

### Subpart 23.2—Energy Savings Performance Contracts

SOURCE: 89 FR 30243, Apr. 22, 2024, unless otherwise noted.

#### 23.200 Scope.

(a) This subpart prescribes policies and procedures for 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.

#### 23.201 Authorities.

This subpart implements the National Energy Conservation Policy Act (42 U.S.C. 8287).

#### 23.202 Policy.

(a) Agencies should 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 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; and

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

(d) For procedures related to unsolicited proposals for energy savings performance contracts, see 15.603(e).

(e) For more information see <https://energy.gov/eere/femp/energy-savings-performance-contracts-federal-agencies>.

### Subpart 23.3—Hazardous Material Identification, Material Safety Data, and Notice of Radioactive Materials

#### 23.300 Scope of subpart.

This subpart prescribes policies and procedures for the following:

(a) 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.

(b) Providing notification of radioactive materials prior to delivery.

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#### 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, as amended at 89 FR 61338, July 30, 2024]

#### 23.302 Hazardous material identification and notice of material safety data.

(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

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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 Notice of radioactive materials.

(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.

(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 installa-

tion/facility radiation protection officer (RPO). The RPO is responsible for ensuring the proper license, authorization, or permit is obtained prior to receipt of the radioactive material.

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### 23.304 Contract clauses.

(a)(1) 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.

(2) 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*.

(b) The contracting officer shall insert the clause at 52.223-7, Notice of Radioactive Materials, in solicitations and contracts for supplies that are or that contain—

(1) Radioactive material requiring specific licensing under regulations issued pursuant to the Atomic Energy Act of 1954; or

(2) 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.

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## Subpart 23.4—Pollution Prevention, Environmental Management Systems, and Waste Reduction

SOURCE: 89 FR 30243, Apr. 22, 2024, unless otherwise noted.

### 23.400 Scope of subpart.

This subpart prescribes policies and procedures for—

(a) Obtaining information needed for Government compliance with right-to-know laws and pollution prevention requirements;