letter of intent indicating that both the Mentor firm and the Protégé firm intend to enter into a contractual relationship under which the Protégé will perform as a subcontractor under the contract resulting from this solicitation and that the firms will negotiate a Mentor-Protégé agreement. The letter of intent must be signed by both parties and contain the following information:

(i) The name, address and phone number of both parties;

(ii) The Protégé firm's business classification, based upon the NAICS code(s) which represents the contemplated supplies or services to be provided by the Protégé firm to the Mentor

firm;

(iii) A statement that the Protégé firm meets the eligibility criteria;

(iv) A preliminary assessment of the developmental needs of the Protégé firm and the proposed developmental assistance the Mentor firm envisions providing the Protégé. The offeror shall address those needs and how their assistance will enhance the Protégé. The offeror shall develop a schedule to assess the needs of the Protégé and establish criteria to evaluate the success in the Program;

(v) A statement that if the offeror or Protégé firm is suspended or debarred while performing under an approved Mentor-Protégé agreement the offeror shall promptly give notice of the suspension or debarment to the EPA Office of Small and Disadvantaged Business Utilization (OSDBU) and the Contracting Officer. The statement shall require the Protégé firm to notify the Contractor if it is suspended or debarred.

(g) The application will be evaluated on the extent to which the offeror's proposal addresses the items listed in paragraphs (e) and (f) of this section. To the maximum extent possible, the application should be limited to not more than 10 single pages, double spaced. The offeror may identify more than one Protégé in its application.

(h) If the offeror is determined to be in the competitive range, or is awarded a contract without discussions, the offeror will be advised by the Contracting Officer whether their application is approved or rejected. The Contracting Officer, if necessary, may request additional information in connection with the offeror's submission of its revised or best and final offer. If the successful offeror has submitted an approved application, they shall comply with the clause titled "Mentor-Protégé Program."

(i) Subcontracts of \$1,000,000 or less awarded to firms approved as Protégés under the

Program are exempt from the requirements for competition set forth in FAR 44.202-2(a)(5) and 52.244-5(b). However, price reasonableness must still be determined and the requirements in FAR 44.202-2(a)(8) for cost and price analysis continue to apply.

(j) Costs incurred by the offeror in fulfilling their agreement(s) with a Protégé firm(s) are not reimbursable as a direct cost under the contract. Unless EPA is the responsible audit agency under FAR 42.703-1, offerors are encouraged to enter into an advance agreement with their responsible audit agency on the treatment of such costs when determining indirect cost rates. Where EPA is the responsible audit agency, these costs will be considered in determining indirect cost rates.

(k) *Submission of Application and Questions Concerning the Program.* The application for the Program shall be submitted to the Contracting Officer, and to the EPA Office of Small and Disadvantaged Business Utilization at the following address: Office of Small and Disadvantaged Business Utilization, U.S. Environmental Protection Agency, William Jefferson Clinton North Building, Mail Code 1230A, 1200 Pennsylvania Avenue NW., Washington, DC 20460, Telephone: (202) 566-2075, Fax: (202) 566-0266.

(End of provision)

27. Revise section 1552.223-71 to read as follows:

1552.223-71 EPA Green Meetings and Conferences.

As prescribed in 1523.703-1, insert the following provision, or language substantially the same as the provision, in solicitations for meetings and conference facilities.

EPA GREEN MEETINGS AND CONFERENCES ([insert abbreviated MONTH YEAR 60 days after date of publication in the Federal Register])

(a) The mission of the EPA is to protect human health and the environment. As such, all

EPA meetings and conferences will be staged using as many environmentally preferable measures as possible. Environmentally preferable means products or services that have a lesser or reduced effect on the environment when compared with competing products or services that serve the same purpose.

(b) Potential meeting or conference facility providers for EPA shall provide information about the environmentally preferable features and practices identified by the checklist contained in paragraph (c) of this section, addressing sustainability for meeting and conference facilities including lodging and non-lodging oriented facilities.

(c) The following list of questions is provided to assist contracting officers in evaluating the environmental preferability of prospective meeting and conference facility providers. More information about EPA's Green Meetings initiative may be found on the Internet at <https://www.epa.gov/p2/green-meetings>.

(1) Does your facility track energy usage and/or GHG emissions through ENERGY STAR Portfolio Manager (<http://www.energystar.gov/benchmark>) or some other calculator based on a recognized greenhouse gas tracking protocol? Y/N__

(2) If available for your building type, does your facility currently qualify for the Energy Star certification for superior energy performance? Y/N __, NA__

(3) Does your facility track water use through ENERGY STAR Portfolio Manager or another equivalent tracking tool and/or undertake best management practices to reduce water use in the facility (<http://www.epa.gov/watersense/commercial>)? Y/N__

(4) Do you use landscaping professionals who are either certified by a WaterSense recognized program or actively undertake the WaterSense “Water-Smart” landscaping design practices (<http://www.epa.gov/watersense/outdoor>)? Y/N__, NA__

(5) Based on the amount of renewable energy your buildings uses, does (or would) your facility qualify as a partner under EPA's Green Power Partnership program

(<https://www.epa.gov/greenpower/green-power-partnership-basic-program-information>)?

Y/N__

(6) Do you restrict idling of motor vehicles in front of your facility, at the loading dock and elsewhere at your facility? Y/N__

(7) Does your facility have a default practice of not changing bedding and towels unless requested by guests?

Y/N__, NA__

(8) Does your facility participate in EPA's WasteWise

(<https://www.epa.gov/smm/wastewise>) and/or Food Recovery Challenge

(<https://www.epa.gov/sustainable-management-food/food-recovery-challenge-frc>) programs?

Y/N__

(9) Do you divert from landfill at least 50% of the total solid waste generated at your facility? Y/N__

(10) Will your facility be able to divert from the landfill at least 75% of the total solid waste expected to be generated during this conference/event? Y/N__

(11) Do you divert from landfill at least 50% of the food waste generated at your facility (through donation, use as animal feed, recycling, anaerobic digestion, or composting)? Y/N__

(12) Will your facility be able to divert from landfill at least 75% of the food waste expected to be generated during this conference/event (through donation, use as animal feed, recycling, anaerobic digestion, or composting)?

Y/N__

(13) Does your facility provide recycling containers for visitors, guests and staff (paper and beverage at minimum)? Y/N__

(14) With respect to any food and beverage prepared and/or served at your facility, does at least 50% of it on average meet sustainability attributes such as: Local, organic, fair trade, fair labor, antibiotic-free, etc.? Y/N__

(15) Will your facility be able to ensure that at least 75% of the food and beverage expected to be served during this conference/event meets sustainability attributes such as: Local, organic, fair trade, fair labor, antibiotic-free, etc.? Y/N__

(16) Does your facility use Design for the Environment (DfE) cleaning products (<https://www.epa.gov/saferchoice/history-safer-choice-and-design-environment>), or similar products meeting other recognized standards for being 'environmentally preferable' (<http://www.epa.gov/epp/>) or more sustainable? Y/N__

(17) Is your facility prepared to document or demonstrate all of the claims you have made above? Y/N__

(d) The contractor shall include any additional "Green Meeting" information in their proposal which is believed is pertinent to better assist us in considering environmental preferability in selecting our meeting venue.

(End of provision)

28. Amend section 1552.227-76 by revising the introductory text in Alternate I to read as follows:

1552.227-76 Project employee confidentiality agreement.

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Alternate I (JAN 2015). Contracts for other than Superfund work shall include Alternate I in

this clause in lieu of paragraph (d).

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29. Revise section 1552.242-70 to read as follows:

1552.242-70 Indirect costs.

As prescribed in 1542.705-70, insert the following clause in all cost-reimbursement and non-commercial time and materials type contracts. If ceilings are not being established, enter “not applicable” in paragraph (c) of the clause.

INDIRECT COSTS ([insert abbreviated MONTH YEAR 60 days after date of publication in the Federal Register])

(a) In accordance with paragraph (d) of the “Allowable Cost and Payment” clause, the final indirect cost rates applicable to this contract shall be established between the Contractor and the appropriate Government representative (EPA, other Government agency, or auditor), as provided by FAR 42.703-1(a). EPA's procedures require a Contracting Officer determination of indirect cost rates for its contracts. In those cases where EPA is the cognizant agency (see FAR 42.705-1), the final rate proposal shall be submitted to the cognizant audit activity and to the following designated Contracting Officer: U.S. Environmental Protection Agency, Manager, Financial Analysis and oversight Service Center, Mail Code 3802R, Policy, Training Oversight Division, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

Where EPA is not the cognizant agency, the final rate proposal shall be submitted to the above-cited address, to the cognizant audit agency, and to the designated Contracting Officer of the cognizant agency. Upon establishment of the final indirect cost rates, the Contractor shall submit an executed Certificate of Current Cost or Pricing Data (see FAR 15.406-2) applicable to the data furnished in connection with the final rates to the cognizant audit agency. The final rates

shall be contained in a written understanding between the Contractor and the appropriate Government representative. Pursuant to the “Allowable Cost and Payment” clause, the allowable indirect costs under this contract shall be obtained by applying the final agreed upon rate(s) to the appropriate bases.

(b) Until final annual indirect cost rates are established for any period, the Government shall reimburse the contractor at billing rates established by the appropriate Government representative in accordance with FAR 42.704, subject to adjustment when the final rates are established. The established billing rates are currently as follows:

Cost center	Period	Rate	Base

These billing rates may be prospectively or retroactively revised by mutual agreement, at the request of either the Government or the Contractor, to prevent substantial overpayment or underpayment.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this clause, ceilings are hereby established on indirect costs reimbursable under this contract. The Government shall not be obligated to pay the Contractor any additional amount on account of indirect costs in excess of the ceiling rates listed below:

Cost center	Period	Rate	Base

(End of clause)

PART 1553—FORMS

30. The authority citation for part 1553 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

31. Revise the heading for section 1553.213 to read as follows:

1553.213 Simplified acquisition procedures.

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