

## GREEN CONTRACTING: Federal Methods for Green Building

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*“The Federal government can be a good steward of our resources, and we fully intend to be.”*

- President George W. Bush

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### Statutes

- Energy Policy Act of 2005, Public Law 109-58, especially Section 104
- Resource Conservation and Recovery Act (RCRA), Section 6002

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### Regulations

- E.O. 13101 – Greening the Government through Waste Prevention, Recycling, and Federal Acquisition
- E. O. 13123 – Energy Star and energy-efficient products reduced energy consumption, and renewable energy
- E.O. 13221 – minimal standby power devices

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### Policy

- **FAR 23.202** 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.

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### American Recovery and Reinvestment Act (ARRA) – The Stimulus Act

- Unprecedented investment in renewable energy infrastructure
- GSA -- \$4.5 billion to the conversion of federal buildings to high-performance green buildings
- DOD -- \$4.2 billion for investment in and renovation of DOD facilities
- DOE -- \$16.8 billion to its Energy Efficiency and Renewable Energy (EERE) Program

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## Greening of Federal Contracts Occurs Via Two Primary Methods

- Energy Savings Performance Contracts (ESPC) – Executive Order 13123
- Inclusion of specific clauses in all contracts, but especially supply and construction contracts

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## FAR 23.205

### Energy-savings performance contracts.

- (a) Section 403 of Executive Order 13123 of June 3, 1999, Greening the Government through Efficient Energy Management, requires an agency to make maximum use of the authority provided in the National Energy Conservation Policy Act ([42 U.S.C. 8287](#)) to use an energy-savings performance contract (ESPC), when life-cycle cost-effective, to reduce energy use and cost in the agency's facilities and operations.

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## FAR 23.205 (continued)

- (b)(1) Under an ESPC, an agency can contract with an energy service company for a period not to exceed 25 years to improve energy efficiency in one or more agency facilities at no direct capital cost to the United States Treasury. The energy service company finances the capital costs of implementing energy conservation measures and receives, in return, a contractually determined share of the cost savings that result.

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## ESPCs

- Energy Savings Performance Contracting is a contracting procedure in which a private contractor evaluates, designs, finances, acquires, and stores and maintains energy savings equipment for a client, and receives compensation based on the performance of that equipment. The conditions of the contract determine the level of compensation to the contractor, with the remainder of the savings retained by the client.

Federal Energy Program Policy Memorandum

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## ESPCs (continued)

- ESPCs specifically authorized in 1995 via Consolidated Omnibus Budget Reconciliation Act, Public Law 99-272 – “Shared Energy Savings Agreements”

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## Typical Methods of Awarding ESPCs

- Contractor responds to a specific RFP, or
- Contractor approaches a federal agency to discuss conducting an audit of the facility's energy consumption with the idea of developing a proposal for energy savings
- DOD and DOE have a prequalification program

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## The DOD Program

- Army is lead agency
- Steps
  - Fed. Biz. Opps. Notice to firms wishing to be considered for prequalification
  - Submit Statement of Qualifications to a Qualification Review Board (QLB)
  - Qualified for one year
  - Technical Board selects no less than 3 but no more than 5 firms from the list of prequalified firms deemed capable of performing a particular project
  - These firms will provide abbreviated pricing and technical proposals

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## The DOD Program (continued)

- Technical Board ranks the offerors and recommends to the CO
- If CO approves, he/she enters into negotiations

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## Keys to ESPC Success

- Identification of a credible baseline
  - Detailed Energy Survey (DES)
  - At no risk to the agency but costs are recoverable by the contractor if the agency goes forward on the recommendation of the contractor
- After the DES is completed and the baseline established, parties negotiate energy conservation measures to be included in the scope of work, including specifically annual cost savings
- These contracts can last up to 25 years to allow amortization of costs, but typically will allow contractor to recover its costs of improvements within the first 10 years

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## FAR Subpart 23.703 -

### *Contracting for Environmentally Preferable and Energy-efficient Products and Services*

- Agencies must—
- (a) Implement cost-effective contracting preference programs promoting energy-efficiency, water conservation, and the acquisition of environmentally preferable products and services; and
- (b) Employ acquisition strategies that affirmatively implement the following environmental objectives:

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## FAR Subpart 23.703 (continued)

- (1) Maximize the utilization of environmentally preferable products and services (based on EPA-issued guidance).
- (2) Promote energy-efficiency and water conservation.
- (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.

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## FAR Subpart 23.703 (continued)

- (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) Promote the use of biobased products.
- (8) Purchase only plastic ring carriers that are degradable ([7 USC 8102\(c\)\(1\)](#), 40 CFR part 238).

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## Energy Efficiency and Energy Consuming Products

- When acquiring consuming products
- **23.203 Energy-efficient products.**
- (a) Unless exempt as provided at [23.204](#)—
- (1) When acquiring energy-consuming products listed in the ENERGY STAR® Program or Federal Energy Management Program (FEMP)—
- (i) Agencies shall purchase ENERGY STAR® or FEMP-designated products; and

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## 23.203 Energy-efficient products (continued)

- (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

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## FAR 23.203 (continued)

- (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

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## FAR 23.203 (continued)

- (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://www1.eere.energy.gov/femp/procurement/eep\\_requirements.html](http://www1.eere.energy.gov/femp/procurement/eep_requirements.html).

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## FAR 52.223-15

- **Energy Efficiency in Energy-Consuming Products.**
- (a) *Definition.* As used in this clause—
- “Energy-efficient product”—
- (1) Means a product that—
- (i) Meets Department of Energy and Environmental Protection Agency criteria for use of the Energy Star trademark label; or

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## FAR 52.223-15 (continued)

- (ii) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy's Federal Energy Management Program.
- (2) The term “product” does not include any energy-consuming product or system designed or procured for combat or combat-related missions ([42 U.S.C. 8259b](#)).
- (b) The Contractor shall ensure that energy-consuming products are energy efficient products (*i.e.*, ENERGY STAR® products or FEMP-designated products) at the time of contract award, for products that are—
- (1) Delivered;

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### FAR 52.223-15 (continued)

- (2) Acquired by the Contractor for use in performing services at a Federally-controlled facility;
- (3) Furnished by the Contractor for use by the Government; or
- (4) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.
- (c) The requirements of paragraph (b) apply to the Contractor (including any subcontractor) unless—

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### FAR 52.223-15 (continued)

- (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://www1.eere.energy.gov/femp/procurement/eep\\_requirements.html](http://www1.eere.energy.gov/femp/procurement/eep_requirements.html).

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