

service assessment rate. This will help prevent consumers or classes of consumers from being charged excessively for a carrier's universal service contribution. Such a rule will help prevent consumers or classes of consumers from being charged excessively for a carrier's universal service contributions. Some carriers may attempt to exercise market power and recover through universal service charges in a non-competitive fashion more than they are contributing to universal service, believing that they can describe those charges as mandated by the Commission or federal action. We are also concerned that some carriers may be allocating a disproportionate share of universal service costs to certain classes of consumers. Such practices might contravene § 201(b) of the Act. As noted above, consumers may be less likely to engage in comparative shopping for a carrier if they are led to believe that certain charges are fixed by the Commission or federal government.

## *2. Characterization of Universal Service Charges to Consumers*

60. We believe that a carrier's billing and collection practices for communications services are subject to regulation as common carrier services under Title II of the Act. We believe that inaccurately identifying or describing charges on bills that recover universal service contributions may violate § 201(b) of the Act. For instance, it is important for consumers to understand that universal service support has long been implicit in the rates for various intrastate and interstate telecommunications services. We therefore recommend that the Commission take decisive action to ensure that consumers are not misled as to the nature of charges on bills identified as recovering universal service contributions. Specifically, we recommend that the Commission consider prohibiting carriers from identifying as a "tax" or as mandated by the Commission or federal government any charges to consumers used to recover universal service contributions. Similarly, we recommend that the Commission consider prohibiting carriers from incorrectly describing as mandatory or federally-approved any universal service line items on bills. This restriction would include both written descriptions of the charges and any oral descriptions from consumer service representatives as well as placement on the bill. While interstate telecommunications providers are required to contribute to the universal service support mechanisms, they are

not required to impose such charges on consumer bills.

61. Cognizant of the First Amendment implications in regulating the manner in which carriers may convey information on consumers' bills, we note that the Supreme Court has held that the government may require a commercial message to "appear in such a form, or include such additional information, warnings, and disclaimers, as are necessary to prevent its being deceptive." On the other hand, restrictions on speech that ban truthful, non-misleading commercial speech about a lawful product cannot withstand scrutiny under the First Amendment. We believe that, pursuant to these Supreme Court rulings, it would not violate the First Amendment to specifically prohibit carriers from including on their bills untruthful or misleading statements regarding the nature of line items used to recover universal service contributions. We urge that the Commission carefully review the record in its proceeding before reaching any conclusion on these issues.

62. We also recommend that the Commission continue to explore, through its Truth-In-Billing proceeding, the possibility of establishing standard nomenclature that carriers could use on their bills to consumers regarding universal service charges. Such standardized language would represent the Commission's view of language that is accurate and not misleading. Standard nomenclature could benefit consumers by having common language across carriers so that consumers can easily identify the charge. We urge that the Commission consider using "Federal Carrier Universal Service Contribution" as standard nomenclature describing any universal service line item on consumer bills. The line item should be accompanied by an explanation that the carrier has chosen to separate its universal service contribution from its other costs of business, and to display the contribution as a line item on the consumer's bill.

63. Finally, we note that many state regulatory agencies either have in place or are considering establishing requirements that will curtail the practice of some carriers of mischaracterizing universal service line items on bills. In addition, other federal agencies, such as the Federal Trade Commission, may have jurisdiction that overlaps or is concurrent with that of the Commission or state regulatory agencies. We therefore recommend that the Commission work closely with these agencies to ensure that consumers are provided with complete and accurate

information regarding the nature of universal service line items.

## **X. Periodic Review**

64. The Act contemplates that universal service is an "evolving" level of service. The Act further contemplates that the Joint Board may periodically make recommendations to the Commission regarding modifications in the definition of services supported by the federal universal service support mechanism. Moreover, we recognize that the telecommunications industry is rapidly changing and that both competition and technological changes will affect universal service needs in rural, insular, and high cost areas of the nation. We therefore recommend that the Commission continue to consult with this Joint Board on matters addressed in this *Second Recommended Decision*. We also recommend that the Joint Board and the Commission broadly reexamine its high cost universal service mechanism no later than three years from July 1, 1999.

## **XI. Recommending Clauses**

65. For the reasons discussed herein, this Federal-State Joint Board, pursuant to § 254(a)(1) and § 410(c) of the Communications Act of 1934, as amended, 47 U.S.C. 254(a)(1) and 410(c), recommends that the Federal Communications Commission adopt the proposals described above relating to high cost universal service support mechanisms for non-rural carriers.

## **List of Subjects**

### *47 CFR Part 36*

Reporting and recordkeeping requirements, Telephone.

### *47 CFR Part 54*

Universal service.

Federal Communications Commission.

**Magalie Roman Salas,**  
*Secretary.*

[FR Doc. 98-32736 Filed 12-8-98; 8:45 am]

BILLING CODE 6712-01-P

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## **ENVIRONMENTAL PROTECTION AGENCY**

### **48 CFR Parts 1526 and 1552**

[FRL-6196-6]

### **Acquisition Regulation: Contractor Proposal Evaluations**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule with request for comments.

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**SUMMARY:** The Environmental Protection Agency (EPA) is amending the EPA Acquisition Regulation (EPAAR) to include new regulations on Socioeconomic Programs, and to amend regulations regarding Solicitation Provisions and Contract Clauses. These amendments will allow contractors to receive technical points in the proposal evaluation process for their ability to utilize local employment and training while performing under EPA contracts. The use of the solicitation provision and contract clause will assist in decreasing the unemployment rate and support economic development (i.e., provide training to local employees) in geographical locations where contractual requirements will be performed.

**DATES:** Comments should be submitted not later than February 8, 1999.

**ADDRESSES:** Written comments should be submitted to the contact listed below at the following address: U.S. Environmental Protection Agency, Office of Acquisition Management (3802R), 401 M Street, SW, Washington, D.C. 20460. Comments will also be accepted on disks in WordPerfect 6.1 format or by electronic mail (E-mail) to smith.frances@epamail.epa.gov. E-mail comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. No Confidential Business Information (CBI) should be submitted through E-mail.

**FOR FURTHER INFORMATION CONTACT:** Frances Smith, U.S. Environmental Protection Agency, Office of Acquisition Management, (3802R), 401 M Street, SW, Washington, D.C. 20460, Telephone: (202) 564-4368.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The EPA Office of Small and Disadvantaged Business Utilization initiated an effort to encourage local hiring and training in EPA Superfund contracts. The overall objective of the OSDBU initiative was to support economic development in areas where EPA contracts would be performed. As such, this proposed rule is intended to assist in decreasing the unemployment rate and providing training to local employees in geographical locations of contractor performance regarding any type of procurement above the simplified acquisition threshold (\$100,000). The Agency has determined that competing offerors may be evaluated on the extent to which they employ and train citizens residing in the communities serviced by EPA contracts. Offerors may be evaluated in such a

manner provided that the employment and training preference is based on geography.

The Department of Justice (DOJ) has recognized preferences based on geography as legitimate race-neutral alternatives to achieve agencies' contracting goals. The DOJ indicated that race-neutral alternatives may include preferences based on wealth, income, education, family, and geography. EPA is hereby establishing a preference based solely on geography (i.e., location of contract performance).

**B. Executive Order 12866**

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866; therefore, no review is required by the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because this proposed rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Comments regarding Paperwork Reduction Act concerns should be sent to OMB (Attn: EPA Desk Officer). OMB is required to make a decision concerning the collection of information contained in the proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to EPA on this proposed rule.

**D. Regulatory Flexibility Act**

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), whenever EPA is required to publish notice of general rulemaking, EPA must prepare an initial regulatory flexibility analysis (IRFA) describing the economic impact of the proposal on small entities, unless the Agency certifies that a proposed rule will not have a "significant economic impact on a substantial number of small entities." As defined in RFA/SBREFA, small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. After consideration of the economic impacts of today's proposed rule on small entities, the Agency certifies that the proposed rule will not have a significant

economic impact on a substantial number of small entities.

Because it is anticipated that the proposed preference for local employment and training contemplated herein will be used primarily in the Agency's Superfund contracts, an impact on a substantial number of small entities is not expected. Historically, the Agency's Superfund contracts have been large enough in scope where small business participation at the prime contractor level has not been substantial. Furthermore, if there was any economic impact, it would not be significant. Any evaluation credit given to an offeror competing for an Agency contract for its proposed local employment and training would not be significant in comparison to other evaluation criteria used in determining the awardee of the contract.

The monthly status report identified in this proposed rule is a deliverable requirement. This deliverable requires contractors to specifically track the following throughout the duration of the contract: the number of local residents employed, the labor category for each local employee, the number of hours each local employee worked, the labor rate for each local employee, the date each local employee received specific training, the amount of training hours each local employee received, the start date for each local employee, and the date and reason for termination of employment by the contractor or local employee.

**E. Unfunded Mandates**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess their regulatory actions on State, local, and tribal governments, and the private sector. This proposed rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in aggregate, or the private sector in one year. The rule is not subject to the requirements of sections 202 and 205 of the UMRA.

**F. 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 E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions on environmental health or safety risks.

#### **List of Subjects in 48 CFR Parts 1526 and 1552**

Environmental protection,  
Government procurement.

Therefore, 48 CFR Chapter 15 is proposed to be amended as set forth below:

#### **SUBCHAPTER D—[AMENDED]**

1. Part 1526, Other Socioeconomic Programs, is added to Subchapter D of the EPAAR as follows:

#### **PART 1526—OTHER SOCIOECONOMIC PROGRAMS**

##### **Subpart 1526.1—Preference for Local Employment and Training**

1526.100 Scope of subpart.

1526.101 Definitions.

1526.102 Policy.

1526.103 Solicitation provision and contract clause.

1526.103-1 Solicitation provision.

1526.103-2 Contract clause.

**Authority:** Sec. 205(c), 63 stat. 390, as amended.

##### **Subpart 1526.1—Preference for local employment and training.**

##### **1526.100 Scope of subpart.**

This subpart provides a preference for prime contractors to employ, hire, and train local employees in geographical locations where contractual requirements will be performed. This preference is intended to assist in decreasing the unemployment rate and to provide training to local employees in geographical locations of contract performance. Offerors will receive technical points in the proposal evaluation process for their ability to employ and train citizens in the geographical location of contract performance.

##### **1526.101 Definitions.**

*Local employment*, as used in this subpart, refers to employment and new hiring of people who reside in the geographical location where contractual requirements will be performed.

*Geographical location*, as used in this subpart, refers to the state and county where contractual requirements will be performed.

*Training*, as used in this subpart, refers to skilled-based instructions provided to local residents (local employees) to perform specified contractual requirements.

##### **1526.102 Policy.**

(a) The preference to use local employment and training as an evaluation factor for award is optional in EPA acquisitions. Contracting officers may include the solicitation provision at 1552.226-70 and the contract clause at 1552.226-71 in solicitations and contracts to encourage contractors to employ, hire, and train local residents.

(b) Contracting officers, in consultation with the project officer, shall define the specific geographical location boundaries for local employment and training in each solicitation and contract. The designated geographical location must coincide with the "area type" indicator used to identify the unemployment rate for the geographical location (see paragraph (e) of this section). Offerors must ensure that employees reside within the stated geographical location boundaries throughout the duration of the contract.

(c) The Bureau of Labor Statistics shall be used to verify unemployment statistics in geographical areas. Contracting officers, in consultation with project officers, shall compare the National unemployment rate with the unemployment rate in the designated geographical area where contract performance will take place.

(1) If the unemployment rate in the designated geographical area is equivalent to or exceeds the National unemployment rate, this clause should be used to support economic development in that particular geographical area.

(2) If the unemployment rate in the designated geographical area is less than the National unemployment rate, this clause may also be used if deemed appropriate by the contracting officer. The contracting officer shall document the contract file with rationale to support use of this clause when the unemployment rate in the designated geographical area is less than the National unemployment rate.

(d) The contracting officer and the project officer may obtain the National unemployment rate by use of the Internet website as follows:

(1) <http://stats.bls.gov/blshome.htm>

(2) Click "Economy at a Glance"

(3) Review the "unemployment rate" pertaining to the most current month in which the solicitation will be issued.

(e) The contracting officer and the project officer shall verify the Bureau of

Labor Statistics for unemployment rates in designated geographical areas by use of the Internet website as follows:

(1) <http://stats.bls.gov/blshome.htm>

(2) Click "Data"

(3) Click "Selective Access"

(4) Scroll down and click on "Local Area Unemployment Statistics"

(i) Check "not seasonally adjusted" and click "next form"

(ii) Select "unemployment rate" and click "next form"

(iii) Choose the "area type" that corresponds with the designated geographical location

(iv) Select the most current year, format "2. Table", "HTML Tables: Yes", "Catalog: Yes", "Delimiter: Space", and click retrieve data.

(f) Compare the National unemployment rate to the unemployment rate pertaining to the most current month in which the solicitation will be issued.

(g) The contractor's current employees who reside in the designated geographical area may be included toward the achievement of technical evaluation points when this clause is used.

(h) All local employees must provide proof of residency to the contractor (i.e., copy of employee's driver's license or confirm address on W-2 Form).

##### **1526.103 Solicitation provisions and contract clause.**

##### **1526.103-1 Solicitation provision.**

Contracting officers shall include the provision at 1552.226-70 in solicitations when the technical evaluation criteria will include technical points pertaining to the contractor's ability to employ, hire, and train local residents in the geographical location of contract performance.

##### **1526.103-2 Contract clause.**

Contracting officers shall include the contract clause at 1552.226-71 in contracts to require the contractor to deliver monthly status reports on local employment and training.

#### **PART 1552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

2. The authority citation for Part 1552 continues to read as follows:

**Authority:** The provisions of this regulation are issued under 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended.

3. Part 1552 is amended by adding 1552.226-70 and 1552.226-71 as follows:

**1552.226-70 Preference for local employment and training certification.**

As prescribed in 1526.103-1, insert the following provision in solicitations when applicable.

**Preference for Local Employment and Training Certification (Dec 19XX)**

(a) The offeror hereby certifies that local employment and training [ ] will [ ] will not be used in the geographical location where contractual requirements will be performed.

(b) The offeror hereby certifies that procedures for local employment and training [ ] are [ ] are not stated in the offeror's proposal, and [ ] will [ ] will not be utilized in the event that the offeror is awarded this contract.

(c) The offeror [ ] has [ ] has not specified the labor category, labor hours, labor rate, and the amount of training hours for local employment in the offeror's proposal.

(d) The offeror [ ] is [ ] is not aware that the technical evaluation criteria concerning this award will include technical points for the offeror's ability to utilize local employment and training.  
(End of provision)

**1552.226-71 Preference for local employment and training.**

As prescribed in 1526.103-2, insert the following clause in contracts when applicable.

**Local Employment and Training (Dec 19XX)**

(a) The contractor shall employ and train \_\_\_ [contracting officer insert # of people] local residents in performance of this contract. A total of \_\_\_ [contracting officer insert # of people] local residents must be employed and trained throughout the duration of this contract.

(b) Upon employing local residents, the contractor shall ensure that each local resident receives training associated with the required contractual performance.

(c) The contractor shall deliver monthly status reports consisting of the number of local residents employed, the labor category for each local employee, the number of hours each local employee worked, the labor rate for each local employee, the date each local employee received specific training, the amount of training hours each local employee received, the start date for each local employee, and the date and reason for termination of employment by the contractor or local employee.

(d) The contractor shall deliver the information identified in paragraph (c) of this clause, to the contracting officer and project officer as part of the standard monthly report specified in this contract.

(End of clause)

Dated: November 17, 1998.

**Betty L. Bailey,**

*Director, Office of Acquisition Management.*  
[FR Doc. 98-32683 Filed 12-8-98; 8:45 am]

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