

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 11, 23, 39, and 52**

[FAC 2005–30; FAR Case 2006–030; Item VI; Docket 2007–0001, Sequence 9]

RIN 9000–AK85

**Federal Acquisition Regulation; FAR
Case 2006–030, Electronic Products
Environmental Assessment Tool
(EPEAT)**

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed to adopt as final, without change, the interim rule published in the **Federal Register** at 72 FR 73215 on December 26, 2007. The interim rule amended the Federal Acquisition Regulation (FAR) to provide regulations for purchasing environmentally preferable products and services when acquiring personal computer products such as desktops, notebooks (also known as laptops), and monitors with use of Electronic Products Environmental Assessment Tool (EPEAT) pursuant to the Energy Policy Act of 2005 and Executive Order 13423, “Strengthening Federal Environmental, Energy, and Transportation Management.”

DATES: *Effective Date:* February 17, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. William Clark, Procurement Analyst, at (202) 219–1813 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAC 2005–30, FAR case 2006–030.

SUPPLEMENTARY INFORMATION:**A. Background**

The EPEAT is a system to help purchasers in the public and private sectors evaluate, compare, and select desktop computers, notebooks and monitors based on their environmental attributes. The EPEAT also provides a clear and consistent set of performance criteria for the design of products, and provides an opportunity for manufacturers to secure market

recognition for efforts to reduce the environmental impact of their products.

This case was opened to amend the FAR to require the use of the EPEAT Product Registry and the IEEE (Institute of Electrical and Electronics Engineers) 1680 Standard for the Environmental Assessment of Personal Computer Products in all solicitations and contracts for personal computer desktops, laptops, and monitors. On January 24, 2007, President Bush issued Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management. Section 2(h) states that the head of each Agency shall “ensure that the agency (i) when acquiring an electronic product to meet its requirements, meets at least 95 percent of those requirements with an Electronic Product Environmental Assessment Tool (EPEAT)-registered electronic product, unless there is no EPEAT standard for such product...”.

The Councils published an interim rule on December 26, 2007 (72 FR 73215). Two respondents submitted comments.

1. One respondent fully supports the interim rule. As a taxpayer, he considers that EPEAT is a critical step in facilitating sound purchasing policy.

Response: None required.

2. The same respondent encourages DoD to expand the use of EPEAT in all COTS purchases of related equipment, even computers that are ruggedized for operational use.

Response: DoD implementation of this rule is outside the scope of this case.

3. Another respondent considers the goals of the regulation laudable, but objects to the process by which the Development Team initiated the development of EPEAT standards. The respondent objects that the Development Team was not rightly identified as a Federal Advisory Committee at its formation, and that neither the requirements of the Federal Advisory Committee Act (FACA), nor even its spirit, were met in the development of EPEAT. The respondent considers that their industry was deprived of the proper and necessary notice of the development of the EPEAT and any associated policies regarding implementation.

Response: The development of the EPEAT is not an issue in this rulemaking. Although the Councils were not involved in the development of the standards, they have reviewed these issues with the Environmental Protection Agency (EPA) and the Office of Management and Budget (OMB). The EPA has demonstrated to the satisfaction of the Councils that the Development Team was not subject to

FACA, and appropriate procedures were followed for development of voluntary consensus standards. The Councils have forwarded the respondent's concerns to EPA. If the respondent has further questions with regard to the EPEAT, key EPEAT points of contact are provided on the EPEAT Website at <http://www.epeat.net/faq.aspx#21>.

4. The same respondent expresses particular concern because this rule takes a non-governmental program that was to be used voluntarily by purchasers and now mandates its use by all Federal Government agencies. The respondent also questions the urgency for issuance of an interim rule rather than a proposed rule.

Response: With regard to mandating the use of the EPEAT for Government purchases, the rule implements the Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management. Section 2(h) states that the head of each Agency shall “ensure that the agency (i) when acquiring an electronic product to meet its requirements, meets at least 95 percent of those requirements with an Electronic Product Environmental Assessment Tool (EPEAT)-registered electronic product, unless there is no EPEAT standard for such product”.

The rule was issued as an interim rule because the Executive Order mandating use of the EPEAT standards was already in effect. Rules that implement a statute or Executive Order are generally issued as interim rules.

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 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 it mandates standards in orders for personal computer products that will be offered for sale to the Government. A Final Regulatory Flexibility Analysis (FRFA) has been prepared and is summarized as follows:

This final rule was initiated to implement Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management, Section 2(h) and the IEEE (Institute of Electrical and Electronics Engineers) 1680 Standard for the Environmental Assessment of Personal Computers, for Federal use in meeting green purchasing requirements when acquiring personal computer products.

There were no significant issues raised by the public comments in response to the initial regulatory flexibility analysis.

As of June 2008, seven of the twenty-seven vendors who have registered products on the EPEAT Product Registry reported that they are small businesses. Data are not available on how many small businesses are reselling personal computer products to the Government, but according to the EPA's Office of Small Disadvantaged Business Utilization, at the time of publication of the interim rule, there were approximately 613 Service Disabled Veteran Owned Small Businesses (SDVOSBs) selling IT hardware to the Federal Government. These small businesses were not manufacturers of IT hardware, but resold IT hardware manufactured by other companies to the Federal Government. Many of the products these resellers sold could meet the IEEE 1680 Standard, and the manufacturers of these products had the option of getting these products EPEAT registered to verify that they do meet this standard.

Because manufacturers are the parties responsible for determining if their products meet the IEEE 1680 Standard or not, there will be little to no impact on small businesses selling IT products to the Federal Government, who are selling EPEAT-registered products. In addition, the EPEAT Product Registry has been designed to encourage small business manufacturer participation. There is a sliding scale for the annual EPEAT registration fee vendors pay to have their products EPEAT registered based on the annual revenue of the vendor.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR Parts 11, 23, 39, 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 2006-030), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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 11, 23, 39, and 52

Government procurement.

Dated: December 24, 2008

Edward Loeb,

Acting Director, Office of Acquisition Policy.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR parts 11, 23, 39, and

52 which was published in the **Federal Register** at 72 FR 73215 on December 26, 2007, is adopted as a final rule without change.

[FR Doc. E9-549 Filed 1-14-09; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12, 22, and 52

[FAC 2005-30; FAR Case 2005-012; Item VII; Docket 2006-0020; Sequence 25]

RIN 9000-AK31

Federal Acquisition Regulation; FAR Case 2005-012, Combating Trafficking in Persons

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed to adopt as final, with changes, the second interim rule published in the **Federal Register** at 72 FR 46335, August 17, 2007, amending the Federal Acquisition Regulation (FAR) to implement 22 U.S.C. 7104(g). This statute requires that contracts include a provision that authorizes the department or agency to terminate the contract, if the contractor or any subcontractor engages in trafficking in persons.

DATES: *Effective Date:* February 17, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Woodson, Procurement Analyst, at (202) 501-3775 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-30, FAR case 2005-012.

SUPPLEMENTARY INFORMATION:

A. Background

The Trafficking Victims Protection Reauthorization Act (TVPPRA) of 2003, as amended by TVPPRA of 2005, addresses the victimization of countless men, women, and children in the United States and abroad. In order to implement the law, DoD, GSA, and NASA published a second interim rule in the **Federal Register** at 72 FR 46335,

August 17, 2007 with request for comments by October 16, 2007. Five respondents submitted comments on the second interim rule. Those comments, summarized as follows, were considered by the Councils in the formation of this final rule:

1. *Applicability to Commercial Items.* Four comments were received from three different respondents regarding the applicability of the rule to commercial items.

(a) One respondent is concerned that although the FAR Matrix indicates that FAR clause 52.222-50 is not applicable to commercial items, FAR 52.212-5 includes 52.222-50 as a clause that the contracting officer may mark as being applicable to commercial items.

Response: The Councils concur with the respondent's concern and agrees to indicate in the FAR clause matrix that clause 52.222-50 is required.

(b) One respondent believes that by making the rule applicable to commercial items, the Councils misinterpreted the separate Federal crimes created under Chapter 77 of Title 18, United States Code, as providing the necessary criminal or civil penalties for the contract violations to which the Federal Acquisition Streamlining Act was meant to apply. The respondent requests the Councils to reconsider the applicability to commercial items.

Response: The Councils note that application of the rule to all contracts for supplies and services, including those for commercial items, is consistent with the broad scope of the statutory directive and is in compliance with the Federal Acquisition Streamlining Act's (FASA) provision concerning commercial contracts. Specifically, the statutory language at 22 U.S.C. 7104(g) contained no exceptions or limitations with regard to its application to Federal contracts. While FASA governs and limits the applicability of laws to commercial items, it also provides that if a provision of law contains criminal or civil penalties, or if the Federal Acquisition Regulatory Council determines that it is not in the best interest of the Federal Government to exempt commercial item contracts, then the provision of law will apply to contracts for commercial items.

(c) Another respondent asked the Councils to give further consideration to not applying the rule to commercial items (subcontracts), indicating that the application will give rise to unintended consequences and create an effect inconsistent with Federal acquisition goals.

Response: The Councils believe that the TVPPRA of 2003 and 2005 reflects Congress's intent to allow for the