



Buying Green: Unintended Consequences of the Government's New Policy

By Paul A. Miller

At the end of last year, the White House issued a new proposed policy letter calling on federal agencies to develop and implement "green purchasing policies and affirmative procurement programs."

The new policy requires agencies to give preference to green products and services, including: alternative fuels and alternative fuel vehicles; bio-based products; Energy Star and Federal Energy Management Program (FEMP)-designated products; electronics registered on the Electronic Product Environmental Assessment Tool; low or no toxic or hazardous chemicals or products; non-ozone depleting substances; recycled content and/or remanufactured products; renewable energy; and water-efficient products.

The policy was issued by the Office of Federal Procurement Policy (OFPP) and would apply to all acquisition and contracting mechanisms, including service contracts, purchases made using government purchase cards and fleet cards, and purchases valued at less than the micro-purchase threshold.

OFPP would also require that each federal agency develop and implement a comprehensive affirmative procurement plan for the acquisition of green products and services, also to be referred to as a "green procurement plan." At minimum, the plan would be required to:

- State a preference for the acquisition of green products and services, and require the flow down of this preference to all agency contractors and subcontractors;
- Explain the green acquisition roles and responsibilities of contracting officials, program managers, product specifiers, purchase card holders, and program administrators;
- Promote the acquisition of green products and services internally within the agency and externally to source providers and other government agencies, including agencies at the state and local levels



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- Provide for annual compliance monitoring, corrective action, and/or auditing of the agency green procurement plan;
- Include the development and use of templates for incorporating green purchasing requirements into solicitations and contracts;
- Use government e-procurement tools, such as FedBizOpps.com, to publicize green acquisition requirements;
- Use past performance evaluations of contractor adherence to green acquisition priorities;
- Implement "automatic substitution policies" for the procurement of "functionally equivalent" green products and services in place of non-green orders for the same products and services ordered through central supply agencies such as the General Services Administration or the Defense Logistics Agency;
- Include requirements and preferences for the use of green products in all newly awarded services contracts, or in re-competitions of existing services contracts;
- Encourage the incorporation of requirements and preferences for the use of green products during modifications of existing services contracts; and
- Require GSA, DLA, and other contract supply agencies to supply "designated green products" and to "phase out any competing non-green products from their catalogs and on-line ordering systems."

Under the policy letter, agencies would be directed to first determine their specific performance requirements for products and services and, if they determine that a green product or service can meet those requirements, to give first consideration to mandatory and preferred sources in obtaining such green products or services.

Also under the new policy, small businesses, including small disadvantaged, women-owned, Native American, Alaska Native, Historically Underutilized Business-Zone, and service-disabled veteran-owned businesses, are preferred sources.

Conceptually, this looks like a good thing—both for the government and for small businesses. But if you dig deeper, concerns emerge that the program will not be implemented as the Administration envisioned. Here's why.

It's all well and good to require agencies to meet new mandates, but if you don't have trained personnel in place to implement those mandates, the benefits for government, small businesses or government buyers start to disappear very quickly.

Under the new proposal, individual agency personnel will not have the expertise or experience necessary in "greening policy" to carry out the mandate for purchase and use of green products and services in a uniform fashion.

Cause for concern

There are some serious concerns that need to be addressed before this new policy is fully implemented to prevent another situation in which government creates more unintended consequences by trying to do the "right thing":

- The new proposal lacks specific standards for agencies to rely on in making the evaluations called for, and it does not spell out methods for applying green programs "to the unique circumstances of a government contractor."
- OFPP needs to further identify how the government intends to aid agencies and contractors when it comes to implementing and adhering to the new green procurement requirements. It suggested designating an agency or other government body to provide assistance, oversight, and coordination during the "transition into the new era of green procurement."
- The new proposal needs to be more specific with respect to how the government will hold executive agencies accountable and ensure they are meeting the proposed green procurement requirements.

The bottom line: "Greening the Government" may mean more costs to the government, unintended consequences and lost opportunities for small business unless more clarification and guidance are issued before full implementation.

We have seen over the years all too often how great ideas can be marred by failing to provide both the resources needed to fully implement them and the training required to ensure the government is living up to its new mandates.

The 1994 Federal Acquisition Streamlining Act is a great example. On paper, it looked like a good idea, but the way it was implemented is still causing problems for small business 14 years later.

Let's not go through the same process as the government seeks to try to help the environment. The ones who will feel the impact of any unintended consequences will once again be small businesses.