

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Parts 2, 4, 7, 11, 13, 23, and 52

[FAR Case 98-015]

RIN 9000-A149

**Federal Acquisition Regulation;
Requirements Supporting
Procurement of Recycled Products
and Environmentally Preferable
Services**

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 implement Executive Order (E.O.) 13101 dated September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition. The amendments also would reorganize and revise existing FAR text. FAR changes to implement E.O. 13123 dated June 3, 1999, Greening the Government through Efficient Energy Management, are the subject of a separate FAR case.

DATES: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before November 22, 1999 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRs), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405. Address e-mail comments submitted via the Internet to: farcase.98-015@gsa.gov. Please submit comments only and cite FAR case 98-015 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Paul Linfield, Procurement Analyst, at (202) 501-1757. Please cite FAR case 98-015.

SUPPLEMENTARY INFORMATION:**A. Background**

This proposed rule amends the FAR to implement E.O. 13101. The proposed rule amends FAR Subpart 2.1 to add definitions of terms used in the FAR to implement environmental policies. In most cases, these terms previously were defined in FAR Part 23, Environment, Conservation, Occupational Safety, and Drug-Free Workplace. These terms are used in other FAR parts. The relocation of these definitions to Subpart 2.1 should make them easier to find and is intended to facilitate understanding the FAR when the terms are used in these other FAR parts. Other amendments include—

1. Reorganizing and revising Subpart 4.3;
2. Revising Subpart 7.1 to emphasize requirements in the E.O. that agency requirements for printing and writing paper must meet minimum content standards specified in section 505 of E.O. 13101;
3. Removing the definition of "recovered material" from Part 11, since it is the same as the definition relocated to Subpart 2.1 and making editorial changes;
4. Revising Subpart 11.3 to add definitions and special requirements that the E.O. and Environmental Protection Agency (EPA) use to implement policies concerning minimum content standards for agency purchases of printing and writing paper; and
5. Clarifying the application to purchases at or below the micro-purchase threshold (\$2,500) of statutory requirements for buying products containing recovered material.

Furthermore, the proposed rule rewrites Subparts 23.4 and 23.7. While this rewrite does not change fundamental environmental policies, the intent is to describe the policies and procedures in a more easily understood manner, substitute reference to E.O. 13101 and remove reference to the revoked E.O. 12873, and define "biobased product," a term defined in E.O. 13101. The proposed rule also contains a new reference to an electronic address that provides Internet access to EPA policy and requirements for acquiring products containing recovered material. Finally, the rule revises the prescriptions for using clauses prescribed in Subparts 4.3, 23.4, and 23.7 and the text of the clauses implementing statutory requirements of the Resource Conservation Recovery Act and requirements in E.O. 13101.

This rule was not subject to Office of Management and Budget 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

This proposed rule may 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 the rule amends two clauses and their applicability to small business concerns. Small business concerns must certify minimum recovered materials content for EPA-designated products when the percentage can be verified. In addition, the rule will require small business concerns that are awarded contracts for support services at Government-owned or -operated facilities to comply with requirements of E.O. 13101 and develop programs promoting and implementing cost-effective waste reduction and affirmative procurement programs for EPA-designated products. Therefore, the Councils performed an Initial Regulatory Flexibility Analysis (IRFA), and it is summarized as follows:

The objective of this rule is to expand markets for products that contain recovered material and to improve the Government's use of products containing recovered material or environmentally preferable products and services. The Resource Conservation Recovery Act (RCRA) defines a "procuring agency" as "any Federal agency, or any State agency or agency of a political subdivision of a State which is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract." RCRA applies to both large and small businesses. RCRA's requirements for Federal procurement apply to all purchases of an EPA-designated product after the Federal agency purchases more than \$10,000 of the product or functionally equivalent products in a fiscal year. However, certain statutory reporting requirements only apply to acquisitions exceeding \$100,000.

The proposed revision to FAR 52.223-9 removes the requirement that a contractor provide at contract completion a certification of minimum recovered material content actually utilized in contract performance, except when the contracting officer believes the percentage can be verified. We estimate that this reduced reporting requirement will affect approximately 35,000 small entities that perform contracts that utilize recovered materials.

Section 701 of E.O. 13101 requires that agency contracts for contractor operation of a Government-owned or -leased facility and contracts for support services at a Government-owned or -leased facility include provisions obligating the contractor to comply with requirements of the order. Compliance includes developing programs to promote and implement cost-effective waste reduction and affirmative procurement

programs required by RCRA. In fiscal year 1998, we estimate that Federal agencies awarded approximately 1,000 contracts to small entities for support services that would be covered by the requirements in section 701 of E.O. 13101.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. The Councils invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR subparts in accordance with 5 U.S.C. 610. Interested parties must submit such comments and should cite 5 U.S.C. 601, *et seq.* (FAR Case 98-015), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104-13) applies because the proposed changes to the FAR reduce information collection requirements that have been approved by the Office of Management and Budget (OMB) under OMB Control Number 9000-0134. The annual reporting burden for OMB Control Number 9000-0134 is estimated to apply to 64,350 respondents and the preparation time is estimated at .5 hours per response for a total burden hour of 32,175 hours. We estimate that removal of the certification requirement will affect more than one-half of the respondents and reduce preparation time for those respondents by one-third.

Annual Reporting Burden: We estimate the revised total burden hours as follows:

Respondents: 64,350;

Responses per respondent: 1;

Total annual responses: 64,350;

Preparation hours per response: 25 minutes;

Total response burden hours: 26,800.

D. Request for Comments Regarding Paperwork Burden

We invite interested parties to comment on the information collection requirements set forth above. Please send comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Mr. Peter N. Weiss, FAR Desk Officer, New Executive Office Building, Room 10102, 725 17th Street, NW, Washington, DC 20503.

Also send a copy of any comments to the FAR Secretariat at the address shown under ADDRESSES. Please cite the OMB Clearance Number 9000-0134 in all correspondence related to the estimate.

List of Subjects in 48 CFR Parts 2, 4, 7, 11, 13, 23, and 52

Government procurement.

Dated: September 17, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 2, 4, 7, 11, 13, 23, and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 2, 4, 7, 11, 13, 23, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by adding, in alphabetical order, the definitions "Energy-efficient product", "Environmentally preferable", "Pollution prevention", "Recovered material", "Virgin material", and "Waste reduction" to read as follows:

2.101 Definitions.

* * * * *

Energy-efficient product means a product in the upper 25 percent of efficiency for all similar products or if there are applicable Federal appliance or equipment efficiency standards, a product that is at least 10 percent more efficient than the minimum Federal standard.

Environmentally preferable means products or services that have a lesser or reduced negative effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.

* * * * *

Pollution prevention means any practice that

(1) Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal, and reduces the hazards to public health and the environment associated with the release of such substances, pollutants, and contaminants;

(2) Reduces or eliminates the creation of pollutants through increased efficiency in the use of raw materials, energy, water, or other resources; or

(3) Protects natural resources by conservation.

* * * * *

Recovered material means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process. For use in subpart 11.3 for paper and paper products, see the definition at 11.301.

* * * * *

Virgin material means previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore, or any undeveloped resource that is, or with new technology will become, a source of raw materials.

Waste reduction means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

PART 4—ADMINISTRATIVE MATTERS

3. Amend Subpart 4.3 by removing section 4.301 and redesignating sections 4.302 through 4.304 as sections 4.301 through 4.303, respectively; and by revising the newly designated sections to read as follows:

Subpart 4.3—Paper Documents

* * * * *

4.301 Definition.

Printed or copied double-sided, as used in this subpart, means printing or reproducing a document so that information is on both sides of a sheet of paper.

4.302 Policy.

It is the policy of the Government that, when electronic commerce methods (see 4.502) are not being used, a contractor should submit paper documents to the Government relating to an acquisition printed or copied double-sided on recycled paper whenever practicable. If the contractor cannot print or copy double-sided, it should print or copy single-sided on recycled paper.

4.303 Contract clause.

Insert the clause at 52.204-4, Printed or Copied Double-Sided on Recycled Paper, in solicitations and contracts that exceed the simplified acquisition threshold.

PART 7—ACQUISITION PLANNING

4. Amend section 7.103 by revising paragraph (n) to read as follows:

7.103 Agency-head responsibilities.

* * * * *

(n) Ensuring that agency planners—
(1) Specify needs for printing and writing paper consistent with the minimum content standards specified in section 505 of Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition (see 11.303); and

(2) Comply with the policy in 11.002(d) regarding procurement of products containing recovered materials and environmentally preferable and energy-efficient products and services.
* * * * *

PART 11—DESCRIBING AGENCY NEEDS

11.001 [Amended]

5. Amend section 11.001 by removing the definitions "Recovered material" and "Virgin material."

6. Amend section 11.002 by revising paragraph (d) to read as follows:

11.002 Policy.

* * * * *

(d) The Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901, et seq.), Executive Order 12902 of March 8, 1994, Energy Efficiency and Water Conservation at Federal Facilities, and Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, establish requirements for the procurement of products containing recovered materials, and environmentally preferable and energy-efficient products and services. Executive agencies must consider use of recovered materials, environmentally preferable purchasing criteria developed by the EPA, and environmental objectives (see 23.704(b)) when—

(1) Developing, reviewing, or revising Federal and military specifications, product descriptions including commercial item descriptions) and standards;

(2) Describing Government requirements for supplies and services; and

(3) Developing source selection factors.

* * * * *

7. Revise Subpart 11.3 to read as follows:

Subpart 11.3—Acceptable Material

- Sec.
11.301 Definitions.
11.302 Policy.

- 11.303 Special requirements for printing and writing paper.
11.304 Contract clause.

11.301 Definitions.

As used in this subpart—
Postconsumer material means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of "recovered material." For paper and paper products, postconsumer material means "postconsumer fiber" defined by the U.S. Environmental Protection Agency (EPA) as—

(1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-use as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage;

(2) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; and

(3) Postconsumer fiber does not include fiber derived from printers' over-runs, converters' scrap, and over-issue publications.

Recovered material for paper and paper products, is defined by EPA in its Comprehensive Procurement Guideline as "recovered fiber" and means the following materials:

(1) Postconsumer fiber.

(2) Manufacturing wastes such as—
(i) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and
(ii) Repulped finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others.

(i) Repulped finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others.

11.302 Policy.

(a) Agencies must not require virgin material or supplies composed of or manufactured using virgin material unless compelled by law or regulation or unless virgin material is vital for safety or meeting performance requirements of the contract.

(b) Except when acquiring commercial items, agencies must

require offerors to identify used, reconditioned, or remanufactured supplies, or unused former Government surplus property, proposed for use under the contract. These supplies or property may not be used in contract performance unless authorized by the contracting officer.

(c) The contracting officer may require offerors to—

(1) Provide information on used, reconditioned, or remanufactured supplies, or unused former Government surplus property, proposed for use under the contract; or

(2) Meet minimum recovered material standards stated in the solicitation. Information requested on recovered material standards specified in a solicitation, to the maximum practicable extent, must be limited to information or standards consistent with normal commercial practices.

11.303 Special requirements for printing and writing paper.

(a) Section 505 of Executive Order 13101, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, establishes minimum recovered material content standards for agency purchases of printing and writing paper. Section 505 requires that 100 percent of an agency's purchases of printing and writing paper must meet or exceed one of the minimum content standards specified in paragraph (b) of this section.

(b) For high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white wove envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock, the minimum content standard must be no less than 30 percent postconsumer materials. If paper containing 30 percent postconsumer material is not reasonably available, does not meet reasonable performance requirements, or is only available at an unreasonable price, then the agency must purchase paper containing no less than 20 percent postconsumer material.

11.304 Contract clause.

Insert the clause at 52.211-5, Material Requirements, in solicitations and contracts for supplies that are not commercial items.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

8. Amend section 13.006 by revising paragraph (g) to read as follows:

13.006 Inapplicable provisions and clauses.

* * * * *

(g) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products.

9. Amend section 13.201 by adding paragraph (f) to read as follows:

13.201 General.

* * * * *

(f) The procurement requirements in the Resource Conservation Recovery Act (42 U.S.C. 6962) and Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, apply to purchases at or below the micro-purchase threshold (see subpart 23.4).

PART 23—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

10. Revise section 23.400 to read as follows:

23.400 Scope of subpart.

This subpart prescribes policies and procedures for acquiring Environmental Protection Agency (EPA)-designated products through affirmative procurement programs required by the Resource Conservation and Recovery Act of 1976 (RCRA) (42 U.S.C. 6962) and Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition.

23.401 [23.402 revised]

11. Revise 23.402 to read as follows:

23.402 Authorities.

(a) The Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. 6962, requires agencies responsible for drafting or reviewing specifications used in agency acquisitions to—

(1) Eliminate from those specifications any requirement excluding the use of recovered materials or requiring products to be manufactured from virgin materials; and

(2) Require, for EPA-designated products, using recovered materials to the maximum extent practicable without jeopardizing the intended end use of the item.

(b) RCRA also requires—

(1) EPA to prepare guidelines on the availability, sources, and potential uses of recovered materials and associated products, including solid waste management services; and

(2) Agencies to develop and implement affirmative procurement programs for EPA-designated products within one year after EPA's designation.

(c) Executive Order 13101 requires that the agency head—

(1) Work to increase and expand markets for recovered materials through greater Government preference and demand for such products consistent with the demands of efficiency and cost-effectiveness; and

(2) Develop and implement affirmative procurement programs in accordance with direction in RCRA and the Executive Order.

23.402 [23.401 revised]

12. Revise 23.401 to read as follows:

23.401 Definition.

EPA-designated product, as used in this subpart, means a product—

(1) That is or can be made with recovered material;

(2) That is listed by EPA in a procurement guideline (40 CFR part 247); and

(3) For which EPA has provided purchasing recommendations in a related Recovered Materials Advisory Notice (RMAN).

13. Revise section 23.403 to read as follows:

23.403 Policy.

Government policy on the use of recovered materials considers cost, availability of competition, and performance. The objective is to acquire competitively, in a cost-effective manner, products that meet performance requirements and that are composed of the highest percentage of recovered materials practicable.

14. Redesignate sections 23.404 and 23.405 as 23.405 and 23.406, respectively, revise them, and add a new section 23.404 to read as follows:

23.404 Agency Affirmative Procurement Programs.

(a) For EPA-designated products, an agency must establish an affirmative procurement program, if the agency's purchases meet the threshold in 23.405(a). Technical or requirements personnel and procurement personnel are responsible for the preparation, implementation, and monitoring of affirmative procurement programs. Agency affirmative procurement programs must include—

(1) A recovered materials preference program;

(2) An agency promotion program;

(3) A program for requiring reasonable estimates, certification, and verification of recovered material used in the performance of contracts; and

(4) Annual review and monitoring of the effectiveness of the program.

(b) Agency affirmative procurement programs must require that 100 percent of purchases of EPA-designated

products contain recovered material, unless the item cannot be acquired—

(1) Competitively within a reasonable time frame;

(2) Meeting appropriate performance standards; or

(3) At a reasonable price.

(c) Agency affirmative procurement programs must provide guidance for purchases of EPA-designated products at or below the micro-purchase threshold.

23.405 Procedures.

(a) These procedures apply to all agency acquisitions of EPA-designated products, including micro-purchases, if—

(1) The price of the product exceeds \$10,000; or

(2) The aggregate amount paid for products, or for functionally equivalent products, in the preceding fiscal year was \$10,000 or more. RCRA requires that an agency include micro-purchases in determining if the aggregate amount paid was \$10,000 or more. However, it is not recommended that an agency track micro-purchases unless it intends to claim an exemption from the requirement to establish an affirmative procurement program in the following fiscal year.

(b) Contracting officers should refer to EPA's list of EPA-designated products (available via the Internet at <http://www.epa.gov/cpg/>) and to their agencies' affirmative procurement program when purchasing supplies that contain recovered material or services that could include incidental supplies that contain recovered material.

(c) The contracting officer must place in the contract file a written justification if an acquisition of EPA-designated products above the micro-purchase threshold does not contain recovered material. If the agency has designated an Environmental Executive, the contracting officer must give a copy of the written justification to that official. The contracting officer must base the justification on the inability to acquire the product—

(1) Competitively within a reasonable period of time;

(2) At reasonable prices; or

(3) To reasonable performance standards in the specifications, provided written determination by technical or requirements personnel is included with the justification. The contracting officer must base the justification on National Institute of Standards and Technology guidelines, if available.

(d) Agencies must establish procedures for consolidating and reporting contractor estimates required by the clause at 52.223-9.

23.406 Solicitation provision and contract clause.

(a) Insert the provision at 52.223-4, Recovered Material Certification, in solicitations that are for, or specify the use of, recovered materials.

(b) Insert the clause at 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products, in solicitations and contracts exceeding \$100,000 that include the provision at 52.223-4. If it is practical to verify the estimate, use the clause with its Alternate I.

15. Revise Subpart 23.7 to read as follows:

Subpart 23.7—Contracting for Environmentally Preferable and Energy-Efficient Products and Services

Sec.

- 23.700 Scope.
- 23.701 Definition.
- 23.702 Authorities.
- 23.703 [Reserved]
- 23.704 Policy.
- 23.705 Application to Government-owned or -leased facilities.
- 23.706 Contract clause.

23.700 Scope.

This subpart prescribes policies for obtaining environmentally preferable and energy-efficient products and services.

23.701 Definition.

Biobased product, as used in this subpart, means a commercial or industrial product (other than food or feed) that utilizes biological products or renewable domestic agricultural (plant, animal, and marine) or forestry materials.

23.702 Authorities.

(a) Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901, *et seq.*).

(b) National Energy Conservation Policy Act (42 U.S.C. 8262g).

(c) Pollution Prevention Act of 1990 (42 U.S.C. 13101, *et seq.*).

(d) Executive Order 12856 of August 3, 1993, Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements.

(e) Executive Order 12902 of March 8, 1994, Energy Efficiency and Water Conservation at Federal Facilities.

(f) Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition.

23.703 [Reserved]**23.704 Policy**

Agencies must—

(a) Implement cost-effective contracting preference programs favoring the acquisition of environmentally preferable and energy-efficient products and services; and

(b) Employ acquisition strategies that affirmatively implement the following environmental objectives:

(1) Maximize the utilization of environmentally preferable products and services (based on EPA-issued guidance).

(2) Maximize the utilization of energy-efficient products.

(3) Eliminate or reduce the generation of hazardous waste and the need for special material processing (including special handling, storage, treatment, and disposal).

(4) Promote the use of nonhazardous and recovered materials.

(5) Realize life-cycle cost savings.

(6) Promote cost-effective waste reduction when creating plans, drawings, specifications, standards, and other product descriptions authorizing material substitutions, extensions of shelf-life, and process improvements.

(7) Consider the use of biobased products.

23.705 Application to Government-owned or -leased facilities

Executive Order 13101, section 701, requires that contracts for contractor operation of a Government-owned or -leased facility and contracts for support services at a Government-owned or -operated facility include provisions that obligate the contractor to comply with the requirements of the order. Compliance includes developing programs to promote and implement cost-effective waste reduction and affirmative procurement programs required by 42 U.S.C. 6962 for all products designated in EPA's Comprehensive Procurement Guideline (40 CFR part 247).

23.706 Contract clause

Insert the clause at 52.223-10, Waste Reduction Program, in all solicitations and contracts for contractor operation of Government-owned or -leased facilities and all solicitations and contracts for support services at Government-owned or -operated facilities.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

16. Revise the section heading and text of 52.204-4 to read as follows:

52.204-4 Printed or Copied Double-Sided on Recycled Paper

As prescribed in 4.303, insert the following clause:

Printed or Copied Double-Sided on Recycled Paper (Date)

(a) *Definitions.* As used in this clause—
Postconsumer material means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of "recovered material." For paper and paper products, postconsumer material means "postconsumer fiber" defined by the U.S. Environmental Protection Agency (EPA) as—

(1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage;

(2) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; and

(3) Postconsumer fiber does not include fiber derived from printers' over-runs, converters' scrap, and over-issue publications.

Printed or copied double-sided means printing or reproducing a document so that information is on both sides of a sheet of paper.

Recovered material, for paper and paper products, is defined by EPA in its Comprehensive Procurement Guideline as "recovered fiber" and means the following materials:

(1) Postconsumer fiber.

(2) Manufacturing wastes such as—

(i) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

(ii) Repulped finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others.

(b) In accordance with section 101 of Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, the Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed or copied double-sided on recycled paper that meet minimum content standards specified in section 505 of Executive Order 13101, when not using electronic commerce methods to submit information or data to the Government.

(c) If the Contractor cannot purchase high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white wove envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock meeting the 30 percent postconsumer material standard for

use in submitting paper documents to the Government, it should use paper containing no less than 20 percent postconsumer material. This lesser standard should be used only when paper meeting the 30-percent postconsumer material standard is not obtainable at a reasonable price or does not meet performance standards.
(End of clause)

17. Amend section 52.211-5 by revising the introductory text, the date of the clause, and the definition "Recovered material" in paragraph (a) to read as follows:

52.211-5 Material Requirements

As prescribed in 11.304, insert the following clause:

Material Requirements (Date)

(a) * * *

Recovered material means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

* * * * *

18. Amend section 52.212-5 by revising the date of the clause; removing paragraph (b)(18) and redesignating paragraphs (b)(16) and (b)(17) as (b)(17) and (b)(18), respectively; and adding a new paragraph (b)(16) 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) * * *

(16)(i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (42 U.S.C. 6962(c)(3)(A)(ii)).

(ii) Alternate I of 52.223-9 (42 U.S.C. 6962(i)(2)(C)).

* * * * *

52.223-4 [Amended]

19. Amend the introductory text of section 52.223-4 by revising the citation "23.405(a)" to read "23.406(a)".

20. Revise the section heading and text of 52.223-9 to read as follows:

52.223-9 Estimate of Percentage of Recovered Material Content for EPA-Designated Products.

As prescribed in 23.406(b), insert the following clause:

Estimate of Percentage of Recovered Material Content for EPA-Designated Products (Date)

(a) *Definitions.* As used in this clause—

Postconsumer material means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of "recovered material."

Recovered material means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

(b) The Contractor, on completion of this contract, shall—

(1) Estimate the percentage of the total recovered material used in contract performance, including, if applicable, the percentage of postconsumer material content; and

(2) Submit this estimate to

_____ [Contracting Officer complete] in accordance with agency procedures.

Alternate I (Date). As prescribed in 23.406(b), redesignate paragraph (b) of the basic clause as paragraph (c) and add the following paragraph (b) to the basic clause:

(b) The Contractor shall execute the following certification required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6962(i)(2)(C):

Certification

I, _____ (name of certifier), am an officer or employee responsible for the performance of this contract and hereby certify that the percentage of recovered material content for EPA-designated products met the applicable contract specifications.

(Signature of the Officer or Employee)

(Typed Name of the Officer or Employee)

(Title)

(Name of Company, Firm, or Organization)

(Date)

(End of certification)

21. Revise section 52.223-10 to read as follows:

52.223-10 Waste Reduction Program.

As prescribed in 23.706, insert the following clause:

Waste Reduction Program (Date)

(a) *Definitions.* As used in this clause—

Recycling means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of products other than fuel for producing heat or power by combustion.

Waste prevention means any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials.

Waste reduction means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

(b) Consistent with the requirements of Section 701 of Executive Order 13101, the Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. The Contractor's programs shall comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962, *et seq.*) and implementing regulations (40 CFR part 247).

(End of clause)

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