Department of Veterans Affairs

Memorandum

Date: April 11, 2025

From: Executive Director, Office of Acquisition and Logistics (003A), and Senior Procurement Executive

Subj: Federal Acquisition Regulation (FAR) Class Deviation to Implement Section 2 of Executive Order (E.O.) 14148, “Initial Rescissions of Harmful Executive Orders and Actions,” which revoked Executive Order 14057, and Section 2 of E.O. 14208, “Ending Procurement and Forced Use of Paper Straws,” February 10, 2025

To: Heads of the Contracting Activities

1. Purpose. To issue a class deviation in accordance with Federal Acquisition Regulation (FAR) 1.404, and as authorized by the Civilian Agency Acquisition Council (CAAC), via CAAC Letter 2025-02, Supplement 1, February 18, 2025, to implement Section 2 of Executive Order (E.O.) 14148, “Initial Rescissions of Harmful Executive Orders and Actions,” January 20, 2025, which revoked Executive Order 14057; and Section 2 of E.O. 14208, “Ending Procurement and Forced Use of Paper Straws,” February 10, 2025.

2. FAR Part Impacted: FAR parts 1, 2, 11, 18, 23, 37, and 52.

3. Effective Date. Immediately.

4. Expiration Date. This deviation expires when incorporated into the FAR or is otherwise rescinded.

5. Applicability. This class deviation applies to all VA contracting activities.

6. Exceptions. None.

7. Background.

a. Current FAR Policy. FAR part 23 prescribes policies and procedures to: 1) reduce emissions, including greenhouse gases; and 2) incentivize markets for sustainable products and services.

b. Need for Deviation. Section 2 of Executive Order 14148, “Initial Rescissions of Harmful Executive Orders and Actions,” issued January 20, 2025 (see 90 FR 8237), revoked Executive Order 14057, “Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability,” issued December 8, 2021. Section 2 of Executive Order 14208, “Ending Procurement and Forced Use of Paper Straws," issued February 10, 2025 (see 90 FR 9585), directs agencies to take appropriate action to eliminate policies designed to disfavor plastic straws. The deviation describes

changes to FAR terms, text, solicitation provisions and contract clauses that will ensure compliance with E.O.s 14148 and 14208.

c. New Policy. As described in paragraph 7.b, this deviation implements E.O.s 14148 and 14208. See paragraph 8 below and Attachment FAR Text – (Deviation FEB 2025).

8. Required Action. Contracting officers shall use the following changes.

a. Use the revised definitions in FAR part 2 and follow the revised procedures in FAR parts 11, 18, 23, and 37 as illustrated in the attachment.

b. When issuing new solicitations or contracts, **do not include** any of the following provisions and clauses:

- 52.204-8 Annual Representations and Certifications (JAN 2025)
- 52.212-3 Offeror Representations and Certifications—Commercial Products and Commercial Services (MAY 2024)
- 52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services (JAN 2025)
- 52.213-4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services) (JAN 2025)
- 52.223-1 Biobased Product Certification (MAY 2024)
- 52.223-2 Reporting of Biobased Products Under Service and Construction Contracts (MAY 2024)
- 52.223-10 Waste Reduction Program (MAY 2024)
- 52.223-19, Compliance with Environmental Management Systems (MAY 2011)
- 52.223-22, Public Disclosure of Greenhouse Gas Emissions and Reduction Goals—Representation (DEC 2016)
- 52.223-23, Sustainable Products and Services (MAY 2024)

c. Any open solicitations that contain any of the provisions or clauses listed above should be amended to remove the provisions and clauses.

d. When issuing new solicitations or contracts, **include** the following provisions and clauses, if applicable:

- 52.204-8, Annual Representations and Certifications (JAN 2025) (DEVIATION FEB 2025)
- 52.212-3 Offeror Representations and Certifications—Commercial Products and Commercial Services (MAY 2024) (DEVIATION FEB 2025)
- 52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services (JAN 2025) (DEVIATION FEB 2025)

- 52.213-4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services) (JAN 2025) (DEVIATION FEB 2025)
- 52.223-1 Biobased Product Certification (MAY 2024) (DEVIATION FEB 2025)
- 52.223-2 Reporting of Biobased Products Under Service and Construction Contracts (MAY 2024) (DEVIATION FEB 2025)
- 52.223-10 Waste Reduction Program (MAY 2024) (DEVIATION FEB 2025)
- 52.223-23, Sustainable Products and Services (MAY 2024) (DEVIATION FEB 2025)

e. Any open solicitations should be amended to include the required provisions and clauses provided in the attachment.

f. When issuing new solicitations, **include** the following notice:

“System updates may lag policy updates. The System for Award Management (SAM) may continue to require entities to complete representations based on provisions that are not included in agency solicitations, including 52.223-22, Public Disclosure of Greenhouse Gas Emissions and Reduction Goals—Representation, and paragraph (t) of 52.212-3, Offeror Representations and Certifications—Commercial Products and Commercial Services. Contracting officers will not consider these representations when making award decisions or enforce requirements. Entities are not required to, nor are they able to, update their entity registration to remove these representations in SAM.”

g. In advancement of Section 2 of Executive Order 14208, the removal of requirements related to Executive Order 14057 eliminates all non-statutory sustainability requirements or preferences in purchases of food service wares, including paper straws. In addition to removing requirements related to Executive Order 14057, the attachment also reflects recent updates to Code of Federal Regulation citations for the U.S. Department of Agriculture’s BioPreferred® Program, a statutory purchasing preference program.

h. For existing contracts, **include** the required provisions and clauses as soon as practicable and include them in existing contracts when extending or exercising an option, as applicable.

9. Additional information. Send questions to va.procurement.policy@va.gov.

JOSEPH MALETTA

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Joseph Maletta

Attachment – (DEVIATION FEB 2025) Executive Order 14148, “Initial Rescissions of Harmful Executive Orders and Actions,” of January 20, 2025, revocation of Executive Order 14057, “Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability,” of December 8, 2021

ATTACHMENT

(DEVIATION FEB 2025)

Executive Order 14148, "Initial Rescissions of Harmful Executive Orders and Actions," of January 20, 2025, revocation of Executive Order 14057, "Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability," of December 8, 2021

Baseline is FAC 2025-03, published in the *Federal Register* on January 3, 2025, effective January 17, 2025.

Changes to the baseline are shown as **[additions]** and ~~deletions~~.

FAR Text that is unchanged is shown as asterisks.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

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Subpart 1.1—Purpose, Authority, Issuance

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1.106 OMB approval under the Paperwork Reduction Act.

The Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) imposes a requirement on Federal agencies to obtain approval from the Office of Management and Budget (OMB) before collecting information from 10 or more members of the public. The information collection and recordkeeping requirements contained in this regulation have been approved by the OMB. The following OMB control numbers apply:

FAR Segment	OMB control No.
* * * * * * *	* * * * * * *
~~52.223-22~~	~~9000-0107.~~
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PART 2—DEFINITIONS OF WORDS AND TERMS

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Subpart 2.1—Definitions

2.101 Definitions.

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Biobased product means a product determined by the U.S. Department of Agriculture to be a commercial product or industrial product (other than food or feed) that is composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials, or that is an intermediate ingredient or feedstock. The term includes, with respect to forestry materials, forest products that meet biobased content requirements, notwithstanding the market share the product holds, the age of the product, or whether the market for the product is new or emerging. (7 U.S.C. 8101) (~~7 CFR 3201.2~~**[7 CFR part 4270.2)]**).

* * * * *

Sustainable products and services means**[-]** ~~products and services that are subject to and meet the following applicable statutory mandates and directives for purchasing~~:

~~(1) *Statutory purchasing programs.*~~

~~(i)~~**[(1)]** Products containing recovered material designated by the U.S. Environmental Protection Agency (EPA) under the Comprehensive Procurement Guidelines (42 U.S.C. 6962) (40 CFR part 247) (*https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program#products*).

~~(ii)~~**[(2)]** Energy- and water-efficient products that are ENERGY STAR® certified or Federal Energy Management Program (FEMP)-designated products (42 U.S.C. 8259b) (10 CFR part 436, subpart C) (*https://www.energy.gov/eere/femp/search-energy-efficient-products and https://www.energystar.gov/products?s=mega*).

~~(iii)~~**[(3)]** Biobased products meeting the content requirement of the U.S. Department of Agriculture under the BioPreferred® program (7 U.S.C. 8102) (~~7 CFR part 3201~~**[7 CFR part 4270]**) (*https://www.biopreferred.gov*).

~~(iv)~~**[(4)]** Acceptable chemicals, products, and manufacturing processes listed under EPA's Significant New Alternatives Policy (SNAP) program, which ensures a safe and smooth transition away from substances that contribute to the depletion of stratospheric ozone (42 U.S.C. 7671l) (40 CFR part 82, subpart G) (*https://www.epa.gov/snap*).

~~(2) *Required EPA purchasing programs.*~~

~~(i) WaterSense® labeled (water efficient) products and services (*https://www.epa.gov/watersense/watersense-products*).~~

~~(ii) Safer Choice-certified products (products that contain safer chemical ingredients) (*https://www.epa.gov/saferchoice/products*).~~

~~(iii) Products and services that meet EPA Recommendations of Specifications, Standards, and Ecolabels in effect as of October 2023 (*https://www.epa.gov/greenerproducts/recommendations-specifications-standards-and-ecolabels-federal-purchasing*).~~

* * * * *

United States, when used in a geographic sense, means the 50 States and the District of Columbia, except as follows: * * *

(9) ~~For use in subpart 23.1, see definition at 23.101.~~**[Reserved]**

* * * * *

PART 11—DESCRIBING AGENCY NEEDS

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11.002 Policy.

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(d)(1) Agencies shall procure sustainable products and services (as defined in 2.101) in accordance with subpart 23.1.

(2) Unless it is not practicable (see 23.104(a)) or an exception ~~or exemption~~ applies (see 23.105~~ and 23.106, respectively~~), agencies shall incorporate the use of sustainable products and services when—

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

(ii) Describing Government requirements for products and services; and

(iii) Developing source-selection factors.

(3) The Green Procurement Compilation (GPC) available at *https://sftool.gov/greenprocurement* provides a comprehensive list

of sustainable products and services and other related sustainable acquisition guidance. Agencies should **[consult the GPC when determining which statutory purchasing programs apply to a specific product or service and incorporate applicable requirements into the requirement document.]**—

~~(i) Consult the GPC when determining which purchasing programs apply to a specific product or service; and~~

~~(ii) Incorporate into agency requirements any required standards, specifications, or ecolabels identified in the GPC for a specific product or service~~.

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Subpart 11.3—Acceptable Material

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11.301 Policy.

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(c) * * *

(2) For biobased products, agencies may not require, as a condition of purchase of such products, the vendor or manufacturer to provide more data than would typically be provided by other business entities offering products for sale to the agency, other than data confirming the biobased content of a product (see ~~7 CFR 3201.8~~**[7 CFR 4270.14]**).

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PART 18—EMERGENCY ACQUISITIONS

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Subpart 18.2—Emergency Acquisition Flexibilities

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18.202 Defense or recovery from certain events.

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~~(c) *Sustainable products and services*. Contracting officers are encouraged, but not required, to procure sustainable products and services if the head of the agency determines the supplies or~~

~~services are to be used to facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; to facilitate provision of international disaster assistance; or to support response to an emergency or major disaster (see 23.106(c)).~~

* * * * *

PART 23—ENVIRONMENT, SUSTAINABLE ACQUISITION, AND MATERIAL SAFETY

23.00 Scope of part.

This part prescribes acquisition policies and procedures supporting the Government's program to protect and improve the quality of the environment, to foster markets for sustainable products and services, and to ensure proper handling and notification of hazardous materials.

23.01 Definitions.

As used in this part—

~~*Environmental* means environmental aspects of internal agency operations and activities, including those aspects related to energy and transportation functions.~~

~~*Greenhouse gas* means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, nitrogen trifluoride, or sulfur hexafluoride.~~

* * * * *

23.02 ~~Policy.~~

~~In accordance with section 208(a) of Executive Order 14057, Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability, agencies shall reduce emissions, including greenhouse gas emissions; promote environmental stewardship; support resilient supply chains; drive innovation; and incentivize markets for sustainable products and services.~~

Subpart 23.1—Sustainable Products and Services

23.100 Scope of subpart.

This subpart provides policies and procedures for procuring sustainable products and services. This subpart applies to all contract actions, including those using part 12 procedures for the acquisition of commercial products, including commercially

available off-the-shelf (COTS) items, and commercial services and acquisitions valued at or below the micro-purchase threshold.

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23.101 Definitions.

As used in this subpart— * * *

U.S. Department of Agriculture (USDA)-designated product category means a generic grouping of products that are or can be made with biobased materials—

(1) That are listed by USDA in a procurement guideline ~~(7 CFR part 3201, subpart B)~~**[available at *https://www.biopreferred.gov/resources/categories.html*]**; and

(2) For which USDA has provided purchasing recommendations ~~(~~available at *https://www.biopreferred.gov***[or 7 CFR part 4270]**~~)~~**.**

* * * * *

~~*United States*, as defined in the Executive Office of the President's Office of Management and Budget, Council on Environmental Quality, and Climate Policy Office Memorandum M-22-06, when used in a geographical sense means—~~

~~(1) The fifty States;~~

~~(2) The District of Columbia;~~

~~(3) The commonwealths of Puerto Rico and the Northern Mariana Islands;~~

~~(4) The territories of Guam, American Samoa, and the United States Virgin Islands; and~~

~~(5) Associated territorial waters and airspace.~~

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23.102 Authorities.

(a) ~~Section 208 of Executive Order 14057, Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability, dated December 8, 2021.~~

~~(b) Paragraph G of section I of the Executive Office of the President's Office of Management and Budget, Council on~~

~~Environmental Quality, and Climate Policy Office Memorandum M-22-06, Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability, dated December 8, 2021.~~

~~(c) Implementing instructions for Executive Order 14057, Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability, dated August 2022.~~

~~(d) The~~**[See the]** authorities referenced in 23.107 for statutory purchasing programs.

23.103 Policy.

(a) Agencies shall procure sustainable products and services (as defined in 2.101) to the maximum extent practicable.

(1) Procuring sustainable products and services is considered practicable, unless the agency cannot acquire products or services—

(i) Competitively within a reasonable performance schedule;

(ii) That meet reasonable performance requirements; or

(iii) At a reasonable price (see 23.103(a)(2)).

(2) When considering whether the price of a sustainable product is reasonable, agencies should consider whether the product is cost-effective over the life of the product. For ENERGY STAR® or Federal Energy Management Program (FEMP)-designated products, a price is reasonable if it is cost-effective over the life of the product taking energy cost savings into account (42 U.S.C. 8259b(b)(2)). Life-cycle cost savings tools for energy-efficient products are available at *https://www.energystar.gov/buildings/save_energy_commercial_buildings/ways_save/energy_efficient_products and https://www.nrel.gov/analysis/tech-lcoe.html*.

(b) ~~When procuring sustainable products and services, agencies shall—~~

~~(1) Ensure compliance with applicable statutory purchasing program requirements (see 23.107); and~~

~~(2) Prioritize multi-attribute sustainable products and services (see 23.104(c)(2)).~~

~~(c)~~ Regarding products under contract actions for services or construction, the contractor is required to provide products that meet the definition of sustainable products and services at 2.101, if the products are—

(1) Delivered to the Government;

(2) Furnished by the contractor for use by the Government;

(3) Incorporated into the construction of a public building or public work; or

(4) Acquired by the contractor for use in performing services under a Government contract where the cost of the products is a direct cost to a Government contract (versus costs which are normally applied to a contractor's general and administrative expenses or indirect costs).

23.104 General procedures.

(a) *Maximum extent practicable*. If the requiring activity submits a written justification addressing the reasons described in 23.103(a)(1), the contracting officer may consider it not practicable to procure sustainable products or services. A written justification may be for a specific product or service or at the line item or contract level. The contracting officer shall maintain the written justification in the contract file.

(b) *Identification*.

(1) Except as provided in paragraph (b)(2) of this section, the contracting officer shall ensure the solicitation and contract identifies—

(i) The sustainable products and services, including the purchasing program and type of product or service, that are applicable to the acquisition, as identified by the requiring activity; and

(ii) Any products and services that are not subject to the requirements of this subpart and the clause at 52.223-23, Sustainable Products and Services, based on the written justification under paragraph (a) of this section **[or an exception at 23.105]**~~, an exception at 23.105, or an exemption at 23.106~~.

(2) The requirement in paragraph (b)(1) of this section does not apply if the justification **[or exception]**~~, exception, or exemption~~ covers the entirety of the contract action requirements.

(c) *Prioritization*. Agencies shall ~~prioritize sustainable products and services as follows:~~

~~(1) Procure~~**[procure]** products and services that meet applicable statutory purchasing program requirements (see 23.107). When both an EPA-designated item (see 23.107-1) and a biobased

product in a USDA-designated product category (see 23.107-2) could be used for the same purposes, and there is not an EPA-designated item that is also a biobased product in a USDA-designated product category that meets the agency's needs, procure the EPA-designated item.

~~(2) Consistent with other statutory procurement requirements, prioritize multi-attribute sustainable products and services, which are those that meet applicable statutory purchasing program requirements (see 23.107) and one or more required EPA purchasing programs (see 23.108).~~

~~(3) If no statutory purchasing program requirements apply, procure sustainable products and services that meet required EPA purchasing program requirements (see 23.108).~~

(d) *Resource*. The Green Procurement Compilation (GPC) available at *https://sftool.gov/greenprocurement* provides a comprehensive list of sustainable products and services and other related sustainable acquisition guidance. ~~In addition to the resources identified for each purchasing program listed in 23.107 and 23.108, agencies~~**[Agencies]** should consult the GPC when determining which **[statutory]** purchasing programs apply to a specific product or service.

23.105 Exceptions.

The following are excepted from the requirement to procure sustainable products and services: * * *

(d) Biobased products to be used in military equipment (products or systems designed or procured for combat or combat-related missions), spacecraft systems, or launch support equipment are not subject to the requirements in 23.107-2 (~~7 CFR 3201.3(e)~~**[7 CFR part 4270.3(a)(5)]**).

23.106 [Reserved]~~Exemptions.~~

~~(a) The Director of National Intelligence may exempt an intelligence activity of the United States and related personnel, resources, and facilities to the extent the Director determines necessary to protect intelligence sources and methods from unauthorized disclosure.~~

~~(b) The head of an agency may exempt the following:~~

~~(1) Particular agency activities and related personnel, resources, and facilities when it is in the interest of national security, to protect intelligence sources and methods from unauthorized disclosure, or where necessary to protect undercover~~

~~law enforcement operations from unauthorized disclosure. The agency shall notify the Chair of the Council on Environmental Quality (CEQ) in writing within 30 days of issuance of the exemption under this paragraph (b)(1).~~

~~(2) On an individual or class basis, any manned and unmanned vehicle, vessel, aircraft, or non-road equipment that is used in combat support, combat service support, military tactical or relief operations, or training for such operations or spaceflight vehicles, including associated ground-support equipment.~~

~~(c) Contracting officers are encouraged, but not required, to procure sustainable products and services if the head of the agency determines the supplies or services are to be used to facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; to facilitate provision of international disaster assistance; or to support response to an emergency or major disaster.~~

~~(d) The head of the agency may submit to the President, through the Chair of CEQ, a request for an exemption of an agency activity, and related personnel, resources, and facilities from this subpart for any reason not otherwise addressed in this section.~~

23.107 Statutory purchasing programs.

Agencies shall ensure compliance with statutory purchasing program requirements described in 23.107-1 through 23.107-4.

23.107-1 Products containing recovered materials.

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(e) *Procedures*. The following procedures apply when the thresholds set forth in paragraph (c)(1) of this section are exceeded.

(1) Once an item has been designated by EPA, agencies shall purchase conforming products to the maximum extent practicable in accordance with 23.104(a), unless a **[justification or exception applies (see 23.104(a) and 23.105).]** ~~justification, exception, or exemption applies (see 23.104(a), 23.105, and 23.106, respectively).~~

* * * * *

23.107-2 Biobased products.

(a) *Authorities*.

(1) The Farm Security and Rural Investment Act of 2002 (FSRIA), 7 U.S.C. 8102, as implemented at ~~7 CFR part 3201~~**[7 CFR part 4270].**

(2) The Energy Policy Act of 2005, Public Law 109-58.

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(e) *Procedures*. The following procedures apply when the thresholds set forth in paragraph (c)(1) of this section are exceeded.

(1) Once a biobased product is included in a USDA-designated product category, agencies shall purchase conforming products to the maximum extent practicable in accordance with 23.104(a), unless a **[justification or exception applies (see 23.104(a) and 23.105).]** ~~justification, exception, or exemption applies (see 23.104(a), 23.105, and 23.106, respectively).~~

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23.107-3 Energy-consuming products and water-consuming products.

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(c) *Procedures*. To the maximum extent practicable in accordance with 23.104(a), unless a **[justification or exception applies (see 23.104(a) and 23.105).]**~~justification, exception, or exemption applies (see 23.104(a), 23.105, and 23.106, respectively).~~

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23.108 [Reserved]~~**Required Environmental Protection Agency purchasing programs.**~~

~~In accordance with 23.104(c), contracting officers shall, after meeting statutory purchasing program requirements in 23.107, purchase to the maximum extent practicable products and services that meet EPA purchasing program requirements described in 23.108-1 through 23.108-3.~~

~~**23.108-1 Water-efficient products.**~~

~~(a) Program. EPA's WaterSense® Program makes it easy to find and select water-efficient products that can save water, energy, and money. WaterSense®-labeled products are backed by independent, third-party certification and meet EPA's specifications for water efficiency and performance.~~

~~(b) Resource. For additional information on WaterSense® products, see https://www.epa.gov/watersense/watersense-products.~~

~~23.108-2 Chemically-intensive products.~~

~~(a) *Program*. Safer Choice is EPA's label for products that contain safer chemicals. Every chemical, regardless of percentage, in a Safer Choice-certified product is evaluated through EPA's rigorous scientific process and only the safest ingredients are allowed.~~

~~(b) *Resource*. For information on Safer Choice-certified products, see https://www.epa.gov/saferchoice.~~

~~23.108-3 Products and services that are subject to EPA Recommendations of Specifications, Standards, and Ecolabels.~~

~~(a) *Program*. The EPA Environmentally Preferable Purchasing (EPP) Program helps Federal agencies identify and procure environmentally preferable products and services to meet zero emissions and other sustainable procurement goals by providing Recommendations of Specifications, Standards, and Ecolabels. The EPP recommendations give preference to multi-attribute or life-cycle based standards and ecolabels that address key environmental and human health impact areas and where product conformance is determined by a competent third-party certification body.~~

~~(b) *Resource*. For additional information on EPA Recommendations of Specifications, Standards, and Ecolabels, see *https://www.epa.gov/greenerproducts/recommendations-specifications-standards-and-ecolabels-federal-purchasing*.~~

23.109 Solicitation provisions and contract clauses.

(a) *General*. Insert the clause at 52.223-23, Sustainable Products and Services, in solicitations and contracts—

(1) Unless—

(i) The requiring activity has provided a written justification that it is not practicable to procure sustainable products and services (see 23.104(a)); **[or]**

(ii) An exception under 23.105 applies; **[and]**~~or~~

~~(iii) An exemption under 23.106 applies; and~~

(2) The scope of the written justification **[or exception]**~~, exception, or exemption~~ covers the entirety of the contract action requirements.

* * * * *

(c) *Biobased products in USDA-designated product categories.*

(1) * * *

(2) Insert the clause at 52.223-2, Reporting of Biobased Products Under Service and Construction Contracts, in service and construction solicitations and contracts, unless the contract will not involve the use of biobased products in USDA-designated product categories at ~~https://www.biopreferred.gov or 7 CFR part 3201~~ **[*https://www.biopreferred.gov/resources/categories.html* or 7 CFR part 4270].**

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Subpart 23.4—Pollution Prevention~~, Environmental Management Systems, and Waste Reduction~~

23.400 Scope of subpart.

This subpart prescribes policies and procedures for **[obtaining information needed for Government compliance with right-to-know laws and pollution prevention requirements.]**~~—~~

~~(a) Obtaining information needed for Government compliance with right-to-know laws and pollution prevention requirements;~~

~~(b) Contractor compliance with environmental management systems; and~~

~~(c) Ensuring waste reduction at Federal facilities.~~

23.401 Definitions.

As used in this subpart—

Federal agency means an executive agency (see 2.101).

Federal facility means a facility owned or operated by a Federal agency in the customs territory of the United States.

23.402 Authorities.

(a) Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001-11050 (EPCRA).

(b) Pollution Prevention Act of 1990, 42 U.S.C. 13101-13109 (PPA).

(c) ~~Executive Order 14057, Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability, dated December 8, 2021.~~

23.403 Emergency planning and toxic release reporting.

(a) Federal facilities are required to comply with the emergency planning and toxic release reporting requirements in EPCRA and PPA.

(b) Pursuant to EPCRA, PPA, and any agency implementing procedures, every contract that provides for performance on a Federal facility shall require the contractor to provide information necessary for the Federal agency to comply with paragraph (a) of this section.

23.404 [Reserved]~~Environmental management systems.~~

~~Agencies may implement an environmental management system (EMS) when it aligns with and supports its agency's mission needs and facilitates implementation and progress toward E.O. 14057 goals. If an agency uses an EMS for contractor operation of Government-owned or -leased facilities or vehicles, and contractor activities affect the agency's environmental management aspects—~~

~~(a) EMS requirements shall be included in contracts to ensure proper implementation and execution of EMS roles and responsibilities; and~~

~~(b) The contracting officer shall—~~

~~(1) Specify the EMS directives with which the contractor must comply; and~~

~~(2) Ensure contractor compliance to the same extent as the agency would be required to comply if the agency operated the facilities or vehicles.~~

23.405 Waste reduction program.

~~To support pollution prevention and agency efforts to minimize waste in accordance with E.O. 14057, c~~**[C]**ontracts for contractor operation of Government-owned or -leased facilities or for support services at Government-owned or -operated facilities shall require the contractor to promote cost-effective waste reduction in all operations and facilities covered by the contract.

23.406 Contract clauses.

(a) Insert the clause at 52.223-5, Pollution Prevention and Right-to-Know Information, in solicitations and contracts that

provide for performance, in whole or in part, on a Federal facility.

(b) **[Reserved.]**~~Insert the clause at 52.223-19, Compliance With Environmental Management Systems, in solicitations and contracts for contractor operation of Government-owned or -leased facilities or vehicles located in the United States if an agency uses an EMS and contractor activities affect aspects of the agency's environmental management. For facilities located outside the United States, the agency head may determine that use of the clause is in the best interest of the Government.~~

(c) Insert the clause at 52.223-10, Waste Reduction Program, in 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.

~~**Subpart 23.5—Greenhouse Gas Emissions**~~

~~**23.500 Scope of subpart.**~~

~~This subpart addresses public disclosure of greenhouse gas emissions and reduction goals.~~

~~**23.501 Policy.**~~

~~In order to better understand both direct and indirect greenhouse gas emissions that result from Federal activities, offerors that are registered in the System for Award Management (SAM) and received $7.5 million or more in Federal contract awards in the prior Federal fiscal year are required to—~~

~~(a) Represent whether they publicly disclose greenhouse gas emissions;~~

~~(b) Represent whether they publicly disclose a quantitative greenhouse gas emissions reduction goal; and~~

~~(c) Provide the website for any such disclosures.~~

~~**23.502 Solicitation provision.**~~

~~The provision at 52.223-22, Public Disclosure of Greenhouse Gas Emissions and Reduction Goals—Representation, is required only when 52.204-7, System for Award Management, is included in the solicitation (see 52.204-8, Annual Representations and Certifications).~~

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PART 37—Service Contracting

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Subpart 37.1—Service Contracts-General

* * * * *

37.102 Policy.

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(i) Agencies shall ensure that service contracts that require the delivery, use, or furnishing of products are consistent with subpart 23.1 (see ~~23.103(c)~~ **[23.103(b)]**).

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

* * * * *

Subpart 52.2—Text of Provisions and Clauses

* * * * *

52.204-8 Annual Representations and Certifications.

As prescribed in 4.1202(a), insert the following provision:

ANNUAL REPRESENTATIONS AND CERTIFICATIONS (JAN 2025) **[(DEVIATION FEB 2025)]**

* * * * *

(c)(1) The following representations or certifications in SAM are applicable to this solicitation as indicated: * * *

~~(xix) 52.223-22, Public Disclosure of Greenhouse Gas Emissions and Reduction Goals—Representation. This provision applies to solicitations that include the provision at 52.204-7.~~

* * * * *

52.212-3 Offeror Representations and Certifications—Commercial Products and Commercial Services.

As prescribed in 12.301(b)(2), insert the following provision:

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (MAY 2024) **[(DEVIATION FEB 2025)]**

* * * * *

(t) **[Reserved.]**~~*Public Disclosure of Greenhouse Gas Emissions and Reduction Goals*. Applies in all solicitations that require offerors to register in SAM (12.301(d)(1)).~~

~~(1) This representation shall be completed if the Offeror received $7.5 million or more in contract awards in the prior Federal fiscal year. The representation is optional if the Offeror received less than $7.5 million in Federal contract awards in the prior Federal fiscal year.~~

~~(2) *Representation. [Offeror to check applicable block(s) in paragraph (t)(2)(i) and (ii)].*~~

~~(i) The Offeror (itself or through its immediate owner or highest-level owner) ☐ does, ☐ does not publicly disclose greenhouse gas emissions, i.e., makes available on a publicly accessible website the results of a greenhouse gas inventory, performed in accordance with an accounting standard with publicly available and consistently applied criteria, such as the Greenhouse Gas Protocol Corporate Standard.~~

~~(ii) The Offeror (itself or through its immediate owner or highest-level owner) ☐ does, ☐ does not publicly disclose a quantitative greenhouse gas emissions reduction goal, i.e., make available on a publicly accessible website a target to reduce absolute emissions or emissions intensity by a specific quantity or percentage.~~

~~(iii) A publicly accessible website includes the Offeror's own website or a recognized, third-party greenhouse gas emissions reporting program.~~

~~(3) If the Offeror checked "does" in paragraphs (t)(2)(i) or (t)(2)(ii) of this provision, respectively, the Offeror shall provide the publicly accessible website(s) where greenhouse gas emissions and/or reduction goals are reported:_____.~~

* * * * *

52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services.

As prescribed in 12.301(b)(4), insert the following clause:

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (JAN 2025) **[(DEVIATION FEB 2025)]**

* * * * *

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial products and commercial services: [*Contracting Officer check as appropriate.*] * * *

__(46) 52.223-23, Sustainable Products and Services (MAY 2024)**[(DEVIATION FEB 2025)]**(~~E.O. 14057,~~ 7 U.S.C. 8102, 42 U.S.C. 6962, 42 U.S.C. 8259b, and 42 U.S.C. 7671l).

* * * * *

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

As prescribed in 13.302-5(d), insert the following clause:

TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES) (JAN 2025) **[(DEVIATION FEB 2025)]**

* * * * *

(b) The Contractor shall comply with the following FAR clauses, incorporated by reference, unless the circumstances do not apply:

(1) The clauses listed below implement provisions of law or Executive order: * * *

(xvii) 52.223-23, Sustainable Products and Services (MAY 2024**[(DEVIATION FEB 2025)]**) (~~E.O. 14057,~~ 7 U.S.C. 8102, 42 U.S.C. 6962, 42 U.S.C. 8259b, and 42 U.S.C. 7671l) (Applies to contracts when the agency identifies in the statement of work, or elsewhere in the contract, the sustainable products and services that apply to the acquisition).

* * * * *

52.223-1 Biobased Product Certification.

As prescribed in 23.109(c)(1), insert the following provision:

BIOBASED PRODUCT CERTIFICATION (MAY 2024) **[(DEVIATION FEB 2025)]**

As required by the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8101(4)) and the Energy Policy Act of 2005 (7 U.S.C. 8102(a)(2)(F)), the offeror certifies, by signing this offer, that biobased products (within categories of products listed by the United States Department of Agriculture in ~~7 CFR part 3201, subpart B~~**[at *https://www.biopreferred.gov/resources/categories.html*]**) to be

used or delivered in the performance of the contract, other than biobased products that are not purchased by the offeror as a direct result of this contract, will comply with the applicable specifications or other contractual requirements.

(End of provision)

52.223-2 Reporting of Biobased Products Under Service and Construction Contracts.

As prescribed in 23.109(c)(2), insert the following clause:

REPORTING OF BIOBASED PRODUCTS UNDER SERVICE AND CONSTRUCTION CONTRACTS (MAY 2024) **[(DEVIATION FEB 2025)]**)

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

Biobased product means a product determined by the U.S. Department of Agriculture (USDA) to be a commercial product or industrial product (other than food or feed) that is composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials, or that is an intermediate ingredient or feedstock. The term includes, with respect to forestry materials, forest products that meet biobased content requirements, notwithstanding the market share the product holds, the age of the product, or whether the market for the product is new or emerging. (7 U.S.C. 8101) (~~7 CFR 3201.2~~**[7 CFR 4270.2]**).

USDA-designated product category means a generic grouping of products that are or can be made with biobased materials—

(1) That are listed by USDA in a procurement guideline ~~(7 CFR part 3201, subpart B)~~ **available at *https://www.biopreferred.gov/resources/categories.html*;** and

(2) For which USDA has provided purchasing recommendations ~~(~~available at *https://www.biopreferred.gov* **[or 7 CFR part 4270]**).

(b) The Contractor shall report to *https://www.sam.gov*, with a copy to the Contracting Officer, on the product types and dollar value of any biobased products in USDA-designated product categories purchased by the Contractor during the previous Government fiscal year, between October 1 and September 30; and

(c) Submit this report no later than—

(1) October 31 of each year during contract performance; and

(2) At the end of contract performance.

* * * * *

52.223-10 Waste Reduction Program.

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

WASTE REDUCTION PROGRAM (MAY 2024) **[(DEVIATION FEB 2025)]**

(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 207 of Executive Order 14057, the~~**[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)

* * * * *

52.223-19 [Reserved. (DEVIATION FEB 2025)]~~Compliance with Environmental Management Systems.~~

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

~~COMPLIANCE WITH ENVIRONMENTAL MANAGEMENT SYSTEMS (MAY 2011)~~

~~The Contractor's work under this contract shall conform with all operational controls identified in the applicable agency or facility Environmental Management Systems and provide monitoring and measurement information necessary for the Government to address environmental performance relative to the goals of the Environmental Management Systems.~~

~~(End of clause)~~

* * * * *

52.223-22 [Reserved. (DEVIATION FEB 2025)]~~Public Disclosure of Greenhouse Gas Emissions and Reduction Goals—Representation.~~

~~As prescribed in 23.502, insert the following provision:~~

~~Public Disclosure of Greenhouse Gas Emissions and Reduction Goals—Representation (DEC 2016)~~

~~(a) This representation shall be completed if the Offeror received $7.5 million or more in Federal contract awards in the prior Federal fiscal year. The representation is optional if the Offeror received less than $7.5 million in Federal contract awards in the prior Federal fiscal year.~~

~~(b) *Representation.* [*Offeror is to check applicable blocks in paragraphs (b)(1) and (2).*]~~

~~(1) The Offeror (itself or through its immediate owner or highest-level owner) [ ] does, [ ] does not publicly disclose greenhouse gas emissions, i.e., make available on a publicly accessible Web site the results of a greenhouse gas inventory, performed in accordance with an accounting standard with publicly available and consistently applied criteria, such as the Greenhouse Gas Protocol Corporate Standard.~~

~~(2) The Offeror (itself or through its immediate owner or highest-level owner) [ ] does, [ ] does not publicly disclose a quantitative greenhouse gas emissions reduction goal, i.e., make available on a publicly available Web site a target to reduce absolute emissions or emissions intensity by a specific quantity or percentage.~~

~~(3) A publicly accessible Web site includes the Offeror's own Web site or a recognized, third-party greenhouse gas emissions reporting program.~~

~~(c) If the Offeror checked "does" in paragraphs (b)(1) or (b)(2) of this provision, respectively, the Offeror shall provide the publicly accessible Web site(s) where greenhouse gas emissions and/or reduction goals are reported: _____.~~

~~(End of provision)~~

52.223-23 Sustainable Products and Services.

As prescribed in 23.109(a), insert the following clause:

SUSTAINABLE PRODUCTS AND SERVICES (MAY 2024) **[(DEVIATION FEB 2025)]**

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

Biobased product means a product determined by the U.S. Department of Agriculture (USDA) to be a commercial product or industrial product (other than food or feed) that is composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials, or that is an intermediate ingredient or feedstock. The term includes, with respect to forestry materials, forest products that meet biobased content requirements, notwithstanding the market share the product holds, the age of the product, or whether the market for the product is new or emerging. (7 U.S.C. 8101) (~~7 CFR 3201.2~~**[7 CFR part 4270.2)]**).

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. (42 U.S.C. 6903).

Sustainable products and services means **[—]** ~~products and services that are subject to and meet the following applicable statutory mandates and directives for purchasing~~:

~~(1) *Statutory purchasing programs.*~~

~~(i)~~**[(1)]** Products containing recovered material designated by the U.S. Environmental Protection Agency (EPA) under the Comprehensive Procurement Guidelines (42 U.S.C. 6962) (40 CFR part 247) (*https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program#products*).

~~(ii)~~**[(2)]** Energy- and water-efficient products that are ENERGY STAR® certified or Federal Energy Management Program (FEMP)-designated products (42 U.S.C. 8259b) (10 CFR part 436, subpart C) (*https://www.energy.gov/eere/femp/search-energy-efficient-products* and *https://www.energystar.gov/products?s=mega*).

~~(iii)~~**[(3)]** Biobased products meeting the content requirement of the USDA under the BioPreferred® program (7 U.S.C. 8102) (~~7 CFR part 3201~~**[7 CFR part 4270]**) (*https://www.biopreferred.gov*).

~~(iv)~~**[(4)]** Acceptable chemicals, products, and manufacturing processes listed under EPA's Significant New Alternatives Policy (SNAP) program, which ensures a safe and smooth transition away from substances that contribute to the depletion of stratospheric

ozone (42 U.S.C. 7671l) (40 CFR part 82, subpart G) (*https://www.epa.gov/snap*).

~~(2) *Required EPA purchasing programs.*~~

~~(i) WaterSense® labeled (water efficient) products and services (*https://www.epa.gov/watersense/watersense-products*).~~

~~(ii) Safer Choice-certified products (products that contain safer chemical ingredients) (*https://www.epa.gov/saferchoice/products*).~~

~~(iii) Product and services that meet EPA Recommendations of Specifications, Standards, and Ecolabels in effect as of October 2023 (*https://www.epa.gov/greenerproducts/recommendations-specifications-standards-and-ecolabels-federal-purchasing*).~~

(b) *Requirements*.

(1) The sustainable products and services, including the purchasing program and type of product or service, that are applicable to this contract, and any products or services that are not subject to this clause, will be set forth in the statement of work or elsewhere in the contract.

(2) The Contractor shall ensure that the sustainable products and services required by this contract are—

(i) Delivered to the Government;

(ii) Furnished for use by the Government;

(iii) Incorporated into the construction of a public building or public work; and

(iv) Furnished for use in performing services under this contract, where the cost of the products is a direct cost to this contract (versus costs which are normally applied to the Contractor's general and administrative expenses or indirect costs). This includes services performed by contractors performing management and operation of Government-owned facilities to the same extent that, at the time of award, an agency would be required to comply if an agency operated or supported the facility.

~~(3)(i) Except as provided in paragraph (b)(3)(ii) of this clause, sustainable products and services must meet the applicable standards, specifications, or other program requirements at time of quote or offer submission; and~~

~~(ii) Sustainable products and services must meet the EPA Recommendations of Specifications, Standards, and Ecolabels in effect as of October 2023.~~

(c) *Resource*. The Green Procurement Compilation (GPC) available at *https://sftool.gov/greenprocurement* provides a comprehensive list of sustainable products and services and sustainable acquisition guidance. The Contractor should review the GPC when determining which **[statutory]** purchasing programs apply to a specific product or service.

(End of clause)

* * * * *