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New Federal Policy Means More Cleantech For Contractors

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If you want a federal contract, be prepared to go green. The Office of Federal Procurement Policy (OFPP) is planning to require all federal agencies to give priority to providers of green products and services. The proposed policy is part of a number of new federal regulations and green standards. Green compliance is becoming an increasingly important issue – and a potential competitive advantage – for federal government contractors.

Background

The OFPP's proposed policy letter, *Acquisition of Green Products and Services*, implements the green procurement requirements set forth in Executive Order 13423, issued in January 2007. Agencies would be required to conduct their activities in an environmentally efficient and sustainable manner. The policy letter expands upon and replaces OFPP Policy Letter 92-4, *Procurement of Environmentally Sound and Energy Efficient Products and Services*, issued in November 1992. The proposed policy also follows recent changes to the federal procurement rules regarding the purchase of items containing recovered materials and biobased content and requiring use of the Electronic Products Environmental Assessment Tool ("EPEAT") when acquiring personal computer products.

Who Will Be Affected?

The new policy has the potential to affect every federal government contractor and subcontractor. The policy letter is currently in draft form and has an extremely broad scope, applying to all executive agencies. Agencies must incorporate these requirements into all future contracts and are encouraged to include them in existing contracts as they are modified or extended.

Policy Requirements

Agencies are expected to comply with the policy letter's guidance requirements when entering into contracts for goods and services. Some noteworthy provisions under the proposed policy letter include:

- **Agency preference for green products and services.** Federal agencies are required to give preference to, among other things, biobased, environmentally preferred, energy-efficient, water-efficient and recycled-content products that comply with specific government standards in their acquisition of goods and services.
- **Implementation of an affirmative procurement plan.** Each agency is required to develop and implement an "affirmative procurement program" (or "green purchasing plan"), in which the agency states a preference for green products and services. The agency is then expected to "flow down" this preference to its contractors and subcontractors.

- **Priority to specified socioeconomic programs.** When making green acquisitions, agencies must first turn to mandatory sources, which include nonprofits that meet certain federal standards, as well as preferred sources, which include small businesses, such as those owned by women or service-disabled veterans. If these sources do not offer compliant green products or services, agencies must seek other contractors to meet their needs. This potentially puts small businesses at a disadvantage, as many of their products and services may not yet meet stated environmental standards.
- **Automatic substitution of green products and services.** A dramatic addition to the federal procurement policy is the requirement that agencies implement automatic substitution policies for the purchase of functionally equivalent green products and services. Additionally, the government's central supply sources are to phase out competing non-green products from federal catalogs and online ordering systems. The desired result may significantly favor compliant products and the contractors that sell or use such items.

When the Policy Becomes Effective

The proposed policy letter was issued for comment on December 28, 2007. The policy's impact on agencies and government contractors will depend on the OFPP's final letter due for publication this year and implementation of the policy by the Federal Acquisition Regulatory Councils and agencies. Of particular importance will be how broadly the OFPP, FAR Councils and agencies define "green products and services." Currently, the letter and Executive Order 13423 cite examples of these products and services, but neither defines the term. It will be important for contractors to stay abreast of changes to the federal procurements rules implementing the final policy and understand how those changes will impact them. For those contractors who fully understand and position themselves, the new policy provides a substantial means to gain competitive advantage in securing new federal government contracts.