

Environmental Protection Agency

§ 35.6760

(2) *Procurements in excess of \$25,000.* The recipient's records and files for procurements in excess of \$25,000 must include the following information, in addition to the information required in paragraph (d)(1) of this section:

- (i) The basis for contractor selection;
- (ii) A written justification for selecting the procurement method;
- (iii) A written justification for use of any specification which does not provide for maximum free and open competition;
- (iv) A written justification for the choice of contract type; and
- (v) The basis for award cost or price, including a copy of the cost or price analysis made in accordance with § 35.6585 of this subpart and documentation of negotiations.

(e) *Other records.* The recipient must maintain records which support the following items:

- (1) Time and attendance records and supporting documentation;
- (2) Documentation of compliance with statutes and regulations that apply to the project; and
- (3) The number of site-specific technical hours spent to complete each pre-remedial product.

§ 35.6705 Records retention.

(a) *Applicability.* This requirement applies to all financial and programmatic records, supporting documents, statistical records, and other records which are required to be maintained by the terms of this subpart, program regulations, or the Cooperative Agreement, or are otherwise reasonably considered as pertinent to program regulations or the Cooperative Agreement.

(b) *Length of retention period.* The recipient must maintain all records for 10 years following submission of the final Financial Status Report unless otherwise directed by the EPA award official, and must obtain written approval from the EPA award official before destroying any records. If any litigation, claim, negotiation, audit, cost recovery, or other action involving the records has been started before the expiration of the ten-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the

end of the regular ten-year period, whichever is later.

(c) *Substitution of microform.* Microform copies may be substituted for the original records. The recipient must have written EPA approval before destroying original records. The microform copying must be performed in accordance with the technical regulations concerning micrographics of Federal Government records (36 CFR part 1230) and EPA records management procedures (EPA Order 2160).

(d) *Starting date of retention period.* The recipient must comply with the requirements regarding the starting dates for records retention described in 40 CFR 31.42(c) (1) and (2).

§ 35.6710 Records access.

(a) *Recipient requirements.* The recipient must comply with the requirements regarding records access described in 40 CFR 31.42(e).

(b) *Availability of records.* The recipient must, with the exception of certain policy, deliberative, and enforcement documents which may be held confidential, ensure that all files are available to the public.

(c) *Contractor requirements.* The recipient must require its contractor to comply with the requirements regarding records access described in 40 CFR 31.36(i)(10).

OTHER ADMINISTRATIVE REQUIREMENTS FOR COOPERATIVE AGREEMENTS

§ 35.6750 Modifications.

The recipient must comply with the requirements regarding changes to the Cooperative Agreement described in 40 CFR 31.30.

§ 35.6755 Monitoring program performance.

The recipient must comply with the requirements regarding program performance monitoring described in 40 CFR 31.40 (a) and (e).

§ 35.6760 Enforcement and termination for convenience.

The recipient must comply with all terms and conditions in the Cooperative Agreement, and is subject to the requirements regarding enforcement of the terms of an award and termination

§ 35.6765

for convenience described in 40 CFR 31.43 and 31.44.

§ 35.6765 Non-Federal audit.

The recipient must comply with the requirements regarding non-Federal audits described in 40 CFR 31.26.

§ 35.6770 Disputes.

The recipient must comply with the requirements regarding dispute resolution procedures described in 40 CFR 31.70.

§ 35.6775 Exclusion of third-party benefits.

The Cooperative Agreement benefits only the signatories to the Cooperative Agreement.

§ 35.6780 Closeout.

(a) Closeout of a Cooperative Agreement, or an activity under a Cooperative Agreement, can take place in the following situations:

- (1) After the completion of all work for a response activity at a site; or
- (2) After all activities under a Cooperative Agreement have been completed; or
- (3) Upon termination of the Cooperative Agreement.

(b) The recipient must comply with the closeout requirements described in 40 CFR 31.50 and 31.51.

§ 35.6785 Collection of amounts due.

The recipient must comply with the requirements described in 40 CFR 31.52 regarding collection of amounts due.

§ 35.6790 High risk recipients.

If EPA determines that a recipient is not responsible, EPA may impose restrictions on the award as described in 40 CFR 31.12.

REQUIREMENTS FOR ADMINISTERING A SUPERFUND STATE CONTRACT (SSC)

§ 35.6800 General.

An SSC is required when either EPA or a political subdivision is the lead agency for a CERCLA response. This rule does not address whether Indian Tribes are subject to the requirements in § 35.6805(i)(2) (See § 35.610(a)).

(a) *EPA-lead SSC (Two-party SSC).* (1) An SSC with a State or Indian Tribe is

40 CFR Ch. I (7-1-04 Edition)

required before EPA can obligate or transfer funds for an EPA-lead remedial action.

(2) The State must comply with the requirements described in §§ 35.6805 and 35.6815 of this subpart. The Indian Tribe must comply with the requirements described in § 35.6805 (a) through (h), (i)(4), (l) through (v); § 35.6815(b); and, if appropriate, § 35.6815 (c) and (d).

(b) *Political subdivision-lead SSC (Three-party SSC).* (1) To ensure State involvement as required under section 121(f) of CERCLA and subpart F of the National Contingency Plan, an SSC is required between EPA, the State and a political subdivision before a political subdivision may take the lead for any phase of remedial response. The SSC must contain, or must be amended to include, the State's assurances pursuant to § 35.6805(i) of this subpart before EPA obligates funds for remedial action set forth in the Statement of Work of the SSC.

(2) Both the State and the political subdivision must comply with the requirements described in §§ 35.6805, 35.6815, and 35.6820 of this subpart.

§ 35.6805 Contents of an SSC.

The SSC must include the following provisions:

- (a) *General authorities*, which documents the relevant statutes and regulations (of each government entity that is a party to the contract) governing the contract;
- (b) *Purpose of the SSC*, which describes the response activities to be conducted and the benefits to be derived;
- (c) *Negation of agency relationship* between the signatories, which states that no signatory of the SSC can represent or act on the behalf of any other signatory in any matter associated with the SSC;
- (d) *A site description*, pursuant to § 35.6105(a)(2)(i) of this subpart;
- (e) *A site-specific Statement of Work*, pursuant to § 35.6105(a)(2)(ii) of this subpart and a statement of whether the contract constitutes an initial SSC or an amendment to an existing contract;
- (f) *A statement of intention to follow EPA policy and guidance*;
- (g) *A project schedule* to be prepared during response activities;