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**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503**

**Office of Federal Procurement Policy
November 2, 1992**

Policy Letter 92-4

**TO THE HEADS OF EXECUTIVE DEPARTMENTS AND
ESTABLISHMENTS**

SUBJECT: Procurement of Environmentally-Sound and Energy-Efficient Products and Services.

1. **Purpose.** This Policy Letter provides Executive branch policies for the acquisition and use of environmentally-sound, energy-efficient products and services.
2. **Supersession Information.** The Policy Letter supersedes and cancels OFPP Policy Letter 76-1, **Federal Procurement Policy Concerning Energy Conservation**, dated August 6, 1976; Supplement No. 1 to Policy Letter 76-1, dated July 2, 1980, and OFPP Policy Letter 77-1, **Procurement of Products that Contain Recycled Material**, dated February 2, 1977.
3. **Authority.** The Policy Letter is issued pursuant to section 6(a) of the Office of Federal Procurement Policy (OFPP) Act, as amended, 41 U.S.C. 405, and section 6002 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6962. RCRA, section 6002 requires OFPP to issue coordinated policies to maximize Federal use of recovered material.
4. Definitions.
 - a. **Executive Agency.** Means an Executive department, and an independent establishment within the meaning of 5 U.S.C. 101, 102, 103(l) and 104(l), respectively.
 - b. **Recovered Material.** Means waste material and by-products which have been recovered or diverted from solid waste, but such term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process (42 U.S.C. 6903 (19)).
 - c. **Post-Consumer Waste.** Means a material or product that has served its intended use and has been discarded for disposal after passing through the hands of a final user. Post-consumer waste is a part of the broader category "recycled material" (40 CFR 247.101(e)).

- d. **Recycled Materials.** Means a material that can be utilized in place of a raw or virgin material in manufacturing a product and consists of materials derived from post-consumer waste, industrial scrap, material derived from agricultural waste and other items, all of which can be used in the manufacture of new products (40 CFR 247.101(g)).
- e. **Environmentally-Sound.** Means a product or service that minimizes damage to the environment and is less harmful to the environment to use, maintain and dispose of in comparison to a competing product or service.
- f. **Cost-Effective Procurement Preference Program.** Means a program that favors, where price and other factors are equal, the procurement of products and services that are more environmentally-sound or energy-efficient than other competing products and services.
- g. **Preference.** Means when two products or services are equal in performance characteristics and price, the Government in making purchasing decisions, will favor the product that is more environmentally-sound or energy-efficient.
5. **Background.** In its day-to-day operations, the Federal Government has the opportunity and obligation to be environmentally and energy conscious in its selection and use of needed products and services. The Government, as the largest single consumer in the nation, has many opportunities to conserve and make more efficient use of energy and other resources. Leveraging the Government's \$190 billion annual purchasing program toward more energy-efficient and environmentally-sound practices will not only benefit the nation by reducing the cost of Government, but will help make the Government a model consumer.
6. **Policy.** It is the policy of the Federal Government that Executive agencies implement cost-effective procurement preference programs favoring the purchase of environmentally-sound, energy-efficient products and services.
- a. **Energy Efficiency.** Executive agencies shall consider energy conservation and efficiency factors in the procurement of property and services, pursuant to the Energy Policy and Conservation Act, 42 U.S.C. 6201, **et seq.**; section 3 of Executive Order 11912, as amended, April 13, 1976, and section 5 of Executive Order 12759, April 17, 1991. Energy conservation and efficiency data will be considered, along with estimated cost and other relevant factors, in the development of purchase requests, invitation for bids and solicitations for offers. In addition, with respect to the procurement of consumer products, as defined under Part B, Title III of the Energy Policy and Conservation Act, agencies shall consider energy use/efficiency labels (42 U.S.C. 6294) and prescribed energy efficiency standards (42 U.S.C. 6295) in making purchasing decisions.
- b. **Environmental Conservation.** Executive agencies shall give preference in their procurement programs to practices and products that conserve natural resources and protect the environment, pursuant to the Resource Conservation and Recovery Act as amended, 42 U.S.C. 6962 and Executive Order 12780, October 31, 1991. Environmental factors will be considered, along with estimated costs and other relevant factors, in the development of purchase requests, invitations for bids, and solicitations for offers.
7. **Responsibilities.**
- a. **Heads of Executive Agencies.** In implementing the policies in Paragraph 6, above, Executive

agencies shall:

- (1) Identify and procure needed products and services that, all factors considered, are environmentally-sound and energy-efficient;
 - (2) Procure products, including packaging, that contain the highest percentage of recovered materials, and where applicable, post-consumer waste, consistent with performance requirements, availability, price reasonableness and cost effectiveness;
 - (3) Employ life cycle cost analysis, whenever feasible and appropriate, to assist in making product and service selections;
 - (4) Use product descriptions and specifications that reflect cost-effective use of recycled products, recovered materials, water efficiency devices, remanufactured products and energy-efficient products, materials and practices;
 - (5) Work with private standard setting organizations and participate, pursuant to OMB Circular No. A-119, in the development of voluntary standards and specifications defining environmentally-sound energy-efficient products, practices and services;
 - (6) Require vendors to certify the percentage of recovered materials used, when contracts are awarded wholly or in part on the basis of utilization of recovered materials;
 - (7) Assure, when drafting or reviewing specifications for required items, that the specifications (a) do not exclude the use of recovered materials; (b) do not unnecessarily require the item to be manufactured from virgin materials; and (c) require the use of recovered materials and environmentally-sound components to the maximum extent practicable without jeopardizing the intended end use of the item; and
 - (8) Arrange for the procurement of solid waste management services in a manner which maximizes energy and resource recovery. Agencies that generate heat, mechanical, or electrical energy from fossil fuel in systems that have the technical capability of using energy or fuel derived from solid waste as a primary or supplementary fuel shall use such capability to the maximum extent practicable.
8. **Special Requirements for Paper.** In implementing the policy in Paragraph 6.b. for paper and paper products acquired through the General Services Administration (GSA) or the Government Printing Office (GPO), Executive agencies shall:
- (1) Designate that the paper and paper products identified in the "GSA Recycled Products Guide" or the "GSA Supply Catalog" be provided, where practicable, when ordering paper from GSA.
 - (2) Provide information to the Joint Committee on Printing and the Government Printing Office regarding the highest practicable percentages of recovered materials (including post-consumer recovered material) allowable in the various paper requirements of the agency subject to reasonable price, performance and availability limitations.
 - (3) Specify in paper orders, placed through either the Government Printing Office or the General Services Administration, or printed product orders, placed through the Government

Printing Office, the highest minimum content paper specifications standard (including post-consumer recovered material standards) developed by the Joint Committee on Printing and the Government Printing Office for the intended use, subject to reasonable price, performance and availability limitations.

(4) Refrain from specifying coated papers, brand name papers, and other specialty or fancy grades of paper for products with a limited useful life such as annual reports, catalogues, training materials and telephone directories. Newsprint containing recycled content should be considered for many limited life documents.

(Note: Copies of the GSA "Recycled Products Guide" or the "GSA Supply Catalog" may be obtained by contacting the GSA Centralized Mailing List Service in Forth Worth, TX 76115: Commercial (817) 334-5215 or Autovan 739-7369).

c. **Affirmative Procurement Programs.** In addition to the responsibilities in subparagraph a. and b. above, Executive agencies must take the following actions:

(1) Develop agency specific affirmative procurement programs for each of the items covered by guidelines developed by the Environmental Protection Agency pursuant to subsection 6002(e) of RCRA (see 40 CFR 248-250, 252 and 253). These programs, as a minimum, must comply with RCRA subsection 6002(i) and must:

(a) state a preference for the procurement of the item covered by the guideline

(b) promote the cost-effective procurement of the covered item'

(c) require estimates of the total amount of the recovered item used in a contract, certification of the minimum amount actually used, where appropriate, and procedures for verifying the estimates and certifications;

(d) provide for the annual review and monitoring of the effectiveness of the program; and

(e) include one of the following options, or a substantially equivalent alternative, to insure that contracts for items covered by the guidelines are awarded, unless waivers are granted pursuant to paragraph (2) below, on the basis of:

* Case-by-case procurement, open competition between products made of virgin materials and products containing recovered materials; preference to be given to the latter, or

* Minimum-content standards, which identify the minimum content of recovered materials that an item must contain to be considered for award.

(2) Base decisions to waive, or not to procure, guideline items composed of the highest percentages of recovered materials practicable of a determination that such items:

(a) are not reasonably available within the time required;

(b) fail to meet the performance standards set forth in applicable specifications or fail

to meet the reasonable performance standards of the procuring agencies;

(c) are only available at an unreasonable price, or

(d) are not available from a sufficient number of sources to maintain a satisfactory level of competition.

(Note: Any determination under (2) (b), above, shall be made on the basis of National Institute of Standards and Technology guidelines when the items being procured are covered by such guidelines.)

(3) The responsibilities specified in c.(1) and (2) above, apply only to purchases of guideline items costing \$10,000 or more or where the quantity of such items, or of functionally-equivalent items, acquired in the course of the preceding year was \$10,000 or more.

(4) Compliance with RCRA, Section 6002, can also be waived where such compliance would be inconsistent with actions taken pursuant to guidelines for the management of solid waste promulgated by EPA under RCRA, Section 6907.

9. **Federal Acquisition Regulation (FAR) Councils.** The Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council shall conduct a thorough review of the relevant parts of the FAR to (1) assure that no unintended encumbrances to the acquisition of environmentally-sound, energy-efficient products and services are contained therein, and (2) that the procurement policies established by this Policy Letter are fully reflected in the FAR within 210 days of the effective date of this Policy Letter.
10. **Reporting Requirements.** In accordance with Section 502, Executive Order 12780 and subsection 6002(i) of RCRA, each Executive agency shall review annually the effectiveness of its affirmative procurement program and shall provide a report regarding its findings to the Environmental Protection Agency and to the OFPP beginning with a report covering Fiscal Year 1992. Such report shall be transmitted by December 15 each year. Reports required by this paragraph may be made available to the public.
11. **Effective Date.** This Policy Letter is effective 30 days after the date of issuance. While full implementation of these policies must await needed change to the FAR, it is expected that agencies will take all appropriate actions in the interim to implement those aspects of the policy that are not dependent upon regulatory change.
12. **Federal Acquisition Regulatory Council.** Pursuant to sections 6(a) and 25(f) of the OFPP Act, as amended, 41 U.S.C. 401 **et seq.**, the Federal Acquisition Regulatory Council shall ensure that the policies established herein are incorporated in the FAR within 210 days from the date this Policy Letter is published in the **Federal Register**. The 210 day period is considered a "timely manner" as prescribed in 41 U.S.C. 405(b).
13. **Information.** Questions or inquiries about this Policy Letter should be directed to Linda Mesaros or Cyndi Vallina, Office of Federal Procurement Policy, 725 17th Street, NW, Washington, DC 20503, telephone (202) 395-3501.

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Administrator