

## Federal Acquisition Regulation

23.204

- (a) Controlling pollution;
- (b) Managing energy and water use in Government facilities efficiently;
- (c) Using renewable energy and renewable energy technologies;
- (d) Acquiring energy- and water-efficient products and services, environmentally preferable products, and products that use recovered materials; and
- (e) Requiring contractors to identify hazardous materials.

[66 FR 65352, Dec. 18, 2001]

### Subpart 23.1 [Reserved]

### Subpart 23.2— Energy and Water Efficiency and Renewable Energy

SOURCE: 66 FR 65352, Dec. 18, 2001, unless otherwise noted.

#### 23.200 Scope.

- (a) This subpart prescribes policies and procedures for—
  - (1) Acquiring energy- and water-efficient products and services, and products that use renewable energy technology; and
  - (2) Using an energy-savings performance contract to obtain energy-efficient technologies at Government facilities without Government capital expense.
- (b) This subpart applies to acquisitions in the United States, its possessions and territories, Puerto Rico, and the Northern Mariana Islands. Agencies conducting acquisitions outside of these areas must use their best efforts to comply with this subpart.

#### 23.201 Authorities.

- (a) Energy Policy and Conservation Act (42 U.S.C. 6361(a)(1)) and Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901, *et seq.*).
- (b) National Energy Conservation Policy Act (42 U.S.C. 8253, 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 pro-

mote 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, contracting officers must purchase ENERGY STAR® or other energy-efficient products designated by the Department of Energy's Federal Energy Management Program (FEMP); or
  - (2) When contracting for services that will include the provision of energy-using products, including contracts for design, construction, renovation, or maintenance of a public building, the specifications must require that the contractor provide ENERGY STAR or other energy-efficient products.
- (b) Information is available via the Internet on—
  - (1) ENERGY STAR® at <http://www.energystar.gov/>; and
  - (2) FEMP at <http://www.eren.doe.gov/femp/procurement>.

#### 23.204 Energy-savings performance contracts.

- (a) Section 403 of Executive Order 13123 of June 3, 1999, Greening the Government through Efficient Energy Management, requires an agency to 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.