

Department of Energy

No. AL-2006-09

Date 07/24/06



# ACQUISITION LETTER

This Acquisition Letter is issued under the authority of the Procurement Executives of DOE and NNSA.

**Subject: Energy Efficiency of Energy Consuming Products — Implementation of Section 104 of the Energy Policy Act of 2005**

**References:**

Energy Policy Act of 2005, Section 104  
Executive Order 13123, Greening the Government through Energy Efficient Management, Section 403  
DOE Acquisition Guide Chapter 23, Greening the Government – Environmental Considerations in Contracting  
FAR Subpart 23.2, Energy and Water Efficiency and Renewable Energy

**When is this Acquisition Letter (AL) Effective?**

This AL is effective immediately upon issuance.

**When does this AL Expire?**

The AL remains in effect until superseded by anticipated FAR coverage or it is canceled.

**Who are the Points of Contact?**

Richard Langston, Office of Procurement and Assistance Policy, MA-61, (202) 287-1339 or [Richard.Langston@hq.doe.gov](mailto:Richard.Langston@hq.doe.gov) or for NNSA, Mr. Stephen Law, Office of Acquisition and Supply Management Office, NA-63, (202) 586-4321 or [Stephen.Law@nnsa.doe.gov](mailto:Stephen.Law@nnsa.doe.gov) .

**What is the Purpose of this AL?**

This AL implements the requirements of Section 104 of the Energy Policy Act of 2005 within the Department of Energy while a pending FAR Case is processed to add the same coverage to the FAR.

**What is the Background?**

The ENERGYSTAR<sup>®</sup> trademark may be used on energy consuming products that offer superior energy efficiency. The Federal Energy Management Program (FEMP) also offers “FEMP

designation” for certain categories of energy consuming products that are in the upper 25% of energy efficiency for their class of products. The FAR currently requires Federal agencies to acquire energy consuming products that are ENERGYSTAR<sup>®</sup> qualified or designated by FEMP. The only exception being the product is not life cycle cost effective or does not meet functional performance requirements.

The FAR requirements in Part 23 have not been well understood and are sometimes overlooked, as there is no clause to implement these provisions. The Energy Policy Act of 2005 provides that Federal agencies incorporate energy efficiency criteria into their guide specifications, project specifications, and construction, renovation, and services contracts. This requirement is in the FAR based on earlier Executive Order 13123 language. However, it lacks an implementing provision. In response, the Department of Energy proposed a FAR Business Case 2006-008 to add a new contract clause to the FAR to be included in solicitations and contracts alerting Federal and industrial personnel of these requirements.

**Are there exceptions to this rule?**

Exceptions to this policy should be rare because such products are generally life cycle cost effective when used as intended. The office requiring the product may pursue a written determination from the Secretary of Energy for an exception if:

- A. an ENERGYSTAR<sup>®</sup> or FEMP designated product is not cost effective over the life of the product, taking energy savings into account, using the measurement criteria at 10 CFR 436; or
- B. no ENERGYSTAR<sup>®</sup> or FEMP designated product is reasonably available that meets the functional requirements of DOE.

**What is the Guidance?**

When acquiring energy consuming products, or specifying the use of listed energy consuming products, insert the following clause in solicitations and contracts (applicable to supply or service contracts, including construction and architect-engineer service contracts):

**ENERGY EFFICIENCY IN ENERGY CONSUMING PRODUCTS (JULY 2006)**

When the contract requires the specification or delivery of energy consuming products for use in a Federal facility, the contractor will specify or deliver ENERGYSTAR<sup>®</sup> qualified products or products conforming to the Federal Energy Management Program’s (FEMP) Energy Efficiency Requirements, whichever may be applicable, provided products with such a designation are available and are life cycle cost effective and meet applicable performance standards. Information about these products is available for ENERGYSTAR<sup>®</sup> at <http://www.energystar.gov/products> and FEMP at [http://www.eere.energy.gov/femp/procurement/eep\\_requirements.cfm](http://www.eere.energy.gov/femp/procurement/eep_requirements.cfm) .

**What about management and operating (M&O) contracts?**

DOE O 430.2A implements the earlier requirements of Executive Orders 13123 and 13134 through its Contractor Requirements Document, applicable to M&O contracts through the Laws, Regulations and DOE Directives clause of the Department of Energy Acquisition Regulation, 10 CFR 970.5204-2. Contracting officers should include the above Energy Efficiency in Energy Consuming Products contract clause in M&O contracts that offer the opportunity for incorporating energy efficiency criteria into their guide or project specifications and construction, renovation, and services subcontracts.