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Subpart 23.2—Energy and Water Efficiency and Renewable Energy

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.

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

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 (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 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 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 purchase items with the lowest standby wattage practicable; and
 - (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 shall incorporate the applicable requirements in paragraph (a)(1) of this section.
- (b) The requirements in paragraph (a) of this section only apply when the relevant product's utility and performance 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 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.
- (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; 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.

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