

22.2110

(6) *Remedies for discrimination.* (i) When the Administrator of the Wage and Hour Division determines that a contractor has discriminated against an employee in violation of 29 CFR 13.6(b), the Administrator of the Wage and Hour Division will notify the contractor and the relevant contracting agency of the discrimination and request that the contractor remedy the violation.

(ii) If the contractor does not remedy the violation, the Administrator of the Wage and Hour Division shall direct the contractor to provide appropriate relief to the affected employee(s) in the investigative findings letter issued pursuant to 29 CFR 13.51. Such relief may include, but is not limited to—

- (A) Employment;
- (B) Reinstatement;
- (C) Promotion; and
- (D) Restoration of leave, or lost pay and/or benefits.

(iii) Payment of liquidated damages in an amount equaling any monetary relief may also be directed unless such amount is reduced by the Administrator of the Wage and Hour Division because the violation was in good faith and the contractor had reasonable grounds for believing the contractor had not violated the E.O. or 29 CFR part 13.

(iv) The Administrator of the Wage and Hour Division may additionally direct that payments due on the contract or any other contract between the contractor and the Federal Government be withheld as may be necessary to provide any appropriate monetary relief. Upon the final order of the Secretary of Labor that monetary relief is due, the Administrator of the Wage and Hour Division may direct the relevant contracting agency to transfer the withheld funds to the Department of Labor for disbursement.

(7) *Recordkeeping.* When a contractor fails to make, maintain, or protect records; or produce records when requested by authorized representatives of the Administrator of the Wage and Hour Division, or otherwise comply with the requirements of 29 CFR 13.25 in violation of 29 CFR 13.6(c), the Administrator of the Wage and Hour Division will request that the contractor remedy the violation. If the contractor

48 CFR Ch. 1 (10–1–24 Edition)

fails to produce required records upon request, the contracting officer shall, upon his or her own action or upon direction of an authorized representative of the Department of Labor, take such action as may be necessary to cause suspension of any further payment, advance, or guarantee of funds on the contract until such time as the violations are discontinued.

(e) *Inclusion of contract clause.* If a contracting agency fails to include the clause at FAR 52.222–62 in a contract to which the E.O. applies, the contracting officer, on his or her own initiative or within 15 days of notification by an authorized representative of the Department of Labor, shall incorporate the contract clause in the contract retroactive to commencement of performance under the contract through the exercise of any and all authority that may be needed (including, where necessary, its authority to negotiate or amend, its authority to pay any necessary additional costs, and its authority under any contract provision authorizing changes, cancellation, and termination).

22.2110 Contract clause.

Insert the clause at 52.222–62, Paid Sick Leave Under Executive Order 13706, in solicitations and contracts that include the clause at 52.222–6, Construction Wage Rate Requirements, or 52.222–41, Service Contract Labor Standards, where work is to be performed, in whole or in part, in the United States (the 50 States and the District of Columbia).

PART 23—ENVIRONMENT, SUSTAINABLE ACQUISITION, AND MATERIAL SAFETY

- Sec.
23.000 Scope.
23.001 Definitions.
23.002 Policy.

Subpart 23.1—Sustainable Products and Services

- 23.100 Scope of subpart.
23.101 Definitions.
23.102 Authorities.
23.103 Policy.
23.104 General procedures.
23.105 Exceptions.

Federal Acquisition Regulation

23.100

- 23.106 Exemptions.
- 23.107 Statutory purchasing programs.
- 23.107-1 Products containing recovered materials.
- 23.107-2 Biobased products.
- 23.107-3 Energy-consuming products and water-consuming products.
- 23.107-4 Products that contain, use, or are manufactured with ozone-depleting substances or products that contain or use high global warming potential hydrofluorocarbons.
- 23.108 Required Environmental Protection Agency purchasing programs.
- 23.108-1 Water-efficient products.
- 23.108-2 Chemically-intensive products.
- 23.108-3 Products and services that are subject to EPA Recommendations of Specifications, Standards, and Ecolabels.
- 23.109 Solicitation provisions and contract clauses.

Subpart 23.2—Energy Savings Performance Contracts

- 23.200 Scope.
- 23.201 Authorities.
- 23.202 Policy.

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

- 23.300 Scope of subpart.
- 23.301 Definition.
- 23.302 Hazardous material identification and notice of material safety data.
- 23.303 Notice of radioactive materials.
- 23.304 Contract clauses.

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

- 23.400 Scope of subpart.
- 23.401 Definitions.
- 23.402 Authorities.
- 23.403 Emergency planning and toxic release reporting.
- 23.404 Environmental management systems.
- 23.405 Waste reduction program.
- 23.406 Contract clauses.

Subpart 23.5—Greenhouse Gas Emissions

- 23.500 Scope of subpart.
- 23.501 Policy.
- 23.502 Solicitation provision.

Subparts 23.6—23.10 [Reserved]

AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

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

23.000 Scope of part.

This part prescribes acquisition policies and procedures supporting the Government's program to protect and improve the quality of the environment, to foster markets for sustainable products and services, and to ensure proper handling and notification of hazardous materials.

[89 FR 30238, Apr. 22, 2024]

23.001 Definitions.

As used in this part—

Environmental means environmental aspects of internal agency operations and activities, including those aspects related to energy and transportation functions.

Greenhouse gas means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, nitrogen trifluoride, or sulfur hexafluoride.

Toxic chemical means a chemical or chemical category listed in 40 CFR 372.65.

[76 FR 31399, May 31, 2011, as amended at 81 FR 83096, Nov. 18, 2016; 89 FR 30238, Apr. 22, 2024]

23.002 Policy.

In accordance with section 208(a) of Executive Order 14057, Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability, agencies shall reduce emissions, including greenhouse gas emissions; promote environmental stewardship; support resilient supply chains; drive innovation; and incentivize markets for sustainable products and services.

[89 FR 30238, Apr. 22, 2024]

Subpart 23.1—Sustainable Products and Services

SOURCE: 89 FR 30238, Apr. 22, 2024, unless otherwise noted.

23.100 Scope of subpart.

This subpart provides policies and procedures for procuring sustainable products and services. This subpart applies to all contract actions, including those using part 12 procedures for the acquisition of commercial products, including commercially available off-the-

23.101

shelf (COTS) items, and commercial services and acquisitions valued at or below the micro-purchase threshold.

23.101 Definitions.

As used in this subpart—

Contract action means any oral or written action that results in the purchase, rent, or lease of supplies or equipment, services, or construction.

Environmental Protection Agency (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 recommended recovered material content levels and other purchasing recommendations in a related Recovered Materials Advisory Notice (RMAN) (available at <https://www.epa.gov/smm/regulatory-background-comprehensive-procurement-guideline-program-cpg#rman>).

Global warming potential means how much a given mass of a chemical contributes to global warming over a given time period compared to the same mass of carbon dioxide. Carbon dioxide's global warming potential is defined as 1.0.

High global warming potential hydrofluorocarbons means any hydrofluorocarbons in a particular end use for which EPA's Significant New Alternatives Policy (SNAP) program has identified other acceptable alternatives that have lower global warming potential. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables of alternatives available at <https://www.epa.gov/snap/>.

Hydrofluorocarbons means compounds that only contain hydrogen, fluorine, and carbon.

Ozone-depleting substance means any substance the EPA designates in 40 CFR part 82 as—

(1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or

(2) Class II, including, but not limited to, hydrochlorofluorocarbons.

United States, as defined in the Executive Office of the President's Office of

48 CFR Ch. 1 (10–1–24 Edition)

Management and Budget, Council on Environmental Quality, and Climate Policy Office Memorandum M–22–06, when used in a geographical sense means—

(1) The fifty States;

(2) The District of Columbia;

(3) The commonwealths of Puerto Rico and the Northern Mariana Islands;

(4) The territories of Guam, American Samoa, and the United States Virgin Islands; and

(5) Associated territorial waters and airspace.

U.S. Department of Agriculture (USDA)-designated product category means a generic grouping of products that are or can be made with biobased materials—

(1) That are listed by USDA in a procurement guideline (7 CFR part 3201, subpart B); and

(2) For which USDA has provided purchasing recommendations (available at <https://www.biopreferred.gov>).

23.102 Authorities.

(a) Section 208 of Executive Order 14057, Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability, dated December 8, 2021.

(b) Paragraph G of section I of the Executive Office of the President's Office of Management and Budget, Council on Environmental Quality, and Climate Policy Office Memorandum M–22–06, Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability, dated December 8, 2021.

(c) Implementing instructions for Executive Order 14057, Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability, dated August 2022.

(d) The authorities referenced in 23.107 for statutory purchasing programs.

23.103 Policy.

(a) Agencies shall procure sustainable products and services (as defined in 2.101) to the maximum extent practicable.

(1) Procuring sustainable products and services is considered practicable, unless the agency cannot acquire products or services—

Federal Acquisition Regulation

23.104

(i) Competitively within a reasonable performance schedule;

(ii) That meet reasonable performance requirements; or

(iii) At a reasonable price (see 23.103(a)(2)).

(2) When considering whether the price of a sustainable product is reasonable, agencies should consider whether the product is cost-effective over the life of the product. For ENERGY STAR® or Federal Energy Management Program (FEMP)-designated products, a price is reasonable if it is cost-effective over the life of the product taking energy cost savings into account (42 U.S.C. 8259b(b)(2)). Life-cycle cost savings tools for energy-efficient products are available at https://www.energystar.gov/buildings/save_energy_commercial_buildings/ways_save_energy_efficient_products and <https://www.nrel.gov/analysis/tech-lcoe.html>.

(b) When procuring sustainable products and services, agencies shall—

(1) Ensure compliance with applicable statutory purchasing program requirements (see 23.107); and

(2) Prioritize multi-attribute sustainable products and services (see 23.104(c)(2)).

(c) Regarding products under contract actions for services or construction, the contractor is required to provide products that meet the definition of sustainable products and services at 2.101, if the products are—

(1) Delivered to the Government;

(2) Furnished by the contractor for use by the Government;

(3) Incorporated into the construction of a public building or public work; or

(4) Acquired by the contractor for use in performing services under a Government contract where the cost of the products is a direct cost to a Government contract (versus costs which are normally applied to a contractor's general and administrative expenses or indirect costs).

23.104 General procedures.

(a) *Maximum extent practicable.* If the requiring activity submits a written justification addressing the reasons described in 23.103(a)(1), the contracting officer may consider it not practicable to procure sustainable products or

services. A written justification may be for a specific product or service or at the line item or contract level. The contracting officer shall maintain the written justification in the contract file.

(b) *Identification.* (1) Except as provided in paragraph (b)(2) of this section, the contracting officer shall ensure the solicitation and contract identifies—

(i) The sustainable products and services, including the purchasing program and type of product or service, that are applicable to the acquisition, as identified by the requiring activity; and

(ii) Any products and services that are not subject to the requirements of this subpart and the clause at 52.223-23, Sustainable Products and Services, based on the written justification under paragraph (a) of this section, an exception at 23.105, or an exemption at 23.106.

(2) The requirement in paragraph (b)(1) of this section does not apply if the justification, exception, or exemption covers the entirety of the contract action requirements.

(c) *Prioritization.* Agencies shall prioritize sustainable products and services as follows:

(1) Procure products and services that meet applicable statutory purchasing program requirements (see 23.107). When both an EPA-designated item (see 23.107-1) and a biobased product in a USDA-designated product category (see 23.107-2) could be used for the same purposes, and there is not an EPA-designated item that is also a biobased product in a USDA-designated product category that meets the agency's needs, procure the EPA-designated item.

(2) Consistent with other statutory procurement requirements, prioritize multi-attribute sustainable products and services, which are those that meet applicable statutory purchasing program requirements (see 23.107) and one or more required EPA purchasing programs (see 23.108).

(3) If no statutory purchasing program requirements apply, procure sustainable products and services that meet required EPA purchasing program requirements (see 23.108).

23.105

(d) *Resource.* The Green Procurement Compilation (GPC) available at <https://sftool.gov/greenprocurement> provides a comprehensive list of sustainable products and services and other related sustainable acquisition guidance. In addition to the resources identified for each purchasing program listed in 23.107 and 23.108, agencies should consult the GPC when determining which purchasing programs apply to a specific product or service.

23.105 Exceptions.

The following are excepted from the requirement to procure sustainable products and services:

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

(b) Weapon systems; however, compliance with applicable agency affirmative procurement programs is required for recovered materials per 23.107-1 (see 23.109(b)) (42 U.S.C. 6962) and for alternatives for ozone depleting substances per 23.107-4 (see 23.109(d)) (42 U.S.C. 76711), unless a written justification exists as described at 23.104(a) (42 U.S.C. 6962(c)(1) and 7 U.S.C. 8102(a)(1)(B)).

(c) Energy-consuming products or systems designed or procured for combat or combat-related missions are not subject to the requirements in 23.107-3 (42 U.S.C. 8259b(a)(5)).

(d) Biobased products to be used in military equipment (products or systems designed or procured for combat or combat-related missions), spacecraft systems, or launch support equipment are not subject to the requirements in 23.107-2 (7 CFR 3201.3(e)).

23.106 Exemptions.

(a) The Director of National Intelligence may exempt an intelligence activity of the United States and related personnel, resources, and facilities to the extent the Director determines necessary to protect intelligence sources and methods from unauthorized disclosure.

(b) The head of an agency may exempt the following:

(1) Particular agency activities and related personnel, resources, and facilities when it is in the interest of na-

48 CFR Ch. 1 (10-1-24 Edition)

tional security, to protect intelligence sources and methods from unauthorized disclosure, or where necessary to protect undercover law enforcement operations from unauthorized disclosure. The agency shall notify the Chair of the Council on Environmental Quality (CEQ) in writing within 30 days of issuance of the exemption under this paragraph (b)(1).

(2) On an individual or class basis, any manned and unmanned vehicle, vessel, aircraft, or non-road equipment that is used in combat support, combat service support, military tactical or relief operations, or training for such operations or spaceflight vehicles, including associated ground-support equipment.

(c) Contracting officers are encouraged, but not required, to procure sustainable products and services if the head of the agency determines the supplies or services are to be used to facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; to facilitate provision of international disaster assistance; or to support response to an emergency or major disaster.

(d) The head of the agency may submit to the President, through the Chair of CEQ, a request for an exemption of an agency activity, and related personnel, resources, and facilities from this subpart for any reason not otherwise addressed in this section.

23.107 Statutory purchasing programs.

Agencies shall ensure compliance with statutory purchasing program requirements described in 23.107-1 through 23.107-4.

23.107-1 Products containing recovered materials.

(a) *Authorities.* The Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. 6962, as implemented at 40 CFR part 247.

(b) *EPA Comprehensive Procurement Guidelines (CPG) Program.* Under RCRA, EPA must designate items that are or can be made with recovered materials and must also recommend practices to assist procuring agencies in meeting their obligations.

(c) *Applicability.* (1) This section applies to contract actions involving an EPA-designated item, if—

(i) The price of the EPA-designated item exceeds \$10,000; or

(ii) The aggregate amount paid for multiple purchases of the EPA-designated item, or a functionally equivalent item, in the preceding fiscal year was \$10,000 or more.

(2) While micro-purchases are included in determining the aggregate amount paid under paragraph (c)(1) of this section, it is not necessary for an agency to track micro-purchases when—

(i) The agency anticipates the aggregate amount paid will exceed \$10,000; or

(ii) The agency intends to establish or continue an affirmative procurement program as described in paragraph (d) of this section in the following fiscal year.

(d) *Agency affirmative procurement program.* An agency shall establish an affirmative procurement program for EPA-designated items if the agency's purchases of EPA-designated items exceed the threshold set forth in paragraph (c)(1) of this section.

(1) Agency affirmative procurement programs must include—

(i) A recovered materials preference program;

(ii) A program to promote the recovered materials preference program;

(iii) A program for requiring reasonable estimates and certification of recovered material used in the performance of contracts, including a preaward certification that products will meet EPA recommendations (see 52.223-4, Recovered Material Certification), and either an estimate or a certification at contract completion (see 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Items, and its Alternate), as well as agency procedures for verification of estimates and certifications;

(iv) Annual review and monitoring of the effectiveness of the affirmative procurement program; and

(v) Guidance for purchases of EPA-designated items at or below the micro-purchase threshold.

(2) Technical or requirements personnel and procurement personnel are responsible for the preparation, imple-

mentation, and monitoring of affirmative procurement programs.

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

(e) *Procedures.* The following procedures apply when the thresholds set forth in paragraph (c)(1) of this section are exceeded.

(1) Once an item has been designated by EPA, agencies shall purchase conforming products to the maximum extent practicable in accordance with 23.104(a), unless a justification, exception, or exemption applies (see 23.104(a), 23.105, and 23.106, respectively).

(2) Agencies may use their own specifications or commercial product descriptions when procuring products containing recovered materials; however, the contract should specify that the product is composed of the—

(i) Highest percentage of recovered materials practicable; or

(ii) Minimum content standards in accordance with EPA's RMANs.

(3) When acquiring products with recovered material, the contracting officer may request information or data on such products, including recycled content or related product standards (see 11.301(c)).

(f) *Resources.* (1) For information on EPA-designated items and associated minimum content standards, see <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program#products>.

(2) Contracting officers should also consult their agency's affirmative procurement program for agency-specific guidance.

23.107-2 Biobased products.

(a) *Authorities.* (1) The Farm Security and Rural Investment Act of 2002 (FSRIA), 7 U.S.C. 8102, as implemented at 7 CFR part 3201.

(2) The Energy Policy Act of 2005, Public Law 109-58.

(b) *USDA BioPreferred® Program.* The BioPreferred Program was created in the 2002 Farm Bill and is managed by the USDA. The goal of the BioPreferred Program is to increase the purchase and use of biobased products (as defined in 2.101) by agencies.

(c) *Applicability.* (1) This section applies to contract actions involving a biobased product in a USDA-designated product category if—

(i) The price of the biobased product exceeds \$10,000; or

(ii) The aggregate amount paid for multiple purchases of the biobased product, or for a functionally equivalent product, in the preceding fiscal year was \$10,000 or more.

(2) While micro-purchases are included in determining the aggregate amount paid under paragraph (c)(1) of this section, it is not necessary for an agency to track micro-purchases when—

(i) The agency anticipates the aggregate amount paid will exceed \$10,000; or

(ii) The agency intends to establish or continue an affirmative procurement program in the following fiscal year.

(d) *Agency affirmative procurement program.* An agency shall establish an affirmative procurement program for biobased products in USDA-designated product categories if the agency's purchases of such products exceed the threshold set forth in paragraph (c)(1) of this section.

(1) Agency affirmative procurement programs must include—

(i) A biobased products preference program;

(ii) A program to promote the biobased products preference program;

(iii) A program for requiring preaward certification that products meet USDA recommendations (see 52.223-1, Biobased Product Certification) and reporting on biobased products used in performance of contracts (see 52.223-2, Reporting of Biobased Products Under Service and Construction Contracts); and

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

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

(3) Agencies have a period of 1 year to revise their procurement program(s) after USDA updates any USDA-designated product categories.

(e) *Procedures.* The following procedures apply when the thresholds set

forth in paragraph (c)(1) of this section are exceeded.

(1) Once a biobased product is included in a USDA-designated product category, agencies shall purchase conforming products to the maximum extent practicable in accordance with 23.104(a), unless a justification, exception, or exemption applies (see 23.104(a), 23.105, and 23.106, respectively).

(2) Agencies may use their own specifications or commercial product descriptions when procuring biobased products; however, the contract should specify that the biobased product is composed of the—

(i) Highest percentage of biobased material practicable; or

(ii) USDA's recommended minimum contents standards.

(3) When acquiring biobased products, the contracting officer may request information or data on such products, including biobased content or related standards of the products (see 11.301(c)).

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

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

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

(f) *Resources.* (1) For information on USDA-designated product categories and minimum content standards for biobased products, see <https://www.biopreferred.gov>.

(2) Contracting officers should also consult their agency's affirmative procurement program for agency-specific guidance.

23.107-3 Energy-consuming products and water-consuming products.

(a) *Authorities.* (1) Energy Policy and Conservation Act (42 U.S.C. 6361(a)(1)).

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

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

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

(b) *Programs*—(1) ENERGY STAR® Program. The ENERGY STAR® program is a voluntary product-labeling initiative that identifies and promotes energy and water efficiency and the reduction of greenhouse gas emissions. This joint U.S. EPA and Department of Energy program helps buyers save money and protect the environment through energy- and water-efficient products and practices.

(2) *Federal Energy Management Program (FEMP)*. FEMP publishes acquisition guidance to help Federal buyers meet requirements for purchasing energy-efficient and water-efficient products. In addition, in product categories not covered by the ENERGY STAR® program, FEMP sets efficiency requirements for product categories that have the potential to generate significant Federal energy savings.

(c) *Procedures*. To the maximum extent practicable in accordance with 23.104(a), unless a justification, exception, or exemption applies (see 23.104(a), 23.105, and 23.106, respectively)—

(1) When acquiring energy- and water-consuming products listed in the ENERGY STAR® Program or FEMP—

(i) Agencies shall purchase ENERGY STAR® certified 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 at <https://www.energy.gov/eere/femp/low-standby-power-product-list>, agencies shall—

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

(B) If FEMP has listed a product without a corresponding wattage recommendation, purchase items that 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- and water-consuming products, agencies shall specify products that comply with the applicable requirements in paragraph (c)(1) of this section.

(d) *Resources*. (1) For information on products under the ENERGY STAR® Program, go to <https://www.energystar.gov/products>.

(2) For information on energy-efficient products, go to <https://www.energy.gov/eere/femp/search-energy-efficient-products>.

(3) For information on low standby power products, go to <https://www.energy.gov/eere/femp/low-standby-power-product-purchasing-requirements-and-compliance-resources>.

23.107-4 Products that contain, use, or are manufactured with ozone-depleting substances or products that contain or use high global warming potential hydrofluorocarbons.

(a) *Authorities*. (1) Title VI of the Clean Air Act (42 U.S.C. 7671, *et seq.*).

(2) Section 706 of Division D, title VII of the Omnibus Appropriations Act, 2009 (Pub. L. 111-8).

(3) EPA regulations, Protection of Stratospheric Ozone (40 CFR part 82).

(b) *Program*. The EPA SNAP Program.

(c) *Agency programs*. Agencies shall implement cost-effective programs to minimize the procurement of materials and substances that contribute to the depletion of stratospheric ozone and/or result in the use, release, or emission of high global warming potential hydrofluorocarbons.

(d) *Procedures*. Agencies shall—

(1) Give preference to the procurement of acceptable alternative chemicals, products, and manufacturing processes that reduce overall risks to human health and the environment by minimizing—

(i) The depletion of ozone in the upper atmosphere; and

(ii) The potential use, release, or emission of high global warming potential hydrofluorocarbons; and

(2) In preparing specifications and purchase descriptions and in the acquisition of products and services—

23.108

(i) Comply with the requirements of title VI of the Clean Air Act; section 706 of division D, title VII of Public Law 111-8; and 40 CFR 82.84(a)(2) through (5);

(ii) Substitute acceptable 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(n); and

(iii) Unless a particular contract requires otherwise, specify that, when feasible, contractors shall use another acceptable alternative in lieu of a high global warming potential hydrofluorocarbon in products and services in a particular end use for which EPA's SNAP program has identified other acceptable alternatives that have lower global warming potential.

(e) *Resource.* Refer to EPA's SNAP program website at <https://www.epa.gov/snap> for the list of alternatives found at 40 CFR part 82, subpart G, as well as supplemental tables of alternatives.

23.108 Required Environmental Protection Agency purchasing programs.

In accordance with 23.104(c), contracting officers shall, after meeting statutory purchasing program requirements in 23.107, purchase to the maximum extent practicable products and services that meet EPA purchasing program requirements described in 23.108-1 through 23.108-3.

23.108-1 Water-efficient products.

(a) *Program.* EPA's WaterSense® Program makes it easy to find and select water-efficient products that can save water, energy, and money. WaterSense®-labeled products are backed by independent, third-party certification and meet EPA's specifications for water efficiency and performance.

(b) *Resource.* For additional information on WaterSense® products, see <https://www.epa.gov/watersense/watersense-products>.

48 CFR Ch. 1 (10-1-24 Edition)

23.108-2 Chemically-intensive products.

(a) *Program.* Safer Choice is EPA's label for products that contain safer chemicals. Every chemical, regardless of percentage, in a Safer Choice-certified product is evaluated through EPA's rigorous scientific process and only the safest ingredients are allowed.

(b) *Resource.* For information on Safer Choice-certified products, see <https://www.epa.gov/saferchoice>.

23.108-3 Products and services that are subject to EPA Recommendations of Specifications, Standards, and Ecolabels.

(a) *Program.* The EPA Environmentally Preferable Purchasing (EPP) Program helps Federal agencies identify and procure environmentally preferable products and services to meet zero emissions and other sustainable procurement goals by providing Recommendations of Specifications, Standards, and Ecolabels. The EPP recommendations give preference to multi-attribute or life-cycle based standards and ecolabels that address key environmental and human health impact areas and where product conformance is determined by a competent third-party certification body.

(b) *Resource.* For additional information on EPA Recommendations of Specifications, Standards, and Ecolabels, see <https://www.epa.gov/greenerproducts/recommendations-specifications-standards-and-ecolabels-federal-purchasing>.

23.109 Solicitation provisions and contract clauses.

(a) *General.* Insert the clause at 52.223-23, Sustainable Products and Services, in solicitations and contracts—

(1) Unless—

(i) The requiring activity has provided a written justification that it is not practicable to procure sustainable products and services (see 23.104(a));

(ii) An exception under 23.105 applies; or

(iii) An exemption under 23.106 applies; and

(2) The scope of the written justification, exception, or exemption covers

the entirety of the contract action requirements.

(b) *EPA-designated items.* Except for the acquisition of COTS items—

(1) Insert the provision at 52.223-4, Recovered Material Certification, in solicitations that require the delivery or specify the use of EPA-designated items; and

(2) Insert the clause at 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-designated Items, in solicitations and contracts exceeding \$150,000 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.

(c) *Biobased products in USDA-designated product categories.* (1) Insert the provision at 52.223-1, Biobased Product Certification, in solicitations, other than for acquisitions described at 23.105(d), that—

(i) Require the delivery or specify the use of biobased products in USDA-designated product categories; or

(ii) Include the clause at 52.223-2.

(2) Insert the clause at 52.223-2, Reporting of Biobased Products Under Service and Construction Contracts, in service and construction solicitations and contracts, unless the contract will not involve the use of biobased products in USDA-designated product categories at <https://www.biopreferred.gov> or 7 CFR part 3201.

(d) *Products containing ozone-depleting substances and hydrofluorocarbons.* Except for contracts for supplies that will be delivered outside the United States and its outlying areas, or contracts for services that will be performed outside the United States and its outlying areas, insert the following clauses:

(1) 52.223-11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons, in solicitations and contracts for—

(i) Refrigeration equipment (in product or service code (PSC) 4110);

(ii) Air conditioning equipment (PSC 4120);

(iii) Clean agent fire suppression systems/equipment (*e.g.*, installed room flooding systems, portable fire extinguishers, aircraft/tactical vehicle fire/

explosion suppression systems) (in PSC 4210);

(iv) Bulk refrigerants and fire suppressants (in PSC 6830);

(v) Solvents, dusters, freezing compounds, mold release agents, and any other miscellaneous chemical specialty that may contain ozone-depleting substances or high global warming potential hydrofluorocarbons (in PSC 6850);

(vi) Corrosion prevention compounds, foam sealants, aerosol mold release agents, and any other preservative or sealing compound that may contain ozone-depleting substances or high global warming potential hydrofluorocarbons (in PSC 8030);

(vii) Fluorocarbon lubricants (primarily aerosols) (in PSC 9150); and

(viii) Any other manufactured end products that may contain or be manufactured with ozone-depleting substances.

(2) 52.223-12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners, in solicitations and contracts that include the maintenance, service, repair, or disposal of—

(i) Refrigeration equipment, such as refrigerators, chillers, or freezers; or

(ii) Air conditioners, including air conditioning systems in motor vehicles.

(3) 52.223-20, Aerosols, in solicitations and contracts—

(i) For products that may contain high global warming potential hydrofluorocarbons as a propellant, or as a solvent; or

(ii) That involve maintenance or repair of electronic or mechanical devices.

(4) 52.223-21, Foams, in solicitations and contracts for—

(i) Products that may contain high global warming potential hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons as a foam blowing agent, such as building foam insulation or appliance foam insulation; or

(ii) Construction of buildings or facilities.

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.

[89 FR 30243, Apr. 22, 2024]

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

Federal Acquisition Regulation

23.400

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.

[89 FR 30243, Apr. 22, 2024]

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.

[89 FR 30243, Apr. 22, 2024]

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;

23.401

(b) Contractor compliance with environmental management systems; and

(c) Ensuring waste reduction at Federal facilities.

23.401 Definitions.

As used in this subpart—

Federal agency means an executive agency (see 2.101).

Federal facility means a facility owned or operated by a Federal agency in the customs territory of the United States.

23.402 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 14057, Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability, dated December 8, 2021.

23.403 Emergency planning and toxic release reporting.

(a) Federal facilities are required to comply with the emergency planning and toxic release reporting requirements in EPCRA and PPA.

(b) Pursuant to EPCRA, PPA, and any agency implementing procedures, every contract that provides for performance on a Federal facility shall require the contractor to provide information necessary for the Federal agency to comply with paragraph (a) of this section.

23.404 Environmental management systems.

Agencies may implement an environmental management system (EMS) when it aligns with and supports its agency's mission needs and facilitates implementation and progress toward E.O. 14057 goals. If an agency uses an EMS for contractor operation of Government-owned or -leased facilities or vehicles, and contractor activities affect the agency's environmental management aspects—

(a) EMS requirements shall be included in contracts to ensure proper implementation and execution of EMS roles and responsibilities; and

(b) The contracting officer shall—

48 CFR Ch. 1 (10–1–24 Edition)

(1) Specify the EMS directives with which the contractor must comply; and

(2) Ensure contractor compliance to the same extent as the agency would be required to comply if the agency operated the facilities or vehicles.

23.405 Waste reduction program.

To support pollution prevention and agency efforts to minimize waste in accordance with E.O. 14057, contracts for contractor operation of Government-owned or -leased facilities or for support services at Government-owned or -operated facilities shall require the contractor to promote cost-effective waste reduction in all operations and facilities covered by the contract.

23.406 Contract clauses.

(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) Insert the clause at 52.223-19, Compliance With Environmental Management Systems, in solicitations and contracts for contractor operation of Government-owned or -leased facilities or vehicles located in the United States if an agency uses an EMS and contractor activities affect aspects of the agency's environmental management. For facilities located outside the United States, the agency head may determine that use of the clause is in the best interest of the Government.

(c) Insert the clause at 52.223-10, Waste Reduction Program, in 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.

Subpart 23.5—Greenhouse Gas Emissions

SOURCE: 89 FR 30244, Apr. 12, 2024, unless otherwise noted.

23.500 Scope of subpart.

This subpart addresses public disclosure of greenhouse gas emissions and reduction goals.

Federal Acquisition Regulation

24.101

23.501 Policy.

In order to better understand both direct and indirect greenhouse gas emissions that result from Federal activities, offerors that are registered in the System for Award Management (SAM) and received \$7.5 million or more in Federal contract awards in the prior Federal fiscal year are required to—

- (a) Represent whether they publicly disclose greenhouse gas emissions;
- (b) Represent whether they publicly disclose a quantitative greenhouse gas emissions reduction goal; and
- (c) Provide the website for any such disclosures.

23.502 Solicitation provision.

The provision at 52.223–22, Public Disclosure of Greenhouse Gas Emissions and Reduction Goals—Representation, is required only when 52.204–7, System for Award Management, is included in the solicitation (see 52.204–8, Annual Representations and Certifications).

Subparts 23.6—23.10 [Reserved]

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.

Subpart 24.3—Privacy Training

- 24.301 Privacy training.
- 24.302 Contract clause.

AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

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.

Personally identifiable information means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other information that is linked or linkable to a specific individual. (See Office of Management and Budget (OMB) Circular No. A-130, Managing Federal Information as a Strategic Resource).

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.