



ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1506 and 1552

[EPA-HQ-OARM-2017-0281; FRL-9974-44-OARM]

Acquisition Regulation: Update to Clauses Pertaining to Release of Contractor Confidential Business Information, Submission of Invoices, and the “Authorized or Required by Statute” Exception for Other than Full and Open Competition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to amend the EPA Acquisition Regulation (EPAAR). The clause pertaining to “Release of Contractor Confidential Business” is updated to incorporate the existing class deviation and make a minor addition. The “Submission of Invoices” clause is revised to incorporate the existing class deviation and updated with minor administrative edits. The clause “Authorized or Required by Statute” is clarified regarding the applicability of written justification requirements for the exception for other than full and open competition.

DATES: This final rule is effective on **[insert date 90 days after date of publication in the Federal Register]** without further notice, unless EPA receives adverse comment by **[Insert date 30 days after date of publication in the Federal Register]**. If EPA receives adverse comment, we will publish a timely withdrawal in the Federal Register informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OARM-2017-0281, at <https://www.regulations.gov>. Follow the online instructions for submitting comments.

Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Holly Hubbell, Policy, Training, and Oversight Division, Acquisition Policy and Training Service Center (3802R), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: 202-564-1091; email address: *hubbell.holly@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

This direct final rule makes changes to the EPAAR, Federal Acquisition Regulation (FAR), 48 CFR parts 1506 and 1552. This rule includes the following content changes: (1) under EPAAR § 1506.302-5(b)(1), adds clarifying language that the Contracting Officer need not provide any written justification under FAR 8.405-6 or 13.501 for use of other than full and open competition when acquiring expert services under the authority of section 109(e) of the Superfund Amendments and Reauthorization Act of 1986 (SARA); (2) revises EPAAR § 1552.232-70 to add information on circumstances that may require obtaining subcontractor costs, makes minor

administrative changes, and incorporates invoice preparation instructions; and (3) revises EPAAR § 1552.235-79 to expand the possible circumstances where the EPA may release the Contractor's CBI.

II. General Information

A. *Why is EPA Using a Direct Final Rule?*

EPA is publishing this rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. If EPA receives adverse comment, we will publish a timely withdrawal in the Federal Register informing the public that the rule will not take effect. Any parties interested in commenting must do so at this time.

B. *Does this action apply to me?*

EPAAR §§ 1552.232-70 and 1552.235-79 apply to contractors who hold a cost-reimbursable contract with EPA. EPAAR §1506.302-5 applies to EPA contracting personnel providing for and imposing responsibilities when contracting under other than full and open competition.

C. *What Should I Consider as I Prepare My Comments for EPA?*

- Submitting CBI.* Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.
- Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
- Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

III. Background

EPAAR §1552.235-79-Release of Contractor Confidential Business Information, was promulgated in the Federal Register (61 FR 14267, April 1, 1996). A Determination and Findings (D&F) found that changes were required to this EPAAR section because complete cost information was vital to the Government's ability to recover federal funds expended for oil spill responses from the parties responsible for these spills. Consequently, a Class Deviation, signed on March 22, 2001 by Judy S. Davis, Acting Director, Office of Acquisition Management to this EPAAR section, was developed to allow EPA to release cost information from the Emergency and Rapid Response Services (ERRS) and Superfund Technical Assessment and Response Team

(START) contracts to federal agencies and other parties involved in oil spill cost recovery efforts. The rule incorporates the Class Deviation for EPAAR § 1552.235-79 into the EPAAR and makes other minor administrative updates.

EPAAR § 1552.232-70, Submission of Invoices, was promulgated in the Federal Register (61 FR 29317, June 10, 1996). The Class Deviation is also dated June 1996 and adds in Invoice Preparation Instructions for SF-1034. The rule incorporates the Class Deviation for EPAAR § 1552.232-70 into the EPAAR and makes other minor administrative updates.

EPAAR §1506.302-5, Authorized or Required by Statute, was promulgated in the Federal Register (53 FR 31872, Aug. 22, 1988). This current action clarifies the applicability of the requirement for written justification for the use of other than full and open competitive procedures when acquiring expert services under the authority of section 109(e) of Superfund Amendments and Reauthorization Act of 1986 (SARA). The FAR was amended on January 2, 1997, to include FAR 13.501 sole source justification requirements for simplified acquisitions under part 13, and again on June 18, 2004, to include FAR 8.405-6 limited source justification (LSJ) requirements for Federal Supply Service acquisitions under part 8. EPA never amended EPAAR § 1506.302-5 to account for the LSJ and sole source requirements of those FAR sections.

IV. Statutory and Executive Orders 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 therefore, not subject to review under the EO.

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 this rule on small entities, “small entity” is defined as: (1) a small business that meets the definition of a small business found in the Small Business Act and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. After considering the economic impacts of 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.

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.

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 final rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or 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 NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This final rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

Executive Order 12898 (59 FR 7629, February 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 final rulemaking 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, 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. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

List of Subjects in 48 CFR Parts 1506 and 1552

Environmental protection, Government procurement, Reporting and recordkeeping

requirements.

Dated: August 21, 2018.

Kimberly Patrick,

Director, Office of Acquisition Management.

For the reasons stated in the preamble, 48 CFR parts 1506 and 1552 are amended as set forth below:

PART 1506—COMPETITION REQUIREMENTS

1. The authority citation for part 1506 continues to read as follows:

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

2. Amend section 1506.302-5 by revising paragraph (b)(1) to read as follows:

1506.302-5 Authorized or required by statute.

(b) *Application.* (1) The contracting officer may use other than full and open competition to acquire the services of experts for use in preparing or prosecuting a civil or criminal action under SARA whether or not the expert is expected to testify at trial. The contracting officer need not provide any written justification (*e.g.*, under FAR 6.303, 8.405-6, or 13.501) for the use of other than full and open competitive procedures when acquiring expert services under the authority of section 109(e) of SARA. The contracting officer shall document the official contract file when using this authority.

PART 1552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. The authority citation for part 1552 continues to read as follows:

Authority: 5 U.S.C. 301 and 41 U.S.C. 418b

4. Revise section 1552.232-70 to read as follows:

1552.232-70 Submission of invoices.

As prescribed in 1532.908, insert the following clause:

SUBMISSION OF INVOICES (DEC 2018)

In order to be considered properly submitted, an invoice or request for contract financing payment must meet the following contract requirements in addition to the requirements of FAR 32.905:

(a) Unless otherwise specified in the contract, an invoice or request for contract financing payment shall be submitted to the following offices/individuals designated in the contract: one copy to the RTP Finance Center shown in Block 12 on the cover of the contract; one copy to the Contracting Officer's Representative (the Contracting Officer's Representative may direct a copy to a separate address); and one copy to the Contracting Officer.

(b) The Contractor shall prepare its invoice or request for contract financing payment on the prescribed Government forms. Standard Form 1034, Public Voucher for Purchases and Services other than Personal, shall be used by contractors to show the amount claimed for reimbursement. Standard Form 1035, Public Voucher for Purchases and Services other than Personal—Continuation Sheet, shall be used to furnish the necessary supporting detail or additional information required by the Contracting Officer. The Contractor may submit self-designed forms which contain the required information.

(c)(1) The Contractor shall prepare a contract level invoice or request for contract financing payment in accordance with the invoice preparation instructions. If contract work is authorized by an individual task order or delivery order (TO/DO), the invoice or request for contract financing payment shall also include a summary of the current and cumulative amounts claimed by cost element for each TO/DO and for the contract total, as well as any supporting data for each TO/DO as identified in the instructions.

(2) The invoice or request for contract financing payment shall include current and cumulative charges by major cost element such as direct labor, overhead, travel, equipment, and

other direct costs. For current costs, each major cost element shall include the appropriate supporting schedule identified in the invoice preparation instructions. Cumulative charges represent the net sum of current charges by cost element for the contract period.

(d)(1) The charges for subcontracts shall be further detailed in a supporting schedule showing the major cost elements for each subcontract.

(2) On a case-by-case basis, when needed to verify the reasonableness of subcontractor costs, the Contracting Officer may require that the contractor obtain from the subcontractor cost information in the detail set forth in paragraph (c)(2) of this section. This information should be obtained through a means which maintains subcontractor confidentiality (for example, via sealed envelopes), if the subcontractor expresses Confidential Business Information (CBI) concerns.

(e) Invoices or requests for contract financing payment must clearly indicate the period of performance for which payment is requested. Separate invoices or requests for contract financing payment are required for charges applicable to the base contract and each option period.

(f)(1) Notwithstanding the provisions of the clause of this contract at FAR 52.216-7, Allowable Cost and Payment, invoices or requests for contract financing payment shall be submitted once per month unless there has been a demonstrated need and Contracting Officer approval for more frequent billings. When submitted on a monthly basis, the period covered by invoices or requests for contractor financing payments shall be the same as the period for monthly progress reports required under this contract.

(2) If the Contracting Officer allows submissions more frequently than monthly, one submittal each month shall have the same ending period of performance as the monthly progress report.

(3) Where cumulative amounts on the monthly progress report differ from the aggregate

amounts claimed in the invoice(s) or request(s) for contract financing payments covering the same period, the contractor shall provide a reconciliation of the difference as part of the payment request.

(g) *EPA Invoice Preparation Instructions - SF 1034*. The information which a contractor is required to submit in its Standard Form 1034 is set forth as follows:

(1) *U.S. Department, Bureau, or establishment and location*—Insert the names and address of the servicing finance office, unless the contract specifically provides otherwise.

(2) *Date Voucher Prepared*—Insert date on which the public voucher is prepared and submitted.

(3) *Contract/Delivery Order Number and Date*—Insert the number and date of the contract and task order or delivery order, if applicable, under which reimbursement is claimed.

(4) *Requisition Number and Date*—Leave blank.

(5) *Voucher Number*—Insert the appropriate serial number of the voucher. A separate series of consecutive numbers, beginning with Number 1, shall be used by the contractor for each new contract. When an original voucher was submitted, but not paid in full because of suspended costs, resubmission vouchers should be submitted in a separate invoice showing the original voucher number and designated with the letter "R" as the last character of the number. If there is more than one resubmission, use the appropriate suffix (R2, R3, etc.) For an adjustment invoice, put invoice number #Adj. For a final invoice, put invoice number F. For a completion invoice, put invoice number #C.

(6) *Schedule Number; Paid By; Date Invoice Received*—Leave blank.

(7) *Discount Terms*—Enter terms of discount, if applicable.

(8) *Payee's Account Number*—This space may be used by the contractor to record the

account or job number(s) assigned to the contract or may be left blank.

(9) *Payee's Name and Address*—Show the name of the contractor exactly as it appears in the contract and its correct address, except when an assignment has been made by the contractor, or the right to receive payment has been restricted, as in the case of an advance account. When the right to receive payment is restricted, the type of information to be shown in this space shall be furnished by the Contracting Officer.

(10) *Shipped From; To; Weight Government B/L Number*—Insert for supply contracts.

(11) *Date of Delivery or Service*—Show the month, day and year, beginning and ending dates of incurrence of costs claimed for reimbursement. Adjustments to costs for prior periods should identify the period applicable to their incurrence, e.g., revised provisional or final indirect cost rates, award fee, etc.

(12) *Articles or Services*—Insert the following: "For detail, see Standard Form 1035 total amount claimed transferred from Page ___ of Standard Form 1035." Insert "COST REIMBURSABLE-PROVISIONAL PAYMENT" or "INDEFINITE QUANTITY/INDEFINITE DELIVERY-PROVISIONAL PAYMENT" on the Interim public vouchers. Insert "COST REIMBURSABLE-COMPLETION VOUCHER" or "INDEFINITE QUANTITY/INDEFINITE DELIVERY-COMPLETION VOUCHER" on the Completion public voucher. Insert "COST REIMBURSABLE-FINAL VOUCHER" or "INDEFINITE QUANTITY/INDEFINITE DELIVERY-FINAL VOUCHER" on the final public voucher. Insert the following certification, signed by an authorized official, on the face of the Standard Form 1034:

"I certify that all payments requested are for appropriate purposes and in accordance with the agreements set forth in the contract."

(Name of Official)

(Title)

(13) *Quantity; Unit Price*—Insert for supply contracts.

(14) *Amount*—Insert the amount claimed for the period indicated in paragraph (g)(11) of this clause.

(h) *EPA Invoice Preparation Instructions - SF 1035*. The information which a contractor is required to submit in its Standard Form 1035 is set forth as follows:

(1) *U.S. Department, Bureau, or Establishment*—Insert the name and address of the servicing finance office.

(2) *Voucher Number*—Insert the voucher number as shown on the Standard Form 1034.

(3) *Schedule Number*—Leave blank.

(4) *Sheet Number*—Insert the sheet number if more than one sheet is used in numerical sequence. Use as many sheets as necessary to show the information required.

(5) *Number and Date of Order*—Insert payee's name and address as in the Standard Form 1034.

(6) *Articles or Services*—Insert the contract number as in the Standard Form 1034.

(7) *Amount*—Insert the latest estimated cost, fee (fixed, base, or award, as applicable), total contract value, and amount and type of fee payable (as applicable).

(8) *A summary of claimed current and cumulative costs and fee by major cost element*—Include the rate(s) at which indirect costs are claimed and indicate the base of each by identifying the line of costs to which each is applied. The rates invoiced should be as specified in the contract or by a rate agreement negotiated by EPA's Cost and Rate Negotiation Team.

(9) *Fee*—The fee shall be determined in accordance with instructions appearing in the

contract.

Note to paragraph (h)—Amounts claimed on vouchers must be based on records maintained by the contractor to show by major cost element the amounts claimed for reimbursement for each applicable contract. The records must be maintained based on the contractor's fiscal year and should include reconciliations of any differences between the costs incurred and amounts claimed for reimbursement. A memorandum record reconciling the total indirect cost(s) claimed should also be maintained.

(i) *Supporting Schedules for Cost Reimbursement Contracts.* The following backup information is required as an attachment to the invoice as shown by category of cost:

(1) *Direct Labor*—Identify the number of hours (by contractor labor category and total) and the total loaded direct labor hours billed for the period in the invoice.

(2) *Indirect Cost Rates*—Identify by cost center, the indirect cost rate, the period, and the cost base to which it is applied.

(3) *Subcontracts*—Identify the major cost elements for each subcontract.

(4) *Other Direct Costs*—When the cost for an individual cost (e.g., photocopying, material and supplies, telephone usage) exceeds \$1,000 per the invoice period, provide a detailed explanation for that cost category.

(5) *Contractor Acquired Equipment (if authorized by the contract)*—Identify by item the quantities, unit prices, and total dollars billed.

(6) *Contractor Acquired Software (if authorized by the contract)*—Identify by item the quantities, unit prices, and total dollars billed.

(7) *Travel*—When travel costs exceed \$2,000 per invoice period, identify by trip, the number of travelers, the duration of travel, the point of origin, destination, purpose of trip,

transportation by unit price, per diem rates on daily basis and total dollars billed. Detailed reporting is not required for local travel. The manner of breakdown, e.g., task order/delivery order basis with/without separate program management, contract period will be specified in the contract instructions.

Note to paragraph (i)—Any costs requiring advance consent by the Contracting Officer will be considered improper and will be suspended, if claimed prior to receipt of Contracting Officer consent. Include the total cost claimed for the current and cumulative-to-date periods. After the total amount claimed, provide summary dollar amounts of cumulative costs:

1. Suspended as of the date of the invoice; and
2. Disallowed on the contract as of the date of the invoice.

The amount shall include costs originally suspended and later disallowed. Also include an explanation of the changes in cumulative costs suspended or disallowed by addressing each adjustment in terms of: voucher number, date, dollar amount, source, and reason for the adjustment. Disallowed costs should be identified in unallowable accounts in the contractor's accounting system.

(j) *Supporting Schedules for Time and Materials Contracts.* The following backup information is required as an attachment to the invoice as shown by category of cost:

(1) *Direct Labor*—Identify the number of hours (by contractor labor category and total) and the total direct labor hours billed for the period of the invoice.

(2) *Subcontracts*—Identify the major cost elements for each subcontract.

(3) *Other Direct Costs*—When the cost for an individual cost (e.g., photocopying, material and supplies, telephone usage) exceeds \$1,000 per the invoice period, provide a detailed explanation for that cost category

(4) *Indirect Cost Rates*—Identify by cost center, the indirect cost rate, the period, and the cost base to which it is applied.

(5) *Contractor Acquired Equipment*—Identify by item the quantities, unit prices, and total dollars billed.

(6) *Contractor Acquired Software*—Identify by item the quantities, unit prices, and total dollars billed.

(7) *Travel*—When travel costs exceed \$2,000 per invoice period, identify by trip, the number of travelers, the duration of travel, the point of origin, destination, purpose of trip, transportation by unit price, per diem rates on daily basis and total dollars billed. Detailed reporting is not required for local travel. The manner of breakdown, e.g., task order/delivery order basis with/without separate program management, contract period will be specified in the contract instructions.

Note to paragraph (j)—Any costs requiring advance consent by the Contracting Officer will be considered improper and will be suspended, if claimed prior to receipt of Contracting Officer consent. Include the total cost claimed for the current and cumulative-to-date periods. After the total amount claimed, provide summary dollar amounts of cumulative costs:

1. Suspended as of the date of the invoice; and
2. Disallowed on the contract as of the date of the invoice.

The amount shall include costs originally suspended and later disallowed. Also include an explanation of the changes in cumulative costs suspended or disallowed by addressing each adjustment in terms of: voucher number, date, dollar amount, source, and reason for the adjustment. Disallowed costs should be identified in unallowable accounts in the contractor's accounting system.

(k) *Resubmissions*. When an original voucher was submitted, but not paid in full because of suspended costs and after receipt of a letter of removal of suspension, resubmissions of any previously claimed amounts which were suspended should be submitted in a separate invoice showing the original voucher number and designated with the letter "R" with the copy of the removal of suspension notice. The amounts should be shown under the appropriate cost category and include all appropriate supplemental schedules.

Note to paragraph (k)—All disallowances must be identified as such in the accounting system through journal entries.

(l) *Adjustment Vouchers*. Adjustment vouchers should be submitted if finalized indirect rates were received but the rates are not for the entire period of performance. For example, the base period of performance is for a calendar year but your indirect rates are by fiscal year. Hence, only part of the base period can be adjusted for the applicable final indirect rates. These invoices should be annotated with “adj” after the invoice number.

(m) *Final Vouchers*. Final Vouchers shall be submitted if finalized rates have been received for the entire period of performance. For example, the base period of performance is for a calendar year but your indirect rates are by fiscal year. You have received finalized rates for the entire base period that encompass both fiscal years that cover the base period. In accordance with FAR 52.216-7, these invoices shall be submitted within 60 days after settlement of final indirect cost rates. They should be annotated with the word “Final” or “F” after the invoice number. Due to system limitations, the invoice number cannot be more than 11 characters to include spaces.

(n) *Completion Vouchers*. In accordance with FAR 52.216-7 (d)(5), a completion voucher shall be submitted within 120 days (or longer if approved in writing by the Contracting Officer) after settlement of the final annual indirect cost rates for all years of a physically complete contract.

The voucher shall reflect the settled amounts and rates. It shall include settled subcontract amounts and rates. The prime contractor is responsible for settling subcontractor amounts and rates included in the completion invoice. Since EPA's invoices must be on a period of performance basis, the contractor shall have a completion invoice for each year of the period of performance. This voucher must be submitted to the Contracting Officer for review and approval before final payment can be made on the contract. The Contracting Officer may request an audit of the completion vouchers before final payment is made. In addition, once approved, the Contracting Officer will request the appropriate closeout paperwork for the contract. For contracts separately invoiced by delivery or task order, provide a schedule showing final total costs claimed by delivery or task order and in total for the contract. In addition to the completion voucher, the contractor must submit the Contractor's Release; Assignee's Release, if applicable; the Contractor's Assignment of Refunds, Rebates, Credits and other Amounts; the Assignee's Assignment of Refunds, Rebates, Credits and other Amounts, if applicable; and the Contractor's Affidavit of Waiver of Lien, when required by the contract.

ALTERNATE I (DEC 2018).

If used in a non-commercial time and materials type contract, substitute the following paragraphs (c)(1) and (2) for paragraphs (c)(1) and (2) of the basic clause:

(c)(1) The Contractor shall prepare a contract level invoice or request for contract financing payment in accordance with the invoice preparation instructions. If contract work is authorized by individual task order or delivery order (TO/DO), the invoice or request for contract financing payment shall also include a summary of the current and cumulative amounts claimed by cost element for each TO/DO and for the contract total, as well as any supporting data for each TO/DO as identified in the instructions.

(2) The invoice or request for contract financing payment that employs a fixed rate feature shall include current and cumulative charges by contract labor category and by other major cost elements such as travel, equipment, and other direct costs. For current costs, each cost element shall include the appropriate supporting schedules identified in the invoice preparation instructions.

(End of clause)

5. Revise section 1552.235-79 to read as follows:

1552.235-79 Release of contractor confidential business information.

As prescribed in 1535.007-70(f), insert the following clause:

RELEASE OF CONTRACTOR CONFIDENTIAL BUSINESS INFORMATION (DEC 2018).

(a) The Environmental Protection Agency (EPA) may find it necessary to release information submitted by the Contractor either in response to this solicitation or pursuant to the provisions of this contract, to individuals not employed by EPA. Business information that is ordinarily entitled to confidential treatment under existing EPA regulations (40 CFR part 2) may be included in the information released to these individuals. Accordingly, by submission of this proposal or signature on this contract or other contracts, the Contractor hereby consents to a limited release of its confidential business information (CBI). An EPA contractor may assert a business confidentiality claim covering part or all of the information submitted by the contractor in a manner that is consistent with 40 CFR 2.203(b). If no such CBI claim accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to the EPA contractor, pursuant to 40 CFR 2.203(a), and will not require the additional measures set forth in this section.

(b) Possible circumstances where the EPA may release the Contractor's CBI include, but

are not limited to the following:

(1) To EPA contractors and other federal agencies and their contractors tasked with recovery, or assisting the Agency in the recovery, of Federal funds expended pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607, as amended, (CERCLA or Superfund) and/or Sec. 311(c) of the Clean Water Act (CWA), as amended by the Oil Pollution Act of 1990 (OPA) (33 U.S.C. 1321(c));

(2) To the U.S. Department of Justice (DOJ) and contractors employed by DOJ for use in advising the EPA and representing the EPA or other federal agencies in procedures for the recovery of Superfund expenditures and costs and damages to be deposited to the Oil Spill Liability Trust Fund (OSLTF);

(3) To the U.S. Department of the Treasury and contractors employed by that department for use in collecting costs to be deposited to the Superfund or the OSLTF;

(4) To parties liable, or potentially liable, for costs under CERCLA Sec. 107 (42 U.S.C. 9607), OPA Sec. 1002 (33 U.S.C. 2702), or CWA Sec. 311 (33 U.S.C. 1321) and their insurers or guarantors ('Potentially Responsible Parties') for purposes of facilitating collection, settlement or litigation of claims against such parties;

(5) To EPA contractors who, for purposes of performing the work required under the respective contracts, require access to information that the Agency obtained under the Clean Air Act (42 U.S.C. 7401 *et seq.*); the CWA (33 U.S.C.1251 *et seq.*); the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*); the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*); the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*); the Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*); CERCLA (42 U.S.C. 9601 *et seq.*); or the OPA (33 U.S.C. 2701 *et seq.*);

(6) To EPA contractors tasked with assisting the Agency in handling and processing information and documents in the administration of Agency contracts, such as providing both preaward and post award audit support and specialized technical support to the Agency's technical evaluation panels;

(7) To employees of grantees working at EPA under the Senior Environmental Employment (SEE) Program;

(8) To Speaker of the House, President of the Senate, or Chairman of a Congressional Committee or Subcommittee;

(9) To entities such as the United States Government Accountability Office, boards of contract appeals, and the Courts in the resolution of solicitation or contract protests and disputes;

(10) To EPA contractor employees engaged in information systems analysis, development, operation, and maintenance, including performing data processing and management functions for the EPA; and

(11) Pursuant to a court order or court-supervised agreement.

(c) The EPA recognizes an obligation to protect the contractor from competitive harm that may result from the release of such information to a competitor. (See also the clauses in this document entitled "Screening Business Information for Claims of Confidentiality" and "Treatment of Confidential Business Information.") Except where otherwise provided by law, CBI shall be released under paragraphs (b)(1), (2), (3), (4), (5), (6), (7) or (10) of this clause only pursuant to a confidentiality agreement.

(d) With respect to EPA contractors, EPAAR § 1552.235-71 will be used as the confidentiality agreement. With respect to contractors for other federal agencies, EPA will expect these agencies to enter into similar confidentiality agreements with their contractors. With

respect to Potentially Responsible Parties, such confidentiality agreements may permit further disclosure to other entities where necessary to further settlement or litigation of claims under CERCLA, the CWA, or the OPA. Such entities include, but are not limited to, accounting firms and technical experts able to analyze the information, provided that they also agree to be bound by an appropriate confidentiality agreement.

(e) This clause does not authorize the EPA to release the Contractor's CBI to the public pursuant to a request filed under the Freedom of Information Act.

(f) The Contractor agrees to include this clause, including this paragraph (f), in all subcontracts at all levels awarded pursuant to this contract that require the furnishing of confidential business information by the subcontractor.

(End of clause)

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