

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, 8259b, 8262g, and 8287](#)).

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

(d) Title VI of the Clean Air Act, as amended ([42 U.S.C. 7671](#), *et seq.*).

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

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

(g) Executive Order 13423 of January 24, 2007, *Strengthening Federal Environmental, Energy, and Transportation Management*.

(h) Executive Order 13514 of October 5, 2009, *Federal Leadership in Environmental, Energy, and Economic Performance*.

23.202 Policy.

(a) *Introduction*. The Government's policy is to acquire *supplies* and services that promote a clean energy economy that increases our Nation's energy security, safeguards the health of our environment, and reduces greenhouse gas emissions from direct and indirect Federal activities. To implement this policy, Federal *acquisitions* will foster markets for sustainable technologies,

products, and services. This policy extends to all *acquisitions*, including those below the *simplified acquisition threshold* and those at or below the *micro-purchase threshold* (including those made with a Government purchase card).

(b) *Water-efficient*. In accordance with Executive Order 13514, dated October 5, 2009, Federal Leadership in *Environmental, Energy, and Economic Performance*, it is the policy and objective of the Government to use and manage water through water-efficient means by—

(1) Reducing potable *water consumption intensity* to include low-flow fixtures and efficient cooling towers;

(2) Reducing agency, industry, landscaping, and agricultural water consumption; and

(3) Storm water management in accordance with section 438 of the Energy Independence and Security Act of 2007 (42 U.S.C.17094) as implemented in <https://www.epa.gov/nps/stormwater-management-federal-facilities-under-section-438-energy-independence-and-security-act>.

23.203 Energy-efficient products.

(a) Unless exempt as provided at [23.204](#)-

(1) When acquiring energy-consuming *products* listed in the ENERGY STAR® Program or Federal Energy Management Program (FEMP)-

(i) Agencies *shall* purchase ENERGY STAR® 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, 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 or *construction* that will include the provision of energy-consuming *products*, agencies *shall* specify *products* that comply with the applicable requirements in paragraph (a)(1) of this section.

(b) Information is available via the Internet about-

(1) ENERGY STAR® at <http://www.energystar.gov/products>; and

(2) FEMP at <http://energy.gov/eere/femp/energy-and-water-efficient-products>.

23.204 Procurement exemptions.

An agency is not required to procure an ENERGY STAR® or FEMP-designated product if the *head of the agency* determines *in writing* that-

(a) No ENERGY STAR® or FEMP-designated product is reasonably available that meets the functional requirements of the agency; or

(b) No ENERGY STAR® or FEMP-designated product is cost effective over the life of the product taking energy cost savings into account.

23.205 Energy-savings performance contracts.

(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 CFR436.34, 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 more information see

<https://energy.gov/eere/femp/energy-savings-performance-contracts-federal-agencies>.

23.206 Contract clause.

Unless exempt pursuant to 23.204, insert the clause at 52.223-15, Energy Efficiency in Energy-Consuming *Products*, in *solicitations* and contracts when energy-consuming *products* listed in the ENERGY STAR® Program or FEMP will be-

(a) Delivered;

(b) Acquired by the contractor for use in performing services at a Federally-controlled facility;

(c) Furnished by the contractor for use by the Government; or

(d) Specified in the design of a *building or work*, or incorporated during its *construction*, renovation, or maintenance.