

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95-169, adopted March 15, 1996, and released March 26, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857-3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Maine, is amended by adding Channel 266B at Machias.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

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ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1516 and 1552

[FRL-5449-9]

Acquisition Regulation; Cost-Sharing Contracts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document adds coverage to the EPA Acquisition Regulation (EPAAR) on cost-sharing contracts. This rule is necessary to provide Contracting Officers guidance for awarding and administering cost-sharing contracts.

EFFECTIVE DATE: April 17, 1996.

FOR FURTHER INFORMATION CONTACT: Paul Schaffer at (202) 260-9032, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (Mail Code 3802F).

SUPPLEMENTARY INFORMATION:

A. Background

Cost-sharing applies only to contracts awarded by EPA in which the Government and contractor agree to share in the costs of a project. Cost-sharing is relevant when a contractor has the opportunity to acquire technology, expertise or other benefits which will enable the contractor to profit after contract completion. Generally, potential benefits to the contractor are less likely where basic research is involved and the extent of commercial application is unknown.

A proposed rule was published in the Federal Register for public comment on August 17, 1995 (60 FR 42828). No comments were received.

B. Executive Order 12866

This rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, no review is required at the Office of Information and Regulatory Affairs within OMB.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not propose any information collection requirements which would require the approval of OMB under 44 U.S.C. 3501, et seq.

D. Regulatory Flexibility Act

The EPA certifies this rule does not exert a significant economic impact on a substantial number of small entities. The rule primarily establishes EPA policies and internal procedures for awarding and administering cost sharing contracts. The contract clause will require small entities to maintain records for costs claimed as its cost share.

Most small entities should presently be compiling information in their accounting systems for all costs incurred under cost reimbursable contracts in order to monitor financial progress under a contract. Any adjustments to existing accounting systems should require only minimal cost and effort. The EPA certifies this rule will have no significant impact on small entities. Therefore, no regulatory flexibility analysis has been prepared.

E. Unfunded Mandates

This rule will not impose unfunded mandates on state or local entities, or others.

List of Subjects in 48 CFR Parts 1516 and 1552

Government procurement, Solicitation provisions and contract clauses.

For the reasons set out in the preamble, Chapter 15 of Title 48 Code of Federal Regulations is amended as set forth below:

1. The authority citation for Parts 1516 and 1552 continues to read as follows:

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

2. Section 1516.303 is added to read as follows:

1516.303 Cost-sharing contracts.

1516.303-71 Definition.

Cost-sharing is a generic term denoting any situation where the Government does not fully reimburse a contractor for all allowable costs necessary to accomplish the project under the contract. This term encompasses cost-matching and cost-limitations, in addition to cost-sharing. Cost-sharing does not include usual contractual limitations such as indirect cost ceilings in accordance with FAR 42.707, or ceilings on travel or other direct costs. Cost-sharing contracts may be required as a result of Congressional mandate.

1516.303-72 Policy.

(a) The Agency shall use cost-sharing contracts where the principal purpose is ultimate commercialization and utilization of technologies by the private sector. There should also be a reasonable expectation of future economic benefits for the contractor and the Government beyond the Government's contract.

(b) Cost-sharing may be accomplished by a contribution to either direct or indirect costs, provided such costs are reasonable, allocable and allowable in accordance with the cost principles of the contract. Allowable costs which are absorbed by the contractor as its share of contract costs may not be charged directly or indirectly to the Agency or the Federal Government.

(c) Unsolicited proposals will be considered on a case-by-case basis by the Contracting Officer as to the appropriateness of cost-sharing.

1516.303-73 Types of cost-sharing.

(a) Cost-sharing may be accomplished in various forms or combinations. These include, but are not limited to: cash outlays, real property or interest therein, personal property or services, cost matching, or other in-kind contributions.

(b) In-kind contributions represent non-cash contributions provided by the performing contractor which would normally be a charge against the contract. While in-kind contributions are an acceptable method of cost-sharing, should the booked costs of property appear unrealistic, the fair market value of the property shall be determined pursuant to 1516.303-74 of this chapter.

(c) In-kind contributions may be in the form of personal property (equipment or supplies) or services which are directly beneficial, specifically identifiable and necessary for the performance of the contract. In-kind contributions must meet all of the following criteria before acceptance.

- (1) Be verifiable from the contractor's books and records;
- (2) Not be included as contributions under any other Federal contract;
- (3) Be necessary to accomplish project objectives;
- (4) Provide for types of charges that would otherwise be allowable under applicable Federal cost principles appropriate to the contractor's organization; and
- (5) Not be paid for by the Federal Government under any contract, agreement or grant.

1516.303-74 Determining the Value of In-Kind Contributions.

In-kind contributions accepted from a contractor will be addressed on a case-by-case basis provided the established values do not exceed fair market values.

(a) Where the Agency receives title to donated land, building, equipment or supplies and the property is not fully consumed during performance of the contract, the Contracting Officer should establish the property's value based on the contractor's booked costs (i.e., acquisition cost less depreciation, if any) at the time of donation. If the booked costs reflect unrealistic values when compared to current market conditions, the Contracting Officer may establish another appropriate value if supported by an independent appraisal of the fair market value of the donated property or property in similar condition and circumstances.

(b) The Contracting Officer will monitor reports of in-kind costs as they are incurred or recognized during the contract period of performance to determine that the value of in-kind services does not exceed fair market values.

(c) The value of any services or the use of personal or real property donated by a contractor should be established when necessary in accordance with

generally accepted accounting policies and Federal cost principles.

1516.303-75 Amount of Cost-Sharing.

(a) Contractors should contribute a reasonable amount of the total project cost covered under the contract. The ratio of cost participation should correlate to the apparent advantages available to performers and the proximity of implementing commercialization, i.e., the higher the potential for future profits, the higher the contractor's share should be.

(b) Fee will not be paid to the contractor or any member of the contractor team (subcontractors and consultants) which has a substantial and direct interest in the contract, or is in a position to gain long term benefits from the contract. A vulnerability the Contracting Officer should consider in reviewing a prime contractor's request for consent to subcontract is whether subcontractors under prime cost-sharing contracts have a significant direct interest in the contract to gain long-term benefits from the contract.

(c) The Contracting Officer, with the input of technical experts, may consider the following factors in determining reasonable levels of cost sharing:

- (1) The availability of the technology to competitors;
- (2) Improvements in the contractor's market share position;
- (3) The time and risk necessary to achieve success;
- (4) If the results of the project involve patent rights which could be sold or licensed;
- (5) If the contractor has non-Federal sources of funds to include as cost participation; and
- (6) If the contractor has the production and other capabilities to capitalize the results of the project.

(d) A contractor's cost participation can be provided by other subcontractors with which it has contractual arrangements to perform the contract as long as the contractor's cost-sharing goal is met.

1516.303-76 Fee on cost-sharing contracts by subcontractors.

(a) Subcontractors under prime cost-sharing contracts who do not have a significant direct interest in the contract or who are not in a position to gain long-term benefits from the contract may earn a fee.

(b) Contracting Officers should be alert to a potential vulnerability for the Government under cost-sharing contracts when evaluating proposed subcontractors or consenting to a subcontract during contract administration, where the subcontractor is a wholly-owned subsidiary of the

prime. The vulnerability consists of the subsidiary earning a large amount of fee, which could be returned to the prime through stock dividends or other intercompany transactions. This could circumvent the objective of a cost-sharing contract.

1516.303-77 Administrative requirements.

(a) The initial Procurement Request shall reflect the total estimated cost of the cost-sharing contract. The face page of the contract award shall indicate the total estimated cost of the contract, the Contractor's share of the cost, and the Government's share of the cost.

(b) The manner of cost-sharing and how it is to be accomplished shall be set forth in the contract. Additionally, contracts which provide for cost-sharing shall require the contractor to maintain records adequate to reflect the nature and extent of their cost-sharing as well as those costs charged the Agency. Such records may be subject to an Agency audit.

3. Section 1516.307 is amended to add paragraph (c) to read as follows:

1516.307 Contract clauses.

* * * * *

(c) The Contracting Officer shall insert a clause substantially the same as 48 CFR 1552.216-75, Estimated Cost and Cost-Sharing, in solicitations and contracts where the total incurred costs are shared by the contractor on a straight percentage basis. The Contracting Officer may develop other clauses, as appropriate, following the same approach, but reflecting different cost-sharing arrangements negotiated on specific contract actions.

4. Subpart 1516.3 is amended by adding Section 1516.370 to read as follows:

1516.370 Solicitation provision.

The solicitation document shall state whether any cost-sharing is required, and may set forth a target level of cost-sharing. Although technical considerations are normally most important, the degree of cost-sharing may be considered in a selection decision when cost becomes a determinative factor in a selection decision.

5. Part 1552 is amended to add Section 1552.216-76 to read as follows:

1552.216-76 Estimated Cost and Cost-Sharing.

As prescribed in 1516.307(c), insert the following clause:

Estimated Cost and Cost-Sharing (Apr. 1996)

(a) The total estimated cost of performing the work under this contract is \$_____. The Contractor's share of this cost shall not

exceed \$_____. The Government's share of this cost shall not exceed \$_____.

(b) For performance of the work under the contract, the Contractor shall be reimbursed for not more than _____ percent of the cost of performance determined to be allowable under the Allowable Cost and Payment clause. The remaining balance of allowable cost shall constitute the Contractor's share.

(c) Fee shall not be paid to the prime contractor under this cost-sharing contract.

(d) The Contractor shall maintain records of all costs incurred and claimed for reimbursement as well as any other costs claimed as part of its cost share. Those records shall be subject to audit by the Government.

(e) Costs contributed by the Contractor shall not be charged to the Government under any other contract, grant or agreement (including allocation to other contracts as part of an independent research and development program) nor be included as contributions under any other Federal contract.

(End of Clause)

Dated: March 11, 1996.

Betty L. Bailey,

Director, Office of Acquisition Management.

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48 CFR Parts 1523 and 1552

[FRL-5448-6]

Acquisition Regulation; Energy-Efficient Computer Equipment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document adds coverage to the EPA Acquisition Regulation (EPAAR) on energy-efficient computer equipment. This final rule is necessary for ensuring that all purchases of microcomputers, including personal computers, monitors, and printers meet "EPA Energy Star" requirements for energy efficiency, unless exempted.

EFFECTIVE DATE: April 17, 1996.

FOR FURTHER INFORMATION CONTACT: Paul Schaffer at (202) 260-9032, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460 (Mail Code 3802F).

SUPPLEMENTARY INFORMATION:

A. Background

Executive Order 12845 (April 23, 1993) requires the Federal Government to purchase only microcomputers, including personal computers, monitors and printers, which meet "EPA Energy Star" requirements for energy efficiency.

A proposed rule was published in the Federal Register on July 25, 1995 (60 FR 37982). No public comments were received.

B. Executive Order 12866

This rule is not a significant regulatory action as defined in Executive Order 12866. Therefore no review is required at the Office of Information and Regulatory Affairs within OMB.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not propose any information collection requirements which would require the approval of OMB under 44 U.S.C. 3501, et seq.

D. Regulatory Flexibility Act

The EPA certifies this rule does not exert a significant economic impact on a substantial number of small entities. The rule establishes EPA policy for purchasing microcomputers, including personal computers, monitors, and printers which must meet "EPA Energy Star" requirements for energy efficiency. The "Energy Star Program" is a voluntary partnership effort with the computer industry, which includes small entities, to promote the introduction of energy-efficient personal computers, monitors, and printers which can reduce air pollution caused by utility power generation. The "Energy Star Program" has no barriers to entry for small entities to procure or develop the necessary technology or components to manufacture Energy Star compliant computers, monitors and printers. Therefore, no regulatory flexibility analysis has been prepared.

E. Unfunded Mandates

This rule will not impose unfunded mandates on state or local entities or others.

List of Subjects in 48 CFR Parts 1523 and 1552

Environmental Conservation, Environmental Safety, Government procurement, Solicitation provisions and contract clauses.

For the reasons set out in the preamble, Chapter 15 of Title 48 Code of Federal Regulations is amended as set forth below:

1. The authority citation for Parts 1523 and 1552 continues to read as follows:

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

1a. The heading for part 1523 is revised to read as follows:

PART 1523—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE.

2. Subpart 1523.70 is added to read as follows:

Subpart 1523.70—Energy-Efficient Computer Equipment

1523.7000 Background.

(a) Executive Order 12845 requires the Federal Government to purchase only microcomputers, including personal computers, monitors and printers, which meet "EPA Energy Star" requirements for energy efficiency. This equipment is often identified by the Energy Star™ logo and is capable of entering and recovering from an energy-efficient low power state.

(b) The EPA Energy Star Computer Program is a voluntary partnership effort with the computer industry to promote the introduction of energy-efficient personal computers, monitors, and printers which can reduce air pollution caused by utility power generation, and ease the burden on building air conditioning and electrical systems. The Energy Star Program is designed to be a self-certifying computer industry program, policed informally by the computer industry itself.

(c) FIRM Bulletin C-35 (dated 11/19/93) describes procedures that will promote the acquisition of energy-efficient microcomputers and associated computer equipment.

1523.7001 Policy.

(a) The "Energy Star" Executive Order (E.O. 12845) applies to the following equipment:

- (1) Personal Computers (stand-alone).
- (2) Personal Computers (end-user on network).

(3) Notebook and other portable computers.

(4) PC printers - laser, inkjet or dot matrix (stand-alone or networked).

(5) High-speed printers used on a PC network (less than approximately 20 pages per minute).

(6) Monitors (CRT or Flat-panel LCD).

(b) "Energy Star" requirements do not apply to the following equipment:

- (1) Workstations.
- (2) File servers.
- (3) Mainframe equipment.
- (4) Minicomputers.
- (5) High-speed printers used with mainframe computers (30 or more pages per minute).
- (6) Mainframe or "dumb" terminals.
- (7) X-terminals.
- (c) All new acquisitions for microcomputers, including personal computers, monitors, and printers, shall