

# CHAPTER 15—ENVIRONMENTAL PROTECTION AGENCY

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## PART 15-1—GENERAL

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**AUTHORITY:** The provisions of this Part 15-1 issued under sec. 205(c), 63 Stat. 377, as amended; 40 U.S.C. 486(c).

**§ 15-1.000 Scope of part.**

(a) The Federal Procurement Regulations System brings together, in Title 41 of the Code of Federal Regulations, the procurement regulations applicable to the civilian agencies of the Government. This part establishes a system of Environmental Protection Agency (EPA) regulations (EPPR) for the codification and publication of policies and procedures of EPA which implement and supplement the Federal Procurement Regulations (FPR).

(b) It is the basic policy of EPA to apply Federal Procurement Regulations. Thus, as to most elements of the procurement process, substantive guidelines will be found by reference thereto. FPR is published as Chapter 1 of this Title 41. EPPR will be published as Chapter 15 of the same title.

[36 F.R. 7506, Apr. 21, 1971]

**Subpart 15-1.0—Regulation System**

**SOURCE:** The provisions of this Subpart 15-1.0 appear at 36 F.R. 7506, Apr. 21, 1971, unless otherwise noted.

**§ 15-1.001 Scope of subpart.**

This subpart establishes EPA Procurement Regulations (EPPR) and states their relationship to FPR.

**§ 15-1.002 Purpose.**

This subpart establishes for EPA uniform policies and procedures related to the procurement of personal property and nonpersonal services (including construction) and real property by lease.

**§ 15-1.003 Authority.**

EPPR are prescribed by the Administrator under the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, or other authority specifically cited.

**§ 15-1.004 Applicability.**

EPPR apply to all offices in EPA to the extent indicated unless otherwise provided by law. EPPR apply to procurements made within and outside the United States unless otherwise specified.

**§ 15-1.006 Issuance.**

**§ 15-1.006-1 Code arrangement.**

EPPR are issued in the Code of Federal Regulations as Chapter 15 of Title 41, Public Contracts and Property Management.

**§ 15-1.006-2 Publication.**

All EPPR material deemed necessary for the general public to understand basic and significant EPPR procurement policies and procedures will be published in the FEDERAL REGISTER and in separate looseleaf form in a distinctive light blue color.

**§ 15-1.007 Arrangement.**

**§ 15-1.007-1 General.**

The general plan, numbering system, and nomenclature used in EPPR conform to the FEDERAL REGISTER standards approved for FPR.

**§ 15-1.007-2 Numbering.**

For ease in identification, the numbering system and part, subpart, and section titles used in EPPR generally conform with those used in FPR.

**§ 15-1.007-3 Citation.**

EPPR may be cited as indicated below. This section when referred to, should be cited as "EPPR 15-1.007-3." When referred to formally in official documents such as legal briefs, the section should be cited as "41 CFR 15-1.007-3."

**§ 15-1.008 Agency implementation.**

EPPR will implement, supplement, or deviate from the FPR when a procedure different than indicated in FPR is required. Implementing material expands upon or indicates the manner of compliance with related FPR. Supplementing material has no counterpart in FPR. Deviating material is defined in § 1-1.009 of this title. Where EPPR does not implement, supplement, or deviate from the FPR, the latter shall be applicable as issued. Deviations from FPR and EPPR will be processed in accordance with § 15-1.009-2 prior to publication.

**§ 15-1.009 Deviation.**

**§ 15-1.009-2 Procedure.**

Deviations from FPR and EPPR shall be kept to a minimum and controlled as follows:

(a) Deviations in both individual cases and classes of cases must be approved in advance by the Deputy Assistant Admin-

istrator for Administration. Requests for approval of such deviations shall be submitted through the Director of Contracts Management to the Deputy Assistant Administrator for Administration. The requests shall cite the specific part of FPR or EPPR from which it is desired to deviate, shall set forth the nature of the deviations, and shall give the reasons for the action requested.

**Subpart 15-1.3—General Policies**

**§ 15-1.318 Disputes clause.**

[36 F.R. 20947, Nov. 2, 1971]

**§ 15-1.318-1 Contracting officer's decision under a disputes clause.**

(a) *Action prior to issuance of a final decision.* (1) In resolving a dispute, the contracting officer must understand that the Environmental Protection Agency (EPA) does not seek litigation as an end in itself. The contracting officer should consider the advisability of attempting to mediate the dispute or hear out the contractor through discussion meetings or other means. The contracting officer is required to effect the prompt determination of disputes arising out of the performance of contracts. He is required to give his personal and independent consideration to the making of each determination or decision with the aid of such technical and legal advice as may be necessary. He must not base his decision on summary advice from members of his legal, technical, and administrative team, since the decision must be the result of the independent judgment and discretion of the contracting officer. He must obtain and study all the facts which bear upon the issue before him. He must insist that his advisors in technical areas give him concrete advice on how to decide and present him with a detailed, understandable statement of the reasoning process by which they arrive at their conclusions.

(2) When a dispute cannot be resolved by agreement, the contracting officer should prepare a final decision on the matter in dispute. The decision should include the allegations made by the contractor, the specific findings of fact which form the basis for the decision, and a terminal paragraph substantially as prescribed in FPR 1-1.318-1. The contracting officer should insure that the contract file includes the following information:

(i) The complete contract including all amendments, supplemental agree-

ments and change orders, pertinent plans, specifications and drawings, and all pertinent preaward papers;

(ii) All correspondence and memoranda, and minutes of meetings or telephone conversations pertinent to the dispute;

(iii) The names and addresses of all persons, including contractor personnel, if known, having information concerning the facts in dispute;

(3) Any additional information or advice which the contracting officer considered in forming his decision, including such items as interoffice memoranda, sample photographs, and inspection, audit and financial reports.

(b) *Issuance of final decision.* (1) The finality of a final decision under FPR 1-1.318-1 depends upon the contracting officer's compliance with the regulations. If a TWX is used, it should be a complete final decision containing the terminal paragraph substantially as prescribed by FPR 1-1.318-1. The final decision should be promptly mailed to the contractor by certified mail, return receipt requested.

(2) Since the Board's jurisdiction of an appeal depends upon contractor's mailing or otherwise furnishing a notice of appeal within 30 days following receipt by the contractor of the final decision, the contracting officer shall preserve proof of the date of contractor's receipt of the final decision and of the date of mailing, furnishing or filing of the notice of appeal. Thus, the contracting officer should preserve the return receipt covering the final decision, and the post-marked envelope in which the notice of appeal was received, and if the notice was furnished in some way other than mailing, the contracting officer should endorse on the document the date of receipt.

(c) *Prohibition of preliminary final decisions.* Contracting officers and their duly authorized representatives are cautioned against the practice of using "preliminary final decisions," when the proper course is a final decision by the contracting officer. "Preliminary final decisions" generally act in favor of the contractor and give him valuable time in which to study the Government position and to develop rebuttals. A final decision by the contracting officer obligates the contractor to decide within 30 days whether he will appeal. This is the prudent and prompt method of disposal of claims and potential disputes. Final decisions may be made only by authorized

contracting officers; other personnel, unless expressly authorized, may not increase or decrease the contractual obligations of the contractor or of the Government.

(d) *Use of Interior Board of Contract Appeals.* Pursuant to an interagency agreement (EPA-IAG-0002(R)) between the EPA and the Department of the Interior Board of Contract Appeals (IBCA), the IBCA will hear appeals from final decisions of EPA contracting officers issued pursuant to the disputes clause in EPA contracts. The rules and regulations of the IBCA appear in 43 CFR Part 4.

(e) *Action upon receipt of notice of appeal.* (1) When a notice of appeal in any form has been received by the contracting officer, he shall endorse thereon the date of mailing (or the date of receipt if the notice was otherwise conveyed) and within 5 days shall forward said notice of appeal to the IBCA by certified mail. The notice will be accompanied by a letter of transmittal stating the financial codes to be used by the Department of the Interior in billing EPA for services of the IBCA. At the same time, he shall telephonically notify the Assistant General Counsel, Grants and Procurement, that the appeal has been received so that Government counsel may be appointed.

(2) Notice of appeal, whether filed within the time prescribed by the "Disputes" clause or not, will be submitted to the IBCA. The contracting officer will forward promptly every notice of appeal to IBCA even if the intention to appeal is only vaguely or indirectly expressed, and regardless of the form of the notice, or of the method by which the notice was furnished to the contracting officer.

(3) Copies of the notice of appeal will be sent simultaneously to the Contracts Policy and Review Branch, Contracts Management Division and to the Assistant General Counsel, Grants and Procurement.

(f) *Duties of the contracting officer—appeal file.* (1) Following receipt of a notice of appeal, or advice that an appeal has been filed, the contracting officer shall promptly compile the appeal file (copies of all documents pertinent to the appeal), and three duplicate appeal files. The file shall include the following:

(i) The findings of fact and the decision from which the appeal is taken, and the letter or letters or other documents of claim in response to which the decision was issued;

(ii) The contract, and pertinent plans, specifications, amendments, and change orders;

(iii) Correspondence between the parties and other data pertinent to the appeal;

(iv) Transcripts of any testimony taken during the course of proceedings and affidavits, or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board;

(v) Such additional information as may be considered material.

(2) In addition to the above, the contracting officer will prepare an index listing each document included in the file submitted to the IBCA, and place copies of such index in the submission and duplicate files.

(3) Contracting Officers, in making the submission, may not submit original documents which are a part of the official contract file. Copies of the pertinent documents will be submitted.

(4) Within 15 days of receipt or advice of a notice of appeal the official and two duplicate files will be forwarded through the Contracts Management Division to the Assistant General Counsel, Grants and Procurement, who will review the file and will forward the official appeal file to the IBCA within the 35-day time limitation set forth in 43 CFR 4.103(b). One duplicate file will be retained by the contracting officer, one by the Contracts Management Division, and one by the Assistant General Counsel.

(5) If for any reason the contracting officer anticipates that he cannot make a timely submission, he will immediately advise the Assistant General Counsel, Grants and Procurement by telephone of the extent of the anticipated delay and the reasons therefor. However, every effort will be exerted to make timely submissions.

(6) At the time of transmittal of the appeal file to the Board, the Assistant General Counsel, Grants and Procurement, shall notify the appellant of the transmittal, provide him with a listing of its contents, and afford him an opportunity to examine the file at the office of the contracting officer, at the office of the IBCA, or at some other suitable EPA office, for the purpose of satisfying himself as to the contents, and furnishing or suggesting any additional documentation deemed pertinent to the appeal. With his transmittal to the IBCA, the Assistant General Counsel, Grants and Pro-

curement, shall certify that the appellant has been provided with the above-described listing.

(g) *Relations with Government counsel.* Contracting officers are reminded that they must cooperate fully with the Government Counsel assigned to handle the case before the Board. The Government Counsel is the contracting officer's lawyer. It is especially important to advise Counsel of all pertinent evidence regardless of the effect it may have on the Government's case. No trial lawyer can be very effective if he learns of an embarrassing fact from his adversary during the hearing before the Board.

(h) *Implementation—Adverse board decisions.* Pursuant to Comptroller General Decision B-125096, September 9, 1963 (43 Comp. Gen. 231), contract modifications or releases given by the Government resulting from contract appeal board decisions adverse to the Government's position shall include the following provision:

"*Provided, however,* That this instrument is not binding if the decision of the Interior Board of Contract Appeals, on which it is based, is later found to be in violation of the standards set forth in the Wunderlich Act (41 U.S.C. 321)."

[36 F.R. 20947, Nov. 2, 1971]

### Subpart 15-1.6—Debarred, Suspended, and Ineligible Bidders

SOURCE: The provisions of this Subpart 15-1.6 appear at 36 F.R. 24003, Dec. 17, 1971, unless otherwise noted.

#### § 15-1.600 Scope of subpart.

This subpart prescribes the Environmental Protection Agency (EPA) policy and procedures for establishment, use, maintenance, and distribution of a debarred, suspended, and ineligible bidders list, for debarring or suspending bidders for cause.

#### § 15-1.602 Establishment, maintenance, and distribution of a list of concerns or individuals debarred, suspended, or declared ineligible.

(a) The Director, Contracts Management Division, is responsible for establishment and maintenance of a master consolidated list or file of firms and individuals who are administratively or legally debarred or suspended from EPA contracting and subcontracting and from whom bids and proposals will not be solicited as provided in FPR 1-1.603. This list will be known as the EPA Debarred,

Suspended, or Declared Ineligible Bidders List.

(b) Collectively, the following documents shall constitute the EPA list:

(1) Consolidated list of current administrative debarments, suspensions, or ineligibles by executive agencies, and periodic supplements thereto, compiled and published by the Office of Compliance, General Services Administration (GSA). This publication is a combined list of such actions taken, including the basis therefor, from notifications furnished GSA by the Department of Defense and executive agencies and distributed to all executive agencies.

(2) Consolidated list of persons or firms against whom action has been taken for violations under public contracts concerning labor standard provisions, and periodic supplements thereto, compiled by the Comptroller General of the United States (GAO).

(3) Consolidated list of concerns and individuals debarred, suspended, or declared ineligible by the Environmental Protection Agency to participate in its procurement program under one or more of the bases set forth in FPR 1-1.602-1 and in accordance with this regulation.

(c) The Director, Contracts Management Division, will effect direct distribution of the consolidated and interim GSA, GAO, and EPA lists to authorized personnel. The list shall not be disclosed to the public.

#### § 15-1.602-1 Bases for entry on the debarred, suspended, and ineligible list.

(a) The Deputy Assistant Administrator for Administration makes the administrative determinations prescribed by FPR 1-1.602-1 (d), (f), and (g).

(b) The Director, Office of Equal Opportunity, directs that action prescribed by FPR 1-1.602-1(e).

#### § 15-1.603 Treatment to be accorded firms or individuals in debarred, suspended, or ineligible status.

The Deputy Assistant Administrator for Administration makes the determinations required by FPR 1-1.603 (a), (d), and (f).

#### § 15-1.604 Causes and conditions applicable to determinations of debarment.

Determination to debar or take other action concerning a firm or individual for a cause or condition for a specified period of time as provided in FPR

1-1.604 shall be made by the Deputy Assistant Administrator for Administration. Whenever cause for debarment becomes known to any contracting officer, the matter shall be submitted, with recommendations of the Director, Contracts Management Division, to the Deputy Assistant Administrator for Administration for appropriate action. The documented file of the case will be included in the submission.

**§ 15-1.604-1 Procedural requirements relating to the imposition of debarment.**

(a) *Hearings.* Hearings requested in connection with debarment proceedings shall be conducted before the Deputy Assistant Administrator for Administration, or his designee. An opportunity shall be afforded to the firm or individual to appear with witnesses and counsel, to present facts or circumstances showing cause why such firm or individual should not be debarred. If the firm or individual elects not to appear, the reviewing authority will make the decision based on the facts on record and such additional evidence as may be furnished by the parties involved. After consideration of the facts, the reviewing authority shall notify the firm or individual of the final decision.

**§ 15-1.605 Suspension of bidders.**

**§ 15-1.605-1 Causes and conditions under which EPA may suspend contractors.**

Any contracting officer may recommend suspension of bidders for the causes and conditions set forth in FPR 1-1.605-1. These recommendations shall be accompanied by the documented file in the case and be submitted through the Director, Contracts Management Division, to the Deputy Assistant Administrator for Administration for determination.

**§ 15-1.605-2 Notice of suspension.**

The Director, Contracts Management Division, or his designee is responsible for preparing the notification to bidders of suspension as required by FPR 1-1.605-4. The notification will be prepared for the signature of the Deputy Assistant Administrator for Administration.

**§ 15-1.606 Agency procedures.**

The Director, Contracts Management Division, is responsible for complying with the provisions of FPR 1-1.606.

**Subpart 15-1.7—Small Business Concerns**

**SOURCE:** The provisions of this Subpart 15-1.7 appear at 36 F.R. 14187, July 31, 1971, unless otherwise noted.

**§ 15-1.704 Agency program direction and operation.**

**§ 15-1.704-1 Small business assistance officer.**

The Administrator will designate an official as the Agency's small business assistance officer. The small business assistance officer will be responsible, either on a full-time basis or as a collateral duty, for the establishment, implementation, and execution of the small business program. He will be the central point of contact for inquiries concerning the small business program from industry, the Small Business Administration (SBA), the Congress, the Office of the Administrator, Environmental Protection Agency, and others. His duties shall include developing a plan of operation to increase the share of contracts awarded to small business by Environmental Protection Agency.

**§ 15-1.704-2 Small business specialist.**

(a) Each chief of Contract Operations shall appoint by name and in writing a small business specialist for each procurement office over which he exercises control, to perform the duties set forth in this section on either a full-time or part-time basis. Only individuals possessing the necessary business acumen, knowledge of the Environmental Protection Agency's procurement policies and procedures, and training and background to accomplish effectively the objective of the small business program shall be considered for appointment. In any instance where the appointee's duty as small business specialist is to be a part-time basis, the appointment shall clearly indicate that the part-time nature of the assignment shall in no way relieve the individual from full responsibility for effectively accomplishing the activity's small business program requirements.

(b) The small business specialist appointed pursuant to paragraph (a) of this section shall perform such of the following duties as are appropriate for his procurement office:

(1) Maintain a program designed to locate capable small business sources for current and future procurements;

(2) Coordinate inquiries and requests for advice from small business concerns on procurement matters;

(3) Review proposed solicitations for supplies and services, assure that small business concerns will be afforded an equitable opportunity to compete, and, as appropriate, initiate recommendations for small business set-asides;

(4) Take action to assure the availability of adequate specifications and drawings, when necessary, to obtain small business participation in a procurement;

(5) Review proposed procurements for possible breakout of items suitable for procurement from small business concerns;

(6) Advise small business concerns with respect to the financial assistance available under existing laws and regulations and assist such concerns in applying for financial assistance;

(7) Participate in determinations concerning the responsibility of a prospective small business contractor;

(8) Participate in the evaluation of a prime contractor's small business subcontracting programs;

(9) Assure that adequate records are maintained, and accurate reports prepared, concerning small business participation in the procurement program;

(10) Make available to SBA copies of solicitations, when so requested; and

(11) Act as liaison between the contracting officer and the appropriate SBA office in connection with set-asides, certificates of competency, size classification, and any other matter in which the small business program may be involved.

**§ 15-1.706-50 Procurement set-asides for small business when an SBA representative is not available.**

**§ 15-1.706-50-1 General.**

If no SBA representative is available, the small business specialist shall initiate recommendations to the contracting officer for small business set-asides with respect to individual procurements or classes of procurements or portions thereof.

**§ 15-1.706-50-2 Review of set-aside recommendations initiated by small business specialist.**

When a small business specialist has recommended that all, or a portion, of an individual procurement or class of procurements be set aside for small business, the contracting officer shall promptly

either (a) concur in the recommendation or (b) disapprove the recommendation, stating in writing his reasons for disapproval. If the contracting officer disapproves the recommendation of a small business specialist, the small business specialist may appeal to the appropriate chief of Contract Operations, whose decision shall be final.

**§ 15-1.706-50-3 Withdrawal or modification of set-asides.**

Withdrawal or modification of an individual or class set-aside which was originally established upon the recommendation of the small business specialist may be proposed by the contracting officer by giving notice, containing the reason for the proposed withdrawal or modification, to the small business specialist. If the small business specialist does not agree to a withdrawal or modification, he may appeal to the appropriate chief of Contract Operations, whose decision shall be final.

**§ 15-1.706-50-4 Small business set-aside for proposed construction procurement.**

(a) Each proposed procurement for construction estimated to cost between \$2,000 and \$500,000 shall be set aside for exclusive small business participation. Such set-asides shall be considered to be unilateral small business set-asides, and shall be withdrawn, in accordance with the procedure of FPR 1-1.705-3 and § 15-1.706-50-3, only if found not to serve the best interest of the Government.

(b) Small business set-aside preferences for construction procurements in excess of \$500,000 shall be considered on a case-by-case basis.

**Subpart 15-1.51—Novation Agreements and Change of Name Agreements**

SOURCE: The provisions of this Subpart 15-1.51 appear at 36 F.R. 8447, May 6, 1971, unless otherwise noted.

**§ 15-1.5100 Scope of subpart.**

This subpart prescribes the policy and procedures for (a) recognition of a successor in interest to Government contracts when such interests are acquired incidental to a transfer of all the assets of a contractor or the part of his assets involved in the performance of the contracts, (b) a change of name of a contractor, and (c) single activity execu-

tion of novation agreements affecting more than one activity.

#### § 15-1.5101 Definition.

For the purposes of this subpart, the following definition applies. A novation agreement is a contractual amendment by which the Government recognizes a successor in interest to a Government contract or a change of name of a contractor. The successor in interest assumes all the obligations under the contract and the transferor, when still in existence, guarantees the performance of the contract by the transferee. Where only a change of name is made the rights and obligations of the parties remain unaffected.

#### § 15-1.5102 Agreement to recognize a successor in interest.

(a) The transfer of a Government contract is prohibited by law (41 U.S.C. 15). However, the Government may recognize a third party as the successor in interest to a Government contract when the third party's interest is incidental to the transfer of all the assets of the contractor, or all of that part of the contractor's assets involved in the performance of the contract. Examples include, but are not limited to:

- (1) Sale of such assets;
- (2) Transfer of such assets pursuant to merger or consolidation of corporations; and
- (3) Incorporation of a proprietorship or partnership;
- (4) The principal party or parties to a contract transfer to another institution and the Government wishes to recognize the new institution as the successor in interest.

(b) When it is consistent with the Government's interest to recognize a successor in interest to a Government contract, the designated activity shall execute an agreement with the transferor and the transferee, which shall ordinarily provide in part that:

- (1) The transferee assumes all the transferor's obligations under the contract;
- (2) The transferor waives all rights under the contract as against the Government;
- (3) The transferor guarantees performance of the contract by the transferee (a satisfactory performance bond from either the transferor or the trans-

feree may be accepted in lieu of such guarantee); and

(4) Nothing in the agreement shall relieve the transferor or the transferee from compliance with any Federal law.

The agreement shall have the concurrence of legal counsel, prior to execution. A format for such an agreement for use when the transferor and transferee are corporations, and all the assets of the transferor are transferred, is set forth in § 15-1.5105. This format may be adapted to fit specific cases and may be used as a guide in preparing similar agreements for use in other situations.

(c) Prior to the execution of such agreement, one copy of each of the following, as applicable, shall be deposited by the contractor with the designated procuring activity:

(1) A properly authenticated copy of the instrument by which the transfer of assets was effected, as, for example, a bill of sale, certificate of merger, indenture of transfer, or decree of court;

(2) A list of all contracts which have not been finally settled between EPA and the transferor, showing for each contract the contract number, the name and address of the activity involved, the total dollar value of the contract as amended, the type of contract, and the balance remaining unpaid;

(3) A certified copy of the resolutions of the Boards of Directors of the corporate parties authorizing the transfer of assets;

(4) A certified copy of the minutes of any stockholders' meetings of the corporate parties necessary to approve the transfer of assets;

(5) A properly authenticated copy of the certificate and articles of incorporation of the transferee if such corporation was formed for the purpose of receiving the assets involved in the performance of the Government contracts;

(6) An opinion of counsel for the transferor and transferee that the transfer was properly effected in accordance with applicable law and the effective date of transfer;

(7) Evidence of the capability of the transferee to perform the contracts;

(8) Balance sheets of the transferor and the transferee as of dates immediately prior to and after the transfer of assets; and

(9) Consent of sureties on all contracts listed under (ii) above on which bonds were required.



§ 15-1.5103 Agreement to recognize change of name of contractor.

(a) When only a change of name is involved, so that the rights and obligations of the parties remain unaffected, an agreement between the designated activity and the contractor shall be executed effecting the amendment of all existing contracts between the parties so as to reflect the contractor's change of name. A format for such an agreement, which shall be adapted for specific cases, is set forth in § 15-1.5105.

(b) Prior to the execution of such agreement, one copy of each of the following shall be deposited by the contractor with the designated procuring activity:

(1) A copy of the instrument by which the change of name was effected, authenticated by a proper official of the State having jurisdiction;

(2) An opinion of counsel for the contractor that the change of name was properly effected in accordance with applicable law; and

(3) A list of all contracts which have not been finally settled between EPA and the contractor, showing for each contract the contract number and the name and address of the activity involved.

(c) Each agreement shall have the concurrence of legal counsel, prior to execution.

§ 15-1.5104 Procedures.

(a) Any EPA procuring activity upon being notified of a successor in interest to, or change in name of, one of its contractors, shall promptly report such information by letter to the Director of Contracts Management Division.

(b) To avoid duplication of effort on the part of EPA activities in preparing and executing agreements to recognize a change of name or successor in interest, only one supplemental agreement will be prepared to effect necessary changes for all contracts between EPA and the contractor involved. The Director of Contracts Management Division will, in each case, designate the activity responsible for taking all necessary and appropriate action with respect to either recognizing or not recognizing a successor in interest, or recognizing a change of name, including without limitation the following:

(1) Obtaining from the contractor a list of the affected contracts, the names and addresses of the activities respon-

sible for these contracts, and the required documentary evidence; and

(2) Drafting and executing a supplemental agreement to one of the contracts affected but covering all applicable outstanding and incomplete contracts affected by the transfer of assets or change of name.

A supplemental agreement number need not be obtained for contracts other than for the one under which the supplemental agreement is written. Each supplemental agreement will contain a list of the contracts affected and, for distribution purposes, the names and addresses of the activities having contracts subject to the supplemental agreement.

(c) The agreement and supporting documents shall be reviewed for legal sufficiency by legal counsel.

(d) After execution of the supplemental agreement, the designated activity shall:

(1) Forward an authenticated copy of the supplemental agreement to the Director of Contracts Management Division, and

(2) Advise each of the affected activities, by letter, of the consummation of the supplemental agreement and request that an administrative change be issued for each affected contract. (A copy of the supplemental agreement should be enclosed—see § 15-1.5105.)

(e) For each such affected contract, the contracting officer shall prepare an administrative change acknowledging the change in name or successor in interest. The administrative change will receive the same distribution as the affected contract. The administrative change will indicate the nature of the transaction, the result attained, and will cite the number of the contract with which the original relevant documents and supplemental agreement are filed.

§ 15-1.5105 Novation agreement formats.

§ 15-1.5105-1 Successor in interest agreement format.

The following form may be used as appropriate to recognize a corporate successor in interest, in accordance with § 15-1.5102.

AGREEMENT (-----, 19--)

This agreement, entered into as of -----  
-----, 19--, by and between the ABC  
Corporation, a corporation duly organized  
and existing under the laws of the State of  
----- with its principal office in the

City of \_\_\_\_\_ (hereinafter referred to as the "Transferor"); the XYZ Corporation (formerly known as the LMN Corporation), a corporation duly organized and existing under the laws of the State of \_\_\_\_\_ with its principal office in the City of \_\_\_\_\_ (hereinafter referred to as the "Transferee"); and the United States of America (hereinafter referred to as the "Government").

WITNESSETH:

Whereas, the Government, represented by Contracting Officers of the Environmental Protection Agency, has entered into certain contracts, letter contracts, and purchase orders with the Transferor (namely: \_\_\_\_\_) or (as set forth in the attached list marked "Exhibit A" to this Agreement and herein incorporated by reference;) and the term "the contracts" as hereinafter used means the above contracts, letter contracts, and purchase orders, and all other contracts, letter contracts, and purchase orders, including amendments and change orders thereto, heretofore made between the Government, represented by Contracting Officers of the Environmental Protection Agency, and the Transferor (whether or not performance and payment have been completed and releases executed, if the Government or the Transferor has any remaining rights, duties, or obligations thereunder), and including amendments and change orders thereto hereafter made between the Government and the Transferee.

Whereas, as of \_\_\_\_\_, 19\_\_\_, the Transferor assigned, conveyed, and transferred to the Transferee all the assets of the Transferor by virtue of a (term descriptive of the legal transaction involved) between the Transferor and the Transferee;

Whereas, the Transferee, by virtue of said assignment, conveyance, and transfer, has acquired all the assets of the Transferor;

Whereas, by virtue of said assignment, conveyance, and transfer, the Transferee has assumed all the duties, obligations, and liabilities of the Transferor under the Contracts;

Whereas, the Transferee is in a position fully to perform the Contracts, and such duties and obligations as may exist under the Contracts;

Whereas, it is consistent with the Government's interest to recognize the Transferee as the successor party to the Contracts;

Whereas, there has been filed with the Government evidence of said assignment, conveyance, or transfer (add if desired, "in the form of a certified copy of the list of the documents required by 41 CFR 15-1.5102");

(Where a change of name is also involved, such as a prior or concurrent change of name of the Transferee, an appropriate recital shall be used; for example:

Whereas, there has been filed with the Government a certificate dated \_\_\_\_\_, 19\_\_\_, signed by the secretary of state of the State of \_\_\_\_\_, to the effect that the

corporate name of LMN Corporation was changed to XYZ Corporation on \_\_\_\_\_, 19\_\_\_);

Now therefore, in consideration of the premises, the parties hereto agree as follows:

1. The Transferor hereby confirms said assignment, conveyance, and transfer to the Transferee, and does hereby release and discharge the Government from, and does hereby waive, any and all claims, demands, and rights against the Government which it now has or may hereafter have in connection with the Contracts.

2. The Transferee hereby assumes, agrees to be bound by, and undertakes to perform each and every one of the terms, covenants, and conditions contained in the Contracts. The Transferee further assumes all obligations and liabilities of, and all claims and demands against, the Transferor under the Contracts, in all respects as if the Transferee were the original party to the Contracts.

3. The Transferee hereby ratifies and confirms all actions heretofore taken by the Transferor with respect to the Contracts with the same force and effect as if the action had been taken by the Transferee.

4. The Government hereby recognizes the Transferee as the Transferor's successor in interest in and to the Contracts. The Transferee hereby becomes entitled to all right, title, and interest of the Transferor in and to the Contracts in all respects as if the Transferee were the original party to the Contracts. The term "Contractor" as used in the Contracts shall be deemed to refer to the Transferee rather than to the Transferor.

5. Except as expressly provided herein, nothing in this Agreement shall be construed as a waiver of any rights of the Government against the Transferor.

6. Notwithstanding the foregoing provisions, all payments and reimbursements heretofore made by the Government to the Transferor and all other action heretofore taken by the Government, pursuant to its obligations under any of the Contracts, shall be deemed to have discharged pro tanto the Government's obligations under the Contracts. All payments and reimbursements made by the Government after the date of this Agreement in the name of or to the Transferor shall have the same force and effect as if made to said Transferee and shall constitute a complete discharge of the Government's obligations under the Contracts to the extent of the amounts so paid or reimbursed.

7. The Transferor and the Transferee hereby agree that the Government shall not be obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any increases therein, directly or indirectly arising out of or resulting from (i) said assignment, conveyance, and transfer, or (ii) this Agreement other than those which the Government, in the absence of said assignment, conveyance, and transfer, or this Agreement,

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would have been obligated to pay or reimburse under the terms of the Contracts.

8. The Transferor hereby guarantees payment of all liabilities and the performance of all obligations which the Transferee (i) assumes under this Agreement, or (ii) may hereafter undertake under the Contracts as they may hereafter be amended or modified; and the Transferor hereby waives notice of and consents to any such amendment or modification.

9. Except as herein modified, the Contracts shall remain in full force and effect.

In witness whereof, each of the parties hereto has executed this Agreement as of the day and year first above written.

UNITED STATES OF AMERICA,

By -----

Title -----

ABC CORPORATION,

By -----

Title -----

[Corporate Seal]

XYZ CORPORATION,

By -----

Title -----

[Corporate Seal]

**CERTIFICATE**

I, -----, certify that I am the Secretary of ABC Corporation, named above, that -----, who signed this Agreement on behalf of said corporation, was then ----- of said corporation; and that this Agreement was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

Witness my hand and seal of said corporation this ----- day of ----- 19--.

By -----

[Corporate Seal]

**CERTIFICATE**

I, -----, certify that I am the Secretary of XYZ Corporation, named above, that -----, who signed this Agreement on behalf of said corporation, was then ----- of said corporation, and that this Agreement was duly signed for and in behalf of said corporation by authority of its governing body and within the scope of its corporate powers.

Witness my hand and the seal of said corporation this ----- day of ----- 19--.

By -----

[Corporate Seal]

**§ 15-1.5105-2 Change of name agreement format.**

The following form may be used as appropriate to recognize a change in name, in accordance with § 15-1.5103:

AGREEMENT (-----, 19--)

This agreement, entered into as of -----, 19--, by and between the ABC Corporation (formerly the XYZ Corporation and hereinafter sometimes referred to as the "Contractor"), a corporation duly organized and existing under the laws of the State of -----, and the United States of America, represented by the Environmental Protection Agency (hereinafter referred to as the "Government").

WITNESSETH:

Whereas, the Government represented by Contracting Officers of the Environmental Protection Agency, has entered into certain contracts, letter contracts, and purchase orders with the XYZ Corporation (namely: -----) or (as set forth in the attached list marked "Exhibit A" to this Agreement and herein incorporated by reference); and the term "the Contracts" as hereinafter used means the above contracts, letter contracts, and purchase orders, and all other contracts, letter contracts, and purchase orders, including amendments and change orders thereto, entered into between the Government, represented by Contracting Officers of the Environmental Protection Agency, and the Contractor (whether or not performance and payment have been completed and releases executed, if the Government or the Contractor has any remaining rights, duties, or obligations thereunder);

Whereas, the XYZ Corporation, by an amendment to its certificate of incorporation, dated -----, 19--, has changed its corporate name to the ABC Corporation;

Whereas, a change of corporate name only is accomplished by said amendment, so that rights and obligations of the Government and of the Contractor under the Contracts are unaffected by said change; and

Whereas, there has been filed with the Government documentary evidence of said change in corporate name;

Now therefore, in consideration of the premises, the parties hereto agree that the Contracts covered by this Agreement are hereby amended by deleting therefrom the name "XYZ Corporation" wherever it appears in the Contracts and substituting therefor the name "ABC Corporation."

In witness whereof, each of the parties hereto has executed this Agreement as of the day and year first above written.

UNITED STATES OF AMERICA,

By -----

Title -----

ABC CORPORATION,

By -----

Title -----

[Corporate Seal]

**CERTIFICATE**

I, -----, certify that I am the Secretary of ABC Corporation, named above; that -----, who

signed this Agreement on behalf of said corporation, was then \_\_\_\_\_ of said corporation; and that this Agreement was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

Witness my hand and the seal of said corporation this \_\_\_\_\_ day of \_\_\_\_\_ 19--.

By \_\_\_\_\_

[Corporate Seal]

**§ 15-1.5105-3 Administrative change format.**

Standard Form 30 will be used for administrative changes resulting from novation and change of name agreements.

**PART 15-2—PROCUREMENT BY FORMAL ADVERTISING**

**Subpart 15-2.4—Opening of Bids and Award of Contract**

Sec.

- 15-2.406 Mistakes in bids.
- 15-2.406-3 Other mistakes disclosed before award.
- 15-2.406-4 Disclosure of mistakes after award.
- 15-2.407-8 Protests against award.

**AUTHORITY:** The provisions of this Subpart 15-2.4 issued under sec. 205(c), 63 Stat. 377, as amended; 40 U.S.C. 486(c).

**§ 15-2.406 Mistakes in bids.**

[36 F.R. 20429, Oct. 22, 1971]

**§ 15-2.406-3 Other mistakes disclosed before award.**

(a) The Director, Contracts Management Division will make the administrative determination in connection with mistakes in bid alleged before opening of bids and before award.

(b) Where the bidder furnishes evidence in support of an alleged mistake, the case shall be marked "Immediate Action—Mistake in Bid" and submitted in duplicate, in the most expeditious manner through procurement channels and the Chief, Policy and Review Branch, to the Director, Contracts Management Division, for evaluation and administrative determination. The file shall be assembled in an orderly manner including an index of enclosures.

(c) Where the evidence submitted by the bidder is incomplete or in need of clarification, the contracting officer shall document the file to indicate his efforts to obtain clear and convincing evidence to support the alleged mistake.

(d) Doubtful mistakes in bids shall not be submitted by contracting officers directly to the Comptroller General for advance decisions, but shall be submitted as outlined in paragraph (b) of this section. The Director, Contracts Management Division will effect coordination with the General Counsel.

[36 F.R. 20429, Oct. 22, 1971]

**§ 15-2.406-4 Disclosure of mistakes after award.**

(a) Authority to make determinations under § 1-2.406-4 of this title has been delegated to the Director, Contracts Management Division.

(b) Mistakes disclosed after award will be forwarded, in duplicate, through procurement channels and the Chief, Policy and Review Branch, to the Director, Contracts Management Division for determinations.

[36 F.R. 20430, Oct. 22, 1971]

**§ 15-2.407-8 Protests against award.**

(a) *Protests before award.* When a protest is received by the contracting officer, he will prepare a written statement of his opinion in the matter supported by copies of all pertinent papers. He will forward them, in duplicate, through procurement channels to the Director, Contracts Management Division, by the most expeditious means and marked "Immediate Action—Protest Before Award." The protest file will include the following:

(1) Statement of the Chief of the Contracting Operations containing recommendations (with supporting reasons) as to the merits of the protest, addressing each allegation of the protest;

(2) Contracting officer's statement of facts and circumstances including a discussion of the merits addressing each allegation of the protest;

(3) Contracting officer's conclusions and recommendations including documentary evidence on which based;

(4) Copy of the Invitation for Bids (IFB) or Request for Proposal (RFP);

(5) Copy of the abstract of bids or proposals;

(6) Copy of the bid or proposal of the successful offeror to whom the award is proposed to be made;

(7) Copy of the bid or proposal by the protester, if any;

(8) Current status of award;

(9) Copies of notice of protest given