

National Aeronautics and
Space Administration
Headquarters
Washington, DC 20546-0001



February 25, 2008

Reply to Attn of:

Office of Procurement

The Honorable Paul Denett
Administrator, Office of Federal Procurement Policy
The Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Mr. Denett:

On behalf of NASA, I am submitting comments on the draft policy letter published for comment in the Federal Register by the Office of Federal Procurement Policy (OFPP) on December 28, 2007. The views expressed herein have been concurred in by the Senior Official responsible for implementing Executive Order 13423, "Strengthening Federal Environmental, Energy, and Transportation Management".

Under the leadership of its Administrator, NASA was the first agency to implement an Environmental Management System (EMS) in the federal government, in accordance with Executive Order 13423 (referred to herein as "the EO"), and its predecessor, Executive Order 13148. Working closely with the Senior Official responsible for implementation of the EO, I have been a partner in that endeavor from the start, integrating EMS principles and requirements and Federal Acquisition Regulation (FAR) requirements and processes in the agency's internal procedural directives. So it is with a great deal of commitment and concern that we submit comments for the second time to OFPP regarding the proposed policy letter.

We understand and support the goals the proposed policy letter is intended to advance, and NASA considers the application of all of the practices mentioned in the proposed policy letter during our contract formulation and administration, as required by sections 3 (e) and (f) of the EO. However, there is a great deal of unnecessary redundancy in the policy letter with respect to requirements of law, EO, and guidance issued by EPA, USDA, DoE and others. Moreover, the major policy innovation in the draft policy letter, introducing so-called "green" requirements into the procurement system, causes considerable confusion because of its vague terminology. We believe the enclosed changes to the draft policy letter will make a substantive contribution to advancement of environmental management and of sustainability.

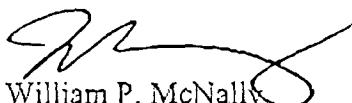
We have addressed our comments to the requirements of the proposed policy letter in its own terms. However, an overarching consideration should be restoring the integrity of the procurement function and policy process by distinguishing them from requirements development and industry regulatory processes. Environmental Management Systems (EMS)

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enables strategic environmental management by agencies, but using the acquisition regulations as a conduit for non-EMS based environmental regulatory requirements does not. The goal of "sustainability" makes the clear distinction between procurement and environmental management disciplines and responsibilities more important than ever before, as they work together as an Acquisition Team, along with other technical and socioeconomic requirements Team representatives.

Thank you for the opportunity to comment once again on the proposed policy letter. My point of contact in these matters is Patrick Flynn, (202) 358-0460, patrick.flynn@nasa.gov.

Sincerely,



William P. McNally
Assistant Administrator
for Procurement

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- 1) Although it is not used in any of the authorities cited in section 2 of the proposed policy letter, "green" is used throughout the letter (46 times). If the word "green" is used, it should be defined. We recommend it be avoided. It is a vague informal term that weakens implementing acquisition policy because "green" is not a performance standard. It provides no basis for contractual requirements definition, for best value comparisons in a competitive acquisition environment, or for incentive contract management, as risk based acquisition and environmental responsibility require. Instead, we recommend consideration be given to using forms of the phrase "sustainable practices for acquisition", which is used in the Executive Order itself. For example,
 - "Acquiring green sustainable products and services is a key element of successfully implementing E.O. 13423, an effective environmental management system (EMS), and a sustainability program." (Proposed policy letter, section 6.)
 - "Incorporate green purchasing requirements sustainable practices for acquisition within agency, organizational, and facility environmental management systems." (Proposed policy letter, section 8.A(3).)
- 2) Responding to an increase in "green" advertising claims, the Federal Trade Commission has accelerated a planned regulatory review of its environmental marketing guidelines. According to the FTC, "green" advertising claims can be vague and confusing to consumers. They should be sufficiently qualified to identify the specific environmental attribute or benefit being claimed for the product or service. Technical evaluation of general green claims is not a procurement function and should not be included in a procurement policy. Furthermore, introduction of this vagueness into the FAR process will cause undue delay in issuing implementing regulations because of the lack of definition.
- 3) If, in order to avoid the foregoing problem, procuring agencies interpret the proposed policy letter to define (i.e. limit) "green" requirements to those specifically mentioned in the policy letter, two major problems result. First, these few national objectives take precedence over practices that are identified through agencies' lifecycle analyses under their EMS. Second, if these practices become enshrined in the FAR, then new scientific information or political actions (e.g., with respect to greenhouse gases or non-point source water pollution) will not be implemented in a timely way.
- 4) Sections 7 and 8.F of the policy letter draft extend "green" purchasing requirements to all contracts for services. Mandatory extension to all service contracts is inappropriate for two reasons. First, the EO requirement applies only to contracts for contractor operation of government-owned facilities or vehicles (section 3(e)). Agencies should maintain their discretion to apply sustainable acquisition requirements (and to tailor them) to other service contracts, particularly to commercial and to off-site services. Second, the burden of evaluating "green" advertising claims is shifted to government contractors, at best creating unenforceable contract provisions for the reasons described above, and at worst, interfering with efficient performance and contract management, thereby increasing costs and delaying schedules.
- 5) Sections 7 and 8.F of the policy letter draft extend "green" purchasing requirements to all procurements below the micropurchase threshold. Because of the difficulty in identifying

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and tracking micropurchases, and because of their minimal impact on the environment, we recommend they be deleted from this policy statement. This broad expansion indicates a lack of regard for environmental economic principles, which is required by the EO sections 1 and 9 (k). Any mechanism such as green purchasing procedures involves transaction costs. When these transaction costs are high enough, and the benefit to be derived from the action small enough, as with micropurchases, then it is best simply to live with the market inefficiency.

- 6) Because it duplicates EMS requirements, paragraph 8.A (4) should begin, "For those agencies that have not fully implemented Environmental Management Systems, develop and implement a formal, comprehensive, written affirmative procurement program ..." For those agencies that have an EMS, these requirements will be covered in the sustainable practices for acquisition that are part of its EMS, as required by EO section 3 (b). It does not make sense to have a separate (affirmative procurement) program to manage these requirements.
- 7) As part of the integrated procurement teams required by paragraph 8.A (2), energy and environmental managers should be included in the training requirement of 8.A (6). As a minimum, all environmental managers involved in determining or administering contractual requirements, "green" or otherwise, should be required to take Contracting Officer's Representative (COR) training, in order to assure a basic understanding of contract management principles. In addition, an introduction to environmental economics should be strongly encouraged if not required, in accordance with the EO sections 1 and 9 (k). We recommend this subparagraph be changed to read in its entirety, "Develop and require training on the sustainable practices for acquisition, including an introduction to environmental economics of green products and services as well as agency sustainable practices for energy and environmental managers, requirements personnel, procurement personnel, purchase card and travel card holders and administrators, fleet managers, and facilities managers, as appropriate."
- 8) Section 10: An Environmental Management System is that part of the overall management system which includes organizational structure, planning activities, responsibilities, practices, procedures, processes and resources for developing, implementing, achieving, reviewing and maintaining the organization's environmental policy. Because of its integral, comprehensive feed-back mechanism, and the EO's requirement that EMS be the *primary* management approach for addressing environmental aspects of internal agency operations and activities (EO section 3 (b)), the agency's effective reporting requirements will be specific to its mission, environment, and its EMS aspect and impact categories. Furthermore, contractors' reporting is already required to conform to agencies' particular EMS requirements (FAC 2001-15, Item V; FAR 23.1005), not to the transitory metrics authorized by this policy letter. In order to comply with the EO, this section of the policy letter should be rewritten to assure that reporting under this policy letter is compliant with agencies' EMS, not with the arbitrary technical requirements enumerated in section 10 of the draft policy letter. We recommend that:
 - a) A subparagraph be inserted at the beginning of section 10 stating, "A. For agencies with established EMS, reporting requirements will be in accordance with the EMS management reporting requirement of their EMS." and

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- b) Existing subparagraphs A and B be redesignated B and C and changed to apply only to agencies that have not implemented EMS.

In accordance with OMB Circular A-119 and FAR 11.101 (b), EMS reporting should be guided by industry consensus models, for example ISO 14031, "Environmental Performance Evaluation" or the Global Reporting Initiative (GRI), not by arbitrary and ephemeral indicators, particularly when involving contractors.