

(j) The contractor agrees to incorporate the substance of this clause in all subcontracts under this contract.

**Aman S. Djahanbani,**

Senior Procurement Executive, US Agency For International Development.

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## ENVIRONMENTAL PROTECTION AGENCY

### 48 CFR Part 1511

[EPA-HQ-OARM-2010-0273; FRL-9630-4]

#### EPAAR Prescription for Work Assignments

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

**ACTION:** Final rule.

**SUMMARY:** EPA will amend the EPA Acquisition Regulation (EPAAR) prescription for the work assignment clause. This final rule provides revised language to the prescription for the work assignment clause, incorporating prescriptive language that provides further instructions on the use of the related clause.

**DATES:** This final rule is effective February 29, 2012.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-OARM-2010-0273. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Office of Environmental (OEI) Information Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

**FOR FURTHER INFORMATION CONTACT:**

Donna S. Blanding, Policy, Training, and Oversight Division, Office of Acquisition Management (3802R), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington,

DC 20460; telephone number: 202-564-1130; fax number: 202-565-2475; email address: [blanding.donna@epa.gov](mailto:blanding.donna@epa.gov).

**SUPPLEMENTARY INFORMATION:**

#### I. General Information

##### A. Does this action apply to me?

Entities potentially affected by this action include firms that are performing or will perform under contract for the EPA. This includes firms in all industry groups.

#### II. Background

Recent contract file review activities revealed better guidance is needed for EPA Contracting Officers (COs) on the work plan and work assignment processes with regard to when a CO should provide the expected level of service needed to the contractor.

As a result, clarifying policy is being added to the prescription for 1511.011-74. Accordingly, the revised language incorporated into EPAAR prescription 1511.011-74 provides the EPA contracting officer with further instructions on the use of EPAAR clause 1552.211-74, when administering work assignments under Cost Reimbursable type term form contracts.

#### III. General Comments

One comment was received on June 6, 2011. The comment appears to be misplaced; it appears the commenter may have been attempting to address a different notice. The comment in reference to physician owned physical therapy practices is not relevant to this requirement. This rule focuses on the administration of work assignments under Cost Reimbursable contracts and not physical therapy practices. As a result, after in-depth review of this public comment, no changes will be made to this final rule.

#### IV. Final Rule

This rule amends the EPAAR to add policy to prescription 1511.011-74 for work assignments under clause 1552.211-74. The original prescription language generally states that the work assignment clause, 1552.211-74, shall be used when a Cost Reimbursable type term form contract with work assignments will be issued. This policy revision only adds additional instructive language. The new policy language contained under 1511.011-74, Work Assignments (Deviation), will serve to provide contracting officers with better guidance on issuing a work assignment. Therefore a revision will not be required to the related EPAAR clause, 1552.211-74 Work Assignments; as this change does not affect the

meaning of the clause. The revised language communicates to contract personnel and program staff that government cost-related estimates should not be provided to contractors prior to receiving the contractor's work plan (proposal); and how to address exceptions. The exceptions addressed in the policy involve circumstances where a contracting officer may need to be able to provide some of the expected level of service needed to the contractor prior to receipt of the work plan (proposal) due to the nature of the work.

#### V. Statutory and Executive Order Reviews

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

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and EO 13563 (76 FR 3821, January 21, 2011). Therefore, no review is required by the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).

##### B. Paperwork Reduction Act

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

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

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

For purposes of assessing the impact of today's final rule on small entities, "small entity" is defined as: (1) A small business that meets the definition of a small business found in the Small Business Act and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit

enterprise which is independently owned and operated and is not dominant in its field.

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

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

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

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

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

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by State and Local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Rather, this rule on work assignments only provides clarification to Contracting Officers when issuing level of effort estimates in a work assignment. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with EPA policy to

promote communications between EPA and State and local governments, EPA specifically solicited comments from State and local officials on this rule and no comments were received from State and local officials.

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

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This rule does not have tribal implications, as specified in Executive Order 13175. Rather, this rule on work assignments only provides clarification to Contracting Officers when issuing level of effort estimates in a work assignment. Thus, Executive Order 13175 does not apply to this action. EPA specifically solicited additional comment from tribal officials on this rule and no comments were received from tribal officials.

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

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

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

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

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

Section 12(d) (15 U.S.C 272 note) of NTTA, Public Law 104–113, directs EPA to use voluntary consensus standards in its regulatory activities, unless to do so would be inconsistent

with applicable law, or otherwise impractical. Voluntary consensus standards are technical standards (e.g. materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

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

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

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

#### *K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3).

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

#### **List of Subjects in 48 CFR Part 1511**

Environmental protection, Government procurement.

Dated: January 31, 2012.

**John R. Bashista,**

*Director, Office of Acquisition Management.*

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

#### **PART 1511—DESCRIBING AGENCY NEEDS**

■ 1. The authority citation for part 1511 continues to read as follows:

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

■ 2. Revise section 1511.011-74 to read as follows:

**1511.011-74 Work Assignments.**

(a) *Policy.* When issuing work assignments, the independent government cost estimate shall not be released to the contractor. In most cases the Contracting Officer (CO) should authorize the contractor to expend only the estimated labor hours necessary to develop the work plan and to initiate preliminary tasks which must be performed before work plan approval can be made. However, in cases where the uncertainties involved in the effort are of such a magnitude that there is no reasonable expectation that the contractor can estimate the level of effort required by the tasks, objectives, or outcomes of the requirement, the CO may provide a ceiling level of effort for the entire work assignment at the time of its issuance. In such cases, the specific uncertainties precluding reasonable estimation of the required level of effort on the contractor's part must be documented in the contract file.

(b) *Solicitation Provision.* The CO shall insert the contract clause at 1552.211.74, Work Assignments, in cost-reimbursement type term form contracts when work assignments are used. For Superfund contracts, except for contracts which require annual conflict of interest certificates (e.g. Site Specific contracts, the Contract Laboratory Program (CLP), and Sample Management Office (SMO) contracts), the CO shall use the clause with either Alternate I or Alternate II. Alternate I shall be used for contractors who have at least three (3) years of records that may be searched for certification purposes. Alternate II shall be used for contractors who do not have at least three (3) years of records that may be searched.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 101126521-0640-02]

**RIN 0648-XA987**

**Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area**

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

**ACTION:** Temporary rule; reallocation.

**SUMMARY:** NMFS is reallocating the projected unused amount of Pacific cod from vessels using jig gear to catcher vessels less than 60 feet (18.3 meters) length overall using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area. This action is necessary to allow the A season apportionment of the 2012 total allowable catch of Pacific cod to be harvested.

**DATES:** Effective February 8, 2012, through 2400 hrs, Alaska local time (A.l.t.), December 31, 2012.

**FOR FURTHER INFORMATION CONTACT:** Obren Davis, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the Bering Sea and Aleutian Islands (BSAI) according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season apportionment of the 2012 Pacific cod total allowable catch (TAC) specified for vessels using jig gear in the BSAI is 1,958 metric tons (mt) for the period 2400 hrs, A.l.t., January 1, 2012, through 1200 hrs, A.l.t., April 30, 2012, as established by the final 2011 and 2012 harvest specifications for groundfish in the BSAI (76 FR 11139, March 1, 2011) and inseason adjustment (76 FR 81875, December 29, 2011).

The Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that jig vessels will not be able to harvest 1,800 mt of the A season apportionment of the 2012 Pacific cod TAC allocated to those vessels under

§ 679.20(a)(7)(ii)(A)(1). Therefore, in accordance with § 679.20(a)(7)(iii)(A), NMFS apportionments from 1,800 mt of Pacific cod from the A season jig gear apportionment to catcher vessels less than 60 feet (18.3 meters(m)) length overall (LOA) using hook-and-line or pot gear.

The harvest specifications for Pacific cod included in the final 2012 harvest specifications for groundfish in the BSAI (76 FR 11139, March 1, 2011) and inseason adjustment (76 FR 81875, December 29, 2011) are revised as follows: 158 mt for vessels using jig gear to the A season apportionments and 6,445 mt to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear.

**Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of Pacific cod specified from jig vessels to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear. Since the fishery is currently open, it is important to immediately inform the industry as to the revised allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 8, 2012.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*