

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Parts 11, 23, 39, and 52**[FAC 2005–23; FAR Case 2006–030; Item  
I; Docket 2007–0001, Sequence 9]

RIN 9000–AK85

**Federal Acquisition Regulation; FAR  
Case 2006–030, Electronic Products  
Environmental Assessment Tool  
(EPEAT)****AGENCIES:** Department of Defense (DoD),  
General Services Administration (GSA),  
and National Aeronautics and Space  
Administration (NASA).**ACTION:** Interim rule with request for  
comments.**SUMMARY:** The Civilian Agency  
Acquisition Council and the Defense  
Acquisition Regulations Council  
(Councils) have agreed on an interim  
rule amending the Federal Acquisition  
Regulation (FAR) to require use of  
Electronic Products Environmental  
Assessment Tool (EPEAT) when  
acquiring personal computer products  
such as desktops, notebooks (also  
known as laptops), and monitors  
pursuant to the Energy Policy Act of  
2005 and Executive Order 13423,  
“Strengthening Federal Environmental,  
Energy, and Transportation  
Management.”**DATES:** *Effective Date:* December 26,  
2007.*Comment Date:* Interested parties  
should submit written comments to the  
FAR Secretariat on or before February  
25, 2008 to be considered in the  
formulation of a final rule.**ADDRESSES:** Submit comments  
identified by FAC 2005–23, FAR case  
2006–030, by any of the following  
methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. To search for any document, first select under “Step 1,” “Documents with an Open Comment Period” and select under “Optional Step 2,” “Federal Acquisition Regulation” as the agency of choice. Under “Optional Step 3,” select “Rules”. Under “Optional Step 4,” from the drop down list, select “Document Title” and type the FAR case number “2006–030”. Click the “Submit” button. Please include your name and company name (if any) inside the document. You may also search for any document by clicking on the “Search for Documents” tab at the

top of the screen. Select from the agency field “Federal Acquisition Regulation”, and type “2006–030” in the “Document Title” field. Select the “Submit” button.

- *Fax:* 202–501–4067.
- *Mail:* General Services

Administration, Regulatory Secretariat  
(VIR), 1800 F Street, NW., Room 4035,  
ATTN: Laurieann Duarte, Washington,  
DC 20405.*Instructions:* Please submit comments  
only and cite FAC 2005–23, FAR case  
2006–030, in all correspondence related  
to this case. All comments received will  
be posted without change to <http://www.regulations.gov>, including any  
personal and/or business confidential  
information provided.**FOR FURTHER INFORMATION CONTACT:** Mr.  
William Clark, Procurement Analyst, at  
(202) 219–1813 for clarification of  
content. Please cite FAC 2005–23, FAR  
case 2006–030. For information  
pertaining to status or publication  
schedules, contact the FAR Secretariat  
at (202) 501–4755.**SUPPLEMENTARY INFORMATION:****A. Background**On January 24, 2007, President Bush  
issued Executive Order 13423,  
“Strengthening Federal Environmental,  
Energy, and Transportation  
Management.” Section 2(h) states that  
the head of each Agency shall “ensure  
that the agency \* \* \* when acquiring  
an electronic product to meet its  
requirements, meets at least 95 percent  
of those requirements with an Electronic  
Product Environmental Assessment  
Tool (EPEAT)-registered electronic  
product, unless there is no EPEAT  
standard for such product”.EPEAT is a system to help purchasers  
in the public and private sectors  
evaluate, compare, and select desktop  
computers, notebooks and monitors  
based on their environmental attributes.  
EPEAT also provides a clear and  
consistent set of performance criteria for  
the design of products, and provides an  
opportunity for manufacturers to secure  
market recognition for efforts to reduce  
the environmental impact of their  
products.The National Technology Transfer  
and Advancement Act of 1995 (NTTAA)  
and the OMB Circular A–119, “Federal  
Participation in the Development and  
Use of Voluntary Consensus Standards  
and in Conformity Assessment  
Activities,” direct Federal agencies to  
utilize voluntary consensus standards  
for regulatory and procurement  
activities, and to participate in the  
development of these standards, unless  
to do so would be inconsistent with law  
or impractical. The Institute of Electricaland Electronics Engineers (IEEE) 1680  
Standard for the Environmental  
Assessment of Personal Computer  
Products houses a set of environmental  
performance criteria, which were  
developed in an open consensus-based  
process by an American National  
Standards Institute (ANSI)-accredited  
organization in accordance with the  
NTTAA requirements. Most of the IEEE  
1680 criteria refer to environmental  
performance characteristics of the  
specific product. EPEAT lists products  
that comply with this IEEE standard.The interim rule amends the FAR to  
require the use of the EPEAT Product  
Registry and the IEEE 1680 Standard for  
the Environmental Assessment of  
Personal Computer Products in all  
solicitations and contracts for personal  
computer desktops, notebooks, and  
monitors. A new clause is required to  
effectively implement the above-  
mentioned statute and Executive order.FAR Subpart 23.7 currently  
implements the requirements for  
acquiring environmentally preferable  
products and services. The interim rule  
revises Subpart 23.7, and prescribes a  
new clause, FAR 52.223–16 (also  
included in FAR 52.212–5 for  
acquisition of commercial items) in all  
solicitations and contracts for the  
acquisition of personal computer  
products, services that require  
furnishing of personal computer  
products for use by the Government,  
and services for contractor operation of  
Government-owned facilities. In  
accordance with Section 7 of Executive  
Order 13423, this requirement applies  
only to contracts performed in the  
United States, unless otherwise  
authorized in agency procedures.The Councils have defined “personal  
computer products” to mean notebook  
computers, desktop computers, or  
computer monitors, and all peripherals  
that are integral to the operation of such  
items, consistent with the IEEE 1680  
standard. For example, the desktop  
computer together with the keyboard,  
the mouse, and the power cord would  
be a personal computer product.  
Printers, copiers, and fax machines are  
not yet covered. To clarify application  
of the clause, the interim rule defines  
notebook computer, computer desktop  
and computer monitor, using the  
definitions in the IEEE 1680 standard.**Authorities**E.O. 13423 revoked E.Os. 13148,  
13101, and 13123. These E.Os. have not  
been eliminated from FAR 23.702 under  
this case, as other conforming changes  
will be required. A separate FAR case  
will address these conforming changes.

### Required vs. Optional Criteria

The IEEE 1680 Standard identifies both required criteria and optional criteria. EPEAT "Bronze" registered products must meet all required criteria. EPEAT "Silver" registered products must meet all required criteria and 50 percent of the optional criteria. EPEAT "Gold" registered products must meet all required criteria and 75 percent of the optional criteria. FAR clause 52.223-16 makes EPEAT Bronze registration the standard that contractors must meet. Office of Federal Environmental Executive guidance asks agencies to strive to procure EPEAT Silver registered products, and Alternate I to the clause makes EPEAT Silver registration the standard that contractors must meet, when agencies determine that standard appropriate. Agencies also may use EPEAT Silver or Gold registration in proposal evaluation.

The basic clause requires the contractor to furnish only personal computer products that at the time of submission of proposals were EPEAT Bronze registered or higher, the first level discussed in clause 1.4 of the IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products. The contractor must furnish what it offered, even if the standard has changed between the offer and delivery. Alternate I provides the same conditions for EPEAT Silver registered products.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because it mandates standards for personal computer products that will be offered for sale to the Government.

An Initial Regulatory Flexibility Act (IRFA) has been prepared. The analysis is summarized as follows:

As of January 2006, four of the thirteen vendors who have registered products on the EPEAT Product Registry are small businesses.

Data are not available on how many small businesses are reselling personal computer products to the Government, but according to the EPA's Office of Small Disadvantaged Business Utilization, there are approximately 613 Service Disabled Veteran Owned Small Businesses selling IT hardware to the Federal Government today. These small businesses are not manufacturers of IT hardware, but

resell IT hardware manufactured by other companies to the Federal Government. Many of the products these resellers sell will meet the IEEE 1680 Standard, and the manufacturers of these products will have the option of getting these products EPEAT-registered to verify that they do meet this standard.

The rule does not impose any new reporting, or recordkeeping requirements. The IEEE 1680 Standard sets forth required and optional criteria. The basic clause in the interim rule mandates compliance with all the required criteria, and the clause alternate requires that products must also meet 50 percent of the optional criteria.

The EPEAT Product Registry has been designed to encourage small business manufacturer participation. There is a sliding scale for the annual EPEAT registration fee vendors pay to have their products EPEAT-registered based on the annual revenue of the vendor. The vendors with the smallest annual revenue pay the smallest annual registration fee of \$1,000, for which the company may register all products. A summary of the standard is available on the EPEAT website, but a copy of the standard costs \$70. There have been no indications from small business vendors to date that the IEEE 1680 Standard or the EPEAT Product Registry is a hindrance to doing business with the Federal Government.

Because manufacturers are the parties responsible for determining if their products meet the IEEE 1680 Standard, there will be little to no impact on small businesses selling IT products to the Federal Government, who are selling EPEAT-registered products.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no practical alternatives that will accomplish the objectives of the interim rule.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR Parts 11, 23, 39, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, et seq. (FAC 2005-23, FAR case 2006-030), in correspondence.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

### D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space

Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management, effective on January 26, 2007, requires the Government to require use of Electronic Products Environmental Assessment Tool (EPEAT) when acquiring personal computer products such as desktops, notebooks (also known as laptops), and monitors. However, pursuant to Public Law 98-577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

### List of Subjects in 48 CFR Parts 11, 23, 39, and 52

Government procurement.

Dated: December 19, 2007.

**Al Matera,**

*Director, Office of Acquisition Policy.*

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 11, 23, 39, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 11, 23, 39, and 52 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

### PART 11—DESCRIBING AGENCY NEEDS

■ 2. Amend section 11.101 by revising paragraph (b) to read as follows:

#### 11.101 Order of precedence for requirements documents.

\* \* \* \* \*

(b) In accordance with OMB Circular A-119, "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities," and Section 12(d) of the National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113 (15 U.S.C. 272 note), agencies must use voluntary consensus standards, when they exist, in lieu of Government-unique standards, except where inconsistent with law or otherwise impractical. The private sector manages and administers voluntary consensus standards. Such standards are not mandated by law (e.g., industry standards such as ISO 9000, and IEEE 1680).

**PART 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE**

■ 3. Add section 23.701 to read as follows:

**23.701 Definitions.**

As used in this subpart—

*Computer monitor* means a video display unit used with a computer.

*Desktop computer* means a computer designed for use on a desk or table.

*Notebook computer* means a portable-style or laptop-style computer system.

*Personal computer product* means a notebook computer, a desktop computer, or a computer monitor, and any peripheral equipment that is integral to the operation of such items. For example, the desktop computer together with the keyboard, the mouse, and the power cord would be a personal computer product. Printers, copiers, and fax machines are not included in peripheral equipment, as used in this definition.

■ 4. Amend section 23.702 by adding paragraphs (h) and (i) to read as follows:

**23.702 Authorities.**

\* \* \* \* \*

(h) Executive Order 13221 of July 31, 2001, Energy Efficient Standby Power Devices.

(i) Executive Order 13423 of January 24, 2007, Strengthening Federal Environmental, Energy, and Transportation Management.

■ 5. Redesignate section 23.705 as 23.706; and add a new section 23.705 to read as follows:

**23.705 Electronic products environmental assessment tool.**

(a) *General.* As required by E.O. 13423, agencies must ensure that they meet at least 95 percent of their annual acquisition requirement for electronic products with Electronic Product Environmental Assessment Tool (EPEAT)-registered electronic products, unless there is no EPEAT standard for such products. This policy applies to contracts performed in the United States, unless otherwise provided by agency procedures.

(b) *Personal computer products.* Personal computer products is a category of EPEAT-registered electronic products.

(1) The IEEE 1680 standard for personal computer products—

(i) Was issued by the Institute of Electrical and Electronics Engineers on April 28, 2006;

(ii) Is a voluntary consensus standard consistent with Section 12(d) of Pub. L. 104–113, the “National Technology Transfer and Advancement Act of 1995”, (see 11.102(c));

(iii) Meets EPA-issued guidance on environmentally preferable products and services; and

(iv) Is described in more detail at <http://www.epeat.net>.

(2) A list of EPEAT-registered products that meet the IEEE 1680 standard can be found at <http://www.epeat.net>.

(3) The IEEE 1680 standard sets forth required and optional criteria. EPEAT “Bronze” registered products must meet all required criteria. EPEAT “Silver” registered products meet all required criteria and 50 percent of the optional criteria. EPEAT “Gold” registered products meet all required criteria and 75 percent of the optional criteria. These are the levels discussed in clause 1.4 of the IEEE 1680 standard. The clause at 52.223–16, IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products, makes EPEAT Bronze registration the standard that contractors must meet. In accordance with guidance from the Office of the Federal Environmental Executive encouraging agencies to procure EPEAT Silver registered products, Alternate I of the clause makes EPEAT Silver registration the standard that contractors must meet. Agencies also may use EPEAT Silver or Gold registration in the evaluation of proposals.

(c) The agency shall establish procedures for granting exceptions to the requirement in paragraph (a) of this section, with the goal that the dollar value of exceptions granted will not exceed 5 percent of the total dollar value of electronic products acquired by the agency, for which EPEAT-registered products are available. For example, agencies may grant an exception if the agency determines that no EPEAT-registered product meets agency requirements, or that the EPEAT-registered product will not be cost effective over the life of the product.

■ 6. Revise the newly designated section 23.706 to read as follows:

**23.706 Contract clauses.**

(a) Insert the clause at 52.223–10, Waste Reduction Program, in all 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.

(b)(1) Unless an exception has been approved in accordance with 23.705(c), insert the clause at 52.223–16, IEEE

1680 Standard for the Environmental Assessment of Personal Computer Products, in all solicitations and contracts for—

(i) Personal computer products;

(ii) Services that require furnishing of personal computer products for use by the Government; or

(iii) Contractor operation of Government-owned facilities.

(2) Agencies may use the clause with its Alternate I when there are sufficient EPEAT Silver registered products available to meet agency needs.

**PART 39—ACQUISITION OF INFORMATION TECHNOLOGY**

■ 7. Amend section 39.101 by revising paragraph (b) to read as follows:

**39.101 Policy.**

\* \* \* \* \*

(b)(1) In acquiring information technology, agencies shall identify their requirements pursuant to—

(i) OMB Circular A–130, including consideration of security of resources, protection of privacy, national security and emergency preparedness, accommodations for individuals with disabilities, and energy efficiency; and

(ii) Standards for environmental assessment of personal computer products (see 23.705).

(2) When developing an acquisition strategy, contracting officers should consider the rapidly changing nature of information technology through market research (see Part 10) and the application of technology refreshment techniques.

\* \* \* \* \*

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 8. Amend section 52.212–5 by—

■ a. Revising the date of the clause; and

■ b. Redesignating paragraphs (b)(27) through (b)(39) as (b)(28) through (b)(40), respectively, and adding a new paragraph (b)(27).

The added text reads as follows:

**52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.**

\* \* \* \* \*

**CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (DEC 2007)**

(b) \* \* \*

(27)(i) 52.223–16, IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products (DEC 2007) (E.O. 13423).

\_\_ (ii) Alternate I (DEC 2007) of 52.223–16.

\* \* \* \* \*

#### 52.223–10 [Amended]

■ 9. Amend section 52.223–10 by removing from the introductory text “23.705” and adding “23.706(a)” in its place.

■ 10. Add section 52.223–16 to read as follows:

#### 52.223–16 IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products.

*As prescribed in 23.706(b)(1), insert the following clause:*

#### IEEE 1680 STANDARD FOR THE ENVIRONMENTAL ASSESSMENT OF PERSONAL COMPUTER PRODUCTS (DEC 2007)

(a) *Definitions.* As used in this clause—  
*Computer monitor* means a video display unit used with a computer.

*Desktop computer* means a computer designed for use on a desk or table.

*Notebook computer* means a portable-style or laptop-style computer system.

*Personal computer product* means a notebook computer, a desktop computer, or a computer monitor, and any peripheral equipment that is integral to the operation of such items. For example, the desktop computer together with the keyboard, the mouse, and the power cord would be a personal computer product. Printers, copiers, and fax machines are not included in peripheral equipment, as used in this definition.

(b) Under this contract, the Contractor shall deliver, furnish for Government use, or furnish for contractor use at a Government-owned facility, only personal computer products that at the time of submission of proposals were EPEAT Bronze registered or higher. Bronze is the first level discussed in clause 1.4 of the IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products.

(c) For information about the standard, see <http://www.epeat.net>.  
(End of clause)

#### Alternate I (DEC 2007)

As prescribed in 23.706(b)(2), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) Under this contract, the Contractor shall deliver, furnish for Government use, or furnish for contractor use at a Government-owned facility, only personal computer products that at the time of submission of proposals were EPEAT Silver registered or higher. Silver is the second level discussed in clause 1.4 of the IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products.

[FR Doc. E7–24937 Filed 12–21–07; 8:45 am]

BILLING CODE 6820–EP–P

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 22 and 52

[FAC 2005–23; FAR Case 2006–019; Item II; Docket 2007–0001; Sequence 12]

RIN 9000–AK66

#### Federal Acquisition Regulation; FAR Case 2006–019, Contracts With Religious Entities

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have adopted as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 11246, as amended, Equal Employment Opportunity, to incorporate the exemption for religious entities prescribed in E.O. 13279.

**DATES:** *Effective Date:* December 26, 2007.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ernest Woodson, Procurement Analyst, at (202) 501–3775 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAC 2005–23, FAR case 2006–019.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This final rule amends the FAR to incorporate the exemption for religious entities prescribed in E.O. 13279. Executive Order 11246, as amended, prohibits Government contractors and subcontractors, and federally assisted construction contractors and subcontractors from discriminating in employment, and requires these contractors to take affirmative action to ensure that employees and applicants are treated without regard to race, color, religion, sex, or national origin. Section 4 of E.O. 13279 amended Section 204 of E.O. 11246 to exempt religious corporations, associations, educational institutions and societies from certain nondiscrimination requirements. Executive Order 11246, as amended, permits religious entities to consider

employment of individuals of a particular religion to perform work connected with carrying on the entity's activities. Religious entities are not exempt from other requirements of the E.O. 11246.

DoD, GSA, and NASA published an interim rule with request for comments in the **Federal Register** at 72 FR 13586, March 22, 2007. No public comments were received on the rule. The Councils have determined to adopt the interim rule as final, without change.

This not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

##### B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule only aligns the FAR with the Department of Labor implementation of the exemption for consistency and clarity. The Department of Labor stated in its **Federal Register** notice of September 30, 2003, that the rule will not have a significant economic impact on a substantial number of small business entities. The rule is expected to have a small positive impact on small business entities, as the rule eases hiring restrictions for religious entities. The rule does not impose new requirements that impose a burden on contractors. No comments were received with regard to an impact on small business.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

##### List of Subjects in 48 CFR Parts 22 and 52

Government procurement.

Dated: December 19, 2007.

Al Matera,

Director, Office of Acquisition Policy.

##### Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 22 and 52,