

## List of Subjects in 48 CFR Parts 1511 and 1552

Environmental protection,  
Government procurement.

Dated: January 15, 2003.

**John C. Gherardini, III,**

*Acting Director, Office of Acquisition Management.*

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

### PART 1511—[AMENDED]

1. The authority citations for Part 1511 continues to read as follows:

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

2. Section 1511.011–81 is added to read as follows:

#### 1511.011–81 Background Checks for EPA Contractors Performing Services On-Site.

(a) Contracting Officers shall insert the clause at 1552.211–81 in all solicitations and contracts, except for commercial item acquisitions, where it is expected that the contractor will be required to perform services on or within Federally-owned or leased space and facilities, commercial space primarily occupied by federal employees, or Superfund, Oil Pollution Act, or Stafford Act sites. The successful awardee must complete the background checks and suitability determinations for individuals before they may begin on-site performance under the contract. This clause is also required, when applicable, for work to be performed on-site that is ordered under non-EPA contracts.

(b) Contracting Officers may include the clause described in paragraph (a) of this clause in solicitations and contracts other than those identified in paragraph (a) of this clause, including commercial item acquisitions if deemed appropriate, if determined necessary in order to protect the Government's interests and national security.

(c) Contracting Officers, on a case-by-case basis, may, either temporarily or permanently, waive the requirement for background checks and suitability determinations if they determine, in writing, that they are not necessary at a specific location, or for a specific individual, in order to protect the Government's interest and national security.

(d) As used in the solicitation and contract clause, Superfund or CERCLA refers to the "Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA, as amended by SARA in 1986), 42 U.S.C. 9601; the Oil Pollution Act refers to the

Clean Water Act as amended by the Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701; and the Stafford Act is the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121.

### PART 1552—[AMENDED]

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

**Authority:** 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418(b).

4. Section 1552.211–81 is added to read as follows:

#### 1552.211–81 Background Checks for EPA Contractors Performing Services On-Site.

As prescribed in 1511.011–81, insert the following clause:

##### BACKGROUND CHECKS FOR EPA CONTRACTORS PERFORMING SERVICES ON-SITE (XXX 2003)

(a) The requirements of this clause apply to the successful awardee(s) of the contract who will be performing on-site work for EPA under the contract.

##### (b) Definitions.

For purposes of this clause, the following definitions apply:

(1) *On-Site:* "On-site" refers to any federally-owned or leased space and facilities and any commercial space primarily occupied by federal workers. It also includes sites where the Environmental Protection Agency (EPA) is working under the authority of CERCLA, the Oil Pollution Act, or the Stafford Act.

(2) *Suitability:* "Suitability" refers to identifiable character traits and past conduct which are reasonably sufficient to indicate whether a given individual is likely or not likely to be able to perform the requirements of a contract or subcontract at EPA on-site locations without undue risk to the interests of the Government and the national security.

(3) *Suitability determination:* A "suitability determination" is a determination that there are reasonable grounds to believe that an individual will likely be able to perform the contract requirements on-site without undue risk to the interests of the Government and the national security.

##### (c) Applicability.

(1) Contractors shall perform background checks and make suitability determinations on contractor employees before the individual employees can perform on-site contract services for the EPA.

(2) Contracting Officers, on a case-by-case basis, may, either temporarily or permanently, waive the requirements of this clause, if they determine in writing that background checks and suitability determinations are not necessary at a specific location, or for a specific individual, in order to protect the Government's interests and national security.

##### (d) Background Check.

(1) The Contractor is responsible for completing background checks and making suitability determinations on its employees prior to the employee beginning on-site work.

Compliance with the requirement for performing a background check and making a suitability determination shall not be construed as providing a contractor employee clearance to have access to classified information or confidential business information. Contractors are required to maintain records of background checks and suitability determinations for four years after they are completed, and to make them available to the Government when requested.

(2) At a minimum, the background check and suitability determination must include an evaluation of:

- (i) Law enforcement checks (Federal, State, and Local for the past 5 years);
- (ii) Credit report;
- (iii) Social Security Number trace;
- (iv) Verification of U.S. citizenship or legal resident status;
- (v) Employment history (past 5 years);
- (vi) Education history (highest degree verified);

(vii) References (3 individuals);

(viii) Residence (past 3 years);

(ix) Military service discharge notice; and

(x) Professional license and certification.

##### (e) Background Check Guidelines.

(1) In making a suitability determination, the contractor shall consider the following factors and evaluate them against the work to be performed, the performance location, and the degree of risk to the Government:

- (i) Any loyalty or terrorism issue;
- (ii) Patterns of conduct (e.g., alcoholism/drug addiction, financial irresponsibility/major liabilities, dishonesty, unemployability for negligence or misconduct, criminal conduct);
- (iii) Dishonorable military discharge;
- (iv) Felony and misdemeanor offenses;
- (v) Drug manufacturing/trafficking/sale;
- (vi) Major honesty issue (e.g., extortion, armed robbery, embezzlement, perjury);
- (vii) Criminal sexual misconduct;
- (viii) Serious violent behavior (e.g., rape, aggravated assault, arson, child abuse, manslaughter);
- (ix) Illegal use of firearms/explosives; and
- (x) Employment related misconduct involving dishonesty, criminal or violent behavior.

(2) The contractor shall evaluate any adverse information about an individual by considering the following factors before making a suitability determination:

- (i) The nature, extent and seriousness of the conduct;
- (ii) The circumstances surrounding the conduct;
- (iii) The frequency and recency of the conduct;
- (iv) The individual's age and maturity at the time of the conduct;
- (v) The presence or absence of rehabilitation and other pertinent behavior changes;
- (vi) The potential for pressure, coercion, exploitation, or duress; and
- (vii) The likelihood of continuation of the conduct.

##### (f) Employee Removal.

Whenever a contractor becomes aware that any employee working at an on-site location