

Federal Acquisition Regulation

23.402

Standard No. 313 (Material Safety Data Sheet, Preparation and Submission of) includes criteria for identification of hazardous materials.

(c) Hazardous material data (Material Safety Data Sheets (MSDS's)) are required—

(1) As specified in the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract);

(2) For any other material designated by a Government technical representative as potentially hazardous and requiring safety controls.

(d) MSDS's must be submitted—

(1) By the apparent successful offeror prior to contract award if hazardous materials are expected to be used during contract performance.

(2) For agencies other than the Department of Defense, again by the contractor with the supplies at the time of delivery.

(e) The contracting officer shall provide a copy of all MSDS's received to the safety officer or other designated individual.

[48 FR 42275, Sept. 19, 1983, as amended at 56 FR 55374, Oct. 25, 1991; 62 FR 236, Jan. 2, 1997]

23.303 Contract clause.

(a) The contracting officer shall insert the clause at 52.223-3, Hazardous Material Identification and Material Safety Data, in solicitations and contracts if the contract will require the delivery of hazardous materials as defined in 23.301.

(b) If the contract is awarded by an agency other than the Department of Defense, the contracting officer shall use the clause at 52.223-3 with its *Alternate I*.

[56 FR 55374, Oct. 25, 1991]

Subpart 23.4—Use of Recovered Materials

SOURCE: 60 FR 28496, May 31, 1995, unless otherwise noted.

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.

[65 FR 36019, June 6, 2000]

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).

[65 FR 36019, June 6, 2000]

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 1 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

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

[65 FR 36019, June 6, 2000]

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 reasonable performance requirements and that are composed of the highest percentage of recovered materials practicable.

[65 FR 36019, June 6, 2000]

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.

[65 FR 36019, June 6, 2000]

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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 programs when purchasing supplies that contain recovered material or services that could include supplies that contain recovered material.

(c) The contracting officer shall place in the contract file a written justification if an acquisition of EPA-designated products above the micro-purchase threshold does not meet applicable minimum recovered material content recommended by EPA guidelines. If the agency has designated an Environmental Executive, the contracting officer shall give a copy of the written justification to that official. The contracting officer shall 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 a written determination by technical or requirements personnel of the performance standard's reasonableness is included with the justification. The technical and requirements personnel must base their determination on National Institute of Standards and Technology guidelines, if available.

(d) Agencies must establish procedures for consolidating and reporting contractor estimates required by the