1516.603-2 What are the requirements for use of an NTP?

(a) An EPA FCS 1102 contracting officer or a duly authorized EPA on-scene coordinator with a delegation of procurement authority may issue an NTP so long as it does not exceed the limits of his or her procurement authority and only when all of the following conditions have been met:

(1) A written determination has been made by the Federal on-scene coordinator that—

(i) As authorized by and consistent with CERCLA section 104(a)(1), 42 U.S.C. 9604(a)(1), and the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300), the EPA must take action to respond to a hazardous substance release or substantial threat of such a release into the environment, or a release or substantial threat of a release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, or

(ii) As authorized by and consistent with the Clean Water Act sections 311(c)(2) and (e)(1)(B), 33 U.S.C. 1321(c)(2) and (e)(1)(B), and the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300), the EPA must take action to respond to a discharge, or a substantial threat of a discharge (to or upon navigable waters, adjoining shorelines, the contiguous zone, or natural resources belonging to, appertaining to, or under the exclusive management of the United States), of oil or a hazardous substance from a vessel, offshore facility, or onshore facility that is of such a size and character as to pose a substantial threat to the public health or welfare of the United States; and

(2) Before a duly authorized EPA on-scene coordinator with a delegation of procurement authority may issue an NTP, he or she must confirm that an EPA FCS 1102 contracting officer is not available to provide the required contracting support by the time the Federal on-scene coordinator requires the response action to be undertaken; and

(3) A written determination is made by an EPA FCS 1102 contracting officer or a duly authorized EPA on-scene coordinator with a delegation of procurement authority that there is no other existing contracting mechanism available to provide the required contracting support by the time required, including the inability of an existing emergency response contractor or other existing contract vehicle to respond in the required time frame. These conditions, as well as any other requirements applicable to NTPs or letter contracts contained in the FAR or EPAAR , must be met before an NTP can be issued by an EPA FCS 1102 contracting officer or a duly authorized EPA on-scene coordinator with a delegation of procurement authority.

(b) What should be included in an NTP?

(1) Since an NTP is a type of letter contract, it is subject to the requirements of FAR 16.603. All of the relevant requirements of FAR 16.603 apply to NTP's including FAR 16.603-2, 16.603-3, and 16.603-4, and an NTP will include all appropriate FAR and EPAAR contract clauses. An NTP should also include an overall price ceiling and be as complete and definite as possible under the circumstances. To the extent NTPs require modification of any FAR or EPAAR prescribed procedures or clauses, an appropriate FAR or EPAAR deviation will be prepared.

(2) The EPA FCS 1102 contracting officer or duly authorized EPA on-scene coordinator with a

delegation of procurement authority shall include in each NTP the clauses required by the FAR or EPAAR for the type of definitive contract contemplated and any additional clauses known to be appropriate for it. In addition, the following clauses must be inserted in the solicitation (if one is issued) and the NTP when an NTP is used:

(i) The clause at FAR 52.216-23, Execution and Commencement of Work, except that the term on-scene coordinator may be used in place of the term contracting officer;

(ii) The clause at FAR 52.216-24, Limitation of Government Liability, with dollar amounts completed in a manner consistent with FAR 16.603-2(d); and

(iii) The clause at FAR 52.216-25, Contract Definitization, with its paragraph (b) completed in a manner consistent with FAR 16.603-2(c) or any applicable FAR deviation. The clause at FAR 52.216-26, Payment of Allowable Costs Before Definitization, shall also be included in a solicitation (if one is issued) and NTPs if a cost-reimbursement definitive contract is contemplated.

(3) Each NTP shall, as required by the clause at FAR 52.216-25, Contract Definitization, contain a negotiated definitization schedule that includes:

(i) Dates for submission of the contractor's price proposal, required cost and pricing data, and if required, make-or-buy and subcontracting plans;

(ii) The date for the start of negotiations; and

(iii) A target date for definitization which shall be the earliest practicable date for definitization (an NTP must be definitized by an EPA FCS 1102 contracting officer). The schedule will provide for definitization of the NTP within 90 calendar days after the date of the NTP award. However, the EPA FCS 1102 contracting officer may, in extreme cases and according to agency procedures, authorize an additional period. If, after exhausting all reasonable efforts, the EPA FCS 1102 contracting officer and the contractor cannot negotiate a definitive contract because of failure to reach agreement as to price or fee, the clause at 52.216-25 requires the contractor to proceed with the work and provides that the contracting officer may, with the approval of the head of the contracting activity, determine a reasonable price or fee in accordance with subpart 15.4 and part 31 of the FAR, subject to appeal as provided in the Disputes clause.

(4) The maximum liability of the Government inserted in the clause at 52.216-24, Limitation of Government Liability, shall, as approved by the official who authorized the NTP, be the estimated amount necessary to cover the contractor's requirements for funds to complete the work to be performed under the NTP. However, it shall not exceed the estimated cost of the definitive contract.

(c) Are there any financial or monetary limitations on the use of an NTP? In addition to the requirements for issuance of an NTP set forth elsewhere in this subpart—

(1) The total definitized dollar value of an individual NTP shall not exceed $200,000.00, and

(2) The applicable Program Office must commit and make available appropriate funding for the emergency response action taken under the NTP prior to NTP issuance.

(d) Are there any other procedural requirements for issuance of an NTP? An NTP must be issued in writing by the EPA FCS 1102 contracting officer or the duly authorized EPA on-scene coordinator with a delegation of procurement authority using a Standard Form 33. In addition, the EPA FCS 1102 contracting officer or the EPA on-scene coordinator awarding the NTP must ensure that the NTP complies with all applicable requirements for letter contracts set forth in the FAR and the

requirements of this section, includes all relevant provisions and clauses, and that all actual or potential conflict of interest or other contracting issues are identified and resolved prior to NTP issuance. To assist the EPA on-scene coordinator and EPA FCS 1102 contracting officer in their responsibilities regarding NTP award, an NTP checklist will be completed by the EPA FCS 1102 contracting officer or EPA on-scene coordinator prior to issuance of the NTP.

(e) What happens after an NTP is awarded to a contractor?

(1) If an NTP is issued by a duly authorized EPA on-scene coordinator with a delegation of procurement authority, he or she must notify the cognizant EPA FCS 1102 contracting officer of the NTP award, and provide the NTP checklist to the contracting officer, as soon as possible but in no event later than the next working day after NTP issuance.

(2) Within 5 working days of the EPA on-scene coordinator's award of an NTP, the on-scene coordinator shall provide to the cognizant EPA FCS 1102 contracting officer all NTP documents, materials, and information necessary for the contracting officer to definitize the contract, and should retain a copy for his/her records. An EPA FCS 1102 contracting officer will be responsible for definitization of the NTP consistent with the definitization procedures set forth in this subpart. During the process of definitizing the NTP, the EPA FCS 1102 contracting officer will send the contractor the “Representations, Certifications, and Other Statements of Offerors” for completion. The contractor will complete this information, and any other required information, and submit it to the EPA FCS 1102 contracting officer prior to definitization of the NTP.

(f) The CCO, who is authorized by EPAAR 1516.603-3 to make the determination to use a letter contract, shall make a class determination and findings authorizing EPA FCS 1102 contracting officers and duly authorized EPA on-scene coordinators with delegations of procurement authority to award NTPs pursuant to the conditions set forth in this subpart.

Parent topic: Subpart 1516.6—Time-and-Materials, Labor-Hour, and Letter Contracts