

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 11, 23, 39, and 52**

[FAC 2005–23; FAR Case 2006–030; Item I; Docket 2007–0001, Sequence 9]

RIN 9000–AK85

Federal Acquisition Regulation; FAR Case 2006–030, Electronic Products Environmental Assessment Tool (EPEAT)

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to require use of Electronic Products Environmental Assessment Tool (EPEAT) when acquiring personal computer products such as desktops, notebooks (also known as laptops), and monitors pursuant to the Energy Policy Act of 2005 and Executive Order 13423, “Strengthening Federal Environmental, Energy, and Transportation Management.”

DATES: *Effective Date:* December 26, 2007.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before February 25, 2008 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–23, FAR case 2006–030, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. To search for any document, first select under “Step 1,” “Documents with an Open Comment Period” and select under “Optional Step 2,” “Federal Acquisition Regulation” as the agency of choice. Under “Optional Step 3,” select “Rules”. Under “Optional Step 4,” from the drop down list, select “Document Title” and type the FAR case number “2006–030”. Click the “Submit” button. Please include your name and company name (if any) inside the document. You may also search for any document by clicking on the “Search for Documents” tab at the

top of the screen. Select from the agency field “Federal Acquisition Regulation”, and type “2006–030” in the “Document Title” field. Select the “Submit” button.

- *Fax:* 202–501–4067.
- *Mail:* General Services

Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–23, FAR case 2006–030, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. William Clark, Procurement Analyst, at (202) 219–1813 for clarification of content. Please cite FAC 2005–23, FAR case 2006–030. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

On January 24, 2007, President Bush issued Executive Order 13423, “Strengthening Federal Environmental, Energy, and Transportation Management.” Section 2(h) states that the head of each Agency shall “ensure that the agency * * * when acquiring an electronic product to meet its requirements, meets at least 95 percent of those requirements with an Electronic Product Environmental Assessment Tool (EPEAT)-registered electronic product, unless there is no EPEAT standard for such product”.

EPEAT is a system to help purchasers in the public and private sectors evaluate, compare, and select desktop computers, notebooks and monitors based on their environmental attributes. EPEAT also provides a clear and consistent set of performance criteria for the design of products, and provides an opportunity for manufacturers to secure market recognition for efforts to reduce the environmental impact of their products.

The National Technology Transfer and Advancement Act of 1995 (NTTAA) and the OMB Circular A–119, “Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,” direct Federal agencies to utilize voluntary consensus standards for regulatory and procurement activities, and to participate in the development of these standards, unless to do so would be inconsistent with law or impractical. The Institute of Electrical

and Electronics Engineers (IEEE) 1680 Standard for the Environmental Assessment of Personal Computer Products houses a set of environmental performance criteria, which were developed in an open consensus-based process by an American National Standards Institute (ANSI)-accredited organization in accordance with the NTTAA requirements. Most of the IEEE 1680 criteria refer to environmental performance characteristics of the specific product. EPEAT lists products that comply with this IEEE standard.

The interim rule amends the FAR to require the use of the EPEAT Product Registry and the IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products in all solicitations and contracts for personal computer desktops, notebooks, and monitors. A new clause is required to effectively implement the above-mentioned statute and Executive order.

FAR Subpart 23.7 currently implements the requirements for acquiring environmentally preferable products and services. The interim rule revises Subpart 23.7, and prescribes a new clause, FAR 52.223–16 (also included in FAR 52.212–5 for acquisition of commercial items) in all solicitations and contracts for the acquisition of personal computer products, services that require furnishing of personal computer products for use by the Government, and services for contractor operation of Government-owned facilities. In accordance with Section 7 of Executive Order 13423, this requirement applies only to contracts performed in the United States, unless otherwise authorized in agency procedures.

The Councils have defined “personal computer products” to mean notebook computers, desktop computers, or computer monitors, and all peripherals that are integral to the operation of such items, consistent with the IEEE 1680 standard. 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 yet covered. To clarify application of the clause, the interim rule defines notebook computer, computer desktop and computer monitor, using the definitions in the IEEE 1680 standard.

Authorities

E.O. 13423 revoked E.Os. 13148, 13101, and 13123. These E.Os. have not been eliminated from FAR 23.702 under this case, as other conforming changes will be required. A separate FAR case will address these conforming changes.

Required vs. Optional Criteria

The IEEE 1680 Standard identifies both required criteria and optional criteria. EPEAT "Bronze" registered products must meet all required criteria. EPEAT "Silver" registered products must meet all required criteria and 50 percent of the optional criteria. EPEAT "Gold" registered products must meet all required criteria and 75 percent of the optional criteria. FAR clause 52.223-16 makes EPEAT Bronze registration the standard that contractors must meet. Office of Federal Environmental Executive guidance asks agencies to strive to procure EPEAT Silver registered products, and Alternate I to the clause makes EPEAT Silver registration the standard that contractors must meet, when agencies determine that standard appropriate. Agencies also may use EPEAT Silver or Gold registration in proposal evaluation.

The basic clause requires the contractor to furnish only personal computer products that at the time of submission of proposals were EPEAT Bronze registered or higher, the first level discussed in clause 1.4 of the IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products. The contractor must furnish what it offered, even if the standard has changed between the offer and delivery. Alternate I provides the same conditions for EPEAT Silver registered products.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because it mandates standards for personal computer products that will be offered for sale to the Government.

An Initial Regulatory Flexibility Act (IRFA) has been prepared. The analysis is summarized as follows:

As of January 2006, four of the thirteen vendors who have registered products on the EPEAT Product Registry are small businesses.

Data are not available on how many small businesses are reselling personal computer products to the Government, but according to the EPA's Office of Small Disadvantaged Business Utilization, there are approximately 613 Service Disabled Veteran Owned Small Businesses selling IT hardware to the Federal Government today. These small businesses are not manufacturers of IT hardware, but

resell IT hardware manufactured by other companies to the Federal Government. Many of the products these resellers sell will meet the IEEE 1680 Standard, and the manufacturers of these products will have the option of getting these products EPEAT-registered to verify that they do meet this standard.

The rule does not impose any new reporting, or recordkeeping requirements. The IEEE 1680 Standard sets forth required and optional criteria. The basic clause in the interim rule mandates compliance with all the required criteria, and the clause alternate requires that products must also meet 50 percent of the optional criteria.

The EPEAT Product Registry has been designed to encourage small business manufacturer participation. There is a sliding scale for the annual EPEAT registration fee vendors pay to have their products EPEAT-registered based on the annual revenue of the vendor. The vendors with the smallest annual revenue pay the smallest annual registration fee of \$1,000, for which the company may register all products. A summary of the standard is available on the EPEAT website, but a copy of the standard costs \$70. There have been no indications from small business vendors to date that the IEEE 1680 Standard or the EPEAT Product Registry is a hindrance to doing business with the Federal Government.

Because manufacturers are the parties responsible for determining if their products meet the IEEE 1680 Standard, there will be little to no impact on small businesses selling IT products to the Federal Government, who are selling EPEAT-registered products.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no practical alternatives that will accomplish the objectives of the interim rule.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR Parts 11, 23, 39, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, et seq. (FAC 2005-23, FAR case 2006-030), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space

Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management, effective on January 26, 2007, requires the Government to require use of Electronic Products Environmental Assessment Tool (EPEAT) when acquiring personal computer products such as desktops, notebooks (also known as laptops), and monitors. However, pursuant to Public Law 98-577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 11, 23, 39, and 52

Government procurement.

Dated: December 19, 2007.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 11, 23, 39, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 11, 23, 39, and 52 continues to read as follows:

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

PART 11—DESCRIBING AGENCY NEEDS

■ 2. Amend section 11.101 by revising paragraph (b) to read as follows:

11.101 Order of precedence for requirements documents.

* * * * *

(b) In accordance with OMB Circular A-119, "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities," and Section 12(d) of the National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113 (15 U.S.C. 272 note), agencies must use voluntary consensus standards, when they exist, in lieu of Government-unique standards, except where inconsistent with law or otherwise impractical. The private sector manages and administers voluntary consensus standards. Such standards are not mandated by law (e.g., industry standards such as ISO 9000, and IEEE 1680).

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

■ 3. Add section 23.701 to read as follows:

23.701 Definitions.

As used in this subpart—

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.

■ 4. Amend section 23.702 by adding paragraphs (h) and (i) to read as follows:

23.702 Authorities.

* * * * *

(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.

■ 5. Redesignate section 23.705 as 23.706; and add a new section 23.705 to read as follows:

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 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 section, 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.

■ 6. Revise the newly designated section 23.706 to read as follows:

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.

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

■ 7. Amend section 39.101 by revising paragraph (b) to read as follows:

39.101 Policy.

* * * * *

(b)(1) In acquiring information technology, agencies shall identify their requirements pursuant to—

(i) OMB Circular A–130, including consideration of security of resources, protection of privacy, national security and emergency preparedness, accommodations for individuals with disabilities, and energy efficiency; and

(ii) Standards for environmental assessment of personal computer products (see 23.705).

(2) When developing an acquisition strategy, contracting officers should consider the rapidly changing nature of information technology through market research (see Part 10) and the application of technology refreshment techniques.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 8. Amend section 52.212–5 by—

■ a. Revising the date of the clause; and

■ b. Redesignating paragraphs (b)(27) through (b)(39) as (b)(28) through (b)(40), respectively, and adding a new paragraph (b)(27).

The added text reads as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (DEC 2007)

(b) * * *

(27)(i) 52.223–16, IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products (DEC 2007) (E.O. 13423).

__ (ii) Alternate I (DEC 2007) of 52.223–16.

* * * * *

52.223–10 [Amended]

■ 9. Amend section 52.223–10 by removing from the introductory text “23.705” and adding “23.706(a)” in its place.

■ 10. Add section 52.223–16 to read as follows:

52.223–16 IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products.

As prescribed in 23.706(b)(1), insert the following clause:

IEEE 1680 STANDARD FOR THE ENVIRONMENTAL ASSESSMENT OF PERSONAL COMPUTER PRODUCTS (DEC 2007)

(a) *Definitions.* As used in this clause—
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.

(b) Under this contract, the Contractor shall deliver, furnish for Government use, or furnish for contractor use at a Government-owned facility, only personal computer products that at the time of submission of proposals were EPEAT Bronze registered or higher. Bronze is the first level discussed in clause 1.4 of the IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products.

(c) For information about the standard, see <http://www.epeat.net>.
(End of clause)

Alternate I (DEC 2007)

As prescribed in 23.706(b)(2), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) Under this contract, the Contractor shall deliver, furnish for Government use, or furnish for contractor use at a Government-owned facility, only personal computer products that at the time of submission of proposals were EPEAT Silver registered or higher. Silver is the second level discussed in clause 1.4 of the IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22 and 52

[FAC 2005–23; FAR Case 2006–019; Item II; Docket 2007–0001; Sequence 12]

RIN 9000–AK66

Federal Acquisition Regulation; FAR Case 2006–019, Contracts With Religious Entities

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have adopted as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 11246, as amended, Equal Employment Opportunity, to incorporate the exemption for religious entities prescribed in E.O. 13279.

DATES: *Effective Date:* December 26, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Woodson, Procurement Analyst, at (202) 501–3775 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAC 2005–23, FAR case 2006–019.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the FAR to incorporate the exemption for religious entities prescribed in E.O. 13279. Executive Order 11246, as amended, prohibits Government contractors and subcontractors, and federally assisted construction contractors and subcontractors from discriminating in employment, and requires these contractors to take affirmative action to ensure that employees and applicants are treated without regard to race, color, religion, sex, or national origin. Section 4 of E.O. 13279 amended Section 204 of E.O. 11246 to exempt religious corporations, associations, educational institutions and societies from certain nondiscrimination requirements. Executive Order 11246, as amended, permits religious entities to consider

employment of individuals of a particular religion to perform work connected with carrying on the entity’s activities. Religious entities are not exempt from other requirements of the E.O. 11246.

DoD, GSA, and NASA published an interim rule with request for comments in the **Federal Register** at 72 FR 13586, March 22, 2007. No public comments were received on the rule. The Councils have determined to adopt the interim rule as final, without change.

This not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule only aligns the FAR with the Department of Labor implementation of the exemption for consistency and clarity. The Department of Labor stated in its **Federal Register** notice of September 30, 2003, that the rule will not have a significant economic impact on a substantial number of small business entities. The rule is expected to have a small positive impact on small business entities, as the rule eases hiring restrictions for religious entities. The rule does not impose new requirements that impose a burden on contractors. No comments were received with regard to an impact on small business.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 22 and 52

Government procurement.

Dated: December 19, 2007.

Al Matera,

Director, Office of Acquisition Policy.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 22 and 52,