

## 23.104

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

(3) Furnished by the contractor for use by the Government.

(c) The required products in the contract actions must meet agency performance requirements.

(d) For purposes of meeting the 95 percent sustainable acquisition requirement, the term “contract actions” includes new contracts (and task and delivery orders placed against them) and new task and delivery orders on existing contracts.

[76 FR 31399, May 31, 2011, as amended at 79 FR 35861, June 24, 2014]

### 23.104 Exceptions.

This subpart does not apply to the following acquisitions:

(a) Contracts performed outside of the United States, unless the agency head determines that such application is in the interest of the United States.

(b) Weapon systems.

### 23.105 Exemption authority.

(a) The head of an agency may exempt—

(1) Intelligence activities of the United States, and related personnel, resources, and facilities, to the extent the Director of National Intelligence or agency head determines it necessary to protect intelligence sources and methods from unauthorized disclosure;

(2) Law enforcement activities of that agency and related personnel, resources, and facilities, to the extent the head of an agency determines it necessary to protect undercover operations from unauthorized disclosure;

(3) Law enforcement, protective, emergency response, or military tactical vehicle fleets of that agency; and

(4) Agency activities and facilities in the interest of national security.

(b) If the head of the agency issues an exemption under paragraph (a) of this section, the agency must notify the Chair of the Council on Environmental Quality in writing within 30 days of the issuance of the exemption.

(c) The agency head may submit through the Chair of the Council on Environmental Quality a request for exemption of an agency activity other than those activities listed in para-

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graph (a) of this section and related personnel, resources, and facilities.

### 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) Section 706 of Division D, Title VII of the Omnibus Appropriations Act, 2009 (Pub. L. 111–8).

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

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

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

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