Federal Acquisition Regulation

22.1505 Solicitation provision and contract clause.

(a) Except as provided in paragraph (b) of 22.1503, insert the provision at 52.222-18, Certification Regarding Knowledge of Child Labor for Listed End Products, in all solicitations that are expected to exceed the micro-purchase threshold and are for the acquisition of end products (regardless of country of origin) of a type identified by country of origin on the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, except solicitations for commercial items that include the provision at 52.212-3, Offeror Representations and Certifications—Commercial Items. The contracting officer must identify in paragraph (b) of the provision at 52.222-18, Certification Regarding Knowledge of Child Labor for Listed End Products, or paragraph (i)(1) of the provision at 52.212-3, any applicable end products and countries of origin from the List. For solicitations estimated to equal or exceed $25,000, the contracting officer must exclude from the List in the solicitation end products from any countries identified at 22.1503(b), in accordance with the specified thresholds.

(b) Insert the clause at 52.222-19, Child Labor—Cooperation with Authorities and Remedies, in all solicitations and contracts for the acquisition of supplies that are expected to exceed the micro-purchase threshold.

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

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

23.400 Scope of subpart.
23.401 Definition.
23.402 Authorities.
23.403 Policy.
23.404 Agency affirmative procurement programs.
23.405 Procedures.
23.406 Solicitation provision and contract clause.

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 Definition.
23.702 Authorities.
23.703 Policy.
23.704 Application to Government-owned or leased facilities.
23.705 Contract clause.

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.
23.000

23.001 Definition.

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

23.002 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.

23.200 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.


23.201 Authorities.


(b) National Energy Conservation Policy Act (42 U.S.C. 8253, 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.


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) If life-cycle cost-effective and available—

(1) When acquiring energy-using products—

(i) Agencies shall purchase ENERGY STAR® or other energy-efficient items listed on the Department of Energy's Federal Energy Management Program

450
(FEMP) Product Energy Efficiency Recommendations product list; and
(ii) For products that consume power in a standby mode and are listed on
FEMP’s Standby Power Devices product listing, agencies shall—
(A) Purchase items which meet
FEMP’s standby power wattage rec-
ommendation or document the reason
for not purchasing such items; or
(B) If FEMP has listed a product
without a corresponding wattage rec-
ommendation, 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 pur-
chase items with the lowest standby
wattage practicable; and
(2) When contracting for services
that will include the provision of en-
ergy-using products, including con-
tracts for design, construction, renova-
tion, or maintenance of a public build-
ing, the specifications shall incor-
porate the applicable requirements in
paragraph (a)(1) of this section.
(b) The requirements in paragraph (a)
of this section only apply when the rel-
levant product’s utility and perform-
ance meet the agency’s need.
(c) Information is available via the
Internet about—
(1) ENERGY STAR® at http://
www.energystar.gov/; and
(2) FEMP at http://
www.eere.energy.gov/femp/procurement.
23.204 Energy-savings performance
contracts.
(a) Section 403 of Executive Order
13123 of June 3, 1999, Greening the Gov-
ernment through Efficient
EnergyManagement, requires an agen-
cy to make maximum use of the au-
thority provided in the National En-
ergy Conservation Policy Act (42 U.S.C.
8287) to use an energy-savings perform-
ance contract (ESPC), when life-cycle
cost-effective, to reduce energy use and
cost in the agency’s facilities and opera-
tions.
(b)(1) Under an ESPC, an agency can
contract with an energy service com-
pany for a period not to exceed 25 years
to improve energy efficiency in one or
more agency facilities at no direct cap-
tal cost to the United States Treas-
ury. The energy service company fi-
nances the capital costs of imple-
menting 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 pro-
vided 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.
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 explo-
sives, that require the furnishing of
data involving hazardous materials.
Agencies may prescribe special proce-
dures for ammunition and explosives.
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, Spec-
ifications 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 re-
sponsible 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 appro-
priate 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.


Subpart 23.4—Use of Recovered Materials

SOURCE: 60 FR 28496, May 31, 1995, unless otherwise noted.

23.401 Definition.

EPA-designated product, as used in this subpart, means a product—

(1) That is or can be made with recovered material;

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

(3) For which EPA has provided purchasing recommendations in a related Recovered Materials Advisory Notice (RMAN).

(65 FR 36039, June 6, 2000)

23.402 Authorities.

(a) The Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. 6962, requires agencies responsible for drafting or reviewing specifications used in agency acquisitions to—

(1) Eliminate from those specifications any requirement excluding the use of recovered materials or requiring products to be manufactured from virgin materials; and

(2) Require, for EPA-designated products, using recovered materials to the maximum extent practicable without jeopardizing the intended end use of the item.

(b) RCRA also requires—

(1) EPA to prepare guidelines on the availability, sources, and potential uses of recovered materials and associated products, including solid waste management services; and
Federal Acquisition Regulation

23.405

(2) Agencies to develop and implement affirmative procurement programs for EPA-designated products within 1 year after EPA's designation.

(c) Executive Order 13101 requires that the agency head—

(1) Work to increase and expand markets for recovered materials through greater Government preference and demand for such products consistent with the demands of efficiency and cost-effectiveness; and

(2) Develop and implement affirmative procurement programs in accordance with direction in RCRA and the Executive order.

[65 FR 36019, June 6, 2000]

23.403 Policy.

Government policy on the use of recovered materials considers cost, availability of competition, and performance. The objective is to acquire competitively, in a cost-effective manner, products that meet reasonable performance requirements and that are composed of the highest percentage of recovered materials practicable.

[65 FR 36019, June 6, 2000]

23.404 Agency affirmative procurement programs.

(a) For EPA-designated products, an agency must establish an affirmative procurement program if the agency's purchases meet the threshold in 23.405(a). Technical or requirements personnel and procurement personnel are responsible for the preparation, implementation, and monitoring of affirmative procurement programs. Agency affirmative procurement programs must include—

(1) A recovered materials preference program;

(2) An agency promotion program;

(3) A program for requiring reasonable estimates, certification, and verification of recovered material used in the performance of contracts; and

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

(b) Agency affirmative procurement programs must require that 100 percent of purchases of EPA-designated products contain recovered material, unless the item cannot be acquired—

(1) Competitively within a reasonable time frame;

(2) Meeting appropriate performance standards; or

(3) At a reasonable price.

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

[65 FR 36019, June 6, 2000]

23.405 Procedures.

(a) These procedures apply to all agency acquisitions of EPA-designated products, including micro-purchases, if—

(1) The price of the product exceeds $10,000; or

(2) The aggregate amount paid for products, or for functionally equivalent products, in the preceding fiscal year was $10,000 or more. RCRA requires that an agency include micro-purchases in determining if the aggregate amount paid was $10,000 or more. However, it is not recommended that an agency track micro-purchases unless it intends to claim an exemption from the requirement to establish an affirmative procurement program in the following fiscal year.

(b) Contracting officers should refer to EPA's list of EPA-designated products (available via the Internet at http://www.epa.gov/cpg/) and to their agencies' affirmative procurement programs when purchasing supplies that could include supplies that contain recovered material or services that contain recovered material.

(c) The contracting officer shall place in the contract file a written justification if an acquisition of EPA-designated products above the micro-purchase threshold does not meet applicable minimum recovered material content recommended by EPA guidelines. If the agency has designated an Environmental Executive, the contracting officer shall give a copy of the written justification to that official. The contracting officer shall base the justification on the inability to acquire the product—

(1) Competitively within a reasonable period of time;

(2) At reasonable prices; or
23.406 Solicitation provision and contract clause.

(a) Insert the provision at 52.223-4, Recovered Material Certification, in solicitations that are for, or specify the use of, EPA-designated products containing recovered materials.

(b) Insert the clause at 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products, in solicitations and contracts exceeding $100,000 that include the provision at 52.223-4. If technical personnel advise that estimates can be verified, use the clause with its Alternate I.

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 agency or designee involved determines that application of this subpart would be inappropriate in connection with the law enforcement agency’s under-cover 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.

23.502 Authority.


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.


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)(ii)) 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.

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).

(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 debarment and suspension 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.


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.

(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.


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.

23.701 Definition.
Biobased product, as used in this subpart, means a commercial or industrial product (other than food or feed) that utilizes biological products or renewable domestic agricultural (plant, animal, and marine) or forestry materials.

23.702 Authorities.
(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.

23.703 Policy.
Agencies must—
(a) Implement cost-effective contracting preference programs promoting energy-efficiency, water conservation, and the acquisition of environmentally 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) Consider the use of biobased products.

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).

23.705 Contract clause.
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.

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]

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).


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).


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 manufactured 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
Federal Acquisition Regulation

23.905


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.


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.


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 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, 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.
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) When the solicitation contains the provision at 52.223-13, Certification of Toxic Chemical Release Reporting, insert the clause at 52.223-14, Toxic Chemical Release Reporting, in the resulting contract, if the contract is expected to exceed $100,000.


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.


(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
Federal Acquisition Regulation

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.