



August 1, 2011

General Services Administration
Regulatory Secretariat (MVCB)
Attn: Hada Flowers
1275 First Street, NE
Washington, DC 20417

Re: FAC 2005-52, FAR Case 2010-001, Sustainable Acquisition

Dear Ms. Flowers,

The Coalition for Government Procurement submits the following comments on the interim rule amending the Federal Acquisition Regulation ("FAR") to implement Executive Order ("EO") 13514, Federal Leadership in Environmental, Energy, and Economic Performance regarding sustainable acquisition. The proposed rule was published in the Federal Register on May 31, 2011.

The Coalition for Government Procurement is a non-profit association of 300 firms selling commercial services and products to the Federal Government. Our members collectively account for approximately 70% of the sales generated through the GSA Multiple Award Schedules (MAS) program and about half of the commercial item solutions purchased annually by the Federal Government. Many of our members also are information technology contractors on most, if not all, of the Governmentwide Acquisition Contracts. In addition, our members are contractors on many agency wide multiple award contracts as well as multi-agency contracts. Coalition members include small, medium and large business concerns offering a wide spectrum of commercial products and services to the Government. The Coalition is proud to have worked with Government officials over the past 30 years towards the mutual goal of common sense acquisition.

The interim rule implementing EO 13514 is of interest to our organization as it establishes sustainability goals and requirements for the acquisition of commercial goods and services. Overall, the Coalition agrees that federal agencies should support markets for sustainable technologies, materials, products, and services. However, we caution that sustainability in the commercial market may be more predominant in some industries than others. Therefore, the Government's move towards more sustainable acquisition will require a modular approach taking into account how prevalent the concept of green is in specific commercial markets. A more gradual implementation will lower cost and administrative burdens for both the public and private sectors.

The Coalition would also like to submit the following comments on specific issues in the interim rule.

1. Sustainable Acquisition Definition

The Coalition is concerned that the definition of sustainable acquisition in the interim rule is overly broad and subjective. As a result, federal agencies may be left to interpret this term on their own, resulting in multiple interpretations across Government. The reference to “social, economic, and other requirements” is especially of concern because it is not commonly used in the context of federal procurement.

To date, the objectives associated with implementing EO 13514 (and its predecessor, EO 13423) from an acquisition perspective have solely been focused on the environment. How “social, economic, and other requirements” would apply to federal procurement is not well understood by the federal acquisition community or contractors. Also, it is not clear what specific economic criteria would be used and how social criteria would be evaluated objectively in the acquisition process. To provide more clarity and avoid the associated increased bid and proposal costs, we recommend that the definition of sustainable acquisition remain consistent with EO 13514 Section 2(h) and limited to the environmental attributes of products and services described in FAR 23.103(a). This clarification would better align the definition with how acquisition is originally addressed in EO 13514.

2. Applicability to 95% of Contract Actions

While a preference for environmentally friendly products has existed through EO 13514 and previous executive orders, applying this objective to 95% of all new contract actions in the FAR is significant. The Coalition is not aware of evidence that would suggest that the acquisition of green goods and services in the federal market is anywhere near this percentage. Increasing the procurement of green products and services will require intermediate steps. It will take time to:

- develop supporting agency processes and programs,
- identify the products and services that meet EO 13514’s objectives,
- develop new greener technologies,
- determine how to address products where no green attributes or alternatives are readily available,
- and educate the acquisition workforce and contractor community about what sustainable acquisition means.

The Government will also need to build an infrastructure that defines many of the current ambiguities in sustainable acquisition such as the development of standards and guidelines. The work of the GSA’s Section 13 Interagency Working Group is just one example. The working group is in the early stages of developing agency guidelines about how ecolabels should be used in federal procurement.

Until these guidelines are developed and implemented over the next year or two, it will be difficult for any agency to make progress towards the 95% green acquisition goal.

Therefore, we recommend that a phased approach be taken in implementation of this objective. Moving too quickly could undermine what EO 13514 was designed to achieve if agencies and contractors do not have the infrastructure in place to obtain these goals. A limited choice of products and less competition from contractors may also result if green requirements become overly burdensome in a budget environment where low costs prevail over best value.

3. Compliance with Environmental Management Systems

52.223-19 Compliance with Environmental Management Systems (EMS) in the interim rule goes beyond the intent of EO 13514 by shifting much of the burden of EMS implementation to contractors. The responsibility to "sustain environmental management" falls under "Section 2. Goals for Agencies" in EO 13514 and does not specifically mention making contractors responsible for EMS conformance. The difficulty for contractors in doing so is that the specific objectives of an EMS are determined by the agency itself based on its mission and operations. As such, the EMS is different for each agency. This inconsistency has the potential to increase procurement costs because compliance must be tailored to each agency and industry will incorporate the cost of variability and compliance into their pricing for products and services.

The Coalition recommends that if 52.223-19 remains in the FAR, it is important that federal agency EMS standards be uniform across agencies to ensure the efficiency and effectiveness of the programs. In addition, the FAR should make clear that any EMS requirements will be determined by the agency and communicated to the contractor prior to award. Simply requiring the contractor to comply with the EMS and measure and monitor their activities accordingly is too broad a requirement to be meaningful.

4. Micropurchase Threshold

The Coalition does not agree that subparts 23.1, 23.2, 23.4, and 23.7 should apply to purchases at or below the micro-purchase threshold. This would create added burden on the micro-purchase system which was originally designed to alleviate administrative burdens, lower costs and increase speed for small purchases. Therefore, we recommend that sustainable acquisition only apply above the micropurchase threshold.

5. Non-ozone depleting

A determination about whether the Government may procure a product containing ozone-depleting substances should take into account all environmental attributes of the substance. If the substance meets any of the other criteria in 23.103(a) such as energy-efficiency or water-efficiency, the product should be able to be procured based on these alternative environmental benefits.

There are a number of minimally ozone-depleting substances which offer significant environmental advantages. An example is HCFC-123, which has lesser GWP (global warming potential)

and also offers superior energy efficiency in centrifugal chillers compared with HFC-134a, the only other refrigerant used in this class of machine. HCFC-123 is an EPA Significant New Alternatives Policy (SNAP) approved refrigerant, and is allowed to be produced under the US Clean Air Act, and the Montreal Protocol until 2030. The Government should be able to utilize products with HCFC-123 and benefit from the associated energy efficiency and cost savings (See Case Study at Attachment).

The Coalition recommends either of the following two changes to 23.103 Sustainable acquisition, subparagraph (5): Option 1. "(5) non-ozone depleting, with the exception of low-ozone depleting products which contribute less to global warming (lower GWP than the non-ozone depleting product) and are more energy efficient;" or Option 2. "(5) non-ozone depleting, unless the low-ozone depleting product being purchased contributes less to global warming (lower GWP than the non-ozone depleting product) and is more energy efficient;".

6. Green Services

The Coalition agrees that the application of EO 13514 should be limited to contract actions for services where products are delivered, acquired, or furnished to the Government. Providing sustainable products (as defined by 23.103(a)) as deliverables in contract actions for services is a reasonable approach. It is important to note however that from a cost perspective, there may be circumstances where the costs associated with the implementation of the interim rule could raise the price for the Government. Some situations that could drive increases are if the products themselves are costlier, if significant research is needed to identify sustainable products, and if third party certifications are required and the product vendors do not pay for them.

7. Effect on Existing Contracts

The interim rule applies the new sustainable acquisition requirements to contract actions including "new contracts (and task and delivery orders placed against them) and new task and delivery orders on existing contracts (see 23.103(d)). Applying these changes to existing contracts materially changes contracts and the underlying negotiations through the addition of new requirements. As a result, "most favored customer" discounts under GSA Federal Supply Schedules may be affected by adding contract burdens that are not found in the commercial market. Because this may significantly affect pricing and the costs involved with doing business with the federal government, the Coalition recommends that the definition of "contract actions" be more consistent with EO 13514, with an emphasis on new, by being limited to "new contracts and task and delivery orders placed against them".

8. Compliance costs for Small Business

Implementation of EO 13514 will increase costs for the vendor community, especially small businesses that do not specialize in green. Many of the products and services that small businesses offer do not fit into the stipulated criteria in Sustainable acquisitions 23.103(a) and it may be very expensive and time consuming for them to comply. Also, much of the reporting requires specialized knowledge in environmental issues. An example is the monitoring and measurement requirements for agency EMSs. Generally, small businesses do not have the staff and expertise to perform these

functions. Fulfilling EMS reporting requirements on their own will take additional time and expense. Finally, if small businesses have to label or certify products for the federal market, these costs will likely be passed on to the Government. The significant costs involved in labeling and certification relate to obtaining the certification itself, administering the program internally, identifying appropriate suppliers, managing the supply chain, and adopting a system to track these activities for compliance purposes. These compliance costs are significant concerns for businesses of all sizes, and especially of concern for small business.

The impact on small business is another reason why a flexible phased approach is critical. A phased approach should examine the evolving nature of the standards, costs to government, costs to industry (especially small business), and what types of green products and alternatives are available in specific markets, and the potential impact on jobs.

9. Exceptions

The Coalition recommends that exceptions apply to:

1. repair of existing building infrastructure, systems, and components that are not designated as sustainable and still have a useful life, and
2. products where no formal environmental label is available.

An inability to purchase products and services to maintain and repair items that still have a useful life could create early obsolescence of building systems and equipment. While green certifications may apply to total equipment, systems, or applications, the parts and components of products rarely have such certifications. In order to allow agencies to maximize the useful life of their existing building systems, an exception for maintenance and repair should apply. There are also many categories of products that do not have environmental labels available. The Coalition recommends that an exception also apply to product categories that do not have environmental labels to ensure that these products are still available to the Government until such environmental programs are developed in the commercial market.

The Coalition appreciates the opportunity to submit comments on the Sustainable Acquisition interim rule. If you have any questions, I may be reached at (202) 331-1053 or awoolley@thecgp.org.

Regards,



Aubrey Woolley
Manager of Policy

