

Executive Order 12866, dated September 30, 1993.

### B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule applies only to military installations and facilities and proximately located local and State governments. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2001-D018.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 1010 of the USA Patriot Act (Public Law 107-56). Section 1010 permits DoD to enter into contracts for the performance of security functions at military installations and facilities during the period of time that United States armed forces are engaged in Operation Enduring Freedom and 180 days thereafter. Section 1010 became effective on October 26, 2001. Comments received in response to this interim rule will be considered in the formation of the final rule.

### List of Subjects in 48 CFR Part 237

Government procurement.

#### Michele P. Peterson,

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR part 237 is amended as follows:

1. The authority citation for 48 CFR part 237 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

### PART 237—SERVICE CONTRACTING

2. Section 237.102-70 is amended by adding paragraph (c) to read as follows:

#### 237.102-70 Prohibition on contracting for firefighting or security-guard functions.

\* \* \* \* \*

(c) Under Section 1010 of Public Law 107-56, this prohibition does not apply to any contract that

(1) Is entered into during the period of time that United States armed forces are engaged in Operation Enduring Freedom or during the period 180 days thereafter;

(2) Is for the performance of security functions at any military installation or facility in the United States;

(3) Is awarded to a proximately located local or State government, or a combination of such governments, whether or not any such government is obligated to provide such services to the general public without compensation; and

(4) Prescribes standards for the training and other qualifications of local government law enforcement personnel who perform security functions under the contract in accordance with criteria established by the Secretary of the department concerned.

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### ENVIRONMENTAL PROTECTION AGENCY

#### 48 CFR Parts 1515, 1533 and 1552

[FRL-7155-7]

#### Acquisition Regulation: Administrative Changes and Technical Amendments

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is issuing this rule to amend the EPA Acquisition Regulation (EPAAR) to eliminate two EPAAR requirements in order to streamline the EPA contracting process. The first requirement relates to the detail required in the EPA contracting officer's source selection decision. The second requirement relates to EPA contracting officer duties if there is a contractor appeal of a final decision of the contracting officer. In addition, technical amendments are being made to the EPAAR solicitation provision entitled "Procedures for Participation in the EPA Mentor-Protégé Program."

**DATES:** This rule is effective on June 12, 2002 without further notice, unless EPA

receives adverse comments by April 15, 2002. If we receive adverse comments, we will, before the rule's effective date, publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Comments may be submitted to Larry Wyborski, US Environmental Protection Agency, Office of Acquisition Management (3802R), 1200 Pennsylvania Avenue, NW., Washington, DC 20004, or electronically at: [wyborski.larry@epamail.epa.gov](mailto:wyborski.larry@epamail.epa.gov).

**FOR FURTHER INFORMATION CONTACT:** Larry Wyborski, U.S. Environmental Protection Agency, Office of Acquisition Management, Mail Code 3802R, 1200 Pennsylvania Avenue, NW, Ariel Rios Building, Washington, DC 20004, (202) 564-4369, [wyborski.larry@epamail.epa.gov](mailto:wyborski.larry@epamail.epa.gov)

#### SUPPLEMENTARY INFORMATION:

##### A. Background

EPA's Office of Acquisition Management established a Procurement Guidance Work Group to assess EPA acquisition policies and recommend changes where appropriate. Among the recommendations were two changes to the EPAAR to eliminate requirements which either: (1) Duplicate other Federal Regulations, or (2) outline unnecessary procedural requirements for EPA contracting officers. Specifically, EPAAR 1515.308-71 provides procedural requirements for documentation in source selection decisions over and above those required by Federal Acquisition Regulation (FAR) 15.308. The EPA Procurement Guidance Work Group determined these additional procedural requirements are not necessary, and therefore should be removed from the EPAAR. The Procurement Guidance Work Group also determined that EPAAR 1533.212, Contracting Officer's duties upon appeal, essentially duplicate procedures set forth in 43 CFR part 4 (Department of Interior Board of Contract Appeals Regulations) and should therefore be removed from the EPAAR.

In addition, technical amendments are being made to the solicitation provision at EPAAR 1552.219-71, Procedures for Participation in the Mentor-Protégé Program, in order to bring the provision into compliance with statutory language. Specifically, since Pub. L. 102-389 (EPA's 1993 Appropriations Act) did not require certain restrictions on the mentor-protégé program previously specified in the provision, these restrictions have been eliminated.

### 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

The Paperwork Reduction Act does not apply because this rule does not contain information collection 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 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; or (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 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 proposed 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 rule streamlines agency internal operating procedures and will therefore not have a significant economic impact on small entities.

### E. 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 their regulatory actions on State, local, and Tribal governments, and the private sector. This 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 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 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 risk.

### 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" are 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 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. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

### H. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and tribal input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This direct final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, as specified in Executive Order 13175. The rule in an acquisition regulation that is technical and administrative in nature. Thus, Executive Order 13175 does not apply to this rule.

### I. National Technology Transfer and Advancement Act of 1995

EPA will use voluntary consensus standards, as directed by 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), in its procurement activities when applicable. The NTTAA 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 rulemaking does not involve technical standards. Therefore, EPA is not considering use of any voluntary consensus standards. EPA welcomes comments on this aspect of the rule making, and, specifically, invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

#### J. Executive Order 13211

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

#### K. 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 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).

#### List of Subjects in 48 CFR Parts 1515, 1533 and 1552

Government procurement.

Therefore, 48 CFR chapter 15 is amended as set forth below:

1. The authority citation for parts 1515, 1533 and 1552 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.

#### 1515.308-71 [Removed]

2. 1515.308-71 is removed.

#### 1553.212 [Removed]

3. Section 1533.212 is removed.

4. Section 1552.219-71 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 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 Protege 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) of this section.

(c) A Protege 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. 673(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 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) 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. 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 paragraph (e) of this section, 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.

(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. 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 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 Protege 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-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 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 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 for Headquarters and Regional procurements shall be submitted to the contracting officer, and to the EPA OSDBU at the following address: Socioeconomic Business Program Officer, Office of Small and Disadvantaged Business Utilization, U.S. Environmental Protection Agency, Ariel Rios Building (1230A), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, Telephone: (202) 564-4322, Fax: (202) 565-2473.

The application for the Program for RTP procurements shall be submitted to the contracting officer, and to the Small Business Specialist at the following address: Small Business Program Officer, RTP Procurement Operations Division (E105-02), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, Telephone: (919) 541-2249, Fax: (919) 541-5539.

The application for the Program for Cincinnati procurements shall be submitted to the contracting officer, and to the Small Business Specialist at the following address: Small and Disadvantaged Business Utilization Officer, Cincinnati Procurement Operations Division (CPOD-Norwood), U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268, Telephone: (513) 487-2024 Fax: (513) 487-2004.

(End of provision)

Dated: February 28, 2002.

**Judy S. Davis,**

*Director, Office of Acquisition Management.*

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**BILLING CODE 6560-50-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

**RIN 1018-AI35**

#### Endangered and Threatened Wildlife and Plants: Listing the Desert Yellowhead as Threatened

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the Fish and Wildlife Service (Service), determine *Yermo xanthocephalus* (desert yellowhead) to be threatened under the authority of the Endangered Species Act of 1973, as amended. This plant is a recently described Wyoming endemic known only from the south end of Cedar Rim on the summit of Beaver Rim in southern Fremont County, Wyoming. It is known from a single population with plants found scattered over an area of 20 hectares (50 acres). The total area actually occupied by the population is only 3.37 hectares (8.33 acres) within the 20 hectares. In 2001 this population contained 11,967 plants and existed entirely on Federal lands. Surface disturbances associated with oil and gas development, compaction by vehicles, trampling by livestock, and randomly occurring, catastrophic events threaten the existing population.

**EFFECTIVE DATE:** April 15, 2002.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 4000 Airport Parkway, Cheyenne, WY 82001.

**FOR FURTHER INFORMATION CONTACT:** Mike Long, Field Supervisor, Wyoming Field Office (see **ADDRESSES** section), telephone 307/772-2374; facsimile (307) 772-2358.

#### SUPPLEMENTARY INFORMATION:

##### Background

*Yermo xanthocephalus* was discovered by Wyoming botanist Robert Dorn while conducting field work in the Beaver Rim area of central Wyoming in 1990. Dorn discovered a small population of an unusual species of

Composite (Asteraceae). Dorn's closer examination revealed that the species was unknown to science and represented a new genus. Dorn (1991) named his discovery *Y. xanthocephalus*, or literally "desert yellowhead."

*Yermo xanthocephalus* is a tap-rooted, glabrous (hairless) perennial herb with leafy stems to 30 centimeters (cm) (12 inches (in)) high. The leathery leaves are alternate, lance-shaped to oval, 4 to 25 cm (1.5 to 10 in) long and often folded along the midvein. Leaf edges are smooth or toothed. Flower heads are many (25 to 180) and crowded at the top of the stem. Each head contains four to six yellow disk flowers (ray flowers are absent) surrounded by five yellow, keeled involucre (whorled) bracts (small leaves beneath the flower). The pappus (the outer whorl of flowering parts) consists of many white bristles.

The species is restricted to shallow deflation hollows in outcrops of Miocene sandstones of the Split Rock Formation (Van Houten 1964). These wind-excavated hollows accumulate drifting snow and may be more mesic (moist) than surrounding areas. The vegetation of these sites is typically sparse, consisting primarily of low-cushion plants and scattered clumps of Indian ricegrass (*Stipa hymenoides*).

Dorn observed approximately 500 plants within 1 hectare (2.5 acres) in 1990 on Federal land managed by the Bureau of Land Management (BLM). Surveys conducted since 1990 by Richard Scott, Curator of the Central Wyoming College Herbarium in Riverton, have failed to locate additional populations on outcrops of the White River, Wagon Bed, and Wind River formations in the Beaver Rim area. The estimate of the plant population's size has increased from 500 in 1990 to 11,967 plants in 2001. However, Dorn's original estimate of 500 plants was a visual estimate and did not include 2 nearby subpopulations, while Scott has been counting all plants in all 3 subpopulations using a monitoring grid. Therefore, the difference in estimates may be largely the result of different techniques used over differing acreages and cannot be assumed to show a significantly increasing trend in population size between 1990 and 2001. Based upon Scott's data collected from 1995 through 2001, the actual population count has increased from 9,293 in 1995 to 11,967 in 2001, possibly in response to higher than normal precipitation over the study period (R. Scott, Central Wyoming College, pers. comm., 2001).