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[FR Doc. 01-12965 Filed 5-23-01; 8:45 am]

BILLING CODE 4310-84-P

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Part 1552

[FRL-6955-3]

Acquisition Regulation; Administrative Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing this final rule that amends the Environmental Protection Agency Acquisition Regulation (EPAAR) by making administrative changes to be consistent with Federal Acquisition Regulation (FAR) provisions.

EFFECTIVE DATE: May 24, 2001.

FOR FURTHER INFORMATION CONTACT: Paul Schaffer, U.S. EPA, Office of Acquisition Management, Mail Code (3802R), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, Telephone: (202) 564-4366.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule was published in the **Federal Register** (65 FR 58921) on October 3, 2000, providing for a 60-day public comment period. Interested parties were afforded an opportunity to participate in the making of this rule. No public comments were received.

B. Executive Order 12866

This is not a significant regulatory action for the purposes of Executive Order 12866; therefore, no review is required by the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).

C. Paperwork Reduction Act (PRA)

The information collection requirement (ICR) in 1552.219-71, Procedures for Participation in the EPA

Mentor-Protége Program, is covered by OMB clearance number 2030-0006. Copies of the ICR document may be obtained from Sandy Farmer, by mail at the EPA Office of Environmental Information, Collection Strategies Division, U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW, Washington, DC 20460, by email at farmer.sandy@epa.gov, or by calling (201) 260-2740. A copy may also be downloaded off the internet at <http://www.epa.gov/icr>. Include the ICR clearance number in any correspondence.

The government-wide information collection requirement in 1552.245-73, Government Property, is covered by OMB clearance number 9000-0075, which is maintained by the General Services Administration. This final rule contains no other clauses with information requirements that require the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

D. 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 RFA 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 today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of

the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the final rule on small entities." 5 U.S.C. 603 and 604. Thus, 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, or otherwise has a positive economic effect on all of the small entities subject to the rule. This final rule merely incorporates existing EPA solicitation and contract provisions into the EPAAR and will have no adverse impact on small entities. The requirements under this final rule impose no additional reporting, record-keeping, or compliance costs on small entities.

E. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess their regulatory actions on State, local, and Tribal governments, and the private sector. This final rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in one year. Any private sector costs for this action relate to paperwork requirements and associated expenditures that are far below the level established for UMRA applicability. Thus, the final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

F. Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks 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 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final 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.

G. Executive Order 13132

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."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final 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. This final rule merely incorporates existing EPA solicitation and contract provisions into the EPAAR. Thus, the requirements of section 6 of the Executive Order do not apply to this final rule.

H. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by Tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of

affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian Tribal government "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This final rule does not significantly or uniquely affect the communities of Indian Tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this final rule.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note), 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 NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This final rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Submission to Congress and the General Accounting Office

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 rules report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Authority: The provisions of this regulation are issued under 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. 48 CFR Chapter 15 is amended as follows:

List of Subjects in 48 CFR Part 1552

Government procurement.

1. The authority citations 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.

2. In Section 1552.211-70, in the clause "Reports of Work" and in alternate 1 revise the effective date of the clause from "Feb 1998" to read "Oct 2000".

3. In Section 1552.211-79 "Compliance with EPA Policies for Information Resources Management" revise the effective date of the clause from "Sept 1991" to read "Oct 2000."

4. Section 1552.219-70 Mentor-Protege Program is revised to read as follows:

1552.219-70 Mentor-Protege Program.

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

MENTOR-PROTEGE PROGRAM

OCT 2000

(a) The Contractor has been approved to participate in the EPA Mentor-Protege program. The purpose of the Program is to increase the participation of small disadvantaged businesses (SDBs) as subcontractors, suppliers, and ultimately as prime contractors; to establish a mutually beneficial relationship with SDB's and EPA's large business prime contractors (although small businesses may participate as Mentors); to develop the technical and corporate administrative expertise of SDBs which will ultimately lead to greater success in competition for contract opportunities; to promote the economic stability of SDBs; and to 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-Protege agreement to the contracting officer, with a copy to the Office of Small and Disadvantaged Business Utilization 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 Protege firm(s).

(d) If the Contractor or Protege firm is suspended or debarred while performing under an approved Mentor-Protege agreement, the Contractor shall promptly give notice of the suspension or debarment to the Office of Small and Disadvantaged Business Utilization and the contracting officer.

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

(f) In an attachment to Standard Form 294, Subcontracts Report for Individual Contracts, the Contractor shall report on the progress made under their Mentor-Protege 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)

5. Section 1552.219-71, Procedures for Participation in the EPA Mentor-Protege Program, is revised to read as follows:

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

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

PROCEDURES FOR PARTICIPATION IN THE EPA MENTOR-PROTEGE PROGRAM

OCT 2000

(a) This provision sets forth the procedures for participation in the EPA Mentor-Protege Program (hereafter referred to as the Program). The purpose of the Program is to increase the participation of small disadvantaged businesses (SDBs) as subcontractors, suppliers, and ultimately as prime contractors; to establish a mutually beneficial relationship with SDBs and EPA's large business prime contractors (although small businesses may participate as Mentors); to develop the technical and corporate administrative expertise of the SDBs which will ultimately lead to greater success in competition for contract opportunities; to promote the economic stability of SDBs; and to aid in the achievement of goals for the use of SDBs in subcontracting activities under EPA contracts. If the successful offeror is accepted into the Program they shall serve as a Mentor to a Protege (SDB) firm(s), providing developmental assistance in accordance with an agreement with the Protege firm(s).

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

(c) A Protege must be a small disadvantaged business (SDB) concern as defined under Federal Acquisition Regulation (FAR) 19.001, and a small business for the purpose of the Small Business Administration (SBA) size standard applicable to the North American Industry Classification System (NAICS) code applicable to the contemplated supplies or services to be provided by the Protege firm to the Mentor firm. Further, consistent with EPA's 1993 Appropriation Act, socially disadvantaged individuals shall be deemed to include women.

(d) Where there may be a concern regarding the Protege firm's eligibility to participate in the program, the protege'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) 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 their SDB program. 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 SDB firms under EPA contracts during its two preceding fiscal years. If recently required to submit a SF 295, provide copies of the two preceding year's reports;

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

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

(1) Information on the offeror's ability to provide developmental assistance to the identified Protege firm and how the assistance will potentially increase contracting and subcontracting opportunities for the Protege firm, including subcontract opportunities in industry categories where SDBs are not dominant in the offeror's vendor base.

(2) A letter of intent indicating that both the Mentor firm and the Protege firm intend to enter into a contractual relationship under which the Protege will perform as a subcontractor under the contract resulting from this solicitation and that the firms will negotiate a Mentor-Protege agreement. Costs incurred by the offeror in fulfilling the agreement(s) with the Protege firm(s) are not reimbursable as a direct cost under the contract. 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 Protege firm's business classification, based upon the NAICS code(s) which represents the contemplated supplies or services to be provided by the Protege firm to the Mentor firm;

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

(iv) A preliminary assessment of the developmental needs of the Protege firm and the proposed developmental assistance the Mentor firm envisions providing the Protege. The offeror shall address those needs and

how their assistance will enhance the Protege. The offeror shall develop a schedule to assess the needs of the Protege and establish criteria to evaluate the success in the Program.

(v) A statement that if the offeror or Protege firm is suspended or debarred while performing under an approved Mentor-Protege agreement the offeror shall promptly give notice of the suspension or debarment to the EPA Office of Small Disadvantaged Business Utilization (OSDBU) and the contracting officer. The statement shall require the Protege 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 (e) and (f). 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 Protege in its application.

(h) If the offeror is determined to be in the competitive range, 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-Protege Program."

(i) Subcontracts of \$1,000,000 or less awarded to firms approved as Proteges under the Program are exempt from the requirements for competition set forth in FAR 52.244-5(b).

(j) Costs incurred by the offeror in fulfilling their agreement(s) with a Protege 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 OSDBU, at the following addresses for headquarters procurements:

Socioeconomic Business Program Officer,
Office of Small and Disadvantaged
Business Utilization, U. S. Environmental
Protection Agency, Ariel Rios Building
(3801R), 1200 Pennsylvania Avenue, NW,
Washington, DC 20460, Telephone: (202)
564-4322, Fax: (202) 565-2473

The application for the Program shall be submitted to the contracting officer, and to the Small Business Specialist, at the following address for RTP procurements:

Small Business Program Officer, Contracts
Management Division (MD-33), U. S.
Environmental Protection Agency,
Research Triangle Park, NC 27711,
Telephone: (919) 541-2249, Fax: (919)
541-5539

The application for the Program shall be submitted to the contracting officer, and to

the Small Business Specialist, at the following address for Cincinnati procurements:

Small and Disadvantaged Business Utilization Officer, Contracts Management Division, 26 West Martin Luther King Drive, Cincinnati, OH 45268, Telephone: (513) 487-2024, Fax: (513) 487-2004

(End of provision)

6. Section 1552.219-72, Small Disadvantaged Business Participation Program, is revised to read as follows:

1552.219-72 Small Disadvantaged Business Participation Program.

As prescribed in 1519.204(a), insert the following clause:

SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM

OCT 2000

(a) Section M of this solicitation contains a source selection factor or subfactor related to the participation of small disadvantaged business (SDB) concerns in the performance of the contract. The nature of the evaluation of an SDB offeror under this evaluation factor or subfactor is dependent upon whether the SDB concern qualifies for the price evaluation adjustment under the clause at FAR 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged

Business Concerns, and whether the SDB concern specifically waives this price evaluation adjustment.

(b) In order to be evaluated under the source selection factor or subfactor, an offeror must provide, with its offer, the following information:

(1) The extent of participation of SDB concerns in the performance of the contract in terms of the value of the total acquisition. Specifically, offerors must provide targets, expressed as dollars and percentages of the total contract value, for SDB participation in the applicable and authorized North American Industry Classification System (NAICS) Industry Subsectors as determined by the Department of Commerce. Total dollar and percentage targets must be provided for SDB participation by the prime contractor, including team members and joint venture partners. In addition, total dollar and percentage targets for SDB participation by subcontractors must be provided and listed separately;

(2) The specific identification of SDB concerns to be involved in the performance of the contract;

(3) The extent of commitment to use SDB concerns in the performance of the contract;

(4) The complexity and variety of the work the SDB concerns are to perform; and

(5) The realism of the proposal to use SDB concerns in the performance of the contract.

(c) An SDB offeror who waives the price evaluation adjustment provided in FAR 52.219-23 shall provide, with their offer, targets, expressed as dollars and percentages of the total contract value, for the work that it intends to perform as the prime contractor in the applicable and authorized NAICS Industry Subsectors as determined by the Department of Commerce. All of the offeror's identified targets described in paragraphs (b) and (c) of this clause will be incorporated into and made part of any resulting contract. (End of provision)

7. Section 1552.219-73, Small Disadvantaged Business Targets, is revised to read as follows:

1552.219-73 Small Disadvantaged Business Targets.

As prescribed in 1519.204(b), insert the following clause:

SMALL DISADVANTAGED BUSINESS TARGETS

OCT 2000

(a) In accordance with FAR 19.1202-4(a) and EPAAR 1552.219-72, the following small disadvantaged business (SDB) participation targets proposed by the contractor are hereby incorporated into and made part of the contract:

Table with 4 columns: Contractor targets, NAICS major group, Dollars, Percentage of total contract value. Rows include Total Prime Contractor Targets and Total subcontractor targets.

(b) The following specifically identified SDB(s) was (were) considered under the Section—SDB participation evaluation factor or subfactor (continue on separate sheet if more space is needed):

- (1) _____
(2) _____
(3) _____
(4) _____
(5) _____

The contractor shall promptly notify the contracting officer of any substitution of firms if the new firms are not SDB concerns.

(c) In accordance with FAR 52.219-25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting, the contractor shall report on the participation of SDB concerns in the performance of the contract no less than thirty (30) calendar days prior to each annual contractor performance evaluation [contracting officer may insert the dates for each performance evaluation (i.e., every 12 months after the effective date of contract)] or as otherwise directed by the contracting officer.

(End of provision)

8. In Section 1552.232-73 "Payments—Fixed-Rate Services Contract" revise the effective date of the

clause from "APR 1984 to read to "OCT 2000."

Dated: February 21, 2001.

Judy S. Davis, Acting Director, Office of Acquisition Management. [FR Doc. 01-12701 Filed 5-23-01; 8:45 am] BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 001226367-0367-01; I.D. 121500E]

Magnuson-Stevens Act Provisions; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures; Corrections

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Corrections to the 2001 specifications for the Pacific Coast groundfish fishery.

SUMMARY: This document contains corrections to the 2001 groundfish fishery specifications and management measures for the Pacific Coast groundfish fishery, which were published on January 11, 2001 and amended at 66 FR 10211 (February 14, 2001), at 66 FR 18409 (April 9, 2001), and at 66 FR 22467 (May 4, 2001).

DATES: Effective May 4, 2001.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier or Becky Renko, NMFS.(206) 526-6140.

SUPPLEMENTARY INFORMATION:

Background

The 2001 fishery specifications and management measures for groundfish taken in the U.S. exclusive economic zone and state waters off the coasts of Washington, Oregon, and California, as authorized by the Pacific Coast Groundfish Fishery Management Plan, were published in the Federal Register on January 11, 2001 (66 FR 2338), and