



Department of Energy
Acquisition Regulation

No. AL-2000-03
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ACQUISITION LETTER

The Procurement Executive is issuing this Acquisition Letter through a delegation from the Secretary and under the authority of the Federal Acquisition Regulation (FAR), Section 1.301(a)(2).

Subject: Greening the Government Requirements in Contracting

References	Title
Executive Order 13101	Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition
Executive Order 13123	Greening the Government Through Efficient Energy Management
FAR 23.2	Energy Conservation
FAR 23.4	Use of Recovered Materials
FAR 23.7	Contracting for Environmentally Preferable and Energy Efficient Products and Services
FAR 52.223-4	Recovered Material Certification
FAR 52.223-9	Certification and Estimate of Percentage of Recovered Material Content for EPA Designated Items
FAR 52.223-10	Waste Reduction Program
DEAR 970.2304	Use of Recovered/Recycled Materials.
DEAR 970.5204-39	Acquisition and Use of Environmentally Preferable Products and Services

When is this Acquisition Letter (AL) Effective?

This AL is effective 10 business days after the date of issuance.

When Does this Acquisition Letter Expire?

This AL is in effect until it is canceled or rescinded.

Whom Do You Contact for More Information?

Contact Richard Langston of the Office of Procurement and Assistance Policy, on 202-586-8247 or via e-mail at richard.langston@pr.doe.gov. A list of Internet information resources is attached to this AL.

What is the Purpose of This Acquisition Letter?

The purpose of this Acquisition Letter is to establish a Green Acquisition Advocate who will be appointed by the Head of the Contracting Activity and will serve as a procurement expert and team member for Greening the Government initiatives within each DOE Contracting Activity. The role of the Green Acquisition Advocate is not to replace or assume the responsibilities of the Recycling Coordinators or Energy Coordinators but to ensure that the procurement organization is an informed and supportive team member.

This Acquisition Letter assigns appropriate roles and responsibilities for the Green Acquisition Advocates and the DOE procurement community as they partner with other DOE personnel to implement Government-wide Greening the Government initiatives. Currently there are two Executive Orders (discussed below) which the Green Acquisition Advocates should take an active role in promoting and implementing. Two additional Greening the Government Executive Orders were issued on April 21 and 22, 2000. They are entitled Greening the Government Through Fleet and Transportation Efficiency and Greening the Government Through Leadership in Environmental Management. It is anticipated that additional requirements will be added to this Acquisition Letter to implement these new Orders but it is too early to give specifics.

What is the Background of this Acquisition Letter?

The Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. 6962, requires Federal agencies to establish programs to promote recycling and to procure products with recycled content when available. RCRA assigned the Environmental Protection Agency (EPA) the responsibility of identifying such products through the use of a designated products list known as the Comprehensive Procurement Guidelines. Executive Order 13101, Greening the Government Through Waste Prevention, Recycling and Federal Acquisition, was issued to improve Federal use of recycled products and environmentally preferable products and services. The Program is generally referred to as the Affirmative Procurement Program as that name was used by the Office of Federal Procurement Policy to describe the Program in OFPP Policy Letter 92-4. It promotes teamwork on the part of the acquisition community (procurement, program, supply, facility management, construction, etc.) to assure the success of the recycling initiative. Section 402 requires that Agency Affirmative Procurement Program implementation responsibilities be shared between program, procurement, and other personnel. It requires Federal agencies to use their acquisition program as a tool to increase and expand markets for recovered materials through greater Federal preference and demand for such products. The Executive Order also requires the Department of Agriculture to establish a similar program for bio-based products.

Executive Order 13123, Greening the Government Through Efficient Energy Management, promotes the acquisition of energy efficient products and services. It requires the Federal government to provide leadership by significantly improving its energy management to save dollars and to reduce emissions that contribute to air pollution and global climate change. It provides that the Federal government as a major consumer will promote energy and water efficiency and the use of renewable energy products and will foster markets for emerging technologies. It requires Federal agencies, when acquiring energy using products, to acquire Energy Star labeled products. If Energy Star labeled products are unavailable, agencies will acquire products in the upper 25% of energy efficiency as designated by the Federal Energy Management Program. It encourages the procurement of renewable energy including solar energy. It also promotes the use of Energy Savings Performance Contracts to improve the energy efficiency of Federal facilities.

Guidance Included in this Acquisition Letter

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I. What is Current Acquisition Policy Relative to Greening the Government Requirements?

A. Executive Order 13101, Greening the Government Through Waste Prevention, Recycling and Federal Acquisition

- (1) Executive Order 13101 replaces Executive Order 12873. The requirements of the earlier Order and the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6962, are presently described in Subpart 23.4, Use of Recovered Materials, of the Federal Acquisition Regulation (FAR). A rulemaking is in process to amend the FAR. The amendment will increase from 20% to 30% the required recovered material content of printing and writing paper, add the EPA Internet address for the list of designated products, revise the content certification requirement at FAR 52.223-9, extend the coverage to support service contractors providing services within a Federal facility, and update the clause at FAR 52.223-10. DOE will undertake a rulemaking to amend the Department of Energy Acquisition Regulation (DEAR) to ensure that its coverage is current with the more recent Executive Order and FAR rulemaking.
- (2) The Environmental Protection Agency maintains a list of products available with recycled content which Federal agencies are required to purchase. The EPA Internet information resource <http://www.epa.gov/epaoswer/non-hw/procure/index.htm> includes the list of products and other useful information. This program has been instrumental in promoting the development of new products with recycled content such as floor coverings, fencing materials, hoses and shipping pallets. Another example is printing and writing paper with recycled content. Federal agencies must procure recycled paper with a post consumer recovered content of not less than 30%. Federal contractors are encouraged to print and copy double-sided using such paper pursuant to a clause at FAR 52.204-4. For other than facility management contracts, the FAR provides both a solicitation provision and contract clause to be used when contracting for products with recovered materials. The solicitation provision at FAR 52.223-4, Use of Recovered Materials, must be used to obtain the offeror's certification that it will supply materials with the minimum recovered material content. The contract clause at FAR 52.223-9, Certification and Estimate of Percentage of Recovered Material Content for EPA Designated Item, should be used to obtain the contractor's certification upon contract completion. The preceding requirements are applicable to Federal acquisitions only. DOE facility management contractors participate in DOE's Affirmative Procurement Program pursuant to DEAR 970.2304 and report their purchases pursuant to the clause at DEAR 970.5204-39. The Department has a longstanding commitment to 100% compliance in the acquisition of EPA designated products.

- (3) The Affirmative Procurement Program has annual reporting requirements. The EM Pollution Prevention Team has developed an electronic reporting system for this purpose. Information about DOE's Affirmative Procurement Program and its reporting system may be found at <http://twilight.saic.com/ap/>. All purchases, including micropurchases, must be reported. The Green Acquisition Advocate and the Recycling Coordinator should coordinate as appropriate to ensure that any work process changes at their site are implemented in a manner which will continue to support this special reporting requirement.
- (4) FAR 23.706 requires that all contracts for operation of a Government facility contain the clause at 52.223-10 entitled "Waste Reduction Program." Facility management contracts for operation of a DOE facility must also contain the clause at 970.5204-39 which provides for the contractor's participation in the DOE Affirmative Procurement Program.
- (5) Prime support service contracts awarded for performance at a Government-owned site should contain the clause at FAR 52.223-10. They should also contain the clause at DEAR 970.5204-39 if the purpose of the contract includes the procurement of any of the items designated in the EPA Comprehensive Procurement Guidelines. In such circumstances, the on site support service contractor will participate in DOE's Affirmative Procurement Program and report such purchases. If none of these products will be procured under the contract, the clause at FAR 52.223-10 may be used alone.
- (6) When acquiring items designated in the EPA Comprehensive Procurement Guidelines, that is, products with recycled content, the solicitation should specify the minimum recovered materials content contained in EPA's Recovered Materials Advisory Notice for the product. FAR 23.404(d) provides that products that meet or exceed the EPA guidelines are to be procured unless it is impossible to acquire the item (i) within a reasonable period of time, (ii) at a reasonable price, (iii) from a reasonable number of competitive suppliers, or (iv) to meet performance specifications. If proposals received are unacceptable due to unreasonable price or other factors, a to procure the product with only virgin content will be documented and approved by the Green Acquisition Advocate pursuant to FAR 23.404(b)(3). A copy of the justification should be furnished to the Assistant Secretary, Energy Efficiency and Renewable Energy, who is the DOE Environmental Executive. This may be accomplished by forwarding a copy to the Affirmative Procurement Program Office, EM-22 and maintaining a copy at the site. Justifications for acquisitions below the micropurchase ceiling need not be formally documented.

justification

B. Executive Order 13123, Greening the Government Through Efficient Energy Management

- (1) This Executive Order calls for Federal leadership in energy and water efficiency, the use of renewable energy products, and the fostering of markets for emerging technologies. It calls for each agency to reduce its greenhouse gas emissions by 30%. It establishes energy efficiency improvement goals for each agency. The goals are 30% by 2005 and 35% by 2010. It calls for expanded use of renewable energy in Federal facilities. It also calls for reduced use of petroleum products through the use of renewable energy sources and alternate fuel sources.
- (2) The requirements of this Executive Order are the subject of a rulemaking to amend the FAR. There are two contracting initiatives discussed in Executive Order 13123. The first is energy and water efficient products and the second is Energy Savings Performance Contracts.
- (3) The Executive Order requires that agencies, when acquiring energy using products, acquire either ENERGY STAR® labeled products or, if ENERGY STAR® labeled products are unavailable, acquire products in the upper 25% of energy efficiency as designated by the Federal Energy Management Program. The ENERGY STAR® Program is a joint program managed by EPA and DOE. The Program works with industry to promote energy conservation. Products meeting certain criteria are allowed to use the ENERGY STAR® trade mark label. Among the best examples of these products are personal computers and monitors. When left unattended, these products "fall asleep," cutting their energy consumption to as little as four watts. Many ENERGY STAR® labeled office printers and copiers also offer fast and reliable duplex (2 sided) printing capabilities. The ENERGY STAR® Home Page, <http://energystar.gov/>, contains a list of products and manufacturers. The Federal Energy Management Program is a DOE Program focusing on the Federal government's energy and water consumption. It includes large products such as office building sized heating and cooling equipment and water saving products. The energy and water using products for which efficiency designations are maintained may be reviewed at <http://www.eren.doe.gov/femp/procurement/>. When contracting for the design, construction, and maintenance of Federal facilities, contractors should be made aware of these requirements regarding energy using equipment. Pending completion of the FAR rulemaking, contracting activities should use the Executive Order, this Acquisition Letter, and the Internet information sites as their guidance for purchasing energy using products.
- (4) The second contracting initiative in Executive Order 13123 is the Energy Savings Performance Contract. Energy Savings Performance Contracts (ESPCs) allow Federal agencies to improve energy efficiency in their facilities at no direct capital cost. Private sector energy service companies (ESCOs) finance the capital cost and install the retrofits. The ESCOs are paid a fixed price out of the energy savings generated by the energy conservation measure. These contracts are competitively awarded at fixed prices and may

have performance periods of up to 25 years. While summary level coverage of ESPCs is being added to the FAR, it will provide that the controlling regulation for this contract type is 10 CFR 436 Subpart B. Several Regional Super ESPCs and technology specific ESPCs have been awarded competitively. These multiple award contracts permit the energy service contractor to identify projects. These ordering agreements are available for the use of all DOE contracting activities as well as other Government agencies. The U.S. Army Corps of Engineers, Huntsville, Alabama District, also has awarded ordering agreements which may be used by DOE contracting activities or other Federal agencies. If a DOE contracting activity does not wish to use these ordering agreements, the Federal Energy Management Program has also prequalified numerous ESCOs that are eligible to compete for ESPCs. The Home Page for these and other energy efficiency funding alternatives may be found at <http://www.eren.doe.gov/femp/financealt.html>. The Green Acquisition Advocate should assist facility and procurement personnel in their consideration of possible ESPC opportunities. The FAR rulemaking will not change current Energy Savings Performance Contracts as it will refer readers to the DOE regulations. Contracting activities shall use 10 CFR 436, Subpart B, the Executive Order, this Acquisition Letter and the Internet information site as their guidance. **Note:** 10 CFR 436.30 contains an out of date reference to an ESPC sunset. The sunset date for use of the ESPC authority has been extended to 2003.

II. Who Is Responsible For Implementing the Executive Orders?

- (A) The Secretary of Energy, by February 5, 1999 memorandum, has appointed the Assistant Secretary for Energy Efficiency and Renewable Energy, as the DOE Environmental Executive. The Environmental Executive has the following duties:
- coordinating all environmental programs relating to waste prevention, recycling, and, acquisition;
 - translating the Federal Strategic Plan for Executive Order 13101 into a specific implementation plan for the Department; and,
 - evaluating the Department's programs and acquisitions to ensure compliance with the Order.
- (B) In addition to the above duties, the DOE Environmental Executive monitors and reports to the Federal Environmental Executive and the Director of the Office of Federal Procurement Policy regarding DOE's progress in the purchase of EPA designated items with recovered content.

- (C) The Pollution Prevention Team, in EM-22, has lead responsibility for management of the Affirmative Procurement Program. The Federal Energy Management Program, EE-90, has lead responsibility for energy efficiency and Energy Savings Performance Contracts. While these Offices have lead responsibility, the procurement community must play a substantive role in assisting program elements to successfully accomplish these programs. To ensure that this occurs, this AL provides roles and responsibilities for the procurement community.

III. What Must the Head of the Contracting Activity Do to Implement this AL?

- (A) The Head of each Contracting Activity shall appoint a Green Acquisition Advocate who will:
- serve as the procurement expert on Greening the Government initiatives including products with recovered/recycled content, i.e., the Affirmative Procurement Program, and energy efficient products and services including ESPCs;
 - educate the procurement staff regarding all Greening the Government initiatives including the Affirmative Procurement Program and energy efficient products and services including ESPCs; and,
 - promote environmentally preferable and energy efficient products and services including ESPCs to the procurement staff and customers.
- (B) A list of additional responsibilities which may be performed by the Green Acquisition Advocates is provided at Attachment 1.

IV. What must the Contracting Officer Do to Implement the AL?

- (A) When reviewing and drafting solicitations and contract documents, the Contracting Officer should ensure that the appropriate provisions and clauses are contained in their solicitations and contracts.
- (B) Contracting Officers should work with requirements personnel, contracting personnel and contractor personnel to be certain that all are aware of their responsibilities in this area. A Greening the Government Contracting Checklist is provided at Attachment 2.

V. **What Tools Are Available to Help Us?**

- (A) There are numerous information tools available on the Internet to assist you. There is a listing of these at Attachment 3.
- (B) The Office of Procurement and Assistance Management has developed a brochure explaining the acquisition related requirements of Executive Order 13101 and its impact on DOE's acquisition community. The brochure can serve as an environmental acquisition introduction for all acquisition personnel, i.e., procurement, program, supply, finance etc.. It may be downloaded from <http://www.pr.doe.gov/envhome.htm> A similar brochure entitled *Buying Energy Efficient Products* has been developed by the Federal Energy Management Program and can be viewed at <http://www.eren.doe.gov/femp/procurement/> .

SAMPLE GREEN ACQUISITION ADVOCATE ACTIVITIES

- Ensure that personnel at the contracting activity are aware of products designated in the EPA Comprehensive Procurement Guidelines for procurement with recycled content, as well as the ENERGY STAR® and Federal Energy Management Program products.
- Ensure that Purchase Card Program training includes awareness of and support for the Affirmative Procurement Program and the ENERGY STAR® and Federal Energy Management Program initiatives.
- Support program initiatives to promote employee support of the environmental and energy efficiency initiatives through informational displays and promotional activities.
- Support program initiatives to include Affirmative Procurement Program, ENERGY STAR®, and Federal Energy Management Program accomplishments in local Home Pages, Intranet sites, newsletters, et cetera.
- Support initiatives to promote participation in OFPP or other agency sponsored pilot acquisitions of environmentally preferable, including energy efficient, products.
- Promote a team approach among the component members of the local acquisition community including procurement, property, environment, program, supply, facilities, construction, etc.
- Promote the maximum possible consideration of a broad range of environmental factors in developing plans, drawings, work statements, specifications, or other product descriptions for use at the facility. Include such factors as elimination of virgin material requirements, use of biobased products, use of recovered materials, reuse of products, life cycle cost, recyclability, use of environmentally preferable products, waste prevention (including toxicity reduction or elimination) and ultimate disposal.
- Coordinate with the Recycling Coordinator to ensure that local procedures provide for purchase cardholders to report their Affirmative Procurement Program transactions pursuant to that Program's reporting requirements.
- Review and approve, when justified, justifications to acquire other than an EPA designated item because it is impossible to acquire the item (i) within a reasonable period of time, (ii) at a reasonable price, (iii) from a reasonable number of competitive suppliers, or (iv) to meet performance specifications.
- When planning contracts for the production or purchase of electricity, consider the purchase of electricity from clean energy sources including 1) renewable energy sources; 2) less greenhouse intensive, non petroleum energy sources such as natural gas; and 3) clean, more efficient fossil energy technologies.

GREENING THE GOVERNMENT CONTRACTING CHECKLIST

- ✓ Ensure that all acquisitions of items designated in the EPA Comprehensive Procurement Guidelines have the EPA recommended content level as provided in EPA's Recovered Materials Advisory Notices (RMANs) for the items.
- ✓ In conjunction with requirements personnel, consider aggregating purchases of EPA designated, environmentally preferable, or energy efficient items to the extent that such action will promote economy or efficiency.
- ✓ Ensure that Facility Management contracts include the environmental preference clause of DEAR 970.5204-39 and that facility management contractor personnel are aware of the program and their responsibilities under the Affirmative Procurement Program.
- ✓ When developing acquisition plans, ensure that Greening the Government requirements are addressed. Include such factors as elimination of virgin material requirements, use of biobased products, use of recovered materials, reuse of products, life cycle cost, recyclability, use of environmentally preferable products, water savings, waste prevention (including toxicity reduction or elimination) and ultimate disposal. Consider whether ENERGY STAR® products or products designated in the upper 25% of energy efficiency by the Federal Energy Management Program are available.
- ✓ Review procurement requests to ensure that, when acquiring items designated in the EPA Comprehensive Procurement Guidelines, recovered content requirements are specified or that a written justification is provided as required by FAR 23.404(b)(3). Justifications may be based upon a finding that an item with recycled content cannot be used because such an item is i] unavailable within a reasonable time ii] unreasonably priced iii] not available from a reasonable number of sources to maintain a satisfactory level of competition or iv] unable to meet performance standards. A copy of the justification should be furnished to the Assistant Secretary, Energy Efficiency and Renewable Energy, who is the DOE Environmental Executive. This may be accomplished by forwarding a copy to the Affirmative Procurement Program Office, EM-22, and maintaining a copy at the site.
- ✓ When procuring paper products, comply with Section 505 of the Executive Order which mandates a minimum recycled content of 30% (this may be reduced to 20% only if the 30% content product is not reasonably available, does not meet reasonable performance requirements, or is unreasonably priced).

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- ✓ When procuring vehicle or heavy equipment lubricants, coolants or tires, purchase re-refined, bio-based, or retread products to the maximum practical extent.
- ✓ When issuing contracts for vehicular or heavy equipment maintenance, specify that re-refined or bio-based coolants and lubricants and retread tires will be used to the maximum practical extent.
- ✓ When procuring electricity, consider the purchase of electricity from clean energy sources including 1) renewable energy sources; 2) less greenhouse intensive, non petroleum energy sources such as natural gas; and 3) clean, more efficient fossil energy technologies.

INTERNET INFORMATION RESOURCES

DOE Internet Resources

<http://www.pr.doe.gov/envhome.htm> is the Office of Procurement and Assistance Management information site which includes hyperlinks to all of the sites listed here

<http://twilight.saic.com/ap> is the EM Pollution Prevention Team special page dealing with Executive Order 13101. Their page contains an extensive listing of DOE and contractor personnel with recycling duties and experience which can serve as an information network tool.

<http://www.energystar.gov/> is the ENERGY STAR® information site.

<http://www.eren.doe.gov/femp/> is the Federal Energy Management Program information site.

<http://www.eren.doe.gov/femp/procurement> contains FEMP product energy information

<http://www.eren.doe.gov/femp/financealt.html> contains extensive Energy Savings Performance Contract information

<http://www.pr.doe.gov/pr3.html> is the DOE Purchase Card Guide

EPA Internet Resources

<http://www.epa.gov/cpg/> is EPA's Comprehensive Procurement Guidelines information site. It describes EPA's designated products, their specifications, their sources of supply and other useful information.

<http://www.epa.gov/opptintr/epp/> is an EPA training site for Environmentally Preferable Purchasing

Facility Management Information Sites

<http://www.inel.gov/national/p2/> is maintained by Idaho National Engineering and Environmental Laboratory.

<http://www.pnl.gov/national/p2/> is maintained by Pacific Northwest National Laboratory

Other Information Resources

<http://www.ofee.gov/> is the Federal Environmental Executive's site - it has many hyperlinks

<http://www.hnd.usace.army.mil/> is the Huntsville, AL office of the Army Corps of Engineers information site. They also award ordering agreements for Energy Savings Performance Contracts.