C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final 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.)

D. Regulatory Flexibility Act

The EPA certifies that this final rule does not exert a significant economic impact on a substantial number of small entities. The requirements to contractors under the final rule impose no reporting, record-keeping, or any compliance costs.

E. Unfunded Mandates

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

List of Subjects in 48 CFR Parts 1506, 1534, 1536, 1542, 1545, and 1552

Government procurement.

Authority: The provisions of this regulation are issued under 5 U.S.C. 301; Sec. 205(c),63 Stat. 390, as amended, 40 U.S.C. 486(c).

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

1. The authority for Parts 1506, 1536, 1542, 1545, and 1552, continue to read as follows:

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

Subpart 1506.371—[Removed]

2. Subpart 1506.371 is removed in its entirety.

PART 1534—[REMOVED]

3. Part 1534 is Removed in its entirety.

Subpart 1536.3—[Removed]

4. Subpart 1536.3 (§§ 1536.303 and 1536.303–70) is removed in its entirety.

1536.570 [Removed]

5. Section 1536.570 is removed in its entirety.

1542.705–1 [Removed]

6. Section 1542.705–1 is removed in its entirety.

Subpart 1545.5–[Removed]

7. Subpart 1545.5 (§ 1545.502) is removed in its entirety.

1552.236–71 [Removed]

8. Section 1552.236–71 is removed in its entirety.

Dated: August 19, 1996.

Betty L. Bailey,

Director, Office of Acquisition Management.

[FR Doc. 96–22654 Filed 9–5–96; 8:45 am]

BILLING CODE 6560–50–P

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48 CFR Parts 1515 and 1552

[FRL–5602–5]

Acquisition Regulation; Coverage of Source Selection Process

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This document amends the Environmental Protection Agency (EPA) acquisition regulation (48 CFR Chapter 15) coverage on the source selection process. EPA is aware that Part 15 of the Federal Acquisition Regulation is currently undergoing revision. The Agency believes that its changes will not conflict with any subsequent revisions to Part 15. Additionally, the Agency believes that the changes to its acquisition regulation are needed now as an interim measure to streamline the process and empower Contracting Officers at EPA. This rule is also necessary to implement portions of the Federal Acquisition Streamlining Act of 1994.

EFFECTIVE DATE: September 23, 1996.

FOR FURTHER INFORMATION CONTACT: Louise Senzel, Environmental Protection Agency, Office of Acquisition Management (3802F), 401 M Street, SW, Washington, D.C. 20460. Telephone: (202) 260–6204.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed rule was published in the Federal Register (61 CFR 25440) on May 21, 1996, providing for a comment period until July 22, 1996.

Interested persons have been afforded an opportunity to participate in the making of this rule. No public comments were received.

B. Executive Order 12866

This is not a significant regulatory action for the purposes of Executive Order 12866; therefore, no review was required by the Office of Information and Regulatory Affairs.

C. Paperwork Reduction Act

The Paperwork Reduction Act did not apply because this 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.).

D. Regulatory Flexibility Act

The EPA certifies that this rule does not exert a significant economic impact on a substantial number of small entities. The requirements to contractors under the proposed rule impose no reporting, record-keeping, or any compliance costs.

E. Unfunded Mandates

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

F. Regulated Entities

EPA contractors are entities potentially affected by this action. Specifically, those entities competing under solicitations for negotiated procurements will be affected.

Category	Regulated entity
Industry	EPA contractors.

List of Subjects in 48 CFR Part 1515 and 1552

Government procurement.

Authority: The provisions of this regulation are issued under 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

Therefore, 48 CFR Chapter 15 is amended as set forth below: 1. The authority citations for parts 1515 and 1552 continue to read as follows:

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

1515.407 [Amended]

2. Section 1515.407 is amended by removing paragraph (a)(1), and by redesignating paragraphs (a)(2) and (3) as (a)(1) and (2).

3. Section 1515.604 is amended by revising paragraphs (a), (c), and (d) to read as follows:

1515.604 Responsibilities and Duties.

* * * * *

(a) *Source Selection Official.* The Source Selection Official (SSO) is the official responsible for overall management of the source selection process. Duties of the SSO include, but are not limited to, appointing members and chairpersons of the Source Evaluation Board, the Technical Evaluation Panel (TEP), and the Business Evaluation Panel (BEP); and approving solicitation related documents. However, the Contracting Officer is responsible for approving amendments to solicitation documents. The SSO may waive in writing the requirement in 1515.612(a)(1)(v) for at least one member of the TEP to be an individual not involved in managing the

current contract. The SSO also approves the competitive range determination and makes the source selection decision.

* * * * *

(c) *Technical Evaluation Panel (TEP).* The Program Office has the responsibility for developing the technical evaluation criteria and statement of work for the solicitation. The TEP has the responsibility for evaluating the technical aspects of the offerors' technical proposals. Based on the recommendation of the Program Office, the SSO has the discretion of assigning this evaluation responsibility to the Project Officer, if appropriate, or to the TEP. When offerors' past performance is evaluated as part of the technical proposal evaluation process, the past performance evaluation shall be conducted by the TEP, or by the Contracting Officer and the Project Officer. Based on input from the Project Officer, the Contracting Officer has the discretion of assigning this responsibility to the TEP or to the Contracting Officer and Project Officer.

(d) *Business Evaluation Panel (BEP).* (1) Outside of the technical review, the Contracts Office has the lead for reviewing solicitation evaluation criteria and the Statement of Work from a business perspective; evaluating the business, pricing, and contractual aspects of the offerors' business and technical proposals; and examining other factors such as the responsibility of the offerors. Based on the recommendation of the Contracting Officer, the SSO has the discretion to designate these responsibilities to the Contracting Officer or designating a BEP. Sections 1515.612(a)(1) (vi) and (vii) are applicable only when the SSO has designated a BEP.

(2) When no BEP is convened, the Contracting Officer shall perform a preliminary cost evaluation of each offeror's cost/price proposal to identify any cost elements that appear unreasonable or questionable. When cost analysis is employed, the Contracting Officer shall perform a detailed cost analysis of the business proposal which includes an evaluation of the offeror's subcontracting program, management structure, and any other relevant factors which may prevent award to an offeror. This analysis may be included in a separate report, in the competitive range determination, or in the pre/post-negotiation memorandum.

4. Section 1515.604–70 is amended by adding paragraph (c) to read as follows:

1515.604–70 Personal conflicts of interest.

* * * * *

(c) Each EPA employee (including special employees (as defined by 1503.600–71 (b)) involved in source evaluation and selection is required to comply with the Office of Government Ethics ethics provisions at 5 CFR Part 2635.

5. Section 1515.605 is amended by revising paragraphs (a), (b), and adding (c) to read as follows:

1515.605 Evaluation Factors.

* * * * *

(a) The Contracting Officer shall insert the provisions at 1552.215–70, ''EPA Source Evaluation and Selection Procedures—Negotiated Procurement'' and either: the provision in 1552.215–71, ''Evaluation Factors for Award,'' where all evaluation factors other than cost or price when combined are significantly more important than cost or price; or the provision in Alternate I to 1552.215–71, where all evaluation factors other than cost or price when combined are significantly less important than cost or price; or the provision in Alternate II to 1552.215–71, where award will be made to the offeror with the lowest-evaluated cost or price whose technical proposal meets the minimum needs of the Government; or the provision in Alternate III where all evaluation factors other than cost or price when combined are approximately equal to cost or price. The Contracting Officer may use provisions substantially the same as 1552.215–71, Alternate I to 1552.215–71, Alternate II to 1552.215–71, or Alternate III to 1552.215–71 without requesting a deviation to the EPAAR.

(b) Technical evaluation criteria should be prepared in accordance with FAR 15.605 and inserted into paragraph (b) of the provision at 1552.215–71, Alternate I, and Alternate III. If technical evaluation criteria are used in Alternate II, the criteria should be prepared in accordance with FAR 15.605 and inserted into paragraph (b). When past performance is to be used as an evaluation factor, the Contracting Officer must develop criteria for evaluating past performance and include such criteria in section M of the solicitation.

(c) *Evaluation Methodologies.* Evaluation criteria may be developed using methodologies other than numerical scoring, e.g., adjectival ratings or color scoring. The relative importance of the evaluation criteria must be clearly identified in the solicitation. The Contracting Officer should identify and prepare evaluation criteria consistent with FAR 15.605.

* * * * *

6. Section 1515.608 is amended by revising paragraphs (a)(1); adding paragraph (a)(3); by revising paragraphs (b)(1)(ii) and (b)(2)(i); by adding paragraph (b)(3); by removing paragraph (c) and by redesignating paragraphs (d) and (e) as (c) and (d), to read as follows:

1515.608 Proposal evaluation.

(a) * * *

(1) Technical proposals shall be evaluated *solely* on the factors specified in the solicitation and in accordance with FAR 15.608. Additionally, the evaluation of technical proposals (including past performance factors) shall be accomplished using the scoring plan shown below or one specifically developed for the solicitation. Contracting Officers may request that the TEP also indicate whether proposals are acceptable or unacceptable, and/or whether the offerors' response to individual criteria are acceptable or unacceptable.

SCORING PLAN

Value	Descriptive statement
0	The factor is not addressed, or is totally deficient and without merit.
1	The factor is addressed, but contains deficiencies and/or weaknesses that can be corrected only by major or significant changes to relevant portions of the proposal, or the factor is addressed so minimally or vaguely that there are widespread information gaps. In addition, because of the deficiencies, weaknesses, and/or information gaps, serious concerns exist on the part of the TEP about the offeror's ability to perform the required work.
2	Information related to the factor is incomplete, unclear, or indicates an inadequate approach to, or understanding of the factor. The TEP believes there is question as to whether the offeror would be able to perform satisfactorily.
3	The response to the factor is adequate. Overall, it meets the specifications and requirements, such that the TEP believes that the offeror could perform to meet the Government's minimum requirements.
4	The response to the factor is good with some superior features. Information provided is generally clear, and the approach is acceptable with the possibility of more than adequate performance.
5	The response to the factor is superior in most features.

* * * * *

(3) The goal of the technical evaluation is to understand each offeror's proposal and to assess each

proposal relative to the specified evaluation factors. The TEP report(s) should address any perceived strengths, as well as any perceived weaknesses or deficiencies, and risks associated with the offerors' performance. Scores may or may not change from the initial evaluation to the supplemental evaluation, depending on the offerors' response to interrogatories. The supplemental TEP report must explain the rationale for no change in score, as well as any decrease or increase in score as a result of the offerors' response to interrogatories.

(b) * * *

(1) * * *

(ii) Any interrogatories the Contracting Officer should submit to offerors to clarify their technical proposals to address any weaknesses, deficiencies, or questions associated with their technical proposals. The Contracting Officer may review the technical proposals and TEP evaluation, and submit any additional interrogatories deemed appropriate.

(2)(i) A statement that the respective technical evaluation panel members are free from actual or potential personal conflicts of interest, and are in compliance with the Office of Government Ethics ethics provisions at 5 CFR Part 2635.

* * * * *

(3) The Contracting Officer may release the cost/price proposals to the entire TEP or solely to the TEP Chairperson, after the TEP has completed its evaluation of initial proposals. The TEP or Chairperson should evaluate cost/price proposals to determine whether the offerors' cost/price proposals adequately reflect their technical proposals and the requirements of the solicitation, and demonstrate that the proposed price or cost provides an adequate understanding of the requirements of the solicitation. Any inconsistencies between the proposals and the solicitation requirements should be identified. Any inconsistencies between the cost and technical proposals should also be identified.

7. Section 1515.609 is amended by revising paragraph (c) to read as follows:

1515.609 Competitive Range.

* * * * *

(c)(1) When a single proposal is the only proposal in the competitive range, as part of the required discussion in the competitive range determination, Contracting Officers shall address at a minimum the following factors: Whether the requirement could have been broken up into smaller components; whether the solicitation provided adequate response time; whether the requirement could have been satisfied with reduced staffing levels (discussion may be combined with the first factor); and if applicable, whether the work required on-site could otherwise be performed at a contractor's facility, avoiding the cost and logistical implications of relocating employees.

(2) In cases where only a single proposal has been received and a competitive range determination has not been prepared, the discussion of the reasons for receipt of the single proposal which otherwise would be contained in the competitive range determination shall be included in the source selection document. The discussion in the source selection document at a minimum shall address the factors referenced in paragraph (c)(1) of this section.

(3) The Contracting Officer shall provide a copy of the competitive range determination or source selection document to the Competition Advocate after approval of the determination or document by the designated Source Selection Official.

8. Section 1515.611 is revised to read as follows:

1515.611 Best and final offers.

The Contracting Officer shall establish a common cut-off date for receipt of revised proposals and/or confirmations of negotiations (best and final offers) upon completion of negotiations.

9. Section 1515.612 is amended by revising paragraphs (a)(1)(iii), (iv) and (v); and by adding paragraph (c) to read as follows:

1515.612 Formal source selection.

(a) * * *

(1) * * *

(iii) SEB Membership—The SSO will determine the organizational levels of the individuals to serve on the SEB.

(iv) TEP Chairperson—The SSO will determine, based on the recommendation of the requesting program office, the Chairperson of the TEP. For recompetes or follow-on contracts, the Chairperson should normally not be the incumbent contract's Project Officer.

(v) TEP Membership—At least two members, in addition to the Project Officer, who are knowledgeable of the procurement's technical aspects. If the procurement is a follow-on to an existing contract, at least one of the TEP members should be someone who is not involved in managing the current contract, preferably from outside of the program division which originated the requirement. See 1515.604(a) for waiver of this requirement.

* * * * *

(c) *Source Selection Plan.* No separate source selection plan is required. The Contracting Officer may include the information required by FAR 15.612(c) in the individual acquisition plan.

10. Section 1552.215–70 is revised to read as follows:

1552.215–70 EPA Source Selection and Selection Procedures—Negotiated Procurements (SEP 1996)

As prescribed in 1515.605, insert the following provision.

EPA SOURCE SELECTION AND SELECTION PROCEDURES—NEGOTIATED PROCUREMENTS (SEP 1996)

(a) The Government will perform source selection in accordance with FAR Part 15 and the EPA Source Evaluation and Selection Procedures in EPAAR Part 1515 (48 CFR Part 1515). The significant features of this procedure are:

(1) The Government will perform either cost analysis or price analysis of the offeror's cost/business proposal in accordance with FAR Parts 15 and 31, as appropriate. In addition, the Government will also evaluate proposals to determine contract cost or price realism.

Cost or price realism relates to an offeror's demonstrating that the proposed cost or price provides an adequate reflection of the offeror's understanding of the requirements of this solicitation, i.e., that the cost or price is not unrealistically low or unreasonably high.

(2) The Government will evaluate technical proposals as specified in 1552.215–71, Evaluation Factors for Award.

(b) In addition to evaluation of the previously discussed elements, the Government will consider in any award decision the responsibility factors set forth in FAR Part 9.

(End of Provision)

11. Section 1552.215–71 is revised as follows:

1552.215–71 Evaluation Factors for Award.

As prescribed in 1515.605, insert one of the following provisions.

EVALUATION FACTORS FOR AWARD (SEP 1996)

(a) The Government will make award to the responsible offeror(s) whose offer conforms to the solicitation and is most advantageous to the Government, cost or price and other factors considered. For this solicitation, all evaluation factors other than cost or price when combined are significantly more important than cost or price.

(b) Technical Evaluation Criteria:

_____

_____

(End of Provision)

EVALUATION FACTORS FOR AWARD (SEP 1996)

ALTERNATE I (SEP 96)

(a) The Government will make award to the responsible offeror(s) whose offer conforms

to the solicitation and is most advantageous to the Government, cost or price, and other factors considered. For this solicitation, all evaluation factors other than cost or price when combined are significantly less important than cost or price.

(b) Technical Evaluation Criteria:

(End of Provision)

EVALUATION FACTORS FOR AWARD—PROPOSAL MEETS THE MINIMUM NEEDS OF THE GOVERNMENT WITH THE LOWEST EVALUATED COST/PRICE

ALTERNATE II (SEP 1996)

(a) The Government will make award to the lowest-evaluated cost or price, technically acceptable, responsible offeror whose offer meets the minimum needs of the Government. In the event that there are two or more technically acceptable, equal price (cost) offers, the Government will consider other factors, as listed below in descending order of importance:

(b) Technical Evaluation Criteria:

(End of Provision)

EVALUATION FACTORS FOR AWARD (SEP 1996)

ALTERNATE III (SEP 96)

(a) The Government will make award to the responsible offeror(s) whose offer conforms to the solicitation and is most advantageous to the Government, cost or price, and other factors considered. For this solicitation, all evaluation factors other than cost or price when combined are approximately equal to cost or price.

(b) Technical Evaluation Criteria:

(End of Provision)

§ 1552.215–72 [Removed]

12. Section 1552.215–72 is removed.

Dated: August 21, 1996.

John C. Gherardini III,

Acting Director, Office of Acquisition Management.

[FR Doc. 96–22642 Filed 9–5–96; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1807, 1808, 1809, 1810, 1811, 1812, 1814, 1828, 1835, 1842, 1852, 1871

Rewrite of the NASA FAR Supplement (NFS)

AGENCY: Office of Procurement, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: Parts 1807 through 1814 (except 1813), and clauses affected by these parts, are revised in their entirety. Part 1810 is removed in its entirety; a new Part 1811 is added; and Parts 1828, 1835, 1842, and 1871 are revised as a result of the rewritten parts. The numbering of NFS sections has been changed to indicate the exact section of the FAR being implemented or supplemented.

EFFECTIVE DATE: September 6, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas O'Toole, (202) 358–0478; Mr. Bruce King, (202) 358–0461.

SUPPLEMENTARY INFORMATION:

Background

The National Performance Review urged agencies to streamline and clarify their regulations. The NFS rewrite initiative was established to pursue these goals by conducting a section by section review of the NFS to verify its accuracy, relevancy, and validity.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not impose any reporting or record keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1807, 1808, 1809, 1810, 1811, 1812, 1814, 1828, 1835, 1842, 1852, and 1871

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1807, 1808, 1809, 1810, 1811, 1812, 1814, 1828, 1835, 1842, 1852, and 1871 are amended as follows:

2. Part 1807 is revised to read as follows:

PART 1807—ACQUISITION PLANNING

Subpart 1807.1—Acquisition Plans

Sec.
1807.103 Agency-head responsibilities.
1807.105 Contents of written acquisition plans.
1807.170 Acquisition Strategy Meeting (ASM)

Subpart 1807.2—Planning for the Purchase of Supplies in Economic Quantities

1807.204 Responsibilities of contracting officers.

Subpart 1807.3—Contractor Versus Government Performance

1807.307 Appeals.

Subpart 1807.5—Inherently Governmental Functions

1807.503 Policy.

Subpart 1807.70—Reserved

Subpart 1807.71—Master Buy Plan

1807.7100 General.
1807.7101 Applicability.
1807.7102 Submission, selection, and notification procedures.
1807.7102–1 Submission of Master Buy Plan.
1807.7102–2 Submission of amendments to the Master Buy Plan.
1807.7102–3 Selection and notification procedures.
1807.7103 Format of Master Buy Plan.

Subpart 1807.72—Acquisition Forecasting

1807.7200 Scope of subpart.
1807.7201 Definitions.
1807.7202 Policy.
1807.7203 Responsibilities.
1807.7204 Forecast data.
1807.7205 Public availability.

Authority: 42 U.S.C. 2473(c)(1)

PART 1807—ACQUISITION PLANNING

Subpart 1807.1—Acquisition Plans

1807.103 Agency-head responsibilities.

(NASA supplements paragraphs (d) and (e))

(d)(i) Except as provided in paragraph (d)(iii) of this section, acquisition plans shall be prepared according to the following:

(A) For acquisitions requiring Headquarters approval, by an Acquisition Strategy Meeting (ASM) (see 1807.170);

(B) For acquisitions not requiring Headquarters approval and expected to exceed $5 million, by installation-approved ASMs or written acquisition plans; and,

(C) For acquisitions not expected to exceed $5 million, in accordance with installation procedures.

(ii) The estimated dollar amounts shall include all options and later phases of the same program or project.

(iii) Acquisition plans are not required for the following acquisitions:

(A) Architect-engineering services;

(B) Broad agency announcements (see 1835.016) or unsolicited proposals;

(C) Basic research from nonprofit organizations;

(D) Utility services available from only one source;

(E) From or through other Government agencies;

(F) Industrial facilities required in support of related contracts; or

(G) MidRange procedure awards (see part 1871). However, acquisition plans are required for commercial item acquisitions that exceed the MidRange dollar thresholds for noncommercial items.