

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: November 30, 2006.

David I. Maurstad,

Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

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DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Parts 23, 36, and 52

[FAR Case 2006-008; Docket 2006-0020;
Sequence 12]

RIN 9000-AK63

**Federal Acquisition Regulation; FAR
Case 2006-008, Implementation of
Section 104 of the Energy Policy Act of
2005**

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to address implementation of Section 104 of the Energy Policy Act of 2005.

DATES: Interested parties should submit written comments to the FAR Secretariat on or before February 5, 2007 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2006-008 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Search for any document by first selecting the proper document types and selecting "Federal Acquisition Regulation" as the agency of choice. At the "Keyword" prompt, type in the FAR case number (for example, FAR Case 2006-008) and click on the "Submit" button. You may also search for any document by clicking on the "Advanced search/document search" tab at the top of the screen, selecting from the agency field "Federal Acquisition Regulation", and typing the FAR case number in the keyword field. Select the "Submit" button.

- Fax: 202-501-4067.

- Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2006-008 in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT For clarification of content, contact Mr. William Clark, Procurement Analyst, at (202) 219-1813. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755. The TTY Federal Relay Number for further information is 1-800-877-8973. Please cite FAR case 2006-008.

SUPPLEMENTARY INFORMATION:

A. Background

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, and those for the design, construction, renovation, or maintenance of a facility.

The purpose of this rule is to ensure compliance with the Federal mandate to promote energy efficiency when specifying or acquiring energy-consuming products. This mandate stems from Section 104 of the Energy Policy Act of 2005. Section 104 requires that all acquisitions of energy consuming-products and all contracts for energy-consuming products require acquisition of ENERGY STAR® or Federal Energy Management Program (FEMP) designated products.

As the world's largest volume-buyer of energy consuming products, the Federal Government can reduce energy consumption and achieve enormous cost savings by purchasing energy-efficient products. ENERGY STAR® and FEMP are two Federal programs concerned with energy efficient products for Federal purchase. The ENERGY STAR® and FEMP websites (<http://www.energystar.gov/products> and http://www.eere.energy.gov/femp/procurement/eep_requirements.cfm, respectively) assist Federal purchasers and contractors to identify these types of highly efficient products.

The ENERGY STAR® program is jointly sponsored by the Environmental Protection Agency and the Department

of Energy. Begun in 1992, Energy Star's original focus was office equipment, but has been expanded to include many other consumer products as well as business products. Over the past decade, ENERGY STAR® has been a driving force behind the more widespread use of such technological innovations as LED traffic lights, compact fluorescent lighting, power management systems for office equipment and consumer electronics, and low standby energy use. The ENERGY STAR® program allows manufacturers of products with superior energy efficiency that meet or exceed specified criteria to use the ENERGY STAR® logo on their products to assist consumers in selecting the energy efficient products. It has been so successful that, in 2005, it saved U.S. consumers, businesses, and Government agencies enough energy to avoid greenhouse gas emissions equivalent to those from 23 million cars while saving \$12 billion on utility bills.

FEMP was designed to reduce energy consumption in Federal buildings. The program began in 1993 to assist Federal purchasers in specifying and acquiring energy efficient products in direct acquisitions, as part of capital projects, and as products supplied through service contracts. FEMP publishes Energy Efficient Purchasing specifications that identify the energy efficiency requirements. Energy efficiency in the FEMP program is targeted to those products in the top 25% of energy efficiency in their class as well as products with low standby power. FEMP has many other user aids for acquiring efficient energy consuming products at their website.

When acquiring energy-using products, FAR 23.203 currently requires the purchase of ENERGY STAR® or other energy-efficient items listed on the FEMP Product Energy Efficiency Recommendations list. Furthermore, FAR 23.203(a)(2) requires that 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 ENERGY STAR® and FEMP energy-efficient products. While these requirements are stated at FAR 23.2, they are often overlooked in services and construction contracts because there is no clause to implement the requirements. Therefore, this proposed rule provides for a clause to be inserted in solicitations and contracts to ensure that suppliers and service and construction contractors recognize when

energy-consuming products must be ENERGY STAR® or FEMP-designated. The proposed rule—

(1) Defines “FEMP-designated product,” as used in FAR Subpart 23.2, as a product that is designated under the Federal Energy Management Program of the Department of Energy as being among the highest 25 percent of equivalent products for energy efficiency (42 U.S.C. 8259b);

(2) Provides that the term “product,” as used in the subpart, does not include any energy consuming product or system designed or procured for combat or combat-related missions (42 U.S.C. 8259b);

(3) Consistent with the Energy Policy Act of 2005, provides for use of the terms “energy-consuming” and “FEMP-designated product” vice “energy-using” and “FEMP Product Energy Efficiency Recommendations product list”, respectively;

(4) Transfers the responsibility for imposing the requirement for ENERGY STAR® or FEMP-designated products from contract specifications to a contract clause;

(5) Provides two exemptions for acquiring ENERGY STAR® or FEMP-designated products; and

(6) Prescribes a contract clause to be used in all solicitations and contracts when energy-consuming products will be—

- (a) Delivered by the contractor;
- (b) Furnished by the contractor in the performance of services at a Federally-controlled facility; or
- (c) Specified in the design, construction, renovation, or maintenance of a facility.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it only emphasizes existing requirements. Whereas the Councils recognize that the rule may affect small entities performing contracts for those agencies that have not fully implemented the program in service and construction contracts, the number of entities affected, and the extent to which they will be affected, is not expected to be significant. The rule may affect the types of products these businesses use during contract

performance. Assistance (including product listings and recommendations) is available to all firms at the ENERGY STAR® and FEMP websites, <http://www.energystar.gov/products> and http://www.eere.energy.gov/femp/procurement/eep_requirements.cfm, respectively. Options to comply with the requirements of the rule can be as simple as purchasing ENERGY STAR® or FEMP-designated products when performing service and construction contracts. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 23, 36, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 20006-008), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 23, 36, and 52

Government procurement.

Dated: November 27, 2006.

Ralph De Stefano,

Director, Contract Policy Division.

Therefore, DOD, GSA, and NASA propose amending 48 CFR parts 23, 36, and 52 as set forth below:

1. The authority citation for 48 CFR parts 23, 36, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

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

- 2. Amend Subpart 23.2 by—
 - a. Redesignating sections 23.201, 23.202, 23.203, and 23.204 as 23.202, 23.203, 23.204, and 23.206, respectively;
 - b. Adding a new sections 23.201, 23.205, and 23.207;
 - c. Removing from paragraph (b) of the newly designated section 23.202 “8253,” and adding “8253, 8259b,” in its place;
 - d. Revising the newly designated section 23.204.

The added and revised text reads as follows:

23.201 Definitions.

As used in this subpart—

FEMP-designated product means a product that is designated under the Federal Energy Management Program of the Department of Energy as being among the highest 25 percent of equivalent products for energy efficiency (42 U.S.C. 8259b).

Product does not include any energy-consuming product or system designed or procured for combat or combat-related missions (42 U.S.C. 8259b).

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23.204 Energy-efficient products.

(a) Unless exempt as provided at 23.205—

(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://www.eere.energy.gov/femp/procurement/eep_requirements.cfm.

23.205 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. Such determinations should be rare as such products are normally life cycle cost effective.

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23.207 Contract clause.

Unless exempt pursuant to 23.205, insert the clause at 52.223-XX, 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 by the contractor;
- (b) Furnished by the contractor in the performance of services at a Federally-controlled facility; or
- (c) Specified in the design, construction, renovation, or maintenance of a facility.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

3. Amend section 36.601-3 by redesignating paragraph (a) as paragraph (a)(1) and adding a new paragraph (a)(2) to read as follows:

36.601-3 Applicable contracting procedures.

- (a)(1) * * *
- (2) Facility design solicitations and contracts that include the specification of energy-consuming products must comply with the requirements at Subpart 23.2.

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PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Amend section 52.212-5 by revising the date of the clause; redesignating paragraphs (b)(23) through (b)(35) as (b)(24) through (b)(36), respectively; and adding a new paragraph (b)(23) to read as follows:

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (DATE)

* * * * *

- (b) * * *
- 1 (23) 52.223-XX, Energy Efficiency in Energy-Consuming Products (Date).

* * * * *

5. Amend section 52.213-4 by revising the date of the clause; redesignating paragraphs (b)(1)(viii) through (b)(1)(xi) as paragraphs

(b)(1)(ix) through (b)(1)(xii), respectively; and adding a new paragraph (b)(1)(viii) to read as follows:

52.213-4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

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TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL ITEMS) (DATE)

* * * * *

- (b) * * *
- (1) * * *
- (viii) 52.223-XX, Energy Efficiency in Energy-Consuming Products (Date) (42 U.S.C. 8259b). Unless exempt pursuant to 23.205, applies to contracts when energy-consuming products listed in the ENERGY STAR® Program or FEMP will be—
 - (A) Delivered by the Contractor;
 - (B) Furnished by the Contractor in the performance of services at a Federally-controlled facility; or
 - (C) Specified in the design, construction, renovation, or maintenance of a facility.

* * * * *

6. Add section 52.223-XX to read as follows:

52.223-XX Energy Efficiency in Energy-Consuming Products.

As prescribed in 23.207, insert the following clause:

ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS (DATE)

(a) *Definition.* As used in this clause, *FEMP-designated product* means a product that is designated under the Federal Energy Management Program (FEMP) of the Department of Energy as being among the highest 25 percent of equivalent products for energy efficiency.

(b) The Contractor shall ensure that energy-consuming products are ENERGY STAR® products, or FEMP-designated products, for products that are—

- (1) Delivered;
- (2) Furnished by the Contractor in performing services at a Federally-controlled facility;
- (3) Specified in architect-engineer designs, plans and specifications; or
- (4) Provided as an article, material, or supply brought to the construction site for incorporation into the building or work.

(c) The requirements of paragraph (b) apply unless—

- (1) The energy-consuming product is not listed in the ENERGY STAR® Program or FEMP; or
- (2) Otherwise approved in writing by the Contracting Officer.
- (d) Information about these products is available for—

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

(2) FEMP at http://www.eere.energy.gov/femp/procurement/eeep_requirements.cfm.

(End of clause)

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AGENCY FOR INTERNATIONAL DEVELOPMENT

48 CFR Part 719

RIN 0412-AA58

Mentor-Protege Program

AGENCY: U.S. Agency for International Development (USAID).

ACTION: Proposed rulemaking; correction.

SUMMARY: The United States Agency for International Development (USAID) is correcting the date for receiving public comments on the proposed rule published on November 22, 2006 in Vol. 71, No. 225, pp. 67518-67523. The date printed was December 8, 2006 but should read February 22, 2007.

DATES: Written comments on the proposed rulemaking at 71 FR 67518 must be received on or before February 22, 2007.

FOR FURTHER INFORMATION CONTACT: If further questions remain please contact Rockefeller P. Herisse, Ph.D. on 202-712-0064 or rherisse@usaid.gov.

Dated: December 1, 2006.

Marilyn Marton,

Director, Office of Small and Disadvantaged Business Utilization (OSDBU).

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 061113298-6298-01; I.D. 110106A]

RIN 0648-AU91

Fisheries Off West Coast States; Highly Migratory Species Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.