

under Colorado, is amended by adding DTV channel 49 and removing DTV channel 10 at Colorado Springs.

**Clay C. Pendarvis,**

*Associate Chief, Video Division, Media Bureau, Federal Communications Commission.*

[FR Doc. E9-19525 Filed 8-13-09; 8:45 am]

BILLING CODE 6712-01-P

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Part 102-36

[FMR Amendment 2009-05; FMR Case 2009-102-2; Docket 2009-0002, Sequence 4]

RIN 3090-A187

### Federal Management Regulation; FMR Case 2009-102-2; Disposition of Excess Personal Property

**AGENCY:** Office of Governmentwide Policy, General Services Administration (GSA).

**ACTION:** Final rule.

**SUMMARY:** The General Services Administration is amending the Federal Management Regulation (FMR) by making a change to its personal property policy. This final rule updates and clarifies language that has caused some confusion with our customers and resulted in unnecessarily prolonged periods to remove property.

**DATES:** *Effective Date:* This final rule is effective on August 14, 2009.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Mr. Robert Holcombe, Office of Governmentwide Policy, Office of Travel, Transportation, and Asset Management (MT), (202) 501-3828 or e-mail at [robert.holcombe@gsa.gov](mailto:robert.holcombe@gsa.gov). For information pertaining to status or publication schedules contact the Regulatory Secretariat, 1800 F Street, NW., Room 4041, Washington, DC, 20405, (202) 501-4755. Please cite FMR case 2009-102-2.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

A proposed rule was published in the *Federal Register* on February 23, 2009 (74 FR 14510) to solicit comments on a proposed change to FMR section 102-36.135 (41 CFR 102-36.135). The language used in that section caused confusion with our customers and resulted in unnecessarily prolonged removal periods. The proposed revision would make it clear that the acquiring agency is responsible for scheduling and

coordinating the property removal once the acquiring agency receives notification from GSA that they have been allocated the property. No comments were received.

##### B. Executive Order 12866

This final rule is excepted from the definition of "regulation" or "rule" under Section 3(d)(3) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993 and, therefore, was not subject to review under Section 6(b) of that Executive Order.

##### C. Regulatory Flexibility Act

This final rule was not required to be published in the *Federal Register* for comment. Therefore, the Regulatory Flexibility Act does not apply. However, a proposed rule was published on February 23, 2009 in order to elicit comments and to provide transparency in the promulgation of federal policies.

##### D. Paperwork Reduction Act

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

##### E. Small Business Regulatory Enforcement Fairness Act

This final rule is exempt from Congressional review under 5 U.S.C. 801 since it relates solely to agency management and personnel.

##### List of Subjects in 41 CFR Part 102-36

Government property, property disposal.

Dated: July 15, 2009.

**Paul F. Prouty,**

*Acting Administrator of General Services.*

■ For the reasons set forth in the preamble, GSA amends 41 CFR part 102-36 as set forth below:

#### PART 102-36—DISPOSITION OF EXCESS PERSONAL PROPERTY

■ 1. The authority citation for 41 CFR part 102-36 continues to read as follows:

**Authority:** 40 U.S.C. 121(c).

■ 2. Revise § 102-36.135 to read as follows:

##### § 102-36.135 How much time do we have to pick up excess personal property that has been approved for transfer?

Normally, you have 15 calendar days from the date of GSA allocation to pick up the excess personal property for transfer, and you are responsible for

scheduling and coordinating the property removal with the holding agency. If additional removal time is required, you are responsible for requesting such additional removal time.

[FR Doc. E9-19481 Filed 8-13-09; 8:45 am]

BILLING CODE 6820-14-P

## GENERAL SERVICES ADMINISTRATION

### 48 CFR Parts 501, 519, and 552

[GSAR Amendment 2009-09; GSAR Case 2006-G501 (Change 37) Docket 2008-0007; Sequence 6]

RIN 3090-A156

### General Services Administration Acquisition Regulation; GSAR Case 2006-G501, Mentor-Protégé Program

**AGENCIES:** General Services Administration (GSA), Office of the Chief Acquisition Officer.

**ACTION:** Final rule.

**SUMMARY:** The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to amend its acquisition regulations to formally encourage GSA prime contractors to assist small business, including veteran-owned small business, service-disabled veteran-owned small business, HUBZone, small disadvantaged business, and women-owned small business, in enhancing their capabilities to perform contracts and subcontracts for GSA and other Federal agencies. The program seeks to increase the base of small business eligible to perform GSA contracts and subcontracts. The program also seeks to foster long-term business relationships between GSA prime contractors and small business entities and to increase the overall number of small business entities that receive GSA contracts, and subcontract awards.

**DATES:** *Effective Date:* September 14, 2009.

*Applicability Date:* The final rule applies to solicitations and existing contracts for supplies or services, including Federal Supply Schedules and construction. Existing contracts shall be modified at no cost to the Government by mutual agreement of both parties.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501-0044. For information pertaining to status or publication schedules, contact the Regulatory

Secretariat (VPR), Room 4041, 1800 F Street, NW, Washington, DC, 20405, (202) 501-4755. Please cite Amendment 2009-09, GSAR case 2006-G501 (Change 37).

#### SUPPLEMENTARY INFORMATION:

##### A. Background

The U.S. General Services Administration (GSA) published a notice of proposed rulemaking in the **Federal Register** at 73 FR 32669, June 10, 2008), in which GSA proposed to develop a Mentor-Protégé Program that encouraged GSA prime contractors to assist small business, including small disadvantaged business, veteran-owned, service-disabled veteran-owned, HUBZone, and women-owned small business in enhancing their capabilities to perform contracts and subcontracts for GSA and other Federal agencies. Successful Mentor-Protégé arrangements represent opportunities for creating access for small business to GSA contracts and awards. GSA received comments on the proposed rule suggesting the Agency clarify the eligible participants in the Program and the types of incentives GSA may provide to prime contractors for providing developmental assistance to protégés. After careful consideration of the public comments received on the notice of proposed rulemaking, GSA is issuing a final rule.

##### Resolution of Comments

Twelve commenters submitted comments in response to the proposed rule. Three of the twelve commenters expressed interest in participating in the GSA Mentor-Protégé Program. A discussion of the comments and the changes made to the rule as a result of those comments is provided below.

*Comment:* One commenter recommends that the word "small" needs to be defined. Large businesses "hide" behind small businesses.

*Response:* Non-concur. The comment is outside the scope of this GSAR case. With the exception of small disadvantaged businesses, 8(a) Participants and HUBZone small business concerns, all other firms self-certify in accordance with the definitions in FAR Part 2.

*Comment:* A commenter states that incentives are insufficient and suggests monetary reimbursement for mentoring expenses, limited ownership interest in the protégé, or relaxation of small business affiliation rule.

*Response:* Non-concur. GSA does not have legal authority to incorporate the incentives suggested by the commenter. GSAM 519.7004, Incentive for Prime Contract Participation, is consistent

with the Mentor-Protégé Programs of other civilian agencies.

*Comment:* Two commenters recommend better monitoring of the Mentor-Protégé Programs.

*Response:* GSA is not responsible for the experiences of other Federal agency Mentor-Protégé Programs and plans to carefully monitor the GSA Mentor-Protégé Program. GSA anticipates having a very successful program that will be beneficial to both mentors and protégés.

*Comment:* Under GSAM 519.7003, General Policy, a commenter recommends the need to address how Mentor-Protégé Agreements can be incorporated into small business prime awards and how evaluation credit during source selection is given to small business firms that are mentors with small business subcontractors.

*Response:* Concur. As with other terms and conditions that need incorporation into a contract, the Mentor-Protégé agreement should be incorporated into the small business prime contractor's contract. In addition, there is nothing in the FAR or GSAR that precludes establishing source selection criteria that would apply to both large and small businesses.

*Comment:* One commenter states that GSAR 519.7004, paragraph (b) does not appear to belong in this section since it points out that the mentor's cost are not reimbursable directly but may be reimbursable once indirect cost rates are established with the cognizant audit agency. How does this relate to incentives for mentors?

*Response:* Non-concur. The civilian agencies do not have the statutory authority that the Department of Defense has for its Mentor-Protégé Program; therefore, civilian agency incentives are limited. GSAM 519.7004, Incentive for Prime Contract Participation, is consistent with the Mentor-Protégé Programs of other civilian agencies.

*Comment:* One commenter requests specific details about the non-monetary award in GSAM 519.7004(d). In addition, the commenter questions why the GSA annual conference in GSAM 519.7004(e) is listed as an incentive and states that overall there are no true incentives offered for the time and effort the Mentor Program would require.

*Response:* Non-concur. GSA will provide the specifics of the non-monetary award at a later date. The civilian agencies do not have the statutory authority that the Department of Defense has; therefore, the incentives for civilian agencies are limited. The GSA annual conference is an opportunity to network, share Mentor-

Protégé experiences and share the "Lessons Learned". GSAM 519.7004, Incentive for Prime Contract Participation, is consistent with the Mentor-Protégé Programs of other civilian agencies.

*Comment:* A commenter questions indirect costs and states that these costs are generally established for cost contracts and certain special fixed price contracts. The references for indirect cost rates seem to be entirely out of place and would often be inapplicable to many competitive firm fixed GSA contracts.

*Response:* Non-concur. Even though this paragraph may not apply to many GSA contracts, this is a GSA-wide Mentor-Protégé Program that can include contracts that may have indirect costs associated with it. The intent of the GSA Mentor-Protégé Program is to not exclude any potential GSA contracts, including GSA cost contracts.

*Comment:* One commenter refers to FAR 15.101-1 which discusses the trade-off process. The commenter states that the natural implication is that the evaluation credit is not applicable to lowest-price technically acceptable source selection, given that tradeoffs are not permitted in that scenario and should be clearly stated, for it substantially limits the circumstance under which this incentive could be applied. The commenter further states that careful distinction is required since the same paragraph goes on to state that past compliance with subcontracting plans can be considered as part of past performance evaluation (trade-off scenario) but also as part of Responsibility Determinations which are made regardless of whether the trade-off or LPTA scenario is used so the paragraph is unclear in regard to the distinction between the two types of source selection.

*Response:* Non-concur. The FAR clearly explains how the trade-off process is utilized. The GSAR language at 519.7004(c) states that the contracting officer "may" give mentors evaluation credit under FAR 15.101-1 considerations for subcontracts which means that it may not be used in all cases.

*Comment:* Regarding GSAM 519.7005, one commenter suggests that the regulation address how measurement of the program success within the first year of the agreement if a Protégé has not received a contract award or dollars. Depending on the terms of the agreement, the first year of the program may involve only development or training; therefore, contract awards may not be immediate.

*Response:* The GSA Mentor-Protégé Program will not be measured only on the contract award and dollars. The measurement of success will include developmental assistance given to the Protégé as required by the Mentor-Protégé Program.

*Comment:* One commenter requests clarification on GSAM 519.7006 and 519.7009. GSAM 519.7009 indicates that a large business mentor's application must include a statement that the firm is currently performing under at least one active approved subcontracting plan. However, GSAM 519.7006 states that mentors must either currently be operating under an approved subcontracting plan under a negotiated award or must have operated under one for a contract awarded within the past five years.

*Response:* Concur. The language has been revised to state that the large business mentor must currently be performing under an approved subcontracting plan. The language "or has performed under at least one approved subcontracting plan awarded under a negotiated contract within the last five years" has been deleted.

*Comment:* A commenter believes that GSAM 519.7003(c) is vague and recommends that the provision be changed to state that an active mentor-protégé arrangement requires the protégé to already be or become a subcontractor under a GSA contract of the mentor firm that contains a subcontracting plan. This revision will then be in agreement with GSAM 519.7009(b).

*Response:* Concur. The language in GSAM 519.7003(c) has been revised.

*Comment:* One commenter recommends that the GSAM language be clear to indicate that this section includes schedules.

*Response:* Concur. Adopted comment.

*Comment:* One commenter states that GSAM 519.7004(c) does not clearly elaborate on the incentives and the associated specifics. The commenter further states that the current language does not mention that the mentor can take credit for costs incurred by the mentor. Other Federal mentor-protégé programs allow the mentor to subsequently receive credit towards their subcontracting plan based on the amount invested. This section combines mentor-protégé performance with small business subcontracting plan compliance which are totally separate elements. Commenter recommends adding language that explicitly describes the incentive as follows:

"future solicitations contain a source selection factor or subfactor regarding the participation in the Mentor-Protégé

Program. In order to receive credit under source selection factor or subfactor, the offeror shall provide a signed letter of mentor-protégé agreement approval before initial evaluation of proposals. The contracting officer may, in his or her discretion, give credit for approvals that occur after the initial evaluation of proposals, but before final evaluation". (Currently in DHS and NASA's programs).

*Response:* Non-concur. With the exception of instances of allowing indirect costs, costs incurred by the mentor are not allowable.

*Comment:* A commenter suggests adding language that enables the mentor to take credit for the developmental assistance provided and how this credit can be applied. Suggested language: "Mentors are eligible to take post-award incentive for subcontracting plan credit whereby the mentor will receive credit towards its subcontracting plan for costs it incurs to provide assistance to a protégé firm. The mentor may use this additional credit toward achievement of its goal under the same or another GSA subcontracting plan. GSA may wish to adjust the credit factor as it sees fit, but it is a federal agency best practice as represented at DOD, DHS, NASA, and others to explicitly state how the benefit and credit is determined."

*Response:* GSA does not concur. GSA believes that the incentives in GSAM 519.7004, "Incentives for prime contractors," that includes coverage whereby mentors may be reimbursed for their indirect costs are sufficient incentives.

*Comment:* One commenter recommends removing GSAM 519.7004(c)(2) in its entirety.

*Response:* Non-concur. The commenter provides no rationale for its removal. GSA believes that this subparagraph is an incentive for prime contractor participation.

*Comment:* A commenter recommends that GSA, if not at inception, then at a later date, to provide greater elaboration and detail regarding the criteria for the OSBU mentoring award.

*Response:* Concur. After implementation of the GSA Mentor-Protégé Program, the Associate Administrator of the Office of Small Business Utilization (OSBU), will be responsible for developing the criteria for the OSBU mentoring award.

*Comment:* One commenter states that GSAM 519.7009 as currently proposed combines elements of a Mentor Application process and a Mentor-Protégé agreement submittal process. It implies that for each protégé agreement, a mentor submit an application. These two elements should be completely

separate as consistent with other Federal agency practices and procedures. The application for the mentor should not contain requests for the number of proposed mentor-protégé arrangements as cited in GSAM 519.7009(b)(2) since it is not known how many will be developed in outlying years. In addition, the specifics on the type of developmental assistance GSAM 519.7009(b)(5) to be provided, or that a signed letter of intent by the mentor and protégé GSAM 519.7009(b)(6) be required are not truly indicative of a prime contractor's eligibility as a mentor. They are elements germane to the development of a specific mentor-protégé agreement and should be incorporated into the ensuing section. By separating the mentor application process from the agreement submittal process, industry and Government are given the flexibility in the future to efficiently add a protégé or protégés as long as it is in good standing both as a prime contractor and mentor. This will result in a reduction in the amount of paperwork and time saving for the Government.

*Response:* Non-concur. Initially, in the proposed rule, GSA had the application and the agreement as separate submissions. However, GSA has determined that it would be less burdensome on both the contractors and GSA personnel to have the application and agreement combined. This is consistent with Mentor-Protégé Programs of other Federal agencies, such as USAID and Department of Homeland Security.

*Comment:* One commenter recommends deletion of GSAM 519.7009(b)(2) requiring mentors to state the number of proposed protégé arrangements at the time of mentor application review and mentor-protégé agreement process.

*Response:* Non-concur. GSA is interested in how many protégés the mentor plans to develop.

*Comment:* Delete GSAM 519.7009(b)(6) requiring a letter of intent be signed by the prospective mentor and protégé at the time of mentor application submittal. This should be a requirement at the time of mentor-protégé submittal.

*Response:* Concur. The final rule now combines the application and agreement. Therefore, the letter of intent is unnecessary.

*Comment:* A commenter recommends adding a section in the mentor application for prospective mentors to provide information on their previous participation in Federal agency mentor-protégé programs. Should the prospective mentor not have any prior

experience, they should describe the entity's ability to provide developmental assistance and how that assistance will potentially increase subcontracting opportunities for protégés. This should be inserted under GSAM 519.7009.

*Response:* Non-concur. The GSA Mentor-Protégé Program stands independently. GSA will be evaluating the mentor-protégé relationship on its own merits. Having experience (positive or negative) on other mentor-protégé programs would not add value and would increase the paperwork burden on the contractor.

*Comment:* Commenter encourages GSA to review and consider the current mentor-protégé application process and forms of those currently in practice at NASA, DOD or DHS as a baseline.

*Response:* GSA has reviewed and considered other agencies' mentor-protégé application processes and forms and has chosen the most appropriate to suit GSA's needs.

*Comment:* Section 519.7017 provides guidance for contracting officers to insert this clause. It seems to imply that will be only for new contracts with no clear guidance regarding the GSA contracts already in place. This will limit the ability for participation by industry at the onset, thus limiting the potential short-term impact and success. Recommend that GSA give clear guidance or instructions as to how existing contracts can be modified to incorporate these new clauses in order to facilitate industry participated once initiated.

*Response:* Concur. GSA did not intend for current contractors to be excluded from participation in the Mentor-Protégé Program. GSAM 519.7017 does not need a revision as it states to insert the clause in all contracts and is not stating newly awarded contracts. The **Federal Register** Notice indicates that the final rule applies to current contracts.

*Comment:* Two commenters recommend that GSA amend its rule to include language defining non-profit agencies (NPAs) for people who are blind or have severe disabilities authorized by the Committee for Purchase from People Who Are Blind or Severely disabled as protégé firms in Section 519.7007(a).

*Response:* Non-concur. The Small Business Administration regulation, 13 CFR 121.105(a)(1) states: "Except for small agricultural cooperatives, a business concern eligible for assistance from SBA as a small business is a business entity organized for profit, with a place of business located in the United States, and which operates

primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor."

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

#### B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule. The changes may 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.*, GSA prepared a Final Regulatory Flexibility Analysis (FRFA), and it is summarized as follows:

The GSA Mentor-Protégé Program will allow small businesses to become protégés and receive developmental assistance from large business mentors. The GSA Mentor-Protégé Program also will allow small businesses who want to mentor other small businesses to participate in the program to provide developmental assistance to protégés. This Program encourages fostering the establishment of long-term business relationships between these small business entities and GSA prime contractors. It is expected that the Program will increase the overall number of small business entities that receive GSA contract and subcontract awards.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat. The Regulatory Secretariat will be submitting a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

#### C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 3090-0286.

#### List of Subjects in 48 CFR Parts 501, 519, and 552

Government procurement.

Dated: August 7, 2009.

**Rodney P. Lantier,**

*Acting Senior Procurement Executive, and Acting Deputy Chief Acquisition Officer, Office of the Chief Acquisition Officer, General Services Administration.*

■ Therefore, GSA amends 48 CFR parts 501, 519, and 552 as set forth below:  
 ■ 1. The authority citation for 48 CFR parts 501, 519, and 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

#### PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

■ 2. Amend section 501.106, in the table, by adding, in numerical sequence, GSAR References "519.70", "552.219-75", "552.219-76" and their corresponding OMB Control Number "3090-0286".

#### PART 519—SMALL BUSINESS PROGRAMS

■ 3. Add Subpart 519.70, consisting of sections 519.7001 through 519.7017, to read as follows:

##### Subpart 519.70—GSA Mentor-Protégé Program

Sec.	
519.7001	Scope of subpart.
519.7002	Definitions.
519.7003	General policy.
519.7004	Incentives for prime contractors.
519.7005	Measurement of program success.
519.7006	Mentor firms.
519.7007	Protégé firms.
519.7008	Selection of protégé firms.
519.7009	Application process.
519.7010	Agreement contents.
519.7011	Application review.
519.7012	Developmental assistance.
519.7013	Obligation.
519.7014	Internal controls.
519.7015	Reports.
519.7016	Program review.
519.7017	Contract clauses.

##### Subpart 519.70—GSA Mentor-Protégé Program

###### 519.7001 Scope of subpart.

The GSA Mentor-Protégé Program is designed to encourage and motivate GSA prime contractors to assist small businesses concerns, small disadvantaged businesses concerns, women-owned small businesses concerns, veteran-owned small business concerns, service-disabled veteran-owned small businesses concerns, and HUBZone small businesses concerns, and enhance their capability of performing successfully on GSA contracts and subcontracts, foster the establishment of long-term business relationships between these small business entities and GSA prime contractors, and increase the overall number of small business entities that receive GSA contract and subcontract awards.

###### 519.7002 Definitions.

The definitions of small business concern, small disadvantaged business concern, HUBZone small business concern, women-owned small business concern, veteran-owned small business

concern, and service-disabled veteran-owned small business concern are the same as found in FAR 2.101. Also see 13 CFR 121, 124, 125 and 126.

(a) *Mentor* as used in the GSA Mentor-Protégé Program, is a prime contractor that elects, on a specific GSA contract, to promote and develop small business subcontractors by providing developmental assistance designed to enhance the business success of the protégé.

(b) *Mentor-Protégé Program Manager* means an employee in the Office of Small Business Utilization (OSBU) (E) designated by the Associate Administrator of OSBU to manage the Mentor-Protégé Program.

(c) *Protégé* as used in the GSA Mentor-Protégé Program is a small business concern that is the recipient of developmental assistance pursuant to a mentor-protégé arrangement on a specific GSA contract.

#### 519.7003 General policy.

(a) A large business prime contractor that meets the requirements at section 519.7006, and is approved as a mentor firm by the Mentor-Protégé Program Manager, may enter into an Agreement with a small business concern, small disadvantaged business concern, women-owned small business concern, veteran-owned small business concern, service-disabled veteran-owned small business concern or HUBZone small business concern that meets the requirements for being a protégé (see 519.7007) in order to provide appropriate developmental assistance to enhance the capabilities of the protégé to perform successfully as a subcontractor and supplier.

(b) A small business prime contractor that is capable of providing developmental assistance to protégés, may also be approved as a mentor.

(c) An active mentor-protégé arrangement requires the protégé to either be a current or newly selected subcontractor under the mentor's prime contract with GSA.

(d) A small business concern's status as a protégé under a GSA contract shall not have an effect on its ability to seek other prime contracts or subcontracts.

(e) Potential Mentors may submit an application for admittance to the Mentor-Protégé Program at any time as long as the requirements at section 519.7006 are met.

(f) The determination of affiliation is a function of the SBA.

#### 519.7004 Incentives for prime contractors.

(a) Under the Small Business Act, 15 U.S.C. 637(d)(4)(E), the GSA is authorized to provide appropriate

incentives to prime contractors in order to encourage subcontracting opportunities for small business concerns consistent with the efficient and economical performance of the contract. This authority is limited to negotiated procurements, including the GSA Multiple Award Schedule contracts and the GSA Governmentwide Acquisition Contracts. It does not include orders under any GSA contracts.

(b) Costs incurred by a mentor to provide developmental assistance, as described in section 519.7012 to fulfill the terms of their agreement(s) with a protégé firm(s), are not reimbursable as a direct cost under a GSA contract. If GSA is the mentor's responsible audit agency under FAR 42.703-1, GSA will consider these costs in determining indirect cost rates. If GSA is not the responsible audit agency, mentors are encouraged to enter into an advance agreement with their responsible audit agency on the treatment of such costs when determining indirect cost rates.

(c) In addition to paragraph (b) of this section, contracting officers may give mentors evaluation credit during the source selection process for subcontracts awarded under their subcontracting plans pursuant to their Mentor-Protégé Agreements. (See FAR 15.101-1). Therefore:

(1) Contracting officers may evaluate proposals with subcontracting plans containing Mentor-Protégé Agreements more favorably than proposals with subcontracting plans that do not include Mentor-Protégé Agreements; and

(2) Contracting officers may assess the prime contractor's compliance with the subcontracting plans submitted in previous contracts as a factor in evaluating past performance under certain circumstances (see FAR 15.304(c)(3) and 15.305(a)(2)(v)) and determining contractor responsibility FAR section 19.705-5(a)(1).

(d) *OSBU Mentoring Award*. A non-monetary award may be presented annually to the mentoring firm providing the most effective developmental support of a protégé. The Mentor-Protégé Program Manager will recommend an award winner to the Administrator of GSA.

(e) *OSBU Mentor-Protégé Annual Conference*. At the conclusion of each year in the Mentor-Protégé Program, mentor firms will be invited to brief contracting officers, program leaders, office directors, and other guests on their experience and progress under the Program. Participation is voluntary.

#### 519.7005 Measurement of program success.

The overall success of the GSA Mentor-Protégé Program encompassing all participating mentors and protégés will be measured by the extent to which it results in:

(a) An increase in the number, dollar value, and percentage of subcontracts awarded to protégés by mentor firms under GSA contracts since the date of entry into the Program. The baseline that demonstrates an increase is determined by comparing the number and total dollar amount of subcontract awards made to the identified protégé firm(s) during the two preceding fiscal years (if any) that are listed in application;

(b) An increase in the number and dollar value of contract and subcontract awards (including percentage of subcontract awards) to protégé firms since the date of the protégé's entry into the Program (under GSA contracts and contracts awarded by other Federal agencies);

(c) An increase in the number and dollar value of subcontracts awarded to a protégé firm by its mentor firm; and

(d) An increase in subcontracting with protégé firms in industry categories where they have not traditionally participated within the mentor firm's activity (*i.e.*, the protégé is expanding its field of expertise or is increasing its opportunities in areas where it has not traditionally performed).

(e) Assessments of the semi-annual reports submitted by the mentors and "Lessons Learned" evaluation submitted by the mentors and protégés to the GSA Mentor-Protégé Program Manager.

#### 519.7006 Mentor firms.

(a) Mentors must be:

(1) A large business prime contractor that is currently performing under an approved subcontracting plan as required by FAR 19.7 - Small business mentors are exempted; or

(2) A small business prime contractor that can provide developmental assistance to enhance the capabilities of protégés to perform as contractors, subcontractors, and suppliers;

(b) Must be eligible (not listed in the "Excluded Parties List System") for U.S. Government contracts and not excluded from the Mentor-Protégé Program under section 519.7014(b);

(c) Must be able to provide developmental assistance that will enhance the ability of protégés to perform as contractors and subcontractors; and

(d) Must provide semi-annual reports detailing the assistance provided and the cost incurred in supporting protégés.

**519.7007 Protégé firms.**

(a) For selection as a protégé, a firm must be:

(1) A small business concern, small disadvantaged business concern, veteran-owned small business concern, service-disabled veteran-owned small business concern, HUBZone small business concern, or women-owned small business concern;

(2) Small for the NAICS code the prime contractor/mentor assigns to the subcontract; and

(3) Eligible (not listed in the "Excluded Parties List System") for U.S. Government contracts and not excluded from the Mentor-Protégé Program under section 519.7014(b).

(b) A protégé firm may self-represent to a mentor firm that it meets the requirements set forth in paragraph (a) of this section. Mentors may check the Central Contractor Registration (CCR) at [www.ccr.gov](http://www.ccr.gov) to verify that the self-representation of the potential protégé meets the specified small business and socioeconomic category eligibility requirements (see FAR 19.703(b) and (d)). HUBZone and small disadvantaged business status eligibility and documentation requirements are determined according to 13 CFR Parts 124 and 126.

(c) A protégé firm must not have another formal, active mentor-protégé relationship under GSA's Mentor-Protégé Program but may have an active mentor-protégé relationship under another agency's program.

**519.7008 Selection of protégé firms.**

(a) Mentor firms will be solely responsible for selecting protégé firms. Mentors are encouraged to select from a broad base of small business concerns including small disadvantaged business concerns, women-owned small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, and HUBZone small business concerns. A protégé must be either a current subcontractor or a newly selected subcontractor for the prime contractor's GSA contract.

(b) Mentor firms may have more than one protégé. GSA reserves the right to limit the number of protégés participating under each mentor firm.

(c) The selection of protégé firms by mentor firms is not protestable, except for a protest regarding the size or eligibility status of an entity selected by a mentor to be a protégé. Such protests shall be handled in accordance with

FAR 19.703(b). The contracting officer shall notify the Office of Small Business Utilization (OSBU) of the protest.

**519.7009 Application process.**

(a) Prime contractors interested in becoming a mentor firm must apply in writing by submitting the GSA Form 3695 to the GSA Mentor-Protégé Program Manager, at GSA Office of Small Business Utilization (E), Washington, DC 20405. The Application shall include the Mentor-Protégé Agreement and will be evaluated for approval based on the extent to which the company plans to provide developmental assistance.

(b) The application must contain:

(1) A statement that the mentor firm is currently performing under at least one active approved subcontracting plan (small business exempted) and the firm is eligible, as of the date of Application, for the award of Federal contracts;

(2) The number of proposed protégé arrangements;

(3) Data on all current GSA contracts, and subcontracts including the contract/subcontract number(s), type of contract(s), period of performance (including options), contract/subcontract value(s) including options, technical program effort(s) (program title), name of GSA Project Manager or Contracting Officer's Representative (including contact information), name of contracting officer(s) and contact information, and awarding GSA installation;

(4) Data on total number and dollar value of subcontracts awarded under GSA prime contracts within the past 2 years and the number and dollar value of such subcontracts awarded to entities who are proposed protégés;

(5) Information on the proposed types of developmental assistance. For each proposed mentor-protégé relationship include information on the company's ability to provide developmental assistance to the identified protégé firm and how that assistance will potentially increase subcontracting opportunities for the protégé firm, including subcontracting opportunities in industry categories where these entities are not dominant in the company's current subcontractor base; and

(6) Agreement information as listed in 519.7010.

**519.7010 Agreement contents.**

The contents of the Agreement must contain:

(a) Names, addresses (including facsimile, e-mail, and homepage) and telephone numbers of mentor and protégé firms and the name, telephone number, and position title within both

firms of the person who will oversee the Agreement.

(b) An eligibility statement from the protégé stating that it is a small business, its primary NAICS code, and when applicable the type of small business (small disadvantaged business concern, HUBZone small business concern, women-owned small business concern, veteran-owned small business concern, or service-disabled veteran-owned small business concern).

(c) A description of the type of developmental assistance that will be provided by the mentor firm to the protégé firm (see 519.7012).

(d) Milestones for providing the identified developmental assistance.

(e) Factors to assess the protégé firm's developmental progress under the Program.

(f) The anticipated dollar value and type of subcontracts that may be awarded to the protégé firm consistent with the extent and nature of mentor firm's business, and the period of time over which they may be awarded.

(g) Program participation term: State the period of time over which the developmental assistance will be performed.

(h) *Mentor termination procedures:* Describe the procedures applicable to the mentor firm when notifying the Protégé firm, in writing and at least 30 days in advance, of the mentor firm's intent to voluntarily withdraw its participation in the Program, or to terminate the Agreement.

(i) *Protégé termination procedures:* Describe the procedures applicable to the protégé firm when notifying the mentor firm, in writing at least 30 days in advance, of the protégé firm's intent to terminate the Mentor-Protégé Agreement.

(j) Plan for accomplishing contract work should the Mentor-Protégé Agreement be terminated or a party excluded under 519.7014(b). The mentor's prime contract with GSA continues even if the Mentor-Protégé Agreement or the Mentor-Protégé Program is discontinued.

(k) The protégé must agree to provide input into the mentor firm's semi-annual reports (see 519.7015). The protégé must submit a "Lessons Learned" evaluation along with the mentor firm at the conclusion of the Mentor-Protégé agreement.

(l) Other terms and conditions as specified by the Mentor-Protégé Manager on a case-by-case basis.

**519.7011 Application review.**

(a) The Mentor-Protégé Program Manager will review the information specified in section 519.7009(b) and

519.7010 to establish the Mentor's and Protégé's eligibility and to ensure all necessary information is included. If the application relates to a specific contract, then the Mentor-Protégé Program Manager will consult with the applicable contracting officer regarding the adequacy of the proposed Agreement, as appropriate. The Mentor-Protégé Program Manager will complete its review no later than 30 days after receipt of the application. The contracting officer must provide feedback to the Program Manager no later than 10 days after receipt of the application.

(b) After the Mentor-Protégé Program Manager completes its review and provides written approval, the Mentor may execute the Agreement and implement the developmental assistance as provided under the Agreement. The Mentor-Protégé Program Manager will provide a copy of the Mentor-Protégé Agreement to the GSA contracting officer for any GSA contracts affected by the Agreement.

(c) The Agreement defines the relationship between the Mentor and the Protégé firms only. The Agreement itself does not create any privity of contract or contractual relationship between the Mentor and GSA nor the Protégé and GSA.

(d) If the Agreement is disapproved, the Mentor may provide additional information for reconsideration. The Mentor-Protégé Program Manager will complete the review of any supplemental information no later than 30 days after its receipt. Upon finding deficiencies that GSA considers correctable, the Mentor-Protégé Program Manager will notify the Mentor and Protégé and request correction of the deficiencies to be provided within 15 days.

#### **519.7012 Developmental assistance.**

The forms of developmental assistance a mentor can provide to a protégé include:

(a) Management guidance relating to—

- (1) Financial management;
- (2) Organizational management;
- (3) Overall business management/planning; and
- (4) Business development.

(b) Engineering and other technical assistance.

(c) Loans.

(d) Rent-free use of facilities and/or equipment.

(e) Temporary assignment of personnel to the protégé for purpose of training.

(f) Any other types of developmental assistance approved by the GSA Mentor-Protégé Program Manager.

#### **519.7013 Obligation.**

(a) The mentor or protégé may terminate the Agreement in accordance with 519.7010. The mentor will notify the Mentor-Protégé Program Manager and the contracting officer, in writing, at least 30 days in advance of the mentor firm's intent to voluntarily withdraw from the Program or to terminate the Agreement, or upon receipt of a protégé's notice to withdraw from the Program.

(b) Mentor and protégé firms will submit a "Lessons Learned" evaluation to the GSA Mentor-Protégé Program Manager at the conclusion or termination of each Mentor-Protégé Agreement or withdrawal from the Mentor-Protégé program.

#### **519.7014 Internal controls.**

(a) The GSA Mentor-Protégé Program Manager will manage the Program. Internal controls will be established by the Mentor-Protégé Program Manager to achieve the stated Program objectives (by serving as checks and balances against undesired actions or consequences) such as:

(1) Reviewing and evaluating mentor Applications for realism, validity and accuracy of provided information;

(2) Monitoring each Mentor-Protégé Agreement by reviewing semi-annual progress reports submitted by mentors and protégés on protégé development to measure protégé progress against the master plan contained in the approved Agreement;

(3) Monitoring milestones in the Agreement (see 519.7010); and

(4) Evaluating "Lessons Learned" submitted by the Mentor and the Protégé as required by section 519.7013 to improve the GSA Mentor-Protégé Program.

(b)(1) GSA has the authority to exclude mentor or protégé firms from participating in the GSA Program.

(2) GSA may rescind approval of an existing Mentor-Protégé Agreement if it determines that such action is in GSA's best interest. The rescission shall be in writing and sent to the Mentor and protégé after approval by the Director of OSBU. Rescission of an Agreement does not change the terms of any subcontract between the Mentor and the Protégé.

(3) Exclusion from the Program does not constitute a termination of the subcontract between the mentor and the protégé.

#### **519.7015 Reports.**

(a) Semi-annual reports shall be submitted by the mentor to the GSA Mentor-Protégé Program manager to include information as outlined in section 552.219-76(c).

(b) Protégés must agree to provide input into the mentor firm's semi-annual reports detailing the assistance provided and goals achieved since agreement inception. However, for cost reimbursable contracts, costs associated with the preparation of these reports are unallowable costs under these Government contracts and will not be reimbursed by the Government.

(c) The GSA contracting officer, or if applicable the technical program manager, shall include an assessment of the prime contractor's (mentor's) performance in the Mentor-Protégé Program in a quarterly "Strengths and Weaknesses" evaluation report. A copy of this assessment will be provided to the Mentor-Protégé Program Manager and to the mentor and protégé.

#### **519.7016 Program review.**

At the conclusion of each year in the Mentor-Protégé Program (anniversary date of the Mentor-Protégé Program), the prime contractor and protégé, as appropriate, will formally brief the GSA Mentor-Protégé Program Manager, the technical program manager, and the contracting officer regarding Mentor-Protégé Program accomplishments pertaining to the approved Agreement.

#### **519.7017 Contract clauses.**

(a) The contracting officer shall insert the clause at 552.219-75, GSA Mentor-Protégé Program, in all unrestricted solicitations (not set aside) and contracts that exceed the simplified acquisition threshold that offer subcontracting opportunities or in the case of a small business, that can offer developmental assistance to a small business protégé.

(b) The contracting officer shall insert the clause at 552.219-76, Mentor Requirements and Evaluation, in contracts anticipated to exceed the simplified acquisition threshold where the prime contractor has signed a Mentor-Protégé Agreement with GSA.

### **PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 4. Add sections 552.219-75 and 552.219-76 to read as follows:

#### **552.219-75 GSA Mentor-Protégé Program.**

As prescribed in 519.7017(a), insert the following clause:

GSA MENTOR-PROTÉGÉ PROGRAM  
((SEP 2009))

(a) Prime contractors, including small businesses, are encouraged to participate in the GSA Mentor-Protégé Program for the purpose of providing developmental assistance to eligible protégé entities to

enhance their capabilities and increase their participation in GSA contracts.

(b) The Program consists of:

(1) Mentor firms are large prime contractors with at least one active subcontracting plan, or that are eligible small businesses;

(2) Protégés are subcontractors to the prime contractor, and include small business concerns, small disadvantaged business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, and women-owned small business concerns meeting the qualifications specified in Subpart 519.70; and

(3) Mentor-protégé Applications and Agreements, approved by the Mentor-Protégé Program Manager in the GSA Office of Small Business Utilization (OSBU).

(c) *Mentor participation in the Program* means providing technical, managerial and financial assistance to aid protégés in developing requisite high-tech expertise and business systems to compete for and successfully perform GSA contracts and subcontracts.

(d) Contractors interested in participating in the Program are encouraged to read FAR Subpart 19.7 and to contact the GSA Office of Small Business Utilization (E), Washington, DC 20405, (202) 501-1021, for further information.

(End of clause)

#### 552.219-76 Mentor Requirements and Evaluation.

As prescribed in 519.7017(b), insert the following clause:

##### MENTOR REQUIREMENTS AND EVALUATION ((SEP 2009))

(a) The purpose of the GSA Mentor-Protégé Program is for a GSA prime contractor to provide developmental assistance to certain subcontractors qualifying as protégés. Eligible protégés include small business concerns, small disadvantaged business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, and women-owned small business concerns meeting the qualifications specified in section 519.7007. The Program requires an Application process and an Agreement between the mentor and the protégé. See GSAR Subpart 519.70 for more information.

(b) GSA will evaluate a GSA mentor's performance on the following factors:

(1) Specific actions taken by the contractor, during the evaluation period, to increase the participation of its protégé as a subcontractor and supplier;

(2) Specific actions taken by the contractor during this evaluation period to develop the technical and corporate administrative expertise of its protégé as defined in the Agreement;

(3) To what extent the protégé has met the developmental objectives in the Agreement; and

(4) To what extent the firm's participation in the Mentor-Protégé Program resulted in the protégé receiving competitive contract(s)

and subcontract(s) from private firms other than the mentor, and from agencies.

(c) Semi-annual reports shall be submitted by a GSA mentor to the GSA Mentor-Protégé Program Manager, GSA Office of Small Business Utilization (E), Washington, DC 20405. The reports must include information as outlined in paragraph (b) of this section. The semi-annual report may include a narrative describing the forms of developmental assistance a mentor provides to a protégé and any other types of permissible, mutually beneficial assistance.

(d) A GSA mentor will notify the GSA Mentor-Protégé Program Manager and the contracting officer, in writing, at least 30 days in advance of the mentor firm's intent to voluntarily withdraw from the GSA Program or terminate the Agreement, or upon receipt of a protégé's notice to withdraw from the Program.

(e) GSA mentor and protégé firms will submit a "Lessons Learned" evaluation to the GSA Mentor-Protégé Program Manager at the conclusion of the Mentor-Protégé Agreement. At the end of each year in the Mentor-Protégé Program, the mentor and protégé, as appropriate, will formally brief the GSA Mentor-Protégé Program manager, the technical program manager, and the contracting officer during a formal Program review regarding Program accomplishments as they pertain to the approved Agreement.

(f) GSA has the authority to exclude mentor or protégé firms from participating in the GSA Program. If GSA excludes a mentor or a protégé from the Program, the GSA Office of Small Business Utilization will deliver to the contractor a Notice specifying the reason for Program exclusion and the effective date. The exclusion from the Program does not constitute a termination of the subcontract between the mentor and the protégé. A plan for accomplishing the subcontract effort should the Agreement be terminated shall be submitted with the Agreement as required in section 519.7011(j).

(g) Subcontracts awarded to GSA protégé firms under this Program are exempt from competition requirements, notwithstanding FAR 52.244-5. However, price reasonableness should still be determined.

(End of clause)

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BILLING CODE 6820-61-S

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 501

[Docket No. NHTSA-2009-0146; Notice 1]

#### Delegations of Authority

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** This document amends NHTSA's delegations of authority. The

amendment effectuates an adjustment that will enable NHTSA to achieve its mission more effectively and efficiently.

**DATES:** *Effective Date:* The amendment is effective August 14, 2009.

**FOR FURTHER INFORMATION CONTACT:** You may contact Jessica Lang, Office of Chief Counsel, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590, by phone at 202-366-5263, or by fax at 202-366-3820.

**SUPPLEMENTARY INFORMATION:** This final rule amends the regulation on delegation of powers and duties within the National Highway Traffic Safety Administration (NHTSA). The amendment relates solely to the placement of the delegation of authority for a function within the agency. It increases the authority of the Chief Counsel to compromise civil penalties and monetary settlements. There is no substantive effect. Notice and the opportunity for comment are therefore not required under the Administrative Procedure Act. The amendment is effective immediately upon publication in the **Federal Register**. In addition, the amendment is not subject to Executive Order 12866, the Department of Transportation's regulatory policies and procedures, or the provisions for Congressional review of final rules in Chapter 8 of Title 5, United States Code.

#### List of Subjects in 49 CFR Part 501

Authorities, Delegations, Organization and functions, Succession to Administrator.

■ In consideration of the foregoing, 49 CFR part 501 is amended as follows:

#### PART 501—[AMENDED]

■ 1. The authority citation for part 501 continues to read as follows:

**Authority:** 49 U.S.C. secs. 105 and 322, delegation of authority at 49 CFR 1.50.

Amendment effective August 14, 2009.

■ 2. Section 501.8(d)(2) is revised to read as follows:

#### § 501.8 Delegations.

\* \* \* \* \*

(d) \* \* \*

(2) Establish the legal sufficiency of all investigations and enforcement actions conducted under the authority of the following chapters, including notes, of Title 49 of the United States Code: Chapter 301; chapter 323; chapter 325; chapter 327; chapter 329; and chapter 331; to make an initial penalty demand based on a violation of any of these chapters; and to compromise any civil penalty or monetary settlement in an amount of \$100,000 or less resulting