

**Pt. 23**

**48 CFR Ch. 1 (10-1-09 Edition)**

- (a) Are only for work that will be performed outside the United States;
- (b) Are for a period of performance of less than 120 days; or
- (c) Are only for—
  - (1) Commercially available off-the-shelf items;
  - (2) Items that would be COTS items, but for minor modifications (as defined at paragraph (3)(ii) of the definition of “commercial item” at 2.101);
  - (3) Items that would be COTS items if they were not bulk cargo; or
  - (4) Commercial services that are—
    - (i) Part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications);
    - (ii) Performed by the COTS provider; and
    - (iii) Are normally provided for that COTS item.

**PART 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE**

- Sec.
- 23.000 Scope.
- 23.001 Definition.

**Subpart 23.1 [Reserved]**

**Subpart 23.2—Energy and Water Efficiency and Renewable Energy**

- 23.200 Scope.
- 23.201 Authorities.
- 23.202 Policy.
- 23.203 Energy-efficient products.
- 23.204 Procurement exemptions.
- 23.205 Energy-savings performance contracts.
- 23.206 Contract clause.

**Subpart 23.3—Hazardous Material Identification and Material Safety Data**

- 23.300 Scope of subpart.
- 23.301 Definition.
- 23.302 Policy.
- 23.303 Contract clause.

**Subpart 23.4—Use of Recovered Materials and Biobased Products**

- 23.400 Scope of subpart.
- 23.401 Definitions.
- 23.402 Authorities.
- 23.403 Policy.
- 23.404 Agency affirmative procurement programs.

- 23.405 Procedures.
- 23.406 Solicitation provisions and contract clauses.

**Subpart 23.5—Drug-Free Workplace**

- 23.500 Scope of subpart.
- 23.501 Applicability.
- 23.502 Authority.
- 23.503 Definitions.
- 23.504 Policy.
- 23.505 Contract clause.
- 23.506 Suspension of payments, termination of contract, and debarment and suspension actions.

**Subpart 23.6—Notice of Radioactive Material**

- 23.601 Requirements.
- 23.602 Contract clause.

**Subpart 23.7—Contracting for Environmentally Preferable Products and Services**

- 23.700 Scope.
- 23.701 Definitions.
- 23.702 Authorities.
- 23.703 Policy.
- 23.704 Application to Government-owned or -leased facilities.
- 23.705 Electronic products environmental assessment tool.
- 23.706 Contract clauses.

**Subpart 23.8—Ozone-Depleting Substances**

- 23.800 Scope of subpart.
- 23.801 Authorities.
- 23.802 [Reserved]
- 23.803 Policy.
- 23.804 Contract clauses.

**Subpart 23.9—Contractor Compliance With Toxic Chemical Release Reporting**

- 23.901 Purpose.
- 23.902 General.
- 23.903 Applicability.
- 23.904 Policy.
- 23.905 Requirements.
- 23.906 Solicitation provision and contract clause.

**Subpart 23.10—Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements**

- 23.1000 Scope.
- 23.1001 Authorities.
- 23.1002 Applicability.
- 23.1003 Definitions.
- 23.1004 Requirements.
- 23.1005 Contract clause.

## Federal Acquisition Regulation

23.203

AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

SOURCE: 48 FR 42275, Sept. 19, 1983, unless otherwise noted.

### 23.000 Scope.

This part prescribes acquisition policies and procedures supporting the Government's program for ensuring a drug-free workplace and for protecting and improving the quality of the environment by

- (a) Controlling pollution;
- (b) Managing energy and water use in Government facilities efficiently;
- (c) Using renewable energy and renewable energy technologies;
- (d) Acquiring energy-efficient and water-efficient products and services, environmentally preferable products, products containing recovered materials, and biobased products; and
- (e) Requiring contractors to identify hazardous materials.

[66 FR 65352, Dec. 18, 2001, as amended at 72 FR 63043, Nov. 7, 2007; 73 FR 21790, Apr. 22, 2008]

### 23.001 Definition.

*Toxic chemical*, as used in this part, means a chemical or chemical category listed in 40 CFR 372.65.

[68 FR 43869, July 24, 2003]

## Subpart 23.1 [Reserved]

## Subpart 23.2—Energy and Water Efficiency and Renewable Energy

SOURCE: 66 FR 65352, Dec. 18, 2001, unless otherwise noted.

### 23.200 Scope.

(a) This subpart prescribes policies and procedures for—

- (1) Acquiring energy- and water-efficient products and services, and products that use renewable energy technology; and
- (2) Using an energy-savings performance contract to obtain energy-efficient technologies at Government facilities without Government capital expense.

(b) This subpart applies to acquisitions in the United States and its outlying areas. Agencies conducting acquisitions outside of these areas must

use their best efforts to comply with this subpart.

[66 FR 65352, Dec. 18, 2001, as amended at 68 FR 28082, May 22, 2003]

### 23.201 Authorities.

(a) Energy Policy and Conservation Act (42 U.S.C.

6361(a)(1)) and Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901, *et seq.*).

(b) National Energy Conservation Policy Act (42 U.S.C. 8253, 8259b, 8262g, and 8287).

(c) Executive Order 11912 of April 13, 1976, Delegations of Authority under the Energy Policy and Conservation Act.

(d) Executive Order 13123 of June 3, 1999, Greening the Government through Efficient Energy Management.

(e) Executive Order 13221 of July 31, 2001, Energy-Efficient Standby Power Devices.

[66 FR 65352, Dec. 18, 2001, as amended at 68 FR 43858, July 24, 2003; 72 FR 65872, Nov. 23, 2007]

### 23.202 Policy.

The Government's policy is to acquire supplies and services that promote energy and water efficiency, advance the use of renewable energy products, and help foster markets for emerging technologies. This policy extends to all acquisitions, including those below the simplified acquisition threshold.

### 23.203 Energy-efficient products.

(a) Unless exempt as provided at 23.204—

(1) When acquiring energy-consuming products listed in the ENERGY STAR® Program or Federal Energy Management Program (FEMP)—

(i) Agencies shall purchase ENERGY STAR® or FEMP-designated products; and

(ii) For products that consume power in a standby mode and are listed on FEMP's Low Standby Power Devices product listing, agencies shall—

(A) Purchase items which meet FEMP's standby power wattage recommendation or document the reason for not purchasing such items; or

## 23.204

(B) If FEMP has listed a product without a corresponding wattage recommendation, purchase items which use no more than one watt in their standby power consuming mode. When it is impracticable to meet the one watt requirement, agencies shall purchase items with the lowest standby wattage practicable; and

(2) When contracting for services or construction that will include the provision of energy-consuming products, agencies shall specify products that comply with the applicable requirements in paragraph (a)(1) of this section.

(b) Information is available via the Internet about—

(1) ENERGY STAR® at <http://www.energystar.gov/products>; and

(2) FEMP at [http://www1.eere.energy.gov/femp/procurement/eeep\\_requirements.html](http://www1.eere.energy.gov/femp/procurement/eeep_requirements.html).

[72 FR 65872, Nov. 23, 2007]

### 23.204 Procurement exemptions.

An agency is not required to procure an ENERGY STAR® or FEMP-designated product if the head of the agency determines in writing that—

(a) No ENERGY STAR® or FEMP-designated product is reasonably available that meets the functional requirements of the agency; or

(b) No ENERGY STAR® or FEMP-designated product is cost effective over the life of the product taking energy cost savings into account.

[72 FR 65872, Nov. 23, 2007]

### 23.205 Energy-savings performance contracts.

(a) Section 403 of Executive Order 13123 of June 3, 1999, Greening the Government through Efficient Energy Management, requires an agency to make maximum use of the authority provided in the National Energy Conservation Policy Act (42 U.S.C. 8287) to use an energy-savings performance contract (ESPC), when life-cycle cost-effective, to reduce energy use and cost in the agency's facilities and operations.

(b)(1) Under an ESPC, an agency can contract with an energy service company for a period not to exceed 25 years to improve energy efficiency in one or

## 48 CFR Ch. 1 (10-1-09 Edition)

more agency facilities at no direct capital cost to the United States Treasury. The energy service company finances the capital costs of implementing energy conservation measures and receives, in return, a contractually determined share of the cost savings that result.

(2) Except as provided in 10 CFR 436.34, ESPC's are subject to subpart 17.1.

(c) To solicit and award an ESPC, the contracting officer—

(1) Must use the procedures, selection method, and terms and conditions provided in 10 CFR part 436, subpart B; at <http://www.eren.doe.gov/femp/resources/legislation.html>; and

(2) May use the "Qualified List" of energy service companies established by the Department of Energy and other agencies.

[66 FR 65352, Dec. 18, 2001. Redesignated at 72 FR 65872, Nov. 23, 2007]

### 23.206 Contract clause.

Unless exempt pursuant to 23.204, insert the clause at 52.223-15, Energy Efficiency in Energy-Consuming Products, in solicitations and contracts when energy-consuming products listed in the ENERGY STAR® Program or FEMP will be—

(a) Delivered;

(b) Acquired by the contractor for use in performing services at a Federally-controlled facility;

(c) Furnished by the contractor for use by the Government; or

(d) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.

[72 FR 65872, Nov. 23, 2007]

## Subpart 23.3—Hazardous Material Identification and Material Safety Data

### 23.300 Scope of subpart.

This subpart prescribes policies and procedures for acquiring deliverable items, other than ammunition and explosives, that require the furnishing of data involving hazardous materials. Agencies may prescribe special procedures for ammunition and explosives.

## Federal Acquisition Regulation

23.401

### 23.301 Definition.

*Hazardous material* is defined in the latest version of Federal Standard No. 313 (Federal Standards are sold to the public and Federal agencies through: General Services Administration, Specifications Unit (3FBP-W), 7th & D Sts., SW., Washington, DC 20407.

[56 FR 55374, Oct. 25, 1991]

### 23.302 Policy.

(a) The Occupational Safety and Health Administration (OSHA) is responsible for issuing and administering regulations that require Government activities to apprise their employees of—

- (1) All hazards to which they may be exposed;
- (2) Relative symptoms and appropriate emergency treatment; and
- (3) Proper conditions and precautions for safe use and exposure.

(b) To accomplish this objective, it is necessary to obtain certain information relative to the hazards which may be introduced into the workplace by the supplies being acquired. Accordingly, offerors and contractors are required to submit hazardous materials data whenever the supplies being acquired are identified as hazardous materials. The latest version of Federal Standard No. 313 (Material Safety Data Sheet, Preparation and Submission of) includes criteria for identification of hazardous materials.

(c) Hazardous material data (Material Safety Data Sheets (MSDS's)) are required—

- (1) As specified in the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract);
  - (2) For any other material designated by a Government technical representative as potentially hazardous and requiring safety controls.
- (d) MSDS's must be submitted—
- (1) By the apparent successful offeror prior to contract award if hazardous materials are expected to be used during contract performance.
  - (2) For agencies other than the Department of Defense, again by the contractor with the supplies at the time of delivery.

(e) The contracting officer shall provide a copy of all MSDS's received to the safety officer or other designated individual.

[48 FR 42275, Sept. 19, 1983, as amended at 56 FR 55374, Oct. 25, 1991; 62 FR 236, Jan. 2, 1997]

### 23.303 Contract clause.

(a) The contracting officer shall insert the clause at 52.223-3, Hazardous Material Identification and Material Safety Data, in solicitations and contracts if the contract will require the delivery of hazardous materials as defined in 23.301.

(b) If the contract is awarded by an agency other than the Department of Defense, the contracting officer shall use the clause at 52.223-3 with its *Alternate I*.

[56 FR 55374, Oct. 25, 1991]

## Subpart 23.4—Use of Recovered Materials and Biobased Products

SOURCE: 72 FR 63043, Nov. 7, 2007, unless otherwise noted.

### 23.400 Scope of subpart.

(a) The procedures in this subpart apply to all agency acquisitions of an Environmental Protection Agency (EPA) or United States Department of Agriculture (USDA)-designated item, if—

- (1) The price of the designated item exceeds \$10,000; or
- (2) The aggregate amount paid for designated items, or for functionally equivalent designated items, in the preceding fiscal year was \$10,000 or more.

(b) While micro-purchases are included in determining the aggregate amount paid under paragraph (a)(2) of this section, it is not recommended that an agency track micro-purchases when—

- (1) The agency anticipates the aggregate amount paid will exceed \$10,000; or
- (2) The agency intends to establish or continue an affirmative procurement program in the following fiscal year.

### 23.401 Definitions.

As used in this subpart—

## 23.402

(a) *EPA-designated item* means a product that is or can be made with recovered material—

(1) That is listed by EPA in a procurement guideline (40 CFR part 247); and

(2) For which EPA has provided purchasing recommendations in a related Recovered Materials Advisory Notice (RMAN) (available at <http://www.epa.gov/epaoswer/non-hw/procure/backgrnd.htm>).

(b) *USDA-designated item* means a generic grouping of products that are or can be made with biobased materials—

(1) That is listed by USDA in a procurement guideline (7 CFR part 2902, subpart B); and

(2) For which USDA has provided purchasing recommendations.

[72 FR 63043, Nov. 7, 2007, as amended at 73 FR 21790, Apr. 22, 2008]

### 23.402 Authorities.

(a) The Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. 6962.

(b) The Farm Security and Rural Investment Act of 2002 (FSRIA), 7 U.S.C. 8102.

(c) Executive Order 13101 of September 14, 1998, Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition.

(d) The Energy Policy Act of 2005, Public Law 109–58.

### 23.403 Policy.

Government policy on the use of products containing recovered materials and biobased products considers cost, availability of competition, and performance. Agencies shall assure the use of products containing recovered materials and biobased products to the maximum extent practicable without jeopardizing the intended use of the product while maintaining a satisfactory level of competition at a reasonable price. Such products shall meet the reasonable performance standards of the agency and be acquired competitively, in a cost-effective manner. Except as provided at FAR 23.404(b), virgin material shall not be required by the solicitation (see 11.302).

## 48 CFR Ch. 1 (10–1–09 Edition)

### 23.404 Agency affirmative procurement programs.

(a) An agency must establish an affirmative procurement program for EPA and USDA-designated items if the agency's purchases of designated items exceed the threshold set forth in 23.400.

(1) Agencies have a period of 1 year to revise their procurement program(s) after the designation of any new item by EPA or USDA.

(2) Technical or requirements personnel and procurement personnel are responsible for the preparation, implementation, and monitoring of affirmative procurement programs.

(3) Agency affirmative procurement programs must include—

(i) A recovered materials and biobased products preference program;

(ii) An agency promotion program;

(iii) For EPA-designated items only, a program for requiring reasonable estimates, certification, and verification of recovered material used in the performance of contracts. Both the recovered material content and biobased programs require preaward certification that the products meet EPA or USDA recommendations. A second certification is required at contract completion for recovered material content; and

(iv) Annual review and monitoring of the effectiveness of the program.

(b) *Exemptions.* (1) Agency affirmative procurement programs must require that 100 percent of purchases of EPA or USDA-designated items contain recovered material or biobased content, respectively, unless the item cannot be acquired—

(i) Competitively within a reasonable time frame;

(ii) Meeting reasonable performance standards; or

(iii) At a reasonable price.

(2) EPA and USDA may provide categorical exemptions for items that they designate, when procured for a specific purpose. For example, some USDA-designated items such as mobile equipment hydraulic fluids, diesel fuel additives, and penetrating lubricants (see 7 CFR 2902.10 *et seq.*) are excluded from the preferred procurement requirement for the application of the USDA-designated item to one or both of the following:

(i) Spacecraft system and launch support equipment.

(ii) Military equipment, *i.e.*, a product or system designed or procured for combat or combat-related missions.

(c) Agency affirmative procurement programs must provide guidance for purchases of EPA-designated items at or below the micro-purchase threshold.

(d) Agencies may use their own specifications or commercial product descriptions when procuring products containing recovered materials or biobased products. When using either, the contract should specify—

(1) For products containing recovered materials, that the product is composed of the—

(i) Highest percent of recovered materials practicable; or

(ii) Minimum content standards in accordance with EPA's Recovered Materials Advisory Notices; and

(2) For biobased products, that the product is composed of—

(i) The highest percentage of biobased material practicable; or

(ii) USDA's recommended minimum contents standards.

(e) Agencies shall treat as eligible for the preference for biobased products, products from "designated countries," as defined in 25.003, provided that those products—

(1) Meet the criteria for the definition of biobased product, except that the products need not meet the requirement that renewable agricultural materials (including plant, animal, and marine materials) or forestry materials in such product must be domestic; and

(2) Otherwise meet all requirements for participation in the preference program.

#### 23.405 Procedures.

(a) *Designated items and procurement guidelines.*

(1) *Recovered Materials.* Contracting officers should refer to EPA's list of EPA-designated items (available via the Internet at "<http://www.epa.gov/cpg/products.htm>") and to their agencies' affirmative procurement program when purchasing products that contain recovered material, or services that could include the use of products that contain recovered material.

(2) *Biobased products.* Contracting officers should refer to USDA's list of USDA-designated items (available through the Internet at <http://www.usda.gov/biopreferred>) and to their agencies affirmative procurement program when purchasing supplies that contain biobased material or when purchasing services that could include supplies that contain biobased material.

(b) *Procurement exemptions.* (1) Once an item has been designated by either EPA or USDA, agencies shall purchase conforming products unless an exemption applies (see 23.404(b)).

(2) When an exemption is used for an EPA-designated item or the procurement of a product containing recovered material does not meet or exceed the EPA recovered material content guidelines, the contracting officer shall place a written justification in the contract file.

(c) *Program priorities.* When both the USDA-designated item and the EPA-designated item will be used for the same purposes, and both meet the agency's needs, the agency shall purchase the EPA-designated item.

[72 FR 63043, Nov. 7, 2007, as amended at 73 FR 21790, Apr. 22, 2008]

#### 23.406 Solicitation provisions and contract clauses.

(a) Insert the provision at 52.223-1, Biobased Product Certification, in solicitations that—

(1) Require the delivery or specify the use of USDA-designated items; or

(2) Include the clause at 52.223-2.

(b) Insert the clause at 52.223-2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts, in service or construction solicitations and contracts unless the contract will not involve the use of USDA-designated items at <http://www.usda.gov/biopreferred> or 7 CFR Part 2902.

(c) Except for the acquisition of commercially available off-the-shelf items, insert the provision at 52.223-4, Recovered Material Certification, in solicitations that—

(1) Require the delivery or specify the use of EPA-designated items; or

## 23.500

(2) Include the clause at 52.223-17, Affirmative Procurement of EPA-designated Items in Service and Construction Contracts.

(d) Except for the acquisition of commercially available off-the-shelf items, insert the clause at 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-designated Items, in solicitations and contracts exceeding \$100,000 that are for, or specify the use of, EPA-designated items containing recovered materials. If technical personnel advise that estimates can be verified, use the clause with its Alternate I.

(e) Insert the clause at 52.223-17, Affirmative Procurement of EPA-designated Items in Service and Construction Contracts, in service or construction solicitations and contracts unless the contract will not involve the use of EPA-designated items.

[72 FR 63043, Nov. 7, 2007, as amended at 73 FR 21790, Apr. 22, 2008; 74 2721, Jan. 15, 2009]

### Subpart 23.5—Drug-Free Workplace

SOURCE: 54 FR 4968, Jan. 31, 1989; 55 FR 21707, May 25, 1990, unless otherwise noted.

#### 23.500 Scope of subpart.

This subpart implements the Drug Free Workplace Act of 1988 (Pub. L. 100-690).

#### 23.501 Applicability.

This subpart applies to contracts, including contracts with 8(a) contractors under FAR subpart 19.8 and modifications that require a justification and approval (see subpart 6.3), except contracts—

(a) At or below the simplified acquisition threshold; however, the requirements of this subpart apply to all contracts of any value awarded to an individual;

(b) For the acquisition of commercial items (see part 12);

(c) Performed outside the United States and its outlying areas or any part of a contract performed outside the United States and its outlying areas;

(d) By law enforcement agencies, if the head of the law enforcement agen-

## 48 CFR Ch. 1 (10-1-09 Edition)

cy or designee involved determines that application of this subpart would be inappropriate in connection with the law enforcement agency's undercover operations; or

(e) Where application would be inconsistent with the international obligations of the United States or with the laws and regulations of a foreign country.

[54 FR 4968, Jan. 31, 1989, as amended at 55 FR 21707, May 25, 1990; 60 FR 34758, July 3, 1995; 60 FR 48248, Sept. 18, 1995; 68 FR 28082, May 22, 2003]

#### 23.502 Authority.

Drug-Free Workplace Act of 1988 (Pub. L. 100-690).

#### 23.503 Definitions.

As used in this subpart—

*Controlled substance* means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), and as further defined in regulation at 21 CFR 1308.11-1308.15.

*Conviction* means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

*Criminal drug statute* means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

*Employee* means an employee of a contractor directly engaged in the performance of work under a Government contract. *Directly engaged* is defined to include all direct cost employees and any other contract employee who has other than a minimal impact or involvement in contract performance.

*Individual* means an offeror/contractor that has no more than one employee including the offeror/contractor.

[54 FR 4968, Jan. 31, 1989, as amended at 55 FR 21707, May 25, 1990; 66 FR 2130, Jan. 10, 2001]

#### 23.504 Policy.

(a) No offeror other than an individual shall be considered a responsible source (see 9.104-1(g) and 19.602-1(a)(2)(i)) for a contract that exceeds

the simplified acquisition threshold, unless it agrees that it will provide a drug-free workplace by—

(1) Publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establishing an ongoing drug-free awareness program to inform its employees about—

(i) The dangers of drug abuse in the workplace;

(ii) The contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Providing all employees engaged in performance of the contract with a copy of the statement required by paragraph (a)(1) of this section;

(4) Notifying all employees in writing in the statement required by subparagraph (a)(1) of this section, that as a condition of employment on a covered contract, the employee will—

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;

(5) Notifying the contracting officer in writing within 10 days after receiving notice under subdivision (a)(4)(ii) of this section, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 days after receiving notice under subparagraph (a)(4) of this section of a conviction, taking one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Requiring such employee to satisfactorily participate in a drug abuse

assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(7) Making a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (a)(1) through (a)(6) of this section.

(b) No individual shall be awarded a contract of any dollar value unless that individual agrees not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing the contract.

(c) For a contract of 30 days or more performance duration, the contractor shall comply with the provisions of paragraph (a) of this section within 30 days after contract award, unless the contracting officer agrees in writing that circumstances warrant a longer period of time to comply. Before granting such an extension, the contracting officer shall consider such factors as the number of contractor employees at the worksite, whether the contractor has or must develop a drug-free workplace program, and the number of contractor worksites. For contracts of less than 30 days performance duration, the contractor shall comply with the provisions of paragraph (a) of this section as soon as possible, but in any case, by a date prior to when performance is expected to be completed.

[54 FR 4968, Jan. 31, 1989, as amended at 55 FR 21707, May 25, 1990; 55 FR 38517, Sept. 18, 1990; 60 FR 34758, July 3, 1995; 61 FR 69292, Dec. 31, 1996]

#### **23.505 Contract clause.**

Except as provided in 23.501, insert the clause at 52.223-6, Drug-Free Workplace, in solicitations and contracts.

[68 FR 28082, May 22, 2003]

#### **23.506 Suspension of payments, termination of contract, and debarment and suspension actions.**

(a) After determining in writing that adequate evidence to suspect any of the causes at paragraph (d) of this section exists, the contracting officer may suspend contract payments in accordance with the procedures at 32.503-6(a)(1).

## 23.601

(b) After determining in writing that any of the causes at paragraph (d) of this section exists, the contracting officer may terminate the contract for default.

(c) Upon initiating action under paragraph (a) or (b) of this section, the contracting officer shall refer the case to the agency suspension and debarment official, in accordance with agency procedures, pursuant to subpart 9.4.

(d) The specific causes for suspension of contract payments, termination of a contract for default, or suspension and debarment are—

(1) The contractor has failed to comply with the requirements of the clause at 52.223-6, Drug-Free Workplace; or

(2) The number of contractor employees convicted of violations of criminal drug statutes occurring in the workplace indicates that the contractor has failed to make a good faith effort to provide a drug-free workplace.

(e) A determination under this section to suspend contract payments, terminate a contract for default, or debar or suspend a contractor may be waived by the agency head for a particular contract, in accordance with agency procedures, only if such waiver is necessary to prevent a severe disruption of the agency operation to the detriment of the Federal Government or the general public (see subpart 9.4). The waiver authority of the agency head cannot be delegated.

[54 FR 4968, Jan. 31, 1989, as amended at 55 FR 21708, May 25, 1990; 61 FR 69292, Dec. 31, 1996]

### Subpart 23.6—Notice of Radioactive Material

SOURCE: 56 FR 55374, Oct. 25, 1991, unless otherwise noted.

#### 23.601 Requirements.

(a) The clause at 52.223-7, Notice of Radioactive Materials, requires the contractor to notify the contracting officer prior to delivery of radioactive material.

(b) Upon receipt of the notice, the contracting officer shall notify receiving activities so that appropriate safeguards can be taken.

## 48 CFR Ch. 1 (10-1-09 Edition)

(c) The clause permits the contracting officer to waive the notification if the contractor states that the notification on prior deliveries is still current. The contracting officer may waive the notice only after consultation with cognizant technical representatives.

(d) The contracting officer is required to specify in the clause at 52.223-7, the number of days in advance of delivery that the contractor will provide notification. The determination of the number of days should be done in coordination with the installation/facility radiation protection officer (RPO). The RPO is responsible for insuring the proper license, authorization or permit is obtained prior to receipt of the radioactive material.

[56 FR 55374, Oct. 25, 1991, as amended at 62 FR 236, Jan. 2, 1997]

#### 23.602 Contract clause.

The contracting officer shall insert the clause at 52.223-7, Notice of Radioactive Materials, in solicitations and contracts for supplies which are, or which contain—(a) radioactive material requiring specific licensing under regulations issued pursuant to the Atomic Energy Act of 1954; or (b) radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries. Such supplies include, but are not limited to, aircraft, ammunition, missiles, vehicles, electronic tubes, instrument panel gauges, compasses and identification markers.

### Subpart 23.7—Contracting for Environmentally Preferable Products and Services

SOURCE: 60 FR 28497, May 31, 1995, unless otherwise noted.

#### 23.700 Scope.

This subpart prescribes policies for acquiring environmentally preferable products and services.

[66 FR 65353, Dec. 18, 2001]

#### 23.701 Definitions.

As used in this subpart—

## Federal Acquisition Regulation

23.705

*Computer monitor* means a video display unit used with a computer.

*Desktop computer* means a computer designed for use on a desk or table.

*Notebook computer* means a portable-style or laptop-style computer system.

*Personal computer product* means a notebook computer, a desktop computer, or a computer monitor, and any peripheral equipment that is integral to the operation of such items. For example, the desktop computer together with the keyboard, the mouse, and the power cord would be a personal computer product. Printers, copiers, and fax machines are not included in peripheral equipment, as used in this definition.

[72 FR 73217, Dec. 26, 2007]

### 23.702 Authorities.

(a) Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901, *et seq.*).

(b) National Energy Conservation Policy Act (42 U.S.C. 8262g).

(c) Pollution Prevention Act of 1990 (42 U.S.C. 13101, *et seq.*).

(d) Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.

(e) Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition.

(f) Executive Order 13123 of June 3, 1999, Greening the Government through Efficient Energy Management.

(g) Farm Security and Rural Investment Act of 2002 (FSRIA) (7 U.S.C. 8102).

(h) Executive Order 13221 of July 31, 2001, Energy Efficient Standby Power Devices.

(i) Executive Order 13423 of January 24, 2007, Strengthening Federal Environmental, Energy, and Transportation Management.

[60 FR 28497, May 31, 1995, as amended at 65 FR 36020, June 6, 2000; 66 FR 65353, Dec. 18, 2001; 68 FR 43869, July 24, 2003; 72 FR 63045, Nov. 7, 2007; 72 FR 73217, Dec. 26, 2007]

### 23.703 Policy.

Agencies must—

(a) Implement cost-effective contracting preference programs promoting energy-efficiency, water conservation, and the acquisition of envi-

ronmentally preferable products and services; and

(b) Employ acquisition strategies that affirmatively implement the following environmental objectives:

(1) Maximize the utilization of environmentally preferable products and services (based on EPA-issued guidance).

(2) Promote energy-efficiency and water conservation.

(3) Eliminate or reduce the generation of hazardous waste and the need for special material processing (including special handling, storage, treatment, and disposal).

(4) Promote the use of nonhazardous and recovered materials.

(5) Realize life-cycle cost savings.

(6) Promote cost-effective waste reduction when creating plans, drawings, specifications, standards, and other product descriptions authorizing material substitutions, extensions of shelf-life, and process improvements.

(7) Promote the use of biobased products.

(8) Purchase only plastic ring carriers that are degradable (7 USC 8102(c)(1), 40 CFR part 238).

[65 FR 36020, June 6, 2000, as amended at 66 FR 65353, Dec. 18, 2001; 72 FR 63045, Nov. 7, 2007]

### 23.704 Application to Government-owned or -leased facilities.

Executive Order 13101, Section 701, requires that contracts for contractor operation of a Government-owned or -leased facility and contracts for support services at a Government-owned or -operated facility include provisions that obligate the contractor to comply with the requirements of the order. Compliance includes developing programs to promote and implement cost-effective waste reduction and affirmative procurement programs required by 42 U.S.C. 6962 for all products designated in EPA's Comprehensive Procurement Guideline (40 CFR part 247).

[65 FR 36020, June 6, 2000]

### 23.705 Electronic products environmental assessment tool.

(a) *General.* As required by E.O. 13423, agencies must ensure that they meet at least 95 percent of their annual acquisition requirement for electronic

## 23.706

products with Electronic Product Environmental Assessment Tool (EPEAT)-registered electronic products, unless there is no EPEAT standard for such products. This policy applies to contracts performed in the United States, unless otherwise provided by agency procedures.

(b) *Personal computer products.* Personal computer products is a category of EPEAT-registered electronic products.

(1) The IEEE 1680 standard for personal computer products—

(i) Was issued by the Institute of Electrical and Electronics Engineers on April 28, 2006;

(ii) Is a voluntary consensus standard consistent with Section 12(d) of Pub. L. 104-113, the “National Technology Transfer and Advancement Act of 1995”, (see 11.102(c));

(iii) Meets EPA-issued guidance on environmentally preferable products and services; and

(iv) Is described in more detail at <http://www.epeat.net>.

(2) A list of EPEAT-registered products that meet the IEEE 1680 standard can be found at <http://www.epeat.net>.

(3) The IEEE 1680 standard sets forth required and optional criteria. EPEAT “Bronze” registered products must meet all required criteria. EPEAT “Silver” registered products meet all required criteria and 50 percent of the optional criteria. EPEAT “Gold” registered products meet all required criteria and 75 percent of the optional criteria. These are the levels discussed in clause 1.4 of the IEEE 1680 standard. The clause at 52.223-16, IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products, makes EPEAT Bronze registration the standard that contractors must meet. In accordance with guidance from the Office of the Federal Environmental Executive encouraging agencies to procure EPEAT Silver registered products, Alternate I of the clause makes EPEAT Silver registration the standard that contractors must meet. Agencies also may use EPEAT Silver or Gold registration in the evaluation of proposals.

(c) The agency shall establish procedures for granting exceptions to the requirement in paragraph (a) of this sec-

## 48 CFR Ch. 1 (10-1-09 Edition)

tion, with the goal that the dollar value of exceptions granted will not exceed 5 percent of the total dollar value of electronic products acquired by the agency, for which EPEAT-registered products are available. For example, agencies may grant an exception if the agency determines that no EPEAT-registered product meets agency requirements, or that the EPEAT-registered product will not be cost effective over the life of the product.

[72 FR 73217, Dec. 26, 2007]

### 23.706 Contract clauses.

(a) Insert the clause at 52.223-10, Waste Reduction Program, in all solicitations and contracts for contractor operation of Government-owned or -leased facilities and all solicitations and contracts for support services at Government-owned or -operated facilities.

(b)(1) Unless an exception has been approved in accordance with 23.705(c), insert the clause at 52.223-16, IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products, in all solicitations and contracts for—

(i) Personal computer products;

(ii) Services that require furnishing of personal computer products for use by the Government; or

(iii) Contractor operation of Government-owned facilities.

(2) Agencies may use the clause with its Alternate I when there are sufficient EPEAT Silver registered products available to meet agency needs.

[72 FR 73217, Dec. 26, 2007]

## Subpart 23.8—Ozone-Depleting Substances

SOURCE: 60 FR 28500, May 31, 1995, unless otherwise noted.

### 23.800 Scope of subpart.

This subpart sets forth policies and procedures for the acquisition of items which contain, use, or are manufactured with ozone-depleting substances.

[60 FR 28500, May 31, 1995, as amended at 61 FR 31645, June 20, 1996]

## Federal Acquisition Regulation

23.902

### 23.801 Authorities.

(a) Title VI of the Clean Air Act (42 U.S.C. 7671, *et seq.*).

(b) Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.

(c) Environmental Protection Agency (EPA) regulations, Protection of Stratospheric Ozone (40 CFR part 82).

[60 FR 28500, May 31, 1995, as amended at 68 FR 43869, July 24, 2003]

### 23.802 [Reserved]

### 23.803 Policy.

(a) It is the policy of the Federal Government that Federal agencies:

(1) Implement cost-effective programs to minimize the procurement of materials and substances that contribute to the depletion of stratospheric ozone; and

(2) Give preference to the procurement of alternative chemicals, products, and manufacturing processes that reduce overall risks to human health and the environment by lessening the depletion of ozone in the upper atmosphere.

(b) In preparing specifications and purchase descriptions, and in the acquisition of supplies and services, agencies shall:

(1) Comply with the requirements of Title VI of the Clean Air Act, Executive Order 13148, and 40 CFR 82.84(a) (2), (3), (4), and (5); and

(2) Substitute safe alternatives to ozone-depleting substances, as identified under 42 U.S.C. 7671k, to the maximum extent practicable, as provided in 40 CFR 82.84(a)(1), except in the case of Class I substances being used for specified essential uses, as identified under 40 CFR 82.4(r).

[60 FR 28500, May 31, 1995, as amended at 61 FR 31645, June 20, 1996; 68 FR 43869, July 24, 2003]

### 23.804 Contract clauses.

Except for contracts that will be performed outside the United States and its outlying areas, insert the clause at:

(a) 52.223-11, Ozone-Depleting Substances, in solicitations and contracts for ozone-depleting substances or for supplies that may contain or be manu-

factured with ozone-depleting substances.

(b) 52.223-12, Refrigeration Equipment and Air Conditioners, in solicitations and contracts for services when the contract includes the maintenance, repair, or disposal of any equipment or appliance using ozone-depleting substances as a refrigerant, such as air conditioners, including motor vehicles, refrigerators, chillers, or freezers.

[61 FR 31645, June 20, 1996, as amended at 68 FR 28083, May 22, 2003]

## Subpart 23.9—Contractor Compliance With Toxic Chemical Release Reporting

SOURCE: 60 FR 55307, Oct. 30, 1995, unless otherwise noted.

### 23.901 Purpose.

This subpart implements the requirements of Executive Order (E.O.) 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.

[68 FR 43869, July 24, 2003]

### 23.902 General.

(a) The Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and the Pollution Prevention Act of 1990 (PPA) established programs to protect public health and the environment by providing the public with important information on the toxic chemicals being released by manufacturing facilities into the air, land, and water in its communities.

(b) Under EPCRA section 313 (42 U.S.C. 11023), and PPA section 6607 (42 U.S.C. 13106), the owner or operator of certain manufacturing facilities is required to submit annual reports on toxic chemical releases and waste management activities to the Environmental Protection Agency (EPA) and the States. See EPA's Web site at <http://www.epa.gov/tri> for guidance.

[60 FR 55307, Oct. 30, 1995, as amended at 61 FR 41474, Aug. 8, 1996; 68 FR 43869, July 24, 2003]

## 23.903

### 23.903 Applicability.

(a) This subpart applies to all competitive contracts expected to exceed \$100,000 and competitive 8(a) contracts.

(b) This subpart does not apply to—

(1) Acquisitions of commercial items as defined in part 2; or

(2) Contractor facilities located outside the United States and its outlying areas.

[60 FR 55307, Oct. 30, 1995, as amended at 61 FR 41474, Aug. 8, 1996; 68 FR 28083, May 22, 2003; 68 FR 43869, July 24, 2003]

### 23.904 Policy.

(a) It is the policy of the Government to purchase supplies and services that have been produced with a minimum adverse impact on community health and the environment.

(b) Federal agencies, to the greatest extent practicable, shall contract with companies that report in a public manner on toxic chemicals released to the environment.

[60 FR 55307, Oct. 30, 1995. Redesignated at 68 FR 43869, July 24, 2003]

### 23.905 Requirements.

(a) E.O. 13148 requires that solicitations for competitive contracts expected to exceed \$100,000 include, to the maximum extent practicable, as an award eligibility criterion, a certification by an offeror that, if awarded a contract, either—

(1) As the owner or operator of facilities to be used in the performance of the contract that are subject to Form R filing and reporting requirements, the offeror will file, and will continue to file throughout the life of the contract, for such facilities, the Toxic Chemical Release Inventory Form (Form R) as described in EPCRA sections 313 (a) and (g) and PPA section 6607; or—

(2) Facilities to be used in the performance of the contract are exempt from Form R filing and reporting requirements because the facilities—

(i) Do not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);—

(ii) Do not have 10 or more full-time employees as specified in section

## 48 CFR Ch. 1 (10-1-09 Edition)

313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);—

(iii) Do not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);—

(iv) Do not fall within the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:

(A) Major group code 10 (except 1011, 1081, and 1094.

(B) Major group code 12 (except 1241).

(C) Major group codes 20 through 39.

(D) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).

(E) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, *et seq.*), or 5169, or 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or

(v) Are not located in the United States and its outlying areas.

(b) A determination that it is not practicable to include the solicitation provision at 52.223-13, Certification of Toxic Chemical Release Reporting, in a solicitation or class of solicitations shall be approved by a procurement official at a level no lower than the head of the contracting activity. Prior to making such a determination for a solicitation or class of solicitations with an estimated value in excess of \$500,000 (including all options), the agency shall consult with the Environmental Protection Agency, Director, Environmental Assistance Division, Office of Pollution Prevention and Toxic Substances (Mail Code 7408), Washington, DC 20460.—

(c) Award shall not be made to offerors who do not certify in accordance with paragraph (a) of this section when the provision at 52.223-13, Certification of Toxic Chemical Release Reporting, is included in the solicitation. If facilities to be used by the offeror in the performance of the contract are not subject to Form R filing and reporting requirements and the offeror

## Federal Acquisition Regulation

23.1004

fails to check the appropriate box(es) in 52.223-13, Certification of Toxic Chemical Release Reporting, such failure shall be considered a minor informality or irregularity.

(d) The contracting officer shall cooperate with EPA representatives and provide such advice and assistance as may be required to aid EPA in the performance of its responsibilities under E.O. 13148.

(e) EPA, upon determining that a contractor is not filing the necessary forms or is filing incomplete information, may recommend to the head of the contracting activity that the contract be terminated for convenience. The head of the contracting activity shall consider the EPA recommendation and determine if termination or some other action is appropriate.

[60 FR 55307, Oct. 30, 1995, as amended at 61 FR 41474, Aug. 8, 1996; 65 FR 46058, July 26, 2000; 68 FR 28083, May 22, 2003. Redesignated and amended at 68 FR 43869, July 24, 2003]

### 23.906 Solicitation provision and contract clause.

Except for acquisitions of commercial items as defined in part 2, the contracting officer shall—

(a) Insert the provision at 52.223-13, Certification of Toxic Chemical Release Reporting, in all solicitations for competitive contracts expected to exceed \$100,000 and competitive 8(a) contracts, unless it has been determined in accordance with 23.905(b) that to do so is not practicable; and

(b) Insert the clause at 52.223-14, Toxic Chemical Release Reporting, in competitively awarded contracts exceeding \$100,000 and competitively awarded 8(a) contracts, except when the determination at 23.905(b) has been made.

[60 FR 55307, Oct. 30, 1995, as amended at 61 FR 41474, Aug. 8, 1996. Redesignated and amended at 68 FR 43869, July 24, 2003; 72 FR 46360, Aug. 17, 2007]

## Subpart 23.10—Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements

SOURCE: 68 FR 43869, July 24, 2003, unless otherwise noted.

### 23.1000 Scope.

This subpart prescribes policies and procedures for obtaining information needed for Government—

(a) Compliance with right-to-know laws and pollution prevention requirements;

(b) Implementation of an environmental management system (EMS) at a Federal facility; and

(c) Completion of facility compliance audits (FCAs) at a Federal facility.

### 23.1001 Authorities.

(a) Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001-11050 (EPCRA).

(b) Pollution Prevention Act of 1990, 42 U.S.C. 13101-13109 (PPA).

(c) Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.

### 23.1002 Applicability.

The requirements of this subpart apply to facilities owned or operated by an agency in the customs territory of the United States.

### 23.1003 Definitions.

As used in this subpart—

*Federal agency* means an executive agency (see 2.101).

*Priority chemical* means a chemical identified by the Interagency Environmental Leadership Workgroup or, alternatively, by an agency pursuant to section 503 of Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.

### 23.1004 Requirements.

(a) E.O. 13148 requires Federal facilities to comply with the provisions of EPCRA and PPA.

(b) Pursuant to E.O. 13148, and any agency implementing procedures, every new contract that provides for performance on a Federal facility shall require the contractor to provide information necessary for the Federal agency to comply with the—

(1) Emergency planning and toxic release reporting requirements in EPCRA, PPA, and E.O. 13148;

## 23.1005

(2) Toxic chemical, priority chemical, and hazardous substance release and use reduction goals of sections 502 and 503 of Executive Order 13148; and

(3) Requirements for EMSs and FCAs if the place of performance is at a Federal facility designated by the agency.

### 23.1005 Contract clause.

(a) Insert the clause at 52.223-5, Pollution Prevention and Right-to-Know Information, in solicitations and contracts that provide for performance, in whole or in part, on a Federal facility.

(b) Use the clause with its *Alternate I* if the contract provides for contractor—

(1) Operation or maintenance of a Federal facility at which the agency has implemented or plans to implement an EMS; or

(2) Activities and operations—

(i) To be performed at a Government-operated Federal facility that has implemented or plans to implement an EMS; and

(ii) That the agency has determined are covered within the EMS.

(c) Use the clause with its *Alternate II* if—

(1) The contract provides for contractor activities on a Federal facility; and

(2) The agency has determined that the contractor activities should be included within the FCA or an environmental management system audit.

## PART 24—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Sec.

24.000 Scope of part.

### Subpart 24.1—Protection of Individual Privacy

24.101 Definitions.

24.102 General.

24.103 Procedures.

24.104 Contract clauses.

### Subpart 24.2—Freedom of Information Act

24.201 Authority.

24.202 Prohibitions.

24.203 Policy.

AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

## 48 CFR Ch. 1 (10-1-09 Edition)

SOURCE: 48 FR 42277, Sept. 19, 1983, unless otherwise noted.

### 24.000 Scope of part.

This part prescribes policies and procedures that apply requirements of the Privacy Act of 1974 (5 U.S.C. 552a) (the Act) and OMB Circular No. A-130, December 12, 1985, to Government contracts and cites the Freedom of Information Act (5 U.S.C. 552, as amended.)

[48 FR 42277, Sept. 19, 1983, as amended at 55 FR 38517, Sept. 18, 1990]

## Subpart 24.1—Protection of Individual Privacy

### 24.101 Definitions.

As used in this subpart—

*Agency* means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

*Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence.

*Maintain* means maintain, collect, use, or disseminate.

*Operation of a system of records* means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

*Record* means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history, and that contains the individual's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

*System of records on individuals* means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

[48 FR 42277, Sept. 19, 1983, as amended at 66 FR 2130, Jan. 10, 2001]