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ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1532 and 1552

[FRL-8179-6]

EPAAR Prescription and Clause—Simplified Acquisition Procedures Financing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revising the EPA Acquisition Regulation (EPAAR) Subparts 1532 and 1552 to implement a procedure for simplified acquisition procedures financing. This EPAAR revision adds a prescription and clause for contracting officers to use when approving advance or interim payments on simplified acquisitions. The prescription and clause apply to commercial item orders at or below the simplified acquisition threshold. This action revises the EPAAR, but does not impose any new requirements on Agency contractors. The procedure allows contractors to invoice for advance and interim payments in accordance with standard commercial practices when authorized by the contracting officer and identified in the clause payment schedule.

DATES: This final rule is effective on June 5, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-OARM-2006-0126. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, i.e., 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 <http://www.regulations.gov> or in hard copy at the OEI Docket, EPA/DC, EPA West, Room B102, 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: Tiffany Schermerhorn, Policy, Training

and Oversight Division, Office of Acquisition Management, Mail Code 3802R, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564-9902; fax number: (202) 565-2475; e-mail address: schermerhorn.tiffany@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

The EPAAR additions are necessary so that contracting officers may provide simplified acquisition procedures financing that is appropriate or customary in the commercial marketplace when purchasing commercial items at or below the simplified acquisition threshold. This rule does not impose any new requirements regarding submission of invoices or vouchers since Agency contractors currently submit invoices or vouchers for payment of orders. The EPAAR changes are consistent with the Federal Acquisition Regulation. No public comments were received in response to the proposed rule published on March 13, 2006. However, a minor revision to the proposed language has been made in response to an internal agency comment.

II. Statutory and Executive Order Reviews

A. Executive Order 12866

It has been determined that this rule is not a “significant regulatory action” under the terms of Executive Order 12866 and is therefore not subject to OMB review.

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.* This rule does not impose any new information collection or other requirements on Agency contractors.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (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 impacts of today’s rule on small entities, small entity is defined as: (1) A small business

as defined by the Small Business Administration’s (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today’s proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any new requirements 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. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising

small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus, today's 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 final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule.

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 final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, or on the relationship between the Federal government and Indian tribes, as specified in Executive Order 13175. The final rule amends acquisition regulations that are administrative and procedural in nature. Thus, Executive Order 13175 does not apply to this rule.

G. 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.

H. Executive Order 13211 (Energy Effects)

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.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the rulemaking 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. 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 rule 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). This rule will be effective on June 5, 2006.

List of Subjects in 48 CFR Parts 1532 and 1552

Government procurement.

Dated: May 24, 2006.

Judy S. Davis,

Director, Office of Acquisition Management.

■ For the reasons set forth in the Preamble, the Environmental Protection Agency amends Chapter 15 of Title 48 Code of Federal Regulations, parts 1532 and 1552 as set forth below:

■ 1. The authority citation for 48 CFR parts 1532 and 1552 continues to read as follows:

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

PART 1532—CONTRACT FINANCING

■ 2. Add 1532.003 to read as follows:

1532.003 Simplified acquisition procedures financing.

(a) *Scope.* This subpart provides for authorization of advance and interim payments on commercial item orders not exceeding the simplified acquisition threshold. Advance payments are payments that are made prior to performance. Interim payments are payments that are made during the order period according to a payment schedule.

(b) *Procedures for micropurchases.* Contracting officers may authorize advance and interim payments on orders for commercial items only at or below the micropurchase threshold.

(c) *Procedures for purchases exceeding micropurchase threshold.* Contracting officers must secure approval at one level above the contracting officer, on a case-by-case basis, for advance and interim payments on orders for commercial items exceeding the micropurchase threshold and not exceeding the simplified acquisition threshold. The contracting officer shall submit a recommendation

for approval of financing terms, along with the supporting rationale for the action, to one level above the contracting officer. Remote simplified acquisition contracting officers (SACO) without one level above contracting officers at their locations shall forward recommendations through their OAM Advisors to secure one level above approval.

(d) *Supporting rationale.* Regardless of dollar value, the contracting officer shall document the file with supporting rationale demonstrating that the purchase meets the conditions of FAR 32.202-1(b)(1), (3) and (4).

(e) *Administration.* Regardless of dollar value, the contracting officer is responsible for ensuring that supplies or services have been delivered. The contracting officer shall document the file with evidence of receipt of supplies

or services throughout the order period as appropriate to the acquisition.

(f) *Clause.* The contracting officer shall insert the clause at 1552.232-74, Payments—Simplified Acquisition Procedures Financing, in solicitations and orders that will provide simplified acquisition procedures financing.

PART 1552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Add 1552.232-74 to read as follows:

1552.232-74 Payments—Simplified Acquisition Procedures Financing.

As prescribed in 1532.003, insert the following clause in solicitations and orders that will provide simplified acquisition procedures financing.

Payments—Simplified Acquisition Procedures Financing (JUN 2006)

Simplified acquisition procedures financing in the form of _____ [contracting officer insert *advance* (prior to performance) and/or *interim* (according to payment schedule) payment(s)] will be provided under this commercial item order in accordance with the payment schedule below. If both advance and interim payments are to be made, the payment schedule shown below will specify the type of payment provided for each line item.

The Government shall pay the contractor as follows upon the submission of invoices or vouchers approved by the project officer:

_____ [insert payment schedule].

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