

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 23 and 52**

[FAC 2001–15; FAR Case 2000–005; Item V]

RIN 9000–AJ44

**Federal Acquisition Regulation;
Leadership in Environmental
Management (E.O. 13148)**

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 agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.

DATES: *Effective Date:* August 25, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Craig R. Goral, Procurement Analyst, at (202) 501–3856. Please cite FAC 2001–15, FAR case 2000–005.

SUPPLEMENTARY INFORMATION:**A. Background**

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 67 FR 55670, August 29, 2002, with a request for comments. Two respondents submitted public comments. A discussion of the comments is provided below. Differences between the proposed and the final rule are discussed in paragraph 1 below.

1. *Comment:* One respondent recommended the following changes to FAR 23.1005:

a. Insert “or plans to implement” between “implemented” and “an EMS” at FAR 23.1005(b)(1) and (b)(2)(i);

b. Change “contractors” to “the contractor” at 23.1005(c)(1); and

c. Remove “FCA” and insert “facility compliance audit or an environmental management system audit” at FAR 23.1005(c)(2).

Councils’ Response:

a. *Concur.* As proposed, FAR 23.1005 requires the use of FAR clause 52.223–5 at facilities with an environmental management system (EMS). The clarification expands the prescription for the use of the clause to include situations where an EMS is contemplated.

b. *Partially concur.* The Councils agree that there is a grammatical error, but corrected the error by substituting the term “contractor activities” for “contractors to conduct activities.”

c. *Concur.* The inclusion of the phrase “or an environmental management system audit” acknowledges an agency’s option to conduct an EMS audit in lieu of a facility compliance audit (FCA) as provided in section 402(b) of Executive Order 13148.

2. *Comment:* The respondent recommended that the FAR rule be reviewed to ensure that, wherever practicable, the FAR actively supports implementation of EMS at Federal facilities including, where the facility or agency deems appropriate, participation in the EMS by contracting entities, including suppliers. The FAR change requires more than the mere provision of information for implementation of an EMS, as the proposed rule now states, to instead include active participation in the EMS, where the facility or agency deems it necessary. At a minimum, the language should state that vendors, contractors, and/or subcontractors are required to be consistent with agency/bureau and/or facility EMS policies.

Councils’ Response: Section 305(c) of E.O. 13148 states: “The Federal Acquisition Regulation (FAR) Council shall develop acquisition policies and procedures for contractors to supply agencies with all information necessary for compliance with this order.” The Councils believe that the rule satisfies this requirement.

Per section 306 of E.O. 13148, an Interagency Environmental Leadership Workgroup “shall develop policies and guidance required by this order and member agencies shall facilitate implementation of the requirements of this order in their respective agencies.” While the Councils recognize and fully appreciate the need for EMS policy and standards, these agency/bureau and/or facility EMS policies will vary among agencies/bureaus and will likely evolve as well. Additionally, the level of participation required by contractors/subcontractors will be contract-specific. Therefore, requirements for EMS participation by contractors/subcontractors would have to be identified in the contract itself. The recommended language does not serve

this purpose and would lead to contractual ambiguities.

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 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 as required by E.O. 13148, this rule does not change the current policies and procedures in FAR Subparts 23.8, 23.9, and 23.10. The final rule provides a means for agencies to obtain contractor information for the implementation of EMSs and the completion of FCAs at certain Federal facilities. Agencies will determine which facilities are appropriate for EMS implementation. Federal facilities include Government-owned, contractor-operated facilities, and Government-owned facilities on which multiple contractors perform services. The criteria for performing EMSs indicate that large, rather than small, Federal facilities are more likely to be included in EMSs, and these large Federal facilities are more likely to be operated by large businesses. If, on the other hand, several contractors are performing services on a Government-owned facility, many of the services performed by small businesses fall within the category of administrative support services considered “environmentally clean” and not included in EMSs. For similar reasons, the requirement pertaining to FCAs is not expected to have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the final rule contains information collection requirements. These changes to the FAR will increase the information collection requirement currently approved under Office of Management and Budget Control Number 9000–0147, since the rule requires contractors to provide information needed by a Federal facility to implement an EMS (Alternate I of FAR 52.223–5) and to complete an FCA (Alternate II of FAR 52.223–5). Accordingly, the FAR Secretariat has forwarded a request for approval of the