

## Health and Human Services

370.505

set forth in subpart 370.2 which are applicable to the instant Buy Indian acquisition shall be followed by the contracting officer, e.g., sections 370.204 and 370.205.

(e) *Subcontracting.* Not more than 50 percent of the work to be performed under a prime contract awarded pursuant to the Buy Indian Act shall be subcontracted to other than Indian firms. For this purpose, work to be performed does not include the provision of materials, supplies, or equipment.

(f) *Wage rates.* A determination of the minimum wage rates by the Secretary of Labor as required by the Davis-Bacon Act (40 U.S.C. 276a) shall be included in all contracts awarded under the Buy Indian Act for over \$2,000 for construction, alteration, or repair, including painting and decorating, of public buildings and public works, except contracts with Indian tribes or public nonprofit organizations serving as governmental instrumentalities of an Indian tribe. The wage rate determination is to be included in contracts with private business entities even if they are owned by an Indian tribe or a member of an Indian tribe and in connection with joint ventures with, or subcontractors of, an Indian tribe or a public nonprofit organization serving as a governmental instrumentality of an Indian tribe.

### 370.504 Competition.

(a) Contracts to be awarded under the Buy Indian Act shall be subject to com-

petition among Indians or Indian concerns to the maximum extent that competition is determined by the contracting officer to be practicable. When competition is determined not to be practicable, a Justification for Other than Full and Open Competition shall be prepared in accordance with 306.303 and subsequently retained in the contract file.

(b) Solicitations must be synopsisized and publicized in the Commerce Business Daily and copies of the synopses sent to the tribal office of the Indian tribal government directly concerned with the proposed acquisition as well as to Indian concerns and others having a legitimate interest. The synopsis should state that the acquisition is restricted to Indian firms under the Buy Indian Act.

### 370.505 Responsibility determinations.

(a) A contract may be awarded under the Buy Indian Act only if it is first determined that the project or function to be contracted for is likely to be satisfactorily performed under that contract and the project or function is likely to be properly completed or maintained under that contract.

(b) The determination called for by paragraph (a) of this section, to be made prior to the award of a contract, will be made in writing by the contracting officer reflecting an analysis of the standards set forth in FAR 9.104-1.



# CHAPTER 4—DEPARTMENT OF AGRICULTURE

(Parts 400 to 499)

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## SUBCHAPTER A—GENERAL

### PART 401—AGRICULTURE ACQUISITION REGULATION SYSTEM

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nation of appointment.  
401.603-1 General.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C.  
486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless  
otherwise noted.

#### 401.000 Scope of part.

This part presents basic policies and  
general information about the Depart-

ment of Agriculture's (USDA) Acquisi-  
tion Regulation, subsequently referred  
to as the AGAR. The AGAR is an inte-  
gral part of the Federal Acquisition  
Regulations System.

#### Subpart 401.1—Purpose, Authority, Issuance

##### 401.101 Purpose.

(a) The AGAR provides for the codi-  
fication and publication of uniform  
policies and procedures for acquisitions  
by contracting activities within USDA.

(b) The purpose of the AGAR is to  
implement the Federal Acquisition  
Regulation (FAR), where further im-  
plementation is needed, and to supple-  
ment the FAR when coverage is needed  
for subject matter not covered in the  
FAR. The AGAR is not by itself a com-  
plete document, as it must be used in  
conjunction with the FAR.

##### 401.103 Authority.

The AGAR and amendments thereto  
are issued under 5 U.S.C. 301 and 40  
U.S.C. 486(c). The Senior Procurement  
Executive (SPE) has the delegated au-  
thority to promulgate Departmental  
acquisition regulations.

##### 401.104 Applicability.

The FAR and AGAR apply to all  
USDA acquisitions of supplies and  
services (including construction) which  
obligate appropriated funds, unless  
otherwise specified in this chapter or  
excepted by law.

##### 401.105 Issuance.

##### 401.105-1 Publication and code ar- rangement.

(a) The AGAR is codified in the Code  
of Federal Regulations (CFR) as Chap-  
ter 4 of Title 48, Federal Acquisition  
Regulations System, to implement and  
supplement Chapter 1 which con-  
stitutes the FAR. Parts 400 through 499  
have been assigned to USDA by the Of-  
fice of the Federal Register.

(b) The AGAR and its subsequent  
changes are published in:

**401.105-2**

(1) Daily issues of the FEDERAL REGISTER.

(2) Cumulative form in the CFR, and

(3) Loose-leaf form for distribution within USDA.

(c) Section 553(a)(2) of the Administrative Procedure Act, 5 U.S.C. 553, provides an exception from the standard public rulemaking procedures to the extent that the rule involves a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts. OFPP Policy Letter 83-2 requires rulemaking for substantive acquisition rules but allows discretion in the matter for other than significant issues meeting the stated criteria. The AGAR has been promulgated and may be revised from time to time in accordance with the rulemaking procedures of the Administrative Procedure Act and OFPP Policy Letter 83-2.

**401.105-2 Arrangement of regulations.**

AGAR coverage parallels the FAR in format, arrangement, and numbering system. However, subdivisions below the section and subsection levels may not always correlate directly to FAR designated paragraphs and subparagraphs.

**401.105-3 Copies.**

Copies of the AGAR published in CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Requests should reference Chapter 4 of Title 48 CFR.

**401.106 OMB approval under the Paperwork Reduction Act.**

The following OMB control numbers apply to USDA solicitations and specified information collections within the AGAR:

AGAR segment	OMB Control No.
411.170 .....	0505-0014
415.2 .....	0505-0013
436.575 .....	0505-0011
437.110 .....	0505-0015
437.270 .....	0505-0016
452.211-1 .....	0505-0014
452.215-71 .....	0505-0013
452.236-75 .....	0505-0011
452.237-74 .....	0505-0015
452.237-76 .....	0505-0016

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[61 FR 53646, Oct. 15, 1996, as amended at 64 FR 52674, Sept. 30, 1999]

**401.170 Electronic access to regulatory information.**

The USDA Departmental Administration Procurement Homepage provides access to the AGAR, AGAR amendments (circulars), AGAR Advisories, and other USDA procurement policy and guidance in electronic form. The Internet address for the Procurement Homepage is URL <http://www.usda.gov/da/procure.html>.

[63 FR 26994, May 15, 1998]

**Subpart 401.2—Administration**

**401.201 Maintenance of the FAR.**

**401.201-1 The two councils.**

(a) USDA’s representative on the Civilian Agency Acquisition Council is designated by the SPE.

(b) The Procurement Policy Division will coordinate proposed FAR revisions with interested contracting activities.

**Subpart 401.3—Agency Acquisition Regulations**

**401.301 Policy.**

(a) The SPE, subject to the authorities in 401.103 and FAR 1.301, may issue and publish Departmental regulations, that together with the FAR, constitute Department-wide policies, procedures, solicitation provisions, and contract clauses governing the contracting process or otherwise controlling the relationship between USDA (including any of its contracting activities) and contractors or prospective contractors.

(b) Each designated head of a contracting activity (HCA) is authorized to issue or authorize the issuance of, at any organizational level, internal guidance which does not have a significant effect beyond the internal operating procedures of the activity, or a significant cost or administrative impact on offerors or contractors. Internal guidance issued by contracting activities will not be published in the FEDERAL REGISTER. HCA’s shall ensure that the guidance, procedures, or instructions issued—

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401.402

(1) Are consistent with the policies and procedures contained in this chapter;

(2) Follow the format, arrangement, and numbering system of this chapter to the extent practicable;

(3) Contain no material which duplicates, paraphrases, or is inconsistent with this chapter; and

(4) Are numbered and identified by use of alphabetical suffixes to the chapter number as follows:

4A [Reserved]

4B Agricultural Research Service.

4C Farm Service Agency.

4D Rural Development (mission area).

4E Food Safety and Inspection Service.

4F [Reserved]

4G Forest Service.

4H [Reserved]

4I Natural Resources Conservation Service.

4J [Reserved]

4K Food and Consumer Service.

4L Animal and Plant Health Inspection Service.

4M [Reserved]

4N Office of Operations.

4O-4P [Reserved]

4R Office of Inspector General.

4S [Reserved]

### 401.304 Agency control and compliance procedures.

(a) The AGAR System is under the direct oversight and control of the SPE, who is responsible for review and issuance of all Department-wide acquisition regulations published in the FEDERAL REGISTER to assure compliance with FAR part 1.

(b) The SPE is also responsible for review and issuance of unpublished, Department-wide internal guidance under the AGAR System.

(c) HCA's are responsible for establishment and implementation of formal procedures for oversight and control of unpublished internal guidance issued within the contracting activity to implement FAR or AGAR requirements. These procedures shall be subject to the review and approval by the SPE.

(d) The SPE is responsible for evaluating coverage under the AGAR System to determine applicability to other agencies and for recommending coverage to the FAR Secretariat for inclusion in the FAR.

(e) Recommendations for revision of existing FAR coverage or new FAR coverage shall be submitted by the HCA to the SPE for further action.

### 401.370 Exclusions.

Subject to the policies of FAR subpart 1.3, certain USDA acquisition policies and procedures may be excluded from the AGAR under appropriately justified circumstances, such as:

(a) Subject matter which is effective for a period less than 12 months.

(b) Subject matter which is instituted on an experimental basis for a reasonable period.

(c) Acquisition procedures instituted on an interim basis to comply with the requirements of statute, regulation, Executive Order, OMB Circular, or OFPP Policy Letter.

### 401.371 AGAR Advisories.

The SPE may issue AGAR Advisories, consistent with the policies of the FAR and the AGAR, for the following purposes:

(a) To communicate Department-wide policy and/or procedural guidance to contracting activities;

(b) To delegate to procurement officials authority to make determinations or to take action to implement the policies of the FAR or the AGAR; and,

(c) To establish internal policy and procedures on an interim basis, prior to incorporation in the AGAR or in a Departmental Directive.

### 401.372 Departmental directives.

Subject to the policies of FAR 1.3, USDA from time to time may issue internal directives to establish procedures, standards, guidance, or methods of performing duties, functions, or operations. Such directives include Departmental Regulations (DR's), Departmental Notices, and Secretary's Memoranda.

## Subpart 401.4—Deviations From the FAR and AGAR

### 401.402 Policy.

Requests for authority to deviate from the provisions of the FAR or the AGAR shall be submitted in writing as

#### 401.403

far in advance as the exigencies of the situation will permit. Each request for deviation shall contain the following:

(a) A statement of the deviation desired, including identification of the specific paragraph number(s) of the FAR and AGAR;

(b) The reason why the deviation is considered necessary or would be in the best interest of the Government;

(c) If applicable, the name of the contractor and identification of the contract affected;

(d) A statement as to whether the deviation has been requested previously and, if so, circumstances of the previous request;

(e) A description of the intended effect of the deviation;

(f) A statement of the period of time for which the deviation is needed; and

(g) Any pertinent background information which will contribute to a full understanding of the desired deviation.

#### 401.403 Individual deviations.

In individual cases, deviations from either the FAR or the AGAR will be authorized only when essential to effect a necessary acquisition or where special circumstances make such deviations clearly in the best interest of the Government. Except for cost principles, HCA's may approve individual deviations from the AGAR, after coordinating with the General Counsel and the SPE. No deviations from the FAR or AGAR may be authorized at the contracting office level. A copy of each deviation and its supporting documentation shall be provided to the SPE. Deviations from the FAR shall not be made unless such action is authorized by the SPE after consultation with the Office of the General Counsel and any other appropriate office, on the basis of a written justification stating clearly the special circumstances involved.

#### 401.404 Class deviations.

Where deviations from the FAR or AGAR are considered necessary for classes of contracts, requests for authority to deviate shall be submitted in writing to the SPE for approval. The SPE may authorize class deviations from the FAR without consulting the Chairperson of the Civilian Agency Ac-

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quisition Council where urgency precludes consultation. The SPE shall subsequently inform the Chairperson of the Civilian Agency Acquisition Council of the deviation including the circumstances under which it was required.

### Subpart 401.6—Contracting Authority and Responsibilities

#### 401.601 General.

(a) The authority and responsibility vested in the Secretary to manage USDA's acquisition function is delegated through the Assistant Secretary for Administration to the SPE. This broad authority includes, but is not limited to, the following responsibilities:

(1) Prescribing and publishing Departmental acquisition policies, regulations, and procedures.

(2) Taking any necessary actions consistent with policies, regulations, and procedures with respect to purchases, contracts, leases, and other transactions.

(3) Designating contracting officers.

(4) Establishing clear lines of contracting authority.

(5) Evaluating and monitoring the performance of USDA's acquisition system.

(6) Managing and enhancing career development of the contracting work force.

(7) Participating in the development of Government-wide acquisition policies, regulations, and standards; and determining specific areas where government-wide performance standards should be established and applied.

(8) Determining areas of Department-unique standards and developing unique Department-wide standards.

(9) Certifying to the Secretary that the acquisition system meets approved standards.

(b) The SPE may delegate contracting authority to the Heads of Contracting Activities (HCA's) and the responsibility to manage their acquisition function.

(c) Unless prohibited by the FAR, the AGAR, or by other applicable statutes and regulations, the SPE may redelegate to HCA's the authority to make determinations as the agency head in

order to implement the policies and procedures of the FAR. Such delegations shall be in writing, but need not be published.

(d) Unless prohibited by the FAR, the AGAR, or by other applicable statutes or regulations, each HCA may designate one individual from the contracting activity to carry out the functions of the HCA (HCAD). The HCAD may exercise all authority delegated to the HCA.

**401.602 Contracting officers.**

**401.602-3 Ratification of unauthorized commitments.**

(a) *Definitions. Ratification*, as used in this section, means the signed, documented action taken by an authorized official to approve and sanction a previously unauthorized commitment.

*Unauthorized commitment*, as used in this section, means an agreement made by a Government representative who lacked the authority to enter into a contract on behalf of the Government.

(b) *Policy*. The HCA may delegate ratification authority to the chief of the contracting office.

(c) *Procedure*. Whenever an official of the cognizant contracting activity who is authorized to ratify unauthorized commitments learns that a person or firm has assumed work as a result of an unauthorized commitment, that official shall take the following actions:

(1) Immediately inform any person who is performing work as a result of an unauthorized commitment that the work is being performed at that person's risk;

(2) Inform the individual who made the unauthorized commitment of the seriousness of the act and the possible consequences;

(3) Ensure that the individual who made the unauthorized commitment furnishes all records and documents concerning the commitment and a complete, written statement of facts, including, but not limited to: a statement as to why a contracting officer was not used; why the vendor was selected and a list of sources considered; a description of work to be performed or products to be furnished; the estimated or agreed price; whether an appropriation is available for the work;

and whether performance has begun. Under exceptional circumstances, such as when the individual who made the unauthorized commitment is no longer available to attest to the circumstances of the unauthorized commitment, the ratifying official may waive these requirements; and

(4) Decide whether ratification is proper and proceed as follows:

(i) If ratification is not justifiable, provide the cognizant program office, contracting office, and the unauthorized contractor with an explanation of the decision not to ratify.

(ii) If ratification appears adequately justified, ratify the action and retain or assign the contract to a successor contracting officer if necessary.

(iii) Maintain related approval, decisional, and background documents in the contract file for audit purposes.

(iv) Notify the cognizant program supervisor or line officer about the final disposition of the case; the notification may include a recommendation that the unauthorized commitment should be further considered a violation of USDA's employee conduct regulations.

**401.603 Selection, appointment, and termination of appointment.**

**401.603-1 General.**

An HCA may delegate contracting authority to the extent authorized by the SPE in a general delegation of acquisition authority, by appointing qualified individuals as contracting officers, in accordance with the USDA Contracting Officer Warrant System, Departmental Regulation 5001-1.

**PART 402—DEFINITIONS OF WORDS AND TERMS**

Sec.  
402.000 Scope of part.

**Subpart 402.1—Definitions**

402.101 Definitions.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

## 402.000

### 402.000 Scope of part.

As used throughout this chapter, the following words and terms are used as defined in this subpart unless the context in which they are used clearly requires a different meaning, or a different definition is prescribed for a particular part or portion of a part.

### Subpart 402.1—Definitions

#### 402.101 Definitions.

*Acquisition official* means an individual who has been delegated authority to manage or to exercise acquisition functions and responsibilities.

*Agency head* or *Head of the Agency* means the Secretary of Agriculture, Deputy Secretary, or the Assistant Secretary for Administration.

*Head of the contracting activity* (HCA) means the official who has overall responsibility for managing the contracting activity (i.e., Chief, Forest Service; Administrator, Agricultural Research Service; etc.), or the individual designated by such an official to carry out the functions of the HCA.

*Senior Procurement Executive* (SPE) means the agency official appointed as such by the head of the agency pursuant to Executive Order 12931. The Director, Office of Procurement and Property Management, has been designated as the USDA SPE.

[61 FR 53646, Oct. 15, 1996, as amended at 63 FR 26994, May 15, 1998]

## PART 403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

### Subpart 403.1—Safeguards

Sec.

- 403.101 Standards of conduct.
- 403.101-3 Agency regulations.
- 403.104 Procurement integrity.
- 403.104-5 [Reserved]
- 403.104-10 Violations or possible violations.

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### Subpart 403.2—Contractor Gratuities to Government Personnel

- 403.203 Reporting suspected violations of the gratuities clause.
- 403.204 Treatment of violations.

### Subpart 403.3—Reports of Suspected Antitrust Violations

- 403.303 Reporting suspected antitrust violations.

### Subpart 403.4—Contingent Fees

- 403.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

### Subpart 403.5—Other Improper Business Practices

- 403.502 Subcontractor kickbacks.

### Subpart 403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

- 403.602 Exceptions.
- 403.603 Responsibilities of the contracting officer.

### Subpart 403.8—Limitation on the Payment of Funds to Influence Federal Transactions

- 403.806 Processing suspected violations
- AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).
- SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

### Subpart 403.1—Safeguards

#### 403.101 Standards of conduct.

##### 403.101-3 Agency regulations.

(a) The standards of conduct for USDA procurement officials are the uniform standards established by the Office of Government Ethics in 5 CFR Part 2635, *Standards of Ethical Conduct for Employees of the Executive Branch*, and FAR 3.104, *Procurement integrity*.

(b) Procurement officials and other employees who require advice concerning the application of standards of conduct to any acquisition issue shall obtain ethics advisory opinions from

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403.502

ethics advisory officials in their agency personnel offices.

### 403.104 Procurement integrity.

#### 403.104-5 [Reserved]

#### 403.104-10 Violations or possible violations.

(a) The contracting officer shall forward information concerning any violation or possible violation of the Procurement Integrity Act (41 U.S.C. 423) to the chief of the contracting office.

(b) Heads of contracting activities (HCA's) or their designees who receive information concerning any violation or possible violation of the Act shall take action in accordance with FAR 3.104-10(b).

[61 FR 53646, Oct. 15, 1996, as amended at 63 FR 26995, May 15, 1998]

### Subpart 403.2—Contractor Gratuities to Government Personnel

#### 403.203 Reporting suspected violations of the gratuities clause.

A suspected violation of the contract clause, FAR 52.203-3, Gratuities, shall be reported immediately to the cognizant contracting officer in writing, stating the circumstances surrounding the incident(s), the date(s), and names of all parties involved. The contracting officer shall review the report for completeness, add any additional information deemed necessary and a recommendation for action, and submit the report to the HCA.

#### 403.204 Treatment of violations.

The HCA shall review the report and consult with the Offices of General Counsel and Inspector General to determine whether further action should be pursued. If it is found that the facts and circumstances warrant further action, the HCA shall give the contractor a formal written notice which summarizes the reported violation and affords the contractor the opportunity to make a written or oral response within a reasonable, specified period after receipt of the notice. The notice shall be sent by certified mail with return receipt requested. Oral presentations shall follow the procedures outlined in

FAR 3.204(b). The HCA shall furnish copies of any adverse determination to the contracting officer and the Department Debarring Officer for their subsequent considerations under FAR 3.204(c)(1) and (2), respectively.

### Subpart 403.3—Reports of Suspected Antitrust Violations

#### 403.303 Reporting suspected antitrust violations.

Contracting officers shall report the circumstances of suspected violations of antitrust laws to the Office of Inspector General in accordance with procedures in Departmental Regulations (1700 series).

### Subpart 403.4—Contingent Fees

#### 403.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) A suspected misrepresentation or violation of the Covenant Against Contingent Fees shall be documented in writing by the contracting officer and reported immediately to the chief of the contracting office. The chief of the contracting office shall determine if a violation has occurred and report any violation to the Office of Inspector General. The chief of the contracting office shall take action in accordance with FAR 3.409(b).

(b) If the chief of the contracting office decides to refer the case to the Department of Justice, it should be referred through the Office of Inspector General with a copy of the report and referral submitted through the HCA to the Senior Procurement Executive.

### Subpart 403.5—Other Improper Business Practices

#### 403.502 Subcontractor kickbacks.

Contracting officers shall report the circumstances of suspected violations of the Anti-Kickback Act (41 U.S.C. 51-54) to the Office of Inspector General in accordance with procedures in Departmental Regulations (1700 series).

**403.602**

**Subpart 403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them**

**403.602 Exceptions.**

The HCA is authorized to accept a contract from the policy in FAR 3.601.

**403.603 Responsibilities of the contracting officer.**

The contracting officer, when requesting authorization under 403.602, shall prepare a written determination and findings for the signature of the HCA. The determination shall document compliance with FAR 3.603, specifying the compelling reason(s) for award, and shall be placed in the contract file.

**Subpart 403.8—Limitation on the Payment of Funds to Influence Federal Transactions**

**403.806 Processing suspected violations.**

Suspected violations of the requirements of 31 U.S.C. 1352 shall be referred to the Office of Inspector General in accordance with procedures in Departmental Regulations (1700 series).

**PART 404—ADMINISTRATIVE MATTERS**

**Subpart 404.4—Safeguarding Classified Information Within Industry**

Sec.

404.403 Responsibilities of contracting officers.

**Subpart 404.6—Contract Reporting**

404.601 Record requirements.

404.602 Federal Procurement Data System.

**Subpart 404.8—Contract Files**

404.870 Document numbering system.

404.870-1 Purchase order/delivery order numbering system.

404.870-2 Contract numbering system.

**Subpart 404.70—Precontract Notices**

404.7001 Solicitation provision.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

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SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

**Subpart 404.4—Safeguarding Classified Information Within Industry**

**404.403 Responsibilities of contracting officers.**

When a proposed solicitation is likely to require access to information classified by USDA, the contracting officer shall consult with the Director of Human Resources Management within the Policy Analysis and Coordination Center of the Office of Assistant Secretary for Administration, regarding the procedures that must be followed.

**Subpart 404.6—Contract Reporting**

**404.601 Record requirements.**

The Senior Procurement Executive (SPE) manages an automated procurement reporting system for USDA. This system provides the Federal Procurement Data System with all required contracting information.

**404.602 Federal Procurement Data System.**

Contracting activities shall report contract actions into the USDA Procurement Reporting System in accordance with the instructions issued or distributed by the SPE.

**Subpart 404.8—Contract Files**

**404.870 Document numbering system.**

**404.870-1 Purchase order/delivery order numbering system.**

USDA purchasing activities shall number their purchase/delivery orders in accordance with *NFC Procedures Manual*, "Purchase Orders," Title II, Section 5.1.

**404.870-2 Contract numbering system.**

Contracting offices shall assign an 8 to 12-digit number to all contracts. Contract numbers will be divided into four data elements and formatted as follows:

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**404.7001**

(1)	(2)	(3)	(4)
Transaction Code	Ordering Office	Fiscal Year	Control Number
XX	XXXX	X	X to XXXXX

(a) *Transaction code.* This two-position code identifies the contract as being one of the following types:

- (1) Code 50—construction contract;
- (2) Code 51 [Reserved]
- (3) Code 52—tree planting/thinning contract;
- (4) Code 53—service contract;
- (5) Code 54—supply contract;
- (6) Code 55—aircraft rental (for firefighting purposes only) contract;
- (7) Code 56—personal equipment rental (rental of vehicular equipment for firefighting purposes only) contract;
- (8) Code 57—leasehold interest in real property contract.

(b) *Ordering office.* This four-position code corresponds to the last four characters of the contracting office's GSA assigned FEDSTRIP requisitioner number.

(c) *Fiscal year.* This one-position code corresponds to the last digit of the fiscal year in which the contract becomes effective.

(d) *Control number.* This up-to-five position code (from one to five characters may be used) will be assigned by the contracting office. While contracts will generally be numbered consecutively (1 through 99999), contracting offices may assign codes in any manner of their choosing. Codes may not be repeated, however, unless one of the preceding data elements (transaction code, ordering office, or fiscal year) changes. Alpha characters as well as numerals may be used in any one or more of the five positions.

**Subpart 404.70—Precontract Notices**

**404.7001 Solicitation provision.**

The contracting officer shall insert the provision at 452.204-70, Inquiries, in all solicitations.

## SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

### PART 405—PUBLICIZING CONTRACT ACTIONS

#### Subpart 405.3—Synopsis of Contract Awards

Sec.

405.303 Announcement of contract awards.

#### Subpart 405.4—Release of Information

405.403 Requests from Members of Congress.

405.404 Release of long-range acquisition estimates.

405.404-1 Release procedures.

#### Subpart 405.5—Paid Advertisements

405.502 Authority.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

#### Subpart 405.3—Synopsis of Contract Awards

##### 405.303 Announcement of contract awards.

Contracting officers shall make information available on any contract award with an estimated total value over \$1 million (including options) to their agency congressional liaison office in sufficient time for the agency to announce it by 5:00 p.m. Washington, DC time on the day of award. The agency congressional liaison office shall, concurrent with the public announcement, provide the award announcement information to the USDA Congressional Relations Office.

#### Subpart 405.4—Release of Information

##### 405.403 Requests from Members of Congress.

The head of the contracting activity (HCA) is the agency head designee pursuant to FAR 5.403(a).

##### 405.404 Release of long-range acquisition estimates.

##### 405.404-1 Release procedures.

(a) HCA's shall establish written procedures to control the release of long-range acquisition estimates, as authorized under FAR 5.404-1.

(b) Classified information shall not be released without the approval of the USDA Security Officer, Policy Analysis and Coordination Center—Human Resources Management. Departmental Manual and Regulation (3400 series) contain guidance on classified information.

#### Subpart 405.5—Paid Advertisements

##### 405.502 Authority.

(a) The authority vested in the agency head to authorize publication of paid advertisements in newspapers (44 U.S.C. 3702) is delegated, with power of redelegation, to HCA's. HCA redelegation of this authority shall be in writing.

(b) Policies and procedures regarding prior authorization required for media other than newspapers are contained in USDA Departmental Regulations 1400 series.

### PART 406—COMPETITION REQUIREMENTS

#### Subpart 406.2—Full and Open Competition After Exclusion of Sources

Sec.

406.202 Establishing or maintaining alternative sources.

#### Subpart 406.3—Other Than Full and Open Competition

406.302 Circumstances permitting other than full and open competition.

406.302-70 Otherwise authorized by law.

#### Subpart 406.5—Competition Advocates

406.501 Requirements.

AUTHORITY: 5 U.S.C. and 40 U.S.C. 486(c).

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SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

### Subpart 406.2—Full and Open Competition After Exclusion of Sources

#### 406.202 Establishing or maintaining alternative sources.

The Senior Procurement Executive is authorized to make determinations pursuant to FAR 6.202(a) and sign the determination and findings required by FAR 6.202(b).

### Subpart 406.3—Other Than Full and Open Competition

#### 406.302 Circumstances permitting other than full and open competition.

#### 406.302-70 Otherwise authorized by law.

(a) *Authority.* Section 1472 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3318) (the Act) authorizes the Secretary of Agriculture to award contracts, without competition, to further research, extension, or teaching programs in the food and agricultural sciences.

(b) *Limitations.* The use of this authority is limited to those instances where it can be determined that contracting without full and open competition is in the best interest of the Government and necessary to the accomplishment of the research, extension, or teaching program. Therefore:

(1) Contracts under the authority of the Act shall be awarded on a competitive basis to the maximum practicable extent.

(2) When full and open competition is not deemed appropriate, the contracting officer shall make a written justification on a case-by-case basis in accordance with procedures in FAR 6.303 and 6.304.

### Subpart 406.5—Competition Advocates

#### 406.501 Requirements.

(a) The Chief, Procurement Policy Division, Procurement and Property Management, Policy Analysis and Co-

ordination Center, has been designated as the Competition Advocate for USDA.

(b) Each HCA shall designate a competition advocate for the contracting activity.

## PART 407—ACQUISITION PLANNING

### Subpart 407.1—Acquisition Plans

Sec.

407.103 Agency-head responsibilities.

407.170 Advance acquisition plans.

### Subpart 407.3—Contractor Versus Government Performance

407.302 General.

### Subpart 407.5—Inherently Governmental Functions

407.503 Policy.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C.

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

### Subpart 407.1—Acquisition Plans

#### 407.103 Agency-head responsibilities.

Heads of Contracting Activities (HCA's) shall develop procedures to comply with FAR 7.103.

#### 407.170 Advance acquisition plans.

Each HCA shall implement an advance acquisition planning system in accordance with procedures in Departmental Directives (5000 series).

### Subpart 407.3—Contractor Versus Government Performance

#### 407.302 General.

The requirements of FAR subpart 7.3 and OMB Circular A-76 are implemented by Departmental Directives (2100 series).

### Subpart 407.5—Inherently Governmental Functions

#### 407.503 Policy.

(a) HCA's shall establish procedures to ensure that requesting activities

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provide the written determination required by FAR 7.503(e), when submitting requests for procurement of services.

(b) In the event of a disagreement as to whether the functions to be performed are inherently governmental, the HCA may refer the matter to the Senior Procurement Executive (SPE) for resolution. When submitting disagreements to the SPE for resolution the HCA shall provide a summary of the areas of disagreement, supported by the following:

(1) The HCA's assessment of whether the services are "inherently governmental";

(2) The basis for that assessment (include references to the definition and policy in FAR subpart 7.5 and/or Office of Federal Procurement Policy letter 92-1);

(3) A copy of the statement of work; and,

(4) The requesting activity's written determination in accordance with FAR 7.503(e).

(c) Such disagreements shall be resolved prior to issuance of the solicitation.

[61 FR 53646, Oct. 15, 1996, as amended at 63 FR 26995, May 15, 1998]

**PART 408—REQUIRED SOURCES OF SUPPLIES AND SERVICES**

**Subpart 408.4—Federal Supply Schedules**

Sec.

408.404 Using schedules.

408.404-3 Requests for waivers.

**Subpart 408.7—Acquisition From Nonprofit Agencies Employing People Who Are Blind or Severely Disabled**

408.701 Definitions.

408.705 Procedures.

408.705-2 Direct order process.

408.705-3 Allocation process.

408.705-4 Compliance with orders.

408.706 Purchase exemptions.

408.707 Prices.

408.711 Quality complaints.

408.712 Specification changes.

408.714 Communications with the central nonprofit agencies and the Committee.

**Subpart 408.8—Acquisition of Printing and Related Supplies**

408.802 Policy.

**Subpart 408.11—Leasing of Motor Vehicles**

408.1103 Contract requirements.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

**Subpart 408.4—Federal Supply Schedules**

**408.404 Using schedules.**

**408.404-3 Requests for waivers.**

A copy of the request for a waiver and the approval shall be placed in the contract file to support the acquisition of items off schedule.

**Subpart 408.7—Acquisition From Nonprofit Agencies Employing People Who Are Blind or Severely Disabled**

**408.701 Definitions.**

*Committee Member* is the Presidential appointee representing USDA as a member of the Committee for Purchase from People Who Are Blind or Severely Disabled.

*Organization head* is the head of the contracting activity (HCA), the head of a USDA corporation (as described in 31 U.S.C. 9101), or the head of a USDA staff office.

**408.705 Procedures.**

(a) The organization head shall appoint one person as Javits-Wagner-O'Day Act (JWOD) Advocate to represent the organization and to coordinate the organization's actions with the Committee Member.

(b) JWOD advocates may represent more than one organization. Advocates need not be acquisition officials.

(c) The organization head shall issue and maintain an action plan to promote and enhance the organization's acquisitions from JWOD participating nonprofit agencies.

(d) The action plan shall:

(1) Announce the organization's support for the JWOD Act;

(2) Establish a promotion program for the products and services provided by the JWOD participating nonprofit agencies;

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(3) Provide for the JWOD Advocate's role in acquisition planning;

(4) Establish measurable program goals for growth or other accomplishment in the organization's JWOD program actions; and

(5) Establish an awards program for successful participation in the JWOD program.

### **408.705-2 Direct order process.**

(a) The chief of a contracting office may apply to a central nonprofit agency for authorization to order specific supplies or services directly from a JWOD participating nonprofit agency.

(b) A copy of the application should be provided to the JWOD Advocate who will inform the USDA Committee Member.

### **408.705-3 Allocation process.**

(a) The chief of a contracting office may apply to a central nonprofit agency for a production allocation of specific supplies or services to a JWOD participating nonprofit agency.

(b) A copy of the application should be provided to the JWOD Advocate who will inform the USDA Committee Member.

### **408.705-4 Compliance with orders.**

Prior to attempting to resolve a failure to perform by a participating nonprofit agency with the Committee, the chief of the contracting office should provide advance notice to the JWOD Advocate who will inform the USDA Committee Member.

### **408.706 Purchase exemptions.**

Prior to applying to the Committee for a purchase exemption, the chief of the contracting office should provide advance notice to the JWOD Advocate who will inform the USDA Committee Member.

### **408.707 Prices.**

Prior to applying for a price revision, the chief of the contracting office should provide advance notice to the JWOD Advocate who will inform the USDA Committee Member.

### **408.711 Quality complaints.**

Prior to attempting to resolve a complaint regarding the quality of goods or

services provided by participating nonprofit agency with the Committee, the chief of the contracting office should provide advance notice to the JWOD Advocate who will inform the USDA Committee Member.

### **408.712 Specification changes.**

Prior to providing 90-days advance notification to the Committee on actions that affect supplies and services on the Procurement List, the chief of the contracting office should provide advance notice to the JWOD Advocate who will inform the USDA Committee Member.

### **408.714 Communications with the central nonprofit agencies and the Committee.**

Any matter requiring referral to the Committee shall be provided to the JWOD Advocate who will coordinate the matter with the Committee Member.

## **Subpart 408.8—Acquisition of Printing and Related Supplies**

### **408.802 Policy.**

(a) The Director, Office of Communications (OC) has been designated as the central printing authority in USDA, with the authority to represent the USDA before the Joint Committee on Printing (JCP), the Government Printing Office, and other Federal and State agencies on all matters related to printing.

(b) Prior to contracting for any of the items defined in FAR 8.801, the contracting officer shall verify that the requisite approval has been received by the publication liaison officer or requisitioner.

(c) The approval from OC or the approval authority designated by OC shall be maintained in the contract file.

## **Subpart 408.11—Leasing of Motor Vehicles**

### **408.1103 Contract requirements.**

If the requirement includes the need for the vendor to provide operational maintenance such as oil and other fluid

changes or replenishment, the contracting officer shall include in the contract (1) a requirement for fluids containing the maximum available amounts of recovered materials; and (2) a preference for either retreaded tires meeting the Federal retread specifications or retreading services for the tires on the vehicle.

## PART 409—CONTRACTOR QUALIFICATIONS

### Subpart 409.4—Debarment, Suspension and Ineligibility

Sec.

- 409.403 Definitions.
- 409.404 List of parties excluded from Federal procurement and nonprocurement programs.
- 409.405 Effect of listing.
- 409.405-1 Continuation of current contracts.
- 409.405-2 Restrictions on subcontracting.
- 409.406 Debarment.
- 409.406-3 Procedures.
- 409.407 Suspension.
- 409.407-3 Procedures.
- 409.470 Appeals.

### Subpart 409.5—Organizational and Consultant Conflicts of Interest

409.503 Waiver.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

### Subpart 409.4—Debarment, Suspension and Ineligibility

#### 409.403 Definitions.

*Debarring official.* Pursuant to the Secretary's delegations of authority in 7 CFR 2.24, the Senior Procurement Executive (SPE) is designated as the debarring official (Department Debarring Officer) with the following exceptions:

(a) For commodity contracts awarded on behalf of the Commodity Credit Corporation (CCC), the Executive Vice President, CCC, or his designee is designated as the debarring official pursuant to 7 CFR part 1407.

(b) For contracts awarded under the School Lunch and Surplus Removal Programs (42 U.S.C. 1755 and 7 U.S.C. 612c), the Department Debarring Officer has delegated debarring authority

to the Agricultural Marketing Service (AMS).

[63 FR 26995, May 15, 1998]

#### 409.404 List of parties excluded from Federal procurement and nonprocurement programs.

The Department Debarring Officer is USDA's single point of contact with GSA for debarment and suspension actions taken under this subpart. The debarring official for AMS shall notify the Department Debarring Officer of each debarment and suspension action by promptly submitting a copy of the debarment or suspension notice and any later changes to the debarment or suspension status. The Department Debarring Officer will forward a copy of each notice to GSA for inclusion in the Government-wide list.

#### 409.405 Effect of listing.

Compelling reasons are considered to be present where failure to contract with the debarred or suspended contractor would seriously harm the agency's programs and prevent accomplishment of mission requirements. The SPE is authorized to make the determinations under FAR 9.405. Requests for such determinations shall be submitted through the head of the contracting activity (HCA) to the SPE.

#### 409.405-1 Continuation of current contracts.

The HCA is authorized to make the determinations under FAR 9.405-1.

#### 409.405-2 Restrictions on subcontracting.

The HCA is authorized to approve subcontracts with debarred or suspended subcontractors under FAR 9.405-2.

#### 409.406 Debarment.

#### 409.406-3 Procedures.

(a) *Investigation and referral.* When a contracting officer becomes aware of possible irregularities or any information which may be sufficient cause for debarment, the case shall be immediately referred through the HCA to the debarring official. The case must be accompanied by a complete statement of the facts (including a copy of

any criminal indictments, if applicable) along with a recommendation for action. Where the statement of facts indicates the irregularities to be possible criminal offenses, or for any other reason further investigation is considered necessary, the matter shall be referred to the HCA who should consult with the Office of Inspector General to determine if further investigation is required prior to referring to the debarring official.

(b) *Decision-making process.* If, after reviewing the recommendations and consulting with the Office of Inspector General and Office of the General Counsel, as appropriate, the debarring official determines debarment is justified, the debarring official shall initiate the proposed debarment in accordance with FAR 9.406-3(c) and notify the HCA of the action taken.

(c) *Fact-finding proceeding.* For actions listed under FAR 9.406-3(b)(2), the contractor shall be given the opportunity to appear at an informal hearing. The hearing should be held at a location and time that is convenient to the parties concerned, if at all possible. The contractor and any specifically named affiliates may be represented by counsel or any duly authorized representative. Witnesses may be called by either party. The proceedings shall be conducted expeditiously and in such a manner that each party will have an opportunity to present all information considered pertinent to the proposed debarment. The contractor shall be provided a copy of a transcript of the proceedings under the conditions established in FAR 9.406-3(b)(2)(ii).

#### **409.407 Suspension.**

#### **409.407-3 Procedures.**

(a) *Investigation and referral.* When a contracting officer becomes aware of possible irregularities or any information which may be sufficient cause for suspension, the case shall be immediately referred through the HCA to the debarring official. The case must be accompanied by a complete statement of the facts along with a recommendation for action. Where the statement of facts indicates the irregularities to be possible criminal offenses, or for any other reason further

investigation is considered necessary, the matter shall be referred to the HCA who should consult with the Office of Inspector General to determine if further investigation is required prior to referring it to the debarring official.

(b) *Decision-making process.* If, after reviewing the recommendations and consulting with the Office of Inspector General and Office of the General Counsel, as appropriate, the debarring official determines suspension is justified, the debarring official shall initiate the proposed suspension in accordance with FAR 9.407-3(c) and notify the HCA of the action taken.

(c) *Fact-finding proceedings.* For actions listed under FAR 9.407-3(b)(2), the contractor shall be given the opportunity to appear at an informal hearing, similar in nature to the hearing for debarments as discussed in 409.406-3(c).

#### **409.470 Appeals.**

A debarred or suspended contractor may appeal the debarring official's decision by mailing or otherwise furnishing a written notice within 90 days from the date of the decision to the U.S. Department of Agriculture Board of Contract Appeals, Washington, DC 20250. A copy of the notice of appeal shall be furnished to the debarring officer from whose decision the appeal is taken. Appeals under subpart 409.4 shall be governed by the rules and procedures of the U.S. Department of Agriculture Board of Contract Appeals set forth in 7 CFR part 24.

### **Subpart 409.5—Organizational and Consultant Conflicts of Interest**

#### **409.503 Waiver.**

(a) The HCA, on a non-delegable basis, is authorized to waive any general rule or procedure in FAR 9.5 when in the Government's interest.

(b) Each request for waiver shall include:

(1) The general rule or procedure proposed to be waived;

(2) An analysis of the potential conflict, including the benefits and detriments to the Government and prospective contractors;

(3) A discussion of why the conflict cannot be avoided, neutralized, or mitigated; and

(4) Advice of counsel obtained under FAR 9.504(b).

## PART 410 [RESERVED]

### PART 411—DESCRIBING AGENCY NEEDS

#### Subpart 411.1—Selecting and Developing Requirements Documents

Sec.

411.103 Market acceptance.

411.105 Purchase descriptions for service contracts.

411.170 Brand name or equal.

411.171 Solicitation provisions and contract clauses.

#### Subpart 411.2—Using and Maintaining Requirements Documents

411.202 Maintenance of standardization documents.

#### Subpart 411.4—Delivery or Performance Schedules

411.404 Contract clauses.

#### Subpart 411.6—Priorities and Allocations

411.600 Scope of subpart.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

#### Subpart 411.1—Selecting and Developing Requirements Documents

##### 411.103 Market acceptance.

(a) The head of the contracting activity (HCA) may determine that offerors must demonstrate, in accordance with FAR 11.103(a), the market acceptability of their items to be offered.

(b) The contracting officer shall place a copy of this determination, signed by the HCA, in the solicitation file.

##### 411.105 Purchase descriptions for service contracts.

When contract personnel are to be used, the requiring official shall record on the requisition his or her determination whether harm to the Government might occur should contractor personnel fail to identify themselves as non-Government officials.

##### 411.170 Brand name or equal.

(a) A “brand name or equal” purchase description shall include the following type of information:

(1) Identification of the item by generic description.

(2) Make, model number, catalog designation, or other description, and identification of a commercial catalog where it is listed.

(3) Name of manufacturer, producer, or distributor of the item and complete address.

(4) All salient characteristics of the “brand name or equal” product or products which have been determined by the requisitioner to be essential to the Government’s minimum requirements.

(b) [Reserved]

##### 411.171 Solicitation provisions and contract clauses.

(a) Contracting officers shall insert the provision at 452.211-70, Brand Name or Equal, in solicitations, other than those for construction, where “brand name or equal” purchase descriptions are used.

(b) Contracting officers shall insert the clause at 452.211-71, Equal Products Offered, in solicitations, other than those for construction, where the provision at 452.211-70 is included.

(c) Contracting officers shall insert the clause at 452.211-72, Statement of Work/Specifications, when the description (statement of work) or specification(s) is included in Section J of the solicitation.

(d) Contracting officers shall insert the clause at 452.211-73, Attachment to Statement of Work/Specifications, when there are attachments to the description (statement of work) or specifications.

[63 FR 26995, May 15, 1998]

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**Subpart 411.2—Using and Maintaining Requirements Documents**

**Subpart 411.6—Priorities and Allocations**

**411.202 Maintenance of standardization documents.**

**411.600 Scope of subpart.**

Recommendations for changes to standardization documents are to be submitted through the Senior Procurement Executive, who will coordinate the submission of these recommendations to the cognizant preparing activity.

The Defense Priorities and Allocation System (DPAS) excludes USDA activities (see 15 CFR 700.18(b)). USDA Contracting Officers are not authorized to place rated orders under DPAS.

**Subpart 411.4—Delivery or Performance Schedules**

**PART 412—ACQUISITION OF COMMERCIAL ITEMS**

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

**411.404 Contract clauses.**

**Subpart 412.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items**

(a) The contracting officer shall insert the clause at 452.211-74, Period of Performance, when it is necessary to specify a period of performance, beginning on the date of award, date of receipt of notice of award, or a specified date.

**412.302 Tailoring of provisions and clauses for the acquisition of commercial items.**

(b) The contracting officer shall insert the clause at 452.211-75, Effective Period of the Contract, when it is necessary to specify the effective period of the contract.

The head of the contracting activity is authorized to approve waivers in accordance with FAR 12.302(c). The approved waiver may be either for an individual contract or for a class of contracts for the specific item. The approved waiver and supporting documentation shall be incorporated into the contract file.

[63 FR 26995, May 15, 1998]

[61 FR 53646, Oct. 15, 1996]

## SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

### PART 413—SIMPLIFIED ACQUISITION PROCEDURES

#### Subpart 413.3—Simplified Acquisition Methods

Sec.

413.301 Governmentwide commercial purchase card.

413.306 SF 44, Purchase Order-Invoice-Voucher.

413.307 Forms.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 64 FR 45895, Aug. 23, 1999, unless otherwise noted.

#### Subpart 413.3—Simplified Acquisition Methods

##### 413.301 Governmentwide commercial purchase card.

USDA policy and procedures on use of the Governmentwide commercial purchase card are established in Departmental Regulation Series 5000.

##### 413.306 SF 44, Purchase Order-Invoice-Voucher.

The Standard Form 44 (and the previously prescribed USDA Form AD-744) is not authorized for use within USDA.

##### 413.307 Forms.

Form AD-838, Purchase Order, is prescribed for use by USDA in lieu of Optional Forms 347 and 348.

### PART 414—SEALED BIDDING

#### Subpart 414.2—Solicitation of Bids

Sec.

414.201 Preparation of invitations for bids.

414.201-6 Solicitation provision.

#### Subpart 414.4—Opening of Bids and Award of Contract

414.404 Rejection of bids.

414.404-1 Cancellation of invitations after opening.

414.407 Mistakes in bids.

414.407-3 Other mistakes disclosed before award.

414.407-4 Mistakes after award.

414.409 Information to bidders.

414.409-2 Award of classified contracts.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

#### Subpart 414.2—Solicitation of Bids

##### 414.201 Preparation of invitations for bids.

##### 414.201-6 Solicitation provision.

The contracting officer shall insert the provision 452.214-70, Award by Lot, when multiple items are segregated into clearly identifiable lots and the contracting officer wants to reserve the right to award by item within a lot, if award in that manner would be advantageous to the Government.

#### Subpart 414.4—Opening of Bids and Award of Contract

##### 414.404 Rejection of bids.

##### 414.404-1 Cancellation of invitations after opening.

An acquisition official at a level above the contracting officer is authorized to make the determinations under FAR 14.404-1(c) and (e)(1).

##### 414.407 Mistakes in bids.

##### 414.407-3 Other mistakes disclosed before award.

The authority to make the determinations under FAR 14.407-3(a), (b), and (d) is delegated, without power of redelegation, to the head of the contracting activity. The authority to make the determination under FAR 14.407-3(c) is delegated to the contracting officer. Each determination pursuant to FAR 14.407-3 shall have the concurrence of the Office of the General Counsel (OGC).

##### 414.407-4 Mistakes after award.

If a mistake in bid is disclosed after award, the contracting officer shall

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make a final determination in accordance with the provisions of FAR 14.407-4 (b) and (c) and shall coordinate each proposed determination with OGC. Such coordination shall, at a minimum, consist of the contracting officer providing the proposed determination and the case file to OGC for comment.

### 414.409 Information to bidders.

#### 414.409-2 Award of classified contracts.

Disposition of classified information shall be in accordance with Departmental Regulation and Manual (3400 Series) and in accordance with direction issued by the USDA Security Officer, Policy Analysis and Coordination Center—Human Resources Management.

## PART 415—CONTRACTING BY NEGOTIATION

### Subpart 415.2—Solicitation and Receipt of Proposals and Information

Sec.

415.204 Contract format.

415.207 Handling proposals and information.

415.209 Solicitation provisions and contract clauses.

### Subpart 415.3—Source Selection

415.303 Responsibilities.

415.305 Proposal evaluation.

### Subpart 415.4—Contract Pricing

415.404-4 Profit.

### Subpart 415.5—Preaward, Award, and Postaward Notifications, Protests and Mistakes

415.570 Post-award conference.

### Subpart 415.6—Unsolicited Proposals

415.604 Agency points of contact.

415.606 Agency procedures.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 64 FR 52674, Sept. 30, 1999, unless otherwise noted.

## Subpart 415.2—Solicitation and Receipt of Proposals and Information

### 415.204 Contract format.

The Senior Procurement Executive is authorized to exempt contracts from the uniform contract format.

### 415.207 Handling proposals and information.

(a) Throughout the source selection process, agency personnel and non-Government evaluators with access to proposal information shall disclose neither the number of offerors nor their identity except as authorized by FAR subpart 15.5. (See also FAR 5.403.)

(b) The contracting officer shall obtain the following written agreement from the non-Government evaluator prior to the release of any proposal to that evaluator.

#### AGREEMENT GOVERNING THE USE AND DISCLOSURE OF PROPOSALS

RFP \_\_\_\_\_

Offeror \_\_\_\_\_

1. To the best of my knowledge and belief, no conflict of interest exists that may diminish my capacity to perform an impartial and objective review of the offeror's proposal, or may otherwise result in a biased opinion or an unfair advantage. If a potential conflict of interest arises or if I identify such a conflict, I agree to notify the Government promptly concerning the potential conflict. In determining whether any potential conflict of interest exists, I agree to review whether my or my employer's relationships with other persons or entities, including, but not limited to, ownership of stocks, bonds, other outstanding financial interests or commitments, employment arrangements (past, present, or under consideration), and, to the extent known by me, all financial interests and employment arrangements of my spouse, minor children, and other members of my immediate household, may place me in a position of conflict, real or apparent, with the evaluation proceedings.

2. I agree to use proposal information only for evaluation purposes. I understand that any authorized restriction on disclosure placed upon the proposal by the prospective contractor or subcontractor or by the Government shall be applied to any reproduction or abstracted information of the proposal. I agree to use my best effort to safeguard such information physically, and not to disclose the contents of, or release any information relating to, the proposal(s) to anyone outside of the Source Evaluation Board or other

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panel assembled for this acquisition, the Contracting Officer, or other individuals designated by the Contracting Officer.

3. I agree to return to the Government all copies of proposals, as well as any abstracts, upon completion of the evaluation.

\_\_\_\_\_  
(Name and Organization)

\_\_\_\_\_  
(Date)

(End of provision)

(c) The release of a proposal to a non-Government evaluator for evaluation does not constitute the release of information for purposes of the Freedom of Information Act (5 U.S.C. 552).

(d) The contracting officer shall attach a cover page bearing the following notice: GOVERNMENT NOTICE FOR HANDLING PROPOSALS—This proposal shall be used and disclosed for evaluation purposes only. Attach a copy of this Government notice to every reproduction or abstract of the proposal. Any authorized restrictive notices which the submitter places on this proposal shall be strictly complied with. Disclosure of this proposal outside the Government for evaluation purposes shall be made only to the extent authorized by, and in accordance with, FAR 3.104-5, FAR 15.207, and AGAR 415.207.

[64 FR 52674, Sept. 30, 1999; 64 FR 54963, Oct. 8, 1999]

### **415.209 Solicitation provisions and contract clauses.**

(a) The provision at 452.215-71, Instructions for the Preparation of Technical and Business Proposals, may be used when offerors will be required to submit technical and business proposals. Contracting officers should tailor the clause to reflect the degree of information required for the specific acquisition.

(b) The contracting officer shall insert the provision at 452.215-72, Amendments to Proposals, in solicitations which require the submittal of lengthy, complex technical proposals.

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### **Subpart 415.3—Source Selection**

#### **415.303 Responsibilities.**

The head of the contracting activity (HCA) is authorized to appoint an individual other than the contracting officer as the source selection authority.

#### **415.305 Proposal evaluation.**

HCAs are responsible for establishing procedures regarding the release of cost information to the members of the technical evaluation team.

### **Subpart 415.4—Contract Pricing**

#### **415.404-4 Profit.**

(a)(1) USDA will use a structured approach to determine the profit or fee prenegotiation objective in acquisition actions when price negotiation is based on cost analysis.

(2) The following types of acquisitions are exempt from the requirements of the structured approach, but the contracting officer shall comply with FAR 15.404-4(d) when analyzing profit for these contracts or actions:

(i) Architect-engineer contracts;

(ii) Construction contracts;

(iii) Contracts primarily requiring delivery of material supplied by subcontractors;

(iv) Termination settlements; and

(v) Cost-plus-award-fee contracts;

(b) Unless otherwise restricted by contracting activity procedures, the Contracting Officer may use another Federal agency's structured approach if that approach has been formalized and is maintained as part of that Agency's acquisition regulations (*i.e.*, included in that Agency's assigned chapter of Title 48 of the Code of Federal Regulations).

(c) The HCA is responsible for establishing procedures to ensure compliance with this subpart.

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### Subpart 415.5—Preaward, Award, and Postaward Notifications, Protests and Mistakes

#### 415.570 Post-award conference.

If a postaward conference is necessary, the contracting officer shall insert clause 452.215-73, Post-Award Conference.

### Subpart 415.6—Unsolicited Proposals

#### 415.604 Agency points of contact.

HCAs are responsible for establishing procedures to ensure compliance with the requirements of FAR 15.604.

#### 415.606 Agency procedures.

HCAs are responsible for establishing the procedures for control of unsolicited proposals required by FAR 15.606(a) and for identifying the contact points as required by FAR 15.606(b).

## PART 416—TYPES OF CONTRACTS

Sec.

416.000 Scope of part.

### Subpart 416.2—Fixed-Price Contracts

416.203 Fixed-price contracts with economic price adjustment.

416.203-4 Contract clauses.

### Subpart 416.4—Incentive Contracts

416.405 Cost-reimbursement incentive contracts.

416.405-2 Cost-plus-award-fee contracts.

416.406 Contract clauses.

416.470 Solicitation provision.

### Subpart 416.5—Indefinite-Delivery Contracts

416.505 Ordering.

416.506 Solicitation provision and contract clauses.

### Subpart 416.6—Time-and-Materials, Labor-Hour, and Letter Contracts

416.603 Letter contracts.

416.603-2 Application.

416.603-4 Contract clauses.

416.670 Contract clauses.

### Subpart 416.7—Agreements

416.702 Basic agreements.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

#### 416.000 Scope of part.

Heads of contracting activities (HCA's) are authorized to establish written procedures allowing the use of any contract type described in FAR part 16 for acquisitions made under simplified acquisition procedures in FAR part 13.

### Subpart 416.2—Fixed-Price Contracts

#### 416.203 Fixed-price contracts with economic price adjustment.

#### 416.203-4 Contract clauses.

An economic price adjustment clause based on cost indexes of labor or material may be used under the conditions listed in FAR 16.203-4(d) after approval by the HCA and consultation with the Office of the General Counsel.

### Subpart 416.4—Incentive Contracts

#### 416.405 Cost-reimbursement incentive contracts.

#### 416.405-2 Cost-plus-award-fee contracts.

The HCA may designate an acquisition official other than the contracting officer as the fee determination official (FDO) to make the final determination of the award fee. The designated official must have warranted contracting authority at the same level as the contracting officer or higher, and shall not have participated in preparing the contractor performance evaluation. If the HCA does not designate an FDO, the chief of the contracting office shall act as the FDO.

[61 FR 53646, Oct. 15, 1996. Redesignated at 63 FR 26995, May 15, 1998.]

#### 416.406 Contract clauses.

The contracting officer shall insert a clause substantially the same as the

#### **416.470**

clause at 452.216-70, Award Fee, in solicitations and contracts which contemplate the award of cost-plus-award-fee contracts.

[61 FR 53646, Oct. 15, 1996. Redesignated at 63 FR 26995, May 15, 1998.]

#### **416.470 Solicitation provision.**

The contracting officer shall insert the provision at 452.216-71, Base Fee and Award Fee Proposal, in solicitations which contemplate the award of a cost-plus-award-fee contract.

### **Subpart 416.5—Indefinite-Delivery Contracts**

#### **416.505 Ordering.**

(a) The Chief, Procurement Policy Division, Procurement and Property Management, Policy Analysis and Coordination Center, has been designated as the Departmental Task Order Ombudsman.

(b) The Departmental Task Order Ombudsman shall designate a task order ombudsman for each contracting activity. Contracting activity ombudsmen shall review and resolve complaints from contractors concerning task or delivery orders placed by the contracting activity.

(c) Any contractor who is not satisfied with the resolution of a complaint by a contracting activity ombudsman may request the Departmental Task Order Ombudsman to review the complaint.

#### **416.506 Solicitation provision and contract clauses.**

(a) The contracting officer shall insert a provision substantially the same as the provision at 452.216-72, Evaluation Quantities-Indefinite-Delivery Contract, in solicitations which contemplate the award of indefinite-quantity or requirements contracts to establish the basis on which offers will be evaluated.

(b) The contracting officer shall insert the clause at 452.216-73, Minimum and Maximum Contract Amounts, in indefinite-delivery, indefinite-quantity contracts when the clause at FAR 52.216-18 is used.

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### **Subpart 416.6—Time-and-Materials, Labor-Hour, and Letter Contracts**

#### **416.603 Letter contracts.**

##### **416.603-2 Application.**

The HCA is authorized to extend the period for defining a letter contract required by FAR 16.603-2(c) in extreme cases where it is determined in writing that such action is in the best interest of the Government.

##### **416.603-4 Contract clauses.**

The contracting officer shall insert the clause at 452.216-75, Letter Contract, in a definitive contract superseding a letter contract.

##### **416.670 Contract clauses.**

The contracting officer shall limit the Government's obligation under a time-and-materials or labor-hour contract by inserting the clause at 452.216-74, Ceiling Price.

### **Subpart 416.7—Agreements**

#### **416.702 Basic agreements.**

Promptly after execution by the Government, the HCA shall furnish to the Senior Procurement Executive a copy of each basic agreement negotiated with contractors in accordance with FAR 16.702.

## **PART 417—SPECIAL CONTRACTING METHODS**

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

### **Subpart 417.2—Options**

#### **417.204 Contracts.**

The head of the contracting activity is authorized to approve contracts which exceed the 5 year limitation in FAR 17.204(e).

[61 FR 53646, Oct. 15, 1996]

## **PART 418 [RESERVED]**

## SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

### PART 419—SMALL BUSINESS PROGRAMS

#### Subpart 419.2—Policies

Sec.

419.201 General policy.

419.201-70 Office of Small and Disadvantaged Business Utilization (OSDBU).

419.201-71 Small business coordinators.

419.201-73 Reports.

#### Subpart 419.5—Set-Asides for Small Business

419.508 Solicitation provisions.

#### Subpart 419.6—Certificates of Competency and Determinations of Eligibility

419.602 Procedures.

419.602-1 Referral.

419.602-3 Resolving differences between the agency and the Small Business Administration.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

#### Subpart 419.2—Policies

##### 419.201 General policy.

It is the policy of USDA to provide a fair portion of its contracting and subcontracting opportunities to small, disadvantaged, minority, and women-owned businesses.

##### 419.201-70 Office of Small and Disadvantaged Business Utilization (OSDBU).

The Office of Small and Disadvantaged Business Utilization (OSDBU) develops rules, policy, procedures and guidelines for the effective administration of USDA's small and disadvantaged business procurement preference program to include minority and women-owned business.

##### 419.201-71 Small business coordinators.

The head of the contracting activity (HCA) or a representative of the HCA shall designate in writing a small business coordinator in each contracting office. Supervisors of small business

coordinators are encouraged to provide sufficient time for the coordinators to carry out their small business program duties. Coordinators' duties shall include, but not be limited to, the following:

(a) Review each proposed acquisition expected to exceed the simplified acquisition threshold prior to its solicitation. The coordinator shall:

(1) Recommend section 8(a) action and identify potential contractors, or

(2) Identify available minority and women-owned businesses to be solicited by competitive procedures. Coordinators shall document the contract file with recommendations made and actions taken.

(b) Participate in goal-setting procedures and planning activities and establish aggressive minority and women-owned business goals based on the annual review of advance acquisition plans.

(c) Participate in the review of those contracts which require the successful offeror to submit written plans for the utilization of small and small disadvantaged businesses as subcontractors.

(d) Ensure that purchases exceeding \$2,500 and not exceeding the simplified acquisition threshold are reserved exclusively for small businesses, including minority and women-owned businesses. This policy shall be implemented unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market prices and in terms of quality and delivery of the goods or services being purchased.

(e) Maintain comprehensive source listings of small businesses.

(f) Upon written request, provide small, minority and women-owned businesses the bidders mailing lists of individuals receiving solicitations which will contain the subcontracting clause entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns." These lists may be limited to those supplies or services of major interest to the requesting firms.

## 419.201-73

(g) Develop a program of contacts with local, small, minority, and women-owned trade, business, and professional associations and organizations and Indian tribal councils to apprise them of USDA's program needs and recurring contract requirements.

(h) Periodically meet with program managers to discuss requirements of the small business preference program, explore the feasibility of breaking large complex requirements into smaller lots suitable for participation by small firms, and encourage program managers to meet with these firms so that their capabilities can be demonstrated.

(i) Establish internal operating procedures which implement the requirements of the regulations as set forth in this part 419. Compile data and prepare all reports pertaining to the small, minority and women-owned business activities. Ensure that these reports are accurate, complete and up-to-date.

(j) Assist and counsel small business firms and especially those found to be nonresponsive or nonresponsible to help qualify them for future awards.

(k) Review proposed large contract requirements to determine the potential for breaking out components suitable for purchase from small business firms.

(l) Ensure that the SBA Resident Procurement Center Representative (PCR) is provided an opportunity and reasonable time to review any solicitation that meets the dollar threshold for small business and small disadvantaged business subcontracting plans.

### 419.201-73 Reports.

(a) The Director, OSDBU, shall be responsible for submitting reports concerning USDA's progress and achievements in the procurement preference program.

(b) The following dates must be adhered to in regard to the reporting of subcontract award data.

#### SF-294 Reports

Frequency: Twice a Year.  
Cut-off date (Reporting Period Ending):  
March 31.  
Date Due at Contracting Activity: April 30.  
Cut-off date (Reporting Period Ending):  
September 30.  
Date Due at Contracting Activity: October 30.

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#### SF-295 Reports

Frequency: Once a Year.  
Cut-off date (12 Month-Period Ending):  
September 30.  
Date Due at OSDBU: October 30.

[61 FR 53646, Oct. 15, 1996, as amended at 63 FR 26995, May 15, 1998]

### Subpart 419.5—Set-Asides for Small Business

#### 419.508 Solicitation provisions.

The contracting officer shall insert the provision at 452.219-70, Size Standard and NAICS Code Information, in solicitations that are set aside for small businesses.

[61 FR 53646, Oct. 15, 1996, as amended at 66 FR 49317, Sept. 27, 2001]

### Subpart 419.6—Certificates of Competency and Determinations of Eligibility

#### 419.602 Procedures.

##### 419.602-1 Referral.

Contracting officers shall refer determinations of non-responsibility regarding small businesses directly to the SBA Regional Office servicing the location where the contractor's office (home) is located.

##### 419.602-3 Resolving differences between the agency and the Small Business Administration.

The HCA is authorized to appeal the issuance of a COC to SBA Headquarters as provided by FAR 19.602-3(a).

[63 FR 26995, May 15, 1998]

## PARTS 420-421 [RESERVED]

## PART 422—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

### Subpart 422.1—Basic Labor Policies

Sec.  
422.103 Overtime.  
422.103-4 Approvals.

### Subpart 422.3—Contract Work Hours and Safety Standards Act

422.302 Liquidated damages and overtime pay.

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### Subpart 422.4—Labor Standards for Contracts Involving Construction

- 422.404 Davis-Bacon Act wage determinations.
- 422.404-6 Modifications of wage determinations.
- 422.406 Administration and enforcement.
- 422.406-8 Investigations.

### Subpart 422.6—Walsh-Healey Public Contracts Act

- 422.604 Exemptions.
- 422.604-2 Regulatory exemptions.
- 422.608 [Reserved]

### Subpart 422.8—Equal Employment Opportunity

- 422.803 Responsibilities.
- 422.804 Affirmative action programs.
- 422.804-2 Construction.
- 422.807 Exemptions.

### Subpart 422.13—Special Disabled and Vietnam Era Veterans

- 422.1303 Waivers.
- 422.1306 Complaint procedures.

### Subpart 422.14—Employment of the Handicapped

- 422.1403 Waivers.
- 422.1406 Complaint procedures.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

### Subpart 422.1—Basic Labor Policies

#### 422.103 Overtime.

#### 422.103-4 Approvals.

Requests for the use of overtime shall be approved by an acquisition official at a level above the contracting officer in accordance with the procedures in FAR 22.103-4 (a) and (b).

### Subpart 422.3—Contract Work Hours and Safety Standards Act

#### 422.302 Liquidated damages and overtime pay.

Heads of contracting activities (HCA's) are authorized to review determinations of liquidated damages due under section 104(c) of the Contract Work Hours and Safety Standards Act,

and to take remedial action, if appropriate, in accordance with FAR 22.302(c). Contractors or subcontractors may request review of administrative determinations of liquidated damages by written notice to the contracting officer. The contracting officer shall promptly forward appeals of liquidated damages determinations to the HCA.

### Subpart 422.4—Labor Standards for Contracts Involving Construction

#### 422.404 Davis-Bacon Act wage determinations.

#### 422.404-6 Modifications of wage determinations.

HCA's are authorized to request extension of the 90 day period for award after bid opening as provided in FAR 22.404-6(b)(6).

#### 422.406 Administration and enforcement.

#### 422.406.8 Investigations.

Reports of violations shall be forwarded to the HCA, who shall process such reports in accordance with FAR 22.406-8(d).

### Subpart 422.6—Walsh-Healey Public Contracts Act

#### 422.604 Exemptions.

#### 422.604-2 Regulatory exemptions.

The Assistant Secretary for Administration can request the Secretary of labor to exempt contracts from the Walsh-Healey Public Contracts Act pursuant to FAR 22.604-2(c). A written finding justifying the request for exemption shall be prepared for the Assistant Secretary's signature and submitted by the HCA to the Senior Procurement Executive (SPE) for referral to the Assistant Secretary.

#### 422.608 [Reserved]

### Subpart 422.8—Equal Employment Opportunity

#### 422.803 Responsibilities.

The contracting office shall submit questions involving the applicability of

**422.804**

Executive Order 11246 and FAR subpart 22.8 through the HCA to the SPE for resolution.

**422.804 Affirmative action programs.**

**422.804-2 Construction.**

The HCA shall ensure that each contracting office, awarding nonexempt construction contracts, maintains a current listing of covered geographical areas subject to affirmative action requirements specifying goals for minorities and women in covered construction trades.

**422.807 Exemptions.**

(a) The Assistant Secretary for Administration is authorized to make the determination in FAR 22.807(a)(1) that a contract is essential to the national security.

(b) The contracting officer shall submit requests for exemptions under FAR 22.807(a)(1), (a)(2), and (b)(5) through the HCA to the SPE for determination by the Assistant Secretary of Administration or referral to the Director, Office of Federal Contract Compliance Programs (OFCCP), as appropriate.

**Subpart 422.13—Special Disabled and Vietnam Era Veterans**

**422.1303 Waivers.**

(a) The Assistant Secretary for Administration is authorized to make the waiver determinations under FAR 22.1303(a) and FAR 22.1303(b) with concurrence of the Director, OFCCP.

(b) The contracting office shall submit requests for waivers through the HCA to the SPE for determination by the Assistant Secretary for Administration.

**422.1306 Complaint procedures.**

The contracting officer shall forward complaints received about the administration of the Vietnam Era Veterans Readjustment Assistance Act directly to the Department of Labor (DoL) as prescribed in FAR 22.1306.

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**Subpart 422.14—Employment of the Handicapped**

**422.1403 Waivers.**

(a) The Assistant Secretary for Administration is authorized to make the waiver determinations under FAR 22.1403(a) and (b) with concurrence of the Director, OFCCP.

(b) The contracting officer shall submit requests for waivers through the HCA to the SPE for determination by the Assistant Secretary for Administration.

**422.1406 Complaint procedures.**

The contracting officer shall forward complaints received about the administration of Section 503 of the Rehabilitation Act of 1973, as amended, directly to the OFCCP as prescribed in FAR 22.1406.

**PART 423—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE**

**Subpart 423.1—Pollution Control and Clean Air and Water**

- Sec.
- 423.101 Applicability.
- 423.103 Policy.
- 423.104 Exemptions.
- 423.106 Delaying award.
- 423.107 Compliance responsibilities.

**Subpart 423.2—Energy Conservation**

- 423.203 Policy.

**Subpart 423.4—Use of Recovered Materials**

- 423.400 Scope of subpart.
- 423.402 Definitions.
- 423.404 Procedures.
- 423.404-70 Acquisition, Recycling, and Waste Prevention Program (AR&WPP).

**Subpart 423.5—Drug-Free Workplace**

- 423.506 Suspension of payments, termination of contract, and debarment and suspension actions.

## Department of Agriculture

423.404

### Subpart 423.6—Notice of Radioactive Material

423.601 Requirements.

### Subpart 423.7—Contracting for Environmentally Preferable and Energy-Efficient Products and Services

423.704 Policy.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

### Subpart 423.1—Pollution Control and Clean Air and Water

#### 423.101 Applicability.

In addition to the requirement in FAR 23.101, this subpart applies to indefinite-delivery contracts, other than those for commercial items, when the contracting officer estimates that the contract will exceed \$100,000.

#### 423.103 Policy.

The head of the contracting activity (HCA) shall establish a system of instructions to make available to each contracting officer the EPA *List of Violating Facilities* and to ensure the contracting officer reviews the list prior to each proposed award.

#### 423.104 Exemptions.

(a) The Assistant Secretary for Administration is authorized to grant an exemption described in FAR 23.104.

(b) The Senior Procurement Executive (SPE) is authorized to consult with the EPA Administrator regarding a proposed class exemption.

#### 423.106 Delaying award.

Prior to notifying EPA, the contracting officer shall advise the SPE of the need to award before the requested time period expires.

#### 423.107 Compliance responsibilities.

The HCA is authorized to notify the Administrator of EPA of known or suspected noncompliance with clean air or water standards in facilities used in performing nonexempt contracts. A copy of the notification is to be provided to the SPE.

### Subpart 423.2—Energy Conservation

#### 423.203 Policy.

In the acquisition of products and services, USDA will give preference to those that are more energy-efficient.

### Subpart 423.4—Use of Recovered Materials

#### 423.400 Scope of subpart.

This subpart implements and supplements FAR policies and procedures for acquiring products and services when preference is given to offers of products containing recovered materials. This subpart further supplements FAR subpart 23.4 by providing guidance for recycling and waste prevention programs in accordance with Executive Order 12873 and 42 U.S.C. 6962.

#### 423.402 Definitions.

*Mission areas* are USDA organizational elements headed by an Undersecretary or an Assistant Secretary.

*USDA Acquisition, Recycling, and Waste Prevention Program*, issued by the USDA Environmental Executive, provides implementing guidance for Departmental affirmative procurement, recycling, and waste reduction.

The *USDA Environmental Executive* is the Deputy Assistant Secretary for Administration.

#### 423.404 Procedures.

(a) The dollar thresholds described in FAR 23.404(a) apply to USDA as a whole.

(b) *EPA designated items*. The officials identified as Acquisition, Recycling, and Waste Prevention Program (AR&WPP) Coordinators are authorized to approve determinations to buy EPA designated items which do not meet EPA or USDA minimum recovered material content standards.

(c) *Agency designated items*. The USDA Environmental Executive may, without further publication in this chapter, designate items or classes of items containing recovered material to be acquired under the procedures in FAR 23.4 and this subpart.

**423.404-70 Acquisition, Recycling, and Waste Prevention Program (AR&WPP).**

(a) *Applicability.* The AR&WPP applies to all USDA organizations; i.e., USDA mission areas, USDA corporations (as described in 31 U.S.C. 9101), and USDA staff offices not included within a mission area.

(b) *Authority.* The AR&WPP has been established to comply with the requirements of Executive Order 12873 to coordinate all environmental programs in the areas of procurement and acquisition, standards and specification review, facilities management, waste prevention and recycling, and logistics.

(c) *Responsibilities.* (1) Each USDA organization will identify one or more AR&WPP Coordinators in writing to represent the mission area, serve on the Council of Coordinators, and work in conjunction with the USDA Environmental Executive.

(2) Each USDA organization periodically will conduct an audit (survey or inventory) of the waste stream generated by the organization. The goals of the audit are:

(i) To identify and measure the elements of waste generated in its operations;

(ii) To identify processes, equipment, techniques, or materials which generate waste in energy or materials;

(iii) To identify actions which can be taken to reduce and to recycle or recover the wastes generated; and

(iv) To assign time frames to accomplish those actions.

(3) Each USDA organization will implement an avoidance or recovery or recycling program based on the results of the waste stream audit.

(4) Each USDA organization will implement a plan to install on-going waste prevention techniques.

(5) Each USDA organization will ensure that responsibility for preparation, implementation, and monitoring of its affirmative procurement program is shared between program personnel and procurement personnel.

(6) Each USDA organization will establish measurable goals by which the effectiveness of its participation in AR&WPP can be assessed on an annual basis.

(7) Each USDA organization will sponsor annual awards to recognize the most innovative environmental program of the year.

(d) *Acquisition and administration.* (1) Each USDA organization will annually review its product descriptions to enhance the use of recovered materials and environmentally preferable products and services by eliminating from the product description:

(i) Any exclusion of recovered materials, and

(ii) Any requirement that items be manufactured from virgin materials.

(2) Each USDA organization will create a promotion program to internally and externally promote its desire to buy recycled products.

(3) Each USDA organization will implement the USDA electronic acquisition system to reduce waste by eliminating unnecessary paper transactions and to foster accurate data collection and reporting of acquisitions.

(4) Each USDA organization will establish an affirmative procurement program specifically for the needs and requirements of its own organization, to maximize environmental benefits, consistent with price, performance, and availability considerations.

(5) Each USDA organization will ensure that the on-going inspection and production surveillance systems in place will monitor the production or the testing of goods and services to verify the recovered material contents reported.

(6) Each USDA organization will include

(i) Requirements in contracts for contractor operation of Government-owned or leased facilities to provide for waste prevention activities and the recycling of materials and

(ii) Environmental and recycling factors in the selection process for the acquisition and management of real property.

**Subpart 423.5—Drug-Free Workplace**

**423.506 Suspension of payments, termination of contract, and debarment and suspension actions.**

(a) The contracting officer may recommend waiver of the determination

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to suspend payments, to terminate a contract, or to debar or to suspend a contractor.

(b) The recommendation shall be submitted through the HCA to the SPE and shall include a full description of the disruption of USDA operations should the determination not be waived.

(c) The SPE will submit the request for a waiver to the Secretary with a recommendation for action.

### Subpart 423.6—Notice of Radioactive Material

#### 423.601 Requirements.

The HCA shall establish a system of instructions to identify the installation/facility radiation protection officer.

### Subpart 423.7—Contracting for Environmentally Preferable and Energy-Efficient Products and Services

#### 423.704 Policy.

In its acquisitions, USDA will give preference to environmentally preferable and energy-efficient products and services.

## PART 424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

### Subpart 424.1—Protection of Individual Privacy

Sec.

424.103 Procedures.

424.104 Contract clauses.

### Subpart 424.2—Freedom of Information Act

424.203 Policy.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

### Subpart 424.1—Protection of Individual Privacy

#### 424.103 Procedures.

USDA regulations implementing the Privacy Act are found in 7 CFR, sub-

title A, part 1, subpart G. Contracting officers shall follow these regulations when responding to requests for information or awarding contracts that will involve the design, development, or operation of a system of records on individuals to accomplish agency functions.

#### 424.104 Contract clauses.

When applicable, the contracting officer shall insert the clause at 452.224-70, Confidentiality of Information, in contracts involving confidential information.

### Subpart 424.2—Freedom of Information Act

#### 424.203 Policy.

USDA regulations implementing the Freedom of Information Act are found in 7 CFR, subtitle A, part 1, subpart A. Contracting officers shall follow these regulations when responding to requests for information or awarding contracts that will involve the design, development, or operation of a system of records on individuals to accomplish agency functions.

[61 FR 53646, Oct. 15, 1996. Redesignated at 63 FR 26995, May 15, 1998.]

## PART 425—FOREIGN ACQUISITION

### Subpart 425.1—Buy American Act—Supplies

Sec.

425.102 Policy.

425.105 Evaluating offers.

425.108 Expected articles, materials, and supplies.

### Subpart 425.2—Buy American Act—Construction Materials

425.202 Policy.

425.203-425.204 [Reserved]

### Subpart 425.3—Balance of Payments Program

425.302 Policy.

425.304 Excess and near-excess foreign currencies.

### Subpart 425.4—Trade Agreements

425.402 Policy.

## 425.102

### Subpart 425.9—Additional Foreign Acquisition Clauses

425.901 Omission of audit clause.

### Subpart 425.10—Implementation of Sanctions Against Countries That Discriminate Against United States Products or Services in Government Procurement

425.1002 Trade sanctions.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

### Subpart 425.1—Buy American Act—Supplies

#### 425.102 Policy.

The Senior Procurement Executive (SPE) shall make the determination prescribed in FAR 25.102(a)(3).

#### 425.105 Evaluating offers.

The SPE shall make the determinations prescribed in FAR 25.105. Requests for SPE approval shall be submitted by the HCA, in writing, and shall provide a detailed justification supporting why the proposed award is in the best interest of the Government.

#### 425.108 Excepted articles, materials, and supplies.

(a) Copies of determinations of non-availability in accordance with FAR 25.102(a)(4) or 25.202(a)(3), for articles, material or supplies not listed in FAR 25.108, shall be submitted to the SPE for submission to the FAR Council.

(b) Information required by FAR 25.108(c) shall be submitted to the SPE for submission to the FAR Council.

### Subpart 425.2—Buy American Act—Construction Materials

#### 425.202 Policy.

(a) The SPE shall make the determination prescribed in FAR 25.202(a)(3).

(b) If a contracting officer proposes that the use of a particular domestic construction material should be waived for a contract on the grounds that its use would be impracticable, the contracting officer shall submit a proposed determination with supporting infor-

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mation through the HCA to the SPE for approval or disapproval.

[63 FR 26995, May 15, 1998]

#### 425.203–425.204 [Reserved]

### Subpart 425.3—Balance of Payments Program

#### 425.302 Policy.

The HCA shall make the determinations prescribed in FAR 25.302(b)(2) and (3) and may authorize differentials greater than 50 percent as prescribed in FAR 25.302(c).

#### 425.304 Excess and near-excess foreign currencies.

HCA's shall make the determinations as to the feasibility of using excess or near-excess currency.

### Subpart 425.4—Trade Agreements

#### 425.402 Policy.

Whenever the U.S. Trade Representative publishes a redetermination of the dollar threshold at which the Trade Agreements Act applies, that dollar threshold will be published in a Departmental Notice, 5025 series.

### Subpart 425.9—Additional Foreign Acquisition Clauses

#### 425.901 Omission of audit clause.

The SPE shall make the determination under FAR 25.901(c)(1).

### Subpart 425.10—Implementation of Sanctions Against Countries That Discriminate Against United States Products or Services in Government Procurement

#### 425.1002 Trade sanctions.

The Secretary, without power of re-delegation, has the authority to make the necessary determination(s) and authorize award(s) of contract(s) in accordance with FAR 25.1002(c).

**PART 426—OTHER  
SOCIOECONOMIC PROGRAMS**

**Subpart 426.70—Preference for  
Selected Biobased Products**

Sec.	
426.7000	Scope of subpart.
426.7001	Applicability.
426.7002	Authority.
426.7003	Policy.
426.7004	Definitions.
426.7005	Preference list.
426.7006	Use of a set-aside or a price preference.
426.7007	Use of a technical evaluation preference.
426.7008	Identification of preferred products.
426.7009	Contract provisions.

AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 5909; 40 U.S.C. 486(c).

SOURCE: 63 FR 26997, May 15, 1998, unless otherwise noted.

**Subpart 426.70—Preference for  
Selected Biobased Products**

**426.7000 Scope of subpart.**

This subpart supplements the FAR to implement the set-asides and preferences described in section 1665 of the Food, Agriculture, Conservation and Trade Act of 1990 (7 U.S.C. 5909).

**426.7001 Applicability.**

This subpart applies to USDA and all of its components, including corporations.

**426.7002 Authority.**

Section 1665 of the Food, Agriculture, Conservation and Trade Act of 1990 (7 U.S.C. 5909) authorizes USDA to establish set-asides and other preferences for products that have been assisted by the Alternative Agricultural Research and Commercialization Corporation (AARCC).

**426.7003 Policy.**

(a) AARCC provides financial assistance to private companies and other parties to commercialize nonfood, nonfeed products made from agricultural and forestry materials and animal by-products (biobased products). Biobased products by their nature are environmentally friendly, and, in many instances, use agricultural material

that otherwise would be waste. It is the policy of USDA to acquire AARCC products to the maximum extent practicable. This policy applies to all acquisitions of products regardless of dollar value.

(b) USDA shall satisfy its requirements for products the same or essentially the same as AARCC products by applying the preferences or set-asides described by this subpart.

**426.7004 Definitions.**

As used in this subpart—

*AARCC products* are products developed with assistance provided by AARCC as authorized by 7 U.S.C. 5905.

*Acquisitions of products* means an acquisition of one or more products for the use of the Government.

*Acquisitions involving the use of products* means an acquisition in which a Government contractor uses products in contract performance.

*Price preference* means an amount, expressed as a percentage, to be used in the evaluation of offers in an acquisition of products.

*Set-aside* means a requirement that vendors responding to a solicitation offer AARCC products.

*Solicitation* includes actions taken under parts 12, 13, 14, 15, and 36 of the Federal Acquisition Regulation.

*Technical evaluation preference* means the use of an award factor or subfactor in which the Government expresses its preference for AARCC products.

**426.7005 Preference list.**

(a) The Office of Procurement and Policy Management (OPPM) and AARCC jointly shall establish and maintain a Preference List for AARCC products.

(b) The Preference List shall contain the list of preferred products, source information for these products, the type(s) of preference to be applied, the beginning and ending dates for the use of preferences, and other terms established to define the preference given to a product.

(c) The Preference List will be publicized within USDA by means of AGAR Advisories (see 401.371). Copies of the Preference List may be obtained from OPPM. The Preference List will

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also be posted on the World Wide Web at the USDA Procurement Home Page.

**426.7006 Use of a set-aside or a price preference.**

Acquisitions for products the same or essentially the same as those products appearing on the Preference List shall either be set-aside exclusively or shall include a price preference for those products shown on the Preference List. The actual price preference to be used shall be determined by the requiring office but may not exceed the percentage shown on the Preference List.

**426.7007 Use of a technical evaluation preference.**

Acquisitions involving the use of products the same or essentially the same as those products appearing on the Preference List shall include a technical evaluation preference, if authorized in the Preference List. The technical evaluation preference may be determined by the contracting officer specifically for each acquisition.

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**426.7008 Identification of preferred products.**

(a) Products subject to a set-aside or technical preference shall be separately listed in the schedule, specification, or performance work statement.

(b) Products subject to a price preference shall be separately listed in the schedule.

**426.7009 Contract provisions.**

(a) Each solicitation containing a price or technical preference under this subpart shall contain the provision 452.226-70, Preferred Products.

(b) Each solicitation for products subject to a set-aside shall include the provision 452.226-71, Set-Aside For Mandatory Products.

(c) Each solicitation for products subject to a price preference shall include the provision 452.226-72, Price Preference for Award.

(d) Solicitations for products may contain both the provision in 452.226-71 and the provision found in 452.226-72.

(e) The provisions prescribed in this section are not required for acquisitions accomplished using the purchase card as a stand alone tool.

## SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

### PART 427—PATENTS, DATA, AND COPYRIGHTS

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

#### Subpart 427.1—General

##### 427.104 General guidance.

As used in FAR part 27, the agency head or agency head designee is the Senior Procurement Executive, except under FAR 27.306(a) and (b). Under FAR 27.306(a) and (b), the agency head is the Secretary without power of redelegation.

[61 FR 53646, Oct. 15, 1996]

### PART 428—BONDS AND INSURANCE

#### Subpart 428.1—Bonds

Sec.

- 428.101 Bid guarantees.
- 428.101-1 Policy on use.
- 428.106 Administration.
- 428.106-6 Furnishing information.

#### Subpart 428.2—Sureties

- 428.203 Acceptability of individual sureties.
- 428.204 Alternatives in lieu of corporate or individual sureties.
- 428.204-2 Certified or cashier's checks, bank drafts, money orders, or currency.

#### Subpart 428.3—Insurance

- 428.307 Insurance under cost-reimbursement contracts.
- 428.307-1 Group insurance plans.
- 428.310 Contract clause for work on a Government installation.
- 428.370 Government-owned vehicles operated in foreign countries.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

#### Subpart 428.1—Bonds

##### 428.101 Bid guarantees.

##### 428.101-1 Policy on use.

The Senior Procurement Executive may authorize class waivers of the requirement to obtain bid guarantees.

##### 428.106 Administration.

##### 428.106-6 Furnishing information.

Heads of contracting activities (HCA's) or their designees may furnish certified copies of bonds and the contracts for which they were given as provided by FAR 28.106-6(c). Requesters may be required to pay costs of certification and copying established by the Departmental Fee Schedule for records requests (7 CFR part 1, subpart A, appendix A).

#### Subpart 428.2—Sureties

##### 428.203 Acceptability of individual sureties.

Evidence of possible criminal or fraudulent activities by an individual surety shall be reported to the Office of Inspector General in accordance with Departmental Regulations (1700 series).

##### 428.204 Alternatives in lieu of corporate or individual sureties.

HCA's shall establish procedures to ensure protection and conveyance of deposited securities of the types listed in FAR 28.204-1 through 28.204-3.

##### 428.204-2 Certified or cashier's checks, bank drafts, money orders, or currency.

The contracting officer shall insert the provision at 452.228-70, Alternative Forms of Security, in a solicitation if a bond is required.

#### Subpart 428.3—Insurance

##### 428.307 Insurance under cost-reimbursement contracts.

##### 428.307-1 Group insurance plans.

Under cost-reimbursement contracts, before buying insurance under a group

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insurance plan, the contractor shall submit the plan to the contracting officer for review. During review, the contracting officer shall use all sources of information available, such as audits, industry practice, or other sources of information, to determine whether acceptance of the plan submitted would be in the Government's best interest.

**428.310 Contract clause for work on a Government installation.**

The contracting officer shall insert the clause at 452.228-71, Insurance Coverage, in solicitations and contracts which include the clause at FAR 52.228-5, Insurance—Work on a Government Installation. If property liability insurance is required, the contracting officer shall use the clause with its Alternate I.

**428.370 Government-owned vehicles operated in foreign countries.**

USDA is authorized to obtain insurance to cover liability incurred by any of its employees while acting within the scope of their employment and operating a Government-owned vehicle in a foreign country. (7 U.S.C. 2262).

**PART 429 [RESERVED]**

**PART 430—COST ACCOUNTING STANDARDS ADMINISTRATION**

Sec.

430.070 Definitions.

**Subpart 430.2—CAS Program Requirements**

430.201 Contract requirements.

430.201-5 Waiver.

430.202 Disclosure requirements.

430.202-2 Impracticality of submission.

430.202-8 Subcontractor Disclosure Statements.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

**430.070 Definitions.**

ACO, as used in this part and in FAR part 30, means *administrative contracting officer* as described in FAR part 42.

**Subpart 430.2—CAS Program Requirements**

**430.201 Contract requirements.**

**430.201-5 Waiver.**

The Senior Procurement Executive (SPE), without the authority to further redelegate, is authorized to request the Cost Accounting Standards Board to waive the application of the Cost Accounting Standards (CAS). Contracting officers shall prepare waiver requests in accordance with 48 CFR chapter 99 (Appendix B, FAR loose-leaf edition), subsection 9903.201-5, and submit them to the SPE through the head of the contracting activity (HCA).

**430.202 Disclosure requirements.**

**430.202-2 Impracticality of submission.**

(a) The Secretary, without the power to delegate, is authorized to determine, in accordance with FAR part 99 (Appendix B), subsection 9903.202-2, that the Disclosure Statement is impractical to secure and to authorize award without obtaining the Disclosure Statement.

(b) The request for this determination is to be prepared in accordance with FAR part 99 (Appendix B), subsection 9903.202-2 and is to contain the proposed report to the CASB.

(c) Requests for a determination under paragraph (a) of this section shall be prepared by the contracting officer and submitted through the HCA to the SPE for concurrence and submittal to the Secretary.

**430.202-8 Subcontractor Disclosure Statements.**

(a) The Secretary, without the power to redelegate, is authorized to determine that the Disclosure Statement for a subcontractor is impractical to secure and to authorize award without obtaining the Disclosure Statement.

(b) Requests for this determination are to be prepared and forwarded as described in 430.202-2.

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**PART 431—CONTRACT COST PRINCIPLES AND PROCEDURES**

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

**Subpart 431.1—Applicability**

**431.101 Objectives.**

(a) The SPE is designated as the official authorized to give advance approval of an individual deviation concerning cost principles.

(b) The SPE is designated as the official authorized to give advance approval of a class deviation concerning cost principles after coordination with the Civilian Agency Acquisition Council.

(c) Requests for advance approval of class deviations concerning cost principles must be submitted to the SPE through the HCA.

[61 FR 53646, Oct. 15, 1996]

**PART 432—CONTRACT FINANCING**

Sec.

- 432.001 Definitions.
- 432.003 Simplified acquisition procedures financing.
- 432.006 Reduction or suspension of contract payments upon finding of fraud.
- 432.006-2 Definitions.
- 432.006-3 Responsibilities.
- 432.006-4 Procedures.
- 432.006-5 Reporting.

**Subpart 432.1—Non-Commercial Item Purchase Financing**

- 432.102 Description of contract financing methods.
- 432.103 Progress payments under construction contracts.
- 432.111 Contract clauses for non-commercial purchases.
- 432.113 Customary contract financing.
- 432.114 Unusual contract financing.

**Subpart 432.2—Commercial Item Purchase Financing**

- 432.202 General.
- 432.202-1 Policy.
- 432.202-4 Security for Government financing.
- 432.206 Solicitation provisions and contract clauses.
- 432.207 Administration and payment of commercial financing payments.

**Subpart 432.3—Loan Guarantees for Defense Production**

- 432.301 Definitions.

**Subpart 432.4—Advance Payments for Non-Commercial Items**

- 432.402 General.
- 432.406 Letters of credit.
- 432.407 Interest.
- 432.412 Contract clause.

**Subpart 432.6—Contract Debts**

- 432.601 Definition.
- 432.616 Compromise actions.

**Subpart 432.7—Contract Funding**

- 432.703 Contract funding requirements.
- 432.703-3 Contracts crossing fiscal years.
- 432.770 USDA specific funding limitations.

**Subpart 432.8—Assignment of Claims**

- 432.802 Conditions.
- 432.803 Policies.
- 432.805 Procedure.
- 432.806 Contract clauses.

**Subpart 432.9—Prompt Payment**

- 432.905 Invoice payments.
- 432.906 Contract financing payments.

**Subpart 432.10—Performance-Based Payments**

- 432.1007 Administration and payment of performance-based payments.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

**432.001 Definitions.**

The *agency contract finance office* is the office, other than the office of the requisitioner, providing funding or performing funding record keeping for the contract action.

*Responsible fiscal authority* is that officer in the agency contract finance office with the responsibility to ensure that adequate funds are available and usable for the intended purpose.

**432.003 Simplified acquisition procedures financing.**

(a) The chief of the contracting office may approve contract financing on a

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contract to be entered under the simplified acquisition procedures. Class approvals may not be made.

(b) The signed approval must contain the supporting rationale for the action and an estimate of the cost and/or risk to the government.

#### **432.006 Reduction or suspension of contract payments upon finding of fraud.**

##### **432.006-2 Definitions.**

(a) The USDA *remedy coordination official* (RCO) is the Assistant Secretary for Administration.

(b) For the purposes of this part, *head of the agency* means, exclusively, the Secretary or the Deputy Secretary.

##### **432.006-3 Responsibilities.**

When a contracting officer suspects that a request for advance, partial, or progress payment is based on fraud, the request shall be referred directly to the Office of Inspector General (OIG) in accordance with their instructions. A copy of the referral shall be submitted through the head of the contracting activity (HCA) to the Senior Procurement Executive (SPE).

##### **432.006-4 Procedures.**

(a) Immediately upon submittal of the referral described in 432.006-3, the HCA and the contracting officer shall confer with the SPE and representatives of the OIG to discuss the potential for reduction or suspension of further payments based on the considerations listed in FAR 32.006-4(d) (1) through (5).

(b) The SPE will determine whether the contractor has contracts with other Departments or contracting activities and will involve them, as necessary, in the decision making process.

(c) The OIG will determine the need for and the extent of an investigation.

(d) Immediately upon completion of the OIG investigation (or, if deemed necessary by the OIG and the SPE, before completion of the investigation) the SPE, in coordination with the HCA, the contracting officer, and the OIG, shall make a report on the action to the RCO.

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(e) Upon receipt of the report, the RCO will submit a recommendation to the Secretary.

(f) Upon receipt of the RCO's report the Secretary will:

(1) Notify the contractor in writing, allowing 30 calendar days after receipt of the notice, that the contractor may submit in writing information and arguments in opposition to the recommendation; and

(2) Consider the RCO's recommendation, the SPE's report, the response of the contractor, and any other relevant information in order to make an appropriate final determination.

(g) This determination will be provided to the contractor and to the SPE for distribution to the agencies involved and for appropriate action under the determination.

(h) The determination and the supporting documentation will be placed in the contract file(s) and a copy will be maintained by the SPE.

(i) The contracting officer will advise the SPE of the actual date of the reduction or suspension action.

(j) Not later than 150 calendar days after the actual date of the reduction or suspension action, the SPE will prepare for the RCO a review of the agency head's determination, and will propose a recommendation from the RCO to the agency head as to whether the reduction or suspension action should continue. The RCO will submit the recommendation (including a recommendation for the time period of a follow up review) to the agency head. This recommendation will be considered by the Secretary and handled as a final action described in paragraph (f) of this section.

(k) The contract may not be closed nor final payment made prior to a final determination by the Secretary.

##### **432.006-5 Reporting.**

The annual report required by FAR 32.006-5 is to be prepared by the SPE and to be submitted to the Secretary within 90 calendar days after the end of the fiscal year. When signed by the Secretary, the report is to be maintained by the SPE.

### Subpart 432.1—Non-Commercial Item Purchase Financing

#### 432.102 Description of contract financing methods.

Progress payments based on a percentage or stage of completion are authorized for use as a payment method under USDA contracts or subcontracts for construction, alteration or repair, and shipbuilding and conversion. Such payments also are authorized for service contracts, if the contracting officer determines that progress payments based on costs are not practicable and adequate safeguards are provided to administer progress payments based on a percentage or stage of completion. For all other contracts, progress payment provisions shall be based on costs except that the HCA may authorize progress payments based on a percentage or stage of completion on a case-by-case basis. Each authorization by the HCA shall include a determination and finding that progress payments based on costs cannot be employed practically and that there are adequate safeguards provided for the administration of progress payments based on a percentage or stage of completion.

#### 432.103 Progress payments under construction contracts.

(a) When approving a progress payment under a construction contract, the contracting officer shall indicate the amount to be paid by the payment office and include in the contract file the rationale in support of the payment.

(b) When a retainage is made on a progress payment under a construction contract, the contracting officer shall place in the contract file a written determination stating the reason(s) for the retainage.

(c) When a progress payment under a construction contract has been approved, the amount to be paid, the amount of any retainage withheld, and the reason(s) for the retainage shall be provided to the contractor by the contracting officer in writing before the payment due date.

(d) When the contractor, under a fixed-price construction contract, furnishes evidence to the contracting officer that the surety has been paid in

full for bond premiums and requests reimbursement, the first subsequent progress payment shall include the total amount attributable to such bond premiums and the Government shall pay that amount in full. This amount paid for the bond premiums is not an amount in addition to the stated contract price.

#### 432.111 Contract clauses for non-commercial purchases.

The contracting officer shall insert the clause at 452.232-70, Reimbursement for Bond Premiums—Fixed Price Construction Contracts, whenever the clause at FAR 52.232-5, Payments under Fixed-Price Construction Contracts, is used in a contract.

[61 FR 53646, Oct. 15, 1996, as amended at 63 FR 26995, May 15, 1998]

#### 432.113 Customary contract financing.

The contracting officer may determine the necessity for customary contract financing. The determination and finding that customary contract financing is needed shall be placed in the contract file.

#### 432.114 Unusual contract financing.

The HCA is authorized to approve unusual contract financing. The signed determination and finding supporting this approval shall be included in the contract file.

### Subpart 432.2—Commercial Item Purchase Financing

#### 432.202 General.

##### 432.202-1 Policy.

In the case of unusual contract financing, the approval by the HCA shall be recorded in a determination and finding and maintained in the contract file.

#### 432.202-4 Security for Government financing.

Prior to determining that an offeror's financial condition is adequate security, the contracting officer must obtain the concurrence of the funding activity in the proposed determination.

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### 432.206 Solicitation provisions and contract clauses.

The responsibility for administration of the liquidation provisions of a contract may not be transferred from the contracting officer.

### 432.207 Administration and payment of commercial financing payments.

The responsibility for receiving, reviewing, and approval of contract financing requests may not be transferred from the contracting officer.

## Subpart 432.3—Loan Guarantees for Defense Production

### 432.301 Definitions.

Within this subpart, the “agency” or “guaranteeing agency” is the “head of the contracting activity” (HCA) and may not be redelegated.

## Subpart 432.4—Advance Payments for Non-Commercial Items

### 432.402 General.

The HCA is designated as the individual responsible for making the findings and determination, and for approval of the contract terms concerning advance payments.

### 432.406 Letters of credit.

The HCA is designated as the individual responsible for coordination with the Department of Treasury concerning letters of credit.

### 432.407 Interest.

(a) The HCA is designated as the individual who may authorize, on a case by case basis, advance payments without interest for the contract types described in FAR 32.407(d)(1), (2), (3), and (4). The signed determination and findings supporting these authorizations shall be included in the contract files.

(b) The SPE is designated as the individual who may authorize advance payments without interest other than those described in paragraph (a) of this section.

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### 432.412 Contract clause.

The decision to use Alternates I or III to clause 52.232–12 must be supported by a determination and finding.

## Subpart 432.6—Contract Debts

### 432.601 Definition.

*Responsible official* means the contracting officer.

### 432.616 Compromise actions.

Compromise of a debt within the proceedings under appeal to the Board of Contract Appeals is the responsibility of the contracting officer.

## Subpart 432.7—Contract Funding

### 432.703 Contract funding requirements.

#### 432.703–3 Contracts crossing fiscal years.

Funds appropriated to USDA may be used for one-year contracts which are to be performed in two fiscal years so long as the total amount for such contracts is obligated in the year for which the funds are appropriated (7 U.S.C. 2209c).

### 432.770 USDA specific funding limitations.

(a) The USDA is authorized to subscribe for newspapers as may be necessary to carry out its authorized work: *Provided*, that such subscriptions shall not be made unless provision is made therefor in the applicable appropriation and the cost thereof is not in excess of limitations prescribed therein (7 U.S.C. 2258).

(b) The expenditure of any USDA appropriation for any consulting service through any contract, pursuant to section 3109 of Title 5 of the U.S. Code shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive Order issued pursuant to existing law (7 U.S.C. 2225a).

**Subpart 432.8—Assignment of Claims**

**432.802 Conditions.**

Written notices of assignment and a true copy of the assigned instrument are to be sent to the contracting officer rather than the agency head. Other copies are distributed as directed in FAR 32.802.

**432.803 Policies.**

The HCA may make a determination of need to include a no-setoff commitment in a contract.

**432.805 Procedure.**

The information described in FAR 32.805 shall be filed with the contracting officer.

**432.806 Contract clauses.**

The contracting officer may make the determination whether to include the clause at FAR 52.232-23 in any purchase order expected to exceed the micro-purchase threshold.

**Subpart 432.9—Prompt Payment**

**432.905 Invoice payments.**

The payment terms for supplies and services on the Procurement List and provided by a Javits-Wagner-O'Day Act participating nonprofit agency are governed by FAR 8.709.

**432.906 Contract financing payments.**

The HCA may prescribe, on a case-by-case basis, a shorter period for financing payments.

**Subpart 432.10—Performance-Based Payments**

**432.1007 Administration and payment of performance-based payments.**

The responsibility for receiving, reviewing, and approval of performance-based payment requests may not be transferred from the contracting officer.

**PART 433—PROTESTS, DISPUTES AND APPEALS**

**Subpart 433.1—Protests**

Sec.

433.102 General.

433.103 Protests to the agency.

433.104 Protests to GAO.

**Subpart 433.2—Disputes and Appeals**

433.203 Applicability.

433.203-70 Agriculture Board of Contract Appeals.

433.209 Suspected fraudulent claims.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

**Subpart 433.1—Protests**

**433.102 General.**

(a) The Senior Procurement Executive (SPE) is responsible for coordinating the handling of bid protests lodged with the General Accounting Office (GAO).

(b) The head of the contracting activity (HCA), on a non-delegable basis, may resolve protests and authorize reimbursement of costs in accordance with FAR 33.102(b).

**433.103 Protests to the agency.**

(a) Actual or prospective bidders or offerors may file protests either with the HCA, as provided by 433.102(b), or with the contracting officer. Protesters who file protests with the HCA shall furnish a complete copy to the contracting officer no later than 1 day after the protest is filed with the HCA.

(b) When a protest is received, the adjudicating official shall take prompt action towards resolution and notify the protester in writing of the action taken. The written final decision shall include a paragraph substantially as follows:

This decision shall be final and conclusive unless a further written notice of protest is filed with the General Accounting Office in accordance with 4 CFR part 21. Neither the filing of a protest with USDA nor the filing of a protest with the General Accounting Office affects your right to file an action

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in a district court of the United States or the United States Court of Federal Claims.

**433.104 Protests to GAO.**

The contracting activity shall furnish a copy of all reports submitted to the GAO, including all relevant documents, to the SPE simultaneously with their submission to the GAO.

**Subpart 433.2—Disputes and Appeals**

**433.203 Applicability.**

The Assistant Secretary for Administration is authorized to determine the applicability of the Contract Disputes

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Act to contracts with foreign governments pursuant to FAR 33.203.

**433.203–70 Agriculture Board of Contract Appeals.**

The organization, jurisdiction, and functions of the Agriculture Board of Contract Appeals, together with its Rules of Procedure, are set out in 7 CFR part 24.

**433.209 Suspected fraudulent claims.**

The contracting officer shall refer all matters related to suspected fraudulent claims by a contractor under the conditions in FAR 33.209 to the Office of Inspector General for additional action or investigation.

## SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

### PART 434—MAJOR SYSTEM ACQUISITION

#### Subpart 434.0—General

- Sec.  
434.001 Definitions.  
434.002 Policy.  
434.003 Responsibilities.  
434.004 Acquisition strategy.  
434.005 General requirements.  
434.005-6 Full production.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

#### Subpart 434.0—General

##### 434.001 Definitions.

Pursuant to OMB Circular No. A-109 (A-109) and the definition at FAR 2.101, within USDA, a system shall be considered a major system if:

(a) The total acquisition costs with private industry are estimated to be \$50 million or more, or

(b) The system has been specifically designated to be a major system by the USDA Acquisition Executive, even if the acquisition costs are not expected to exceed \$50 million.

[61 FR 53646, Oct. 15, 1996, as amended at 63 FR 26995, May 15, 1998]

##### 434.002 Policy.

In addition to the policy guidance at FAR 34.002, the policies outlined in paragraph 6 of A-109 should serve as guidelines for all contracting activities in planning and developing systems, major or otherwise.

##### 434.003 Responsibilities.

(a) The Secretary of Agriculture or other designated USDA key executive is responsible for making four key decisions in each major system acquisition process. These are listed in paragraph 9 of A-109 and elaborated on in paragraphs 10 through 13. The key executives of USDA (Secretary, Deputy Secretary, Under Secretaries and Assistant Secretaries) individually or as a

group will participate in this decision making process.

(b) The Assistant Secretary for Administration (ASA) is the USDA Acquisition Executive. The ASA will ensure that A-109 is implemented in USDA and that the management objectives of the Circular are realized. The ASA is responsible for designating the program manager for each major system acquisition, designating an acquisition to be a major system acquisition, and approving the written charter and project control system for each major system acquisition.

(c) The Procurement and Property Management staff is responsible for assisting the ASA in carrying out the above responsibilities.

(d) Heads of contracting activities must:

(1) Ensure compliance with the requirements of A-109, FAR part 34 and AGAR 434.

(2) Ensure that potential major system acquisitions are brought to the attention of the USDA Acquisition Executive.

(3) Recommend qualified candidates for designation as program managers for each major system acquisition within their jurisdiction.

(4) Ensure that program managers fulfill their responsibilities and discharge their duties.

(5) Cooperate with the ASA in implementing the requirements of A-109.

(e) The program manager is responsible for planning and executing the major system acquisition, ensuring appropriate coordination with the USDA Acquisition Executive and other key USDA executives.

##### 434.004 Acquisition strategy.

(a) The program manager will develop, in coordination with the Acquisition Executive, a written charter outlining the authority, responsibility, accountability, and budget for accomplishing the proposed objective.

(b) The program manager will develop, subject to the approval of the Acquisition Executive, a project control system to schedule, monitor, and regularly report on all aspects of the

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project. The control system shall establish reporting periods and milestones consistent with the key decisions listed in paragraph 9 of A-109.

(c) Upon initiation of the project, the program manager will report regularly to the Acquisition Executive.

### 434.005 General requirements.

#### 434.005-6 Full production.

The Secretary or the USDA key executive designated by the Secretary for the specific program is the agency head for the purposes of FAR 34.005-6.

## PART 435—RESEARCH AND DEVELOPMENT CONTRACTING

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

### 435.010 Scientific and technical reports.

Research and development contracts shall contain a provision requiring that the contractor send copies of all scientific and technical reports to the National Technical Information Service at the address indicated in FAR 35.010(b). The release of research and development contract results to other government activities and to the private sector is subject to the provisions of FAR subpart 4.4.

[61 FR 53646, Oct. 15, 1996]

## PART 436—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

### Subpart 436.2—Special Aspects of Contracting for Construction

Sec.

- 436.201 Evaluation of contractor performance.
- 436.203 Government estimate of construction costs.
- 436.204 Disclosure of the magnitude of construction projects.
- 436.205 Statutory cost limitations.
- 436.209 Construction contracts with architect-engineer firms.
- 436.213 Special procedures for sealed bidding in construction contracting.
- 436.213-2 Presolicitation notices.

#### Subpart 436.3 [Reserved]

## 48 CFR Ch. 4 (10-1-02 Edition)

### Subpart 436.5—Contract Clauses

- 436.500 Scope of subpart.
- 436.571 Prohibition against the use of lead-based paint.
- 436.572 Use of premises.
- 436.573 Archeological or historic sites.
- 436.574 Control of erosion, sedimentation, and pollution.
- 436.575 Maximum workweek-construction schedule.
- 436.576 Samples and certificates.
- 436.577 Emergency response.
- 436.578 Standard specifications for construction of roads and bridges.
- 436.579 Opted timber sale road requirements.

### Subpart 436.6—Architect-Engineer Services

- 436.601 Policy.
- 436.601-3 Applicable contracting procedures.
- 436.602 Selection of firms for architect-engineer contracts.
- 436.602-1 Selection criteria.
- 436.602-2 Evaluation boards.
- 436.602-3 Evaluation board functions.
- 436.602-4 Selection authority.
- 436.602-5 Short selection process for contracts not to exceed the simplified acquisition threshold.
- 436.603 Collecting data on and appraising firms' qualifications.
- 436.604 Performance evaluation.
- 436.605 Government cost estimate for architect-engineer work.
- 436.609 Contract clauses.
- 436.609-1 Design within funding limitations.
- 436.670 Firms ineligible for award—construction.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

### Subpart 436.2—Special Aspects of Contracting for Construction

#### 436.201 Evaluation of contractor performance.

*Preparation of performance evaluation reports.* In addition to the requirements of FAR 36.201, performance evaluation reports shall be prepared for indefinite-delivery type contracts when either the contract maximum or the contracting activity's reasonable estimate of services to be ordered exceeds \$500,000.00. For these contracts, performance evaluation reports shall be prepared for each order at the time of final acceptance of the work under the order.

**436.203 Government estimate of construction costs.**

For acquisitions using sealed bid procedures, the contracting officer may disclose the overall amount of the Government's estimate of construction costs following identification of the responsive bid most advantageous to the Government; verification of that bid's price reasonableness; and verification of the bidder's responsibility. For acquisitions using other than sealed bid procedures (e.g., negotiation), the contracting officer may disclose the overall amount of the estimate after contract award.

**436.204 Disclosure of the magnitude of construction projects.**

In the case of indefinite-delivery type contracts, the reasonable estimate of work to be done or the maximum in the solicitation, both including all options, is to be used to select the price range. Contracting officers may elect to use both a price range for the base period of services and the total, inclusive of options, to best describe the magnitude of the solicitation.

**436.205 Statutory cost limitations.**

(a) When it appears that funds available for a project may be insufficient for all the desired features of construction, the contracting officer may provide in the solicitation for a base bid item covering the work generally as specified and for one or more additive or deductive bid items which progressively add or omit specified features of the work in a stated order of priority. In this case, the contracting officer shall insert the provision at 452.236-70, Additive or Deductive Items, in solicitations for construction.

(b) In the alternative to the process in paragraph (a) of this section, the contracting officer may use the policies and procedures found in FAR 17.2.

**436.209 Construction contracts with architect-engineer firms.**

The head of the contracting activity (HCA) is authorized to approve the award of a contract to construct a project, in whole or in part, to the firm (inclusive of its subsidiaries or affiliates) that designed the project.

**436.213 Special procedures for sealed bidding in construction contracting.****436.213-2 Presolicitation notices.**

The authority to waive a presolicitation notice is restricted to the HCA.

[63 FR 26995, May 15, 1998]

**Subpart 436.3 [Reserved]****Subpart 436.5—Contract Clauses****436.500 Scope of subpart.**

This subpart prescribes clauses for insertion in USDA solicitations and contracts for construction and for dismantling, demolition, or removal of improvements or structures. The contracting officer shall use the clauses as prescribed, in contracts that exceed the simplified acquisition threshold. The contracting officer may use the clauses if the contract amount is expected to be within the simplified acquisition threshold.

**436.571 Prohibition against the use of lead-based paint.**

The contracting officer shall insert the clause at 452.236-71, Prohibition Against the Use of Lead-Based Paint, in solicitations and contracts, if the work involves construction or rehabilitation (including dismantling, demolition, or removal) of residential structures. This clause may be used in contracts for other than residential structures.

**436.572 Use of premises.**

The contracting officer shall insert the clause at 452.236-72, Use of Premises, if the contractor will be permitted to use land or premises administered by USDA.

**436.573 Archeological or historic sites.**

The contracting officer shall insert the clause at 452.236-73, Archeological or Historic Sites, if the contractor will be working in an area where such sites may be found. Use of the clause is optional in service contracts for on-the-ground work, e.g. reforestation, silvicultural, land stabilization, or other agricultural-related projects.

**436.574****436.574 Control of erosion, sedimentation, and pollution.**

The contracting officer shall insert the clause at 452.236-74, Control of Erosion, Sedimentation and Pollution, if there is a need for applying environmental controls in the performance of work. Use of the clause is optional in service contracts for on-the-ground e.g., reforestation, silvicultural, land stabilization, or other agricultural-related projects.

**436.575 Maximum workweek-construction schedule.**

The contracting officer shall insert the clause at 452.236-75, Maximum Workweek-Construction Schedule, if the clause at FAR 52.236-15 is used and the contractor's work schedule is restricted by access to the facility or must be coordinated with the schedule of contract administration personnel.

[63 FR 26996, May 15, 1998]

**436.576 Samples and certificates.**

The contracting officer shall insert the clause at 452.236-76, Samples and Certificates, in all contracts.

**436.577 Emergency response.**

The contracting officer may insert the clause at 452.236-77, Emergency Response, in construction contracts awarded for the Forest Service.

**436.578 Standard specifications for construction of roads and bridges.**

The contracting officer shall insert the clause at 452.236-78, Forest Service Standard Specifications for Construction of Roads and Bridges, in construction contracts that incorporate the standard specifications.

**436.579 Opted timber sale road requirements.**

The contracting officer shall insert the clause at 452.236-79, Opted Timber Sale Road Requirements, in road construction contracts resulting from a timber sale turnback.

**48 CFR Ch. 4 (10-1-02 Edition)****Subpart 436.6—Architect-Engineer Service****436.601 Policy.****436.601-3 Applicable contracting procedures.**

The technical official's listing of areas where recovered materials cannot be used shall be referred to the contracting activity's official designated in accordance with FAR 23.404. A copy of the listing and of any approval or disapproval by that official is to be retained in the solicitation file.

**436.602 Selection of firms for architect-engineer contracts.****436.602-1 Selection criteria.**

The HCA is authorized to approve the use of design competition under the conditions in FAR 36.602-1(b).

**436.602-2 Evaluation boards.**

HCA's shall establish written procedures for providing permanent or ad hoc architect-engineer evaluation boards as prescribed in FAR 36.602-2. The procedures may provide for the appointment of private practitioners of architecture, engineering, or related professions when such action is determined by the HCA to be essential to meet the Government's minimum needs.

**436.602-3 Evaluation board functions.**

The selection report required in FAR 36.602-3(d) shall be prepared for the approval of the HCA. The HCA may authorize an acquisition official above the level of the contracting officer to execute the required approval.

**436.602-4 Selection authority.**

(a) The HCA shall serve as the selection authority in accordance with FAR 36.602-4. The HCA may authorize an acquisition official above the level of the contracting officer to serve as the selection authority.

(b) A copy of the final selection, inclusive of the supporting documents, shall be provided to the contracting officer and maintained in the solicitation file.

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### **436.602-5 Short selection process for contracts not to exceed the simplified acquisition threshold.**

The HCA may include either or both procedures in FAR 36.602-5 in the procedures for evaluation boards.

### **436.603 Collecting data on and appraising firms' qualifications.**

(a) HCA's which require architect-engineer services shall establish procedures to comply with the requirements of FAR 36.603.

(b) The procedures shall include a list of names, addresses, and phone numbers of offices or boards assigned to maintain architect-engineer qualification data files. The list shall be updated annually.

### **436.604 Performance evaluation.**

*Preparation of performance evaluation reports.* (a) In addition to the requirements of FAR 36.604, performance evaluation reports shall be prepared for indefinite-delivery type contracts when either the contract maximum or the contracting activities reasonable estimate of services to be ordered exceeds \$25,000.00. For these contracts, performance evaluation reports shall be prepared for each order at the time of final acceptance of the work under the order.

(b) The contracting officer may require a performance evaluation report on the work done by the architect-engineer after the completion of or during the construction of the designed project.

### **436.605 Government cost estimate for architect-engineer work.**

The contracting officer may release the Government's total cost estimate in accordance with FAR 36.605(b).

### **436.609 Contract clauses.**

#### **436.609-1 Design within funding limitations.**

(a) Should the head of the contracting activity appoint a designee to make the determination in FAR 36.609-1(c)(1), the appointment may be to one no lower than the official authorized to commit program funds for the work being acquired.

(b) The contracting officer, with the advice of appropriate technical representatives, may make the determination in FAR 36.609-1(c)(2) or (3).

(c) A copy of the determinations described in paragraph (b) and (c) of this section shall be maintained in the contract file.

### **436.670 Firms ineligible for award—construction.**

The contracting officer shall insert the clause at 452.236-80, Firms Ineligible For Award—Construction, in the contract for architect-engineering services except as provided in FAR 36.209 and AGAR 436.209.

## **PART 437—SERVICE CONTRACTING**

### **Subpart 437.1—Service Contracts—General**

Sec.

437.104 Personal services contracts.

437.110 Solicitation provisions and contract clauses.

### **Subpart 437.2—Advisory and Assistance Services**

437.203 Policy.

437.204 Guidelines for determining availability of personnel.

437.270 Solicitation provisions and contract clauses.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

### **Subpart 437.1—Service Contracts—General**

#### **437.104 Personal services contracts.**

USDA has the following specific statutory authorities to contract for personal services:

(a) Section 706(a) of the Organic Act of 1944 (7 U.S.C. 2225) authorizes contracting with persons or organizations on a temporary basis, without regard to civil service compensation classification standards in 5 U.S.C., Chapter 51 and Subchapter III of Chapter 53, *Provided:*

(1) That no expenditures shall be made unless specifically provided for in the applicable appropriation, and

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(2) Expenditures do not exceed any limitations prescribed in the appropriation.

(b) 7 U.S.C. 1627 authorizes the Secretary of Agriculture to contract with technically qualified persons, firms or organizations to perform research, inspection, classification, technical, or other special services, without regard to the civil-service laws, *Provided*: it is for a temporary basis and for a term not to exceed six months in any fiscal year.

#### 437.110 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert a clause substantially the same as the clause at 452.237-70, Loss Damage, Destruction or Repair, in contracts for equipment rental, whether the equipment is furnished with or without operator.

(b) The contracting officer shall insert a provision substantially the same as the clause at 452.237-71, Pre-Bid/Pre-Proposal Conference, in all solicitations if a conference with prospective offerors will be held prior to the submittal of bids or proposals.

(c) The contracting officer shall insert the provision at 452.237-73, Equipment Inspection visit, in solicitations if work is to be done on Government equipment and an offeror's inspection is encouraged for an understanding of the work to be performed prior to submittal of bids or proposals.

(d) The contracting officer shall insert a clause substantially the same as the clause at 452.237-74, Key Personnel, in contracts if contract performance requires identification of the contractor's key personnel.

(e) The contracting officer shall insert a clause substantially the same as the clause at 452.237-75, Restrictions Against Disclosure, in service contracts (including architect-engineer contracts) requiring restrictions on release of information developed or obtained in connection with performance of the contract.

#### 48 CFR Ch. 4 (10-1-02 Edition)

### Subpart 437.2—Advisory and Assistance Services

#### 437.203 Policy.

Contracting for advisory and assistance services is subject to the policy and procedures in Departmental Regulations (5000 series).

#### 437.204 Guidelines for determining availability of personnel.

The head of the contracting activity (HCA) is authorized to approve the use of non-Government evaluators in proposal evaluation. Each such decision shall be supported by a written determination in accordance with FAR 37.204.

[64 FR 52675, Sept. 30, 1999]

#### 437.270 Solicitation and contract clauses.

(a) The contracting officer shall insert a clause substantially the same as the clause at 452.237-76, Progress Reporting, in all contracts for advisory and assistance services. It may also be used in other service contracts.

(b) The contracting officer shall insert a clause substantially the same as the clause at 452.237-78, Contracts with Consulting Firms for Services, in solicitations and contracts for consulting services which prohibit follow-on contracts with the contracting firm.

### PARTS 438-440 [RESERVED]

### PART 441—ACQUISITION OF UTILITY SERVICES

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

#### Subpart 441.2—Acquiring Utility Services

#### 441.201 Policy.

As used in FAR 41.201(d)(2)(i) and 41.201(d)(3) the Federal agency head designee is the head of the contracting activity.

[61 FR 53646, Oct. 15, 1996]

## SUBCHAPTER G—CONTRACT MANAGEMENT

### PART 442—CONTRACT ADMINISTRATION

#### Subpart 442.1—Interagency Contract Administration and Audit Services

Sec.  
442.102 Procedures.

#### Subpart 442.15—Contractor Performance Information

442.1502 Policy.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

#### Subpart 442.1—Interagency Contract Administration and Audit Services

442.102 Procedures.

(a) The Office of Inspector General (OIG), Audit Division, has established a cross-servicing arrangement with the Defense Contract Audit Agency (DCAA) to provide contract audit services required by the FAR.

(b) All contract audit services required by contracting officers, except those which can be accomplished in-house, shall be coordinated through the cognizant OIG Regional Inspector General—Auditing (RIG-A). Cognizance is determined on the basis of the contractor's location. There is no charge for DCAA audit services coordinated through OIG.

(c) In order to ensure compliance with this requirement and to evaluate the results of audits, contracting officers shall forward to the RIG-A copies of all price negotiation memoranda prepared for contracts and contract modifications in excess of \$500,000.

#### Subpart 442.15—Contractor Performance Information

442.1502 Policy.

The Contractor Performance System (CPS), developed by the National Institutes of Health, is designated as the single USDA-wide system for maintain-

ing contractor performance/evaluation information. Use of the CPS is mandatory. As a minimum, the CPS shall be accessed for contractor past performance information as part of proposal evaluation in accordance with FAR subpart 15.3, and information resulting from the evaluation of contractor performance in accordance with FAR subpart 42.15 shall be entered into and maintained in this system. The CPS is a part of the USDA Acquisition Toolkit which can be accessed from the USDA Procurement Homepage at <http://www.usda.gov/procurement/>.

[66 FR 49867, Oct. 1, 2001]

### PARTS 443–444 [RESERVED]

### PART 445—GOVERNMENT PROPERTY

#### Subpart 445.3—Providing Government Property to Contractors

Sec.  
445.302 Providing facilities.  
445.302-1 Policy.

#### Subpart 445.4—Contractor Use and Rental of Government Property

445.403 Rental—Use and Charges clause.  
445.407 Non-Government use of plant equipment.

#### Subpart 445.6—Reporting, Redistribution and Disposal of Contractor Inventory

445.608 Screening of contracting inventory.  
445.608-6 Waiver of screening requirements.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

#### Subpart 445.3—Providing Government Property to Contractors

445.302 Providing facilities.

445.302-1 Policy.

Heads of contracting activities (HCA's) are authorized to make determinations for providing facilities to a contractor as prescribed in FAR 45.302-1(a)(4).

445.403

**Subpart 445.4—Contractor Use and Rental of Government Property**

**445.403 Rental—Use and Charges clause.**

HCA's are authorized to make determinations for charging rent on the basis of use under the Use and Charges clause in FAR 52.245-9 as prescribed in FAR 45.403(a).

**445.407 Non-Government use of plant equipment.**

Requests for non-Government use of plant equipment as prescribed in FAR 45.407 shall be submitted by the HCA to the Senior Procurement Executive (SPE) for approval.

**Subpart 445.6—Reporting, Redistribution and Disposal of Contractor Inventory**

**445.608 Screening of contractor inventory.**

**445.608-6 Waiver of screening requirements.**

Requests to waive screening requirements as prescribed in FAR 46.608-6 shall be submitted by the HCA to the SPE for approval.

**PART 446—QUALITY ASSURANCE**

AUTHORITY: 5 U.S.C. 30 and 40 U.S.C. 486(c).

**Subpart 446.3—Contract Clauses**

**446.370 Inspection and acceptance.**

The Contracting Officer shall insert the clause at 452.246-70, Inspection and Acceptance, in contracts where inspection and acceptance will be performed at the same location. The clause with its Alternate I is for use when inspection and acceptance will be performed at different locations.

[61 FR 53646, Oct. 15, 1996]

**PART 447—TRANSPORTATION**

**Subpart 447.3—Transportation in Supply Contracts**

Sec.  
447.302 Place of delivery—F.O.B. point.

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447.305 Solicitation provisions, contract clauses, and transportation factors.

447.305-10 Packing, marking, and consignment instructions.

AUTHORITY: 5 U.S.C. 30 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

**Subpart 447.3—Transportation in Supply Contracts**

**447.302 Place of delivery—F.O.B. point.**

The contracting officer shall insert a clause substantially the same as the clause at 452.247-70, Delivery Location, in supply contracts when it is necessary to specify delivery locations. If appropriate, the clause may reference an attachment which lists various delivery locations and other delivery details (e.g., quantities to be delivered to each location, etc.).

**447.305 Solicitation provisions, contract clauses, and transportation factors.**

**447.305-10 Packing, marking, and consignment instructions.**

(a) The contracting officer shall insert a clause substantially the same as the clause at 452.247-71, Marking Deliverables, in solicitations and contracts if special marking on deliverables (other than reports) are required.

(b) The contracting officer shall insert the clause at 452.247-72, Packing for Domestic Shipment, in contracts when item(s) will be delivered for immediate use to a destination in the continental United States; when the material specification or purchase description does not provide preservation, packaging, packing, and/or marking requirements; and/or when the requiring activity has not cited a specific specification for packaging.

(c) The contracting officer shall insert the clause at 452.247-73, Packing for Overseas Shipment, in contracts when item(s) will be delivered to an overseas destination for immediate use, the material specification does not specify packing levels, and the required activity has not specified such requirements.

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**PART 448 [RESERVED]**

**PART 449—TERMINATION OF CONTRACTS**

**Subpart 449.1—General Principles**

Sec.

449.106 Fraud or other criminal conduct.

449.111 Review of proposed settlements.

**Subpart 449.4—Termination for Default**

449.402 Termination of fixed-price contracts for default.

449.402-3 Procedure for default.

**Subpart 449.5—Contract Termination Clauses**

449.501 General.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

**Subpart 449.1—General Principles**

**449.106 Fraud or other criminal conduct.**

(a) If the contracting officer suspects fraud or other criminal conduct a written report documenting the facts shall be submitted by the head of the contracting activity (HCA) to the Office of Inspector General. Copies of documents or other information connected with the suspected fraud or criminal conduct shall be provided with the report. Concurrently, a copy of the report shall also be submitted to the Senior Procurement Executive.

(b) Depending on the findings of the Office of Inspector General, the HCA may initiate suspension or debarment action as prescribed in FAR part 9.4 and part 409.4.

**449.111 Review of proposed settlements.**

Proposed settlement agreements shall be reviewed and approved in accordance with contracting activity procedures.

**Subpart 449.4—Termination for Default**

**449.402 Termination of fixed-price contracts for default.**

**449.402-3 Procedure for default.**

In addition to the requirements of FAR 49.402-3(g), the notice of termination shall contain instructions regarding the disposition of any Government property in the possession of the contractor (see FAR 45.508-1) and, in the case of construction contracts, such materials, appliances, and structures as may be on the site of the construction work. The notice shall also contain a statement concerning the liability of the contractor or its surety for any liquidated damages (see FAR 49.402-7).

**Subpart 449.5—Contract Termination Clauses**

**449.501 General.**

Use of special purpose termination clauses pursuant to the authority of FAR 49.501 shall be approved in advance by the HCA.

**PART 450—EXTRAORDINARY CONTRACTUAL ACTIONS**

Sec.

450.001 Definitions.

**Subpart 450.1—General**

450.104 Reports.

**Subpart 450.2—Delegation of and Limitations on Exercise of Authority**

450.201 Delegation of authority.

**Subpart 450.3—Contract Adjustments**

450.303 Contract adjustment.

450.303-1 Contractor requests.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

**450.001 Definitions.**

*Approving authority*, as used in this part, means the Assistant Secretary for Administration.

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*Secretarial level*, as used in this part means the Assistant Secretary for Administration.

**Subpart 450.1—General**

**450.104 Reports.**

The Senior Procurement Executive shall prepare the report required by FAR 50.104.

**Subpart 450.2—Delegation of and Limitations on Exercise of Authority**

**450.201 Delegation of authority.**

The Assistant Secretary for Administration is authorized to approve all ac-

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tions under FAR part 50 except indemnification actions listed in FAR 50.201(d) which must be approved by the Secretary, without power of delegation.

**Subpart 450.3—Contract Adjustments**

**450.303 Contract adjustment.**

**450.303–1 Contractor requests.**

Contractor requests shall be submitted to the contracting officer.

**PART 451 [RESERVED]**

## SUBCHAPTER H—CLAUSES AND FORMS

### PART 452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

#### Subpart 452.2—Texts of Provisions and Clauses

Sec.  
452.204-70 Inquiries.  
452.211-70 Brand Name or Equal.  
452.211-71 Equal Products Offered.  
452.211-72 Statement of Work/Specifications.  
452.211-73 Attachments to Statement of Work/Specifications.  
452.211-74 Period of Performance.  
452.211-75 Effective Period of the Contract.  
452.214-70 Award by Lot.  
452.215-71 Instructions for the Preparation of Technical and Business Proposals.  
452.215-72 Amendments to Proposals.  
452.215-73 Post Award Conference.  
452.216-70 Award Fee.  
452.216-71 Base Fee and Award Fee Proposal.  
452.216-72 Evaluation Quantities—Indefinite-Delivery Contract.  
452.216-73 Minimum and Maximum Contract Amounts.  
452.216-74 Ceiling Price.  
452.216-75 Letter Contract.  
452.219-70 Size Standard and NAICS Code Information.  
452.224-70 Confidentiality of Information.  
452.226-70 Preferred Products.  
452.226-71 Set-aside for Mandatory Products.  
452.226-72 Price Preference for Award.  
452.228-70 Alternative Forms of Security.  
452.228-71 Insurance Coverage.  
452.232-70 Reimbursement for Bond Premiums—Fixed-Price Construction Contracts.  
452.236-70 Additive or Deductive Items.  
452.236-71 Prohibition Against the Use of Lead-Based Paint.  
452.236-72 Use of Premises.  
452.236-73 Archaeological or Historic Sites.  
452.236-74 Control of Erosion, Sedimentation, and Pollution.  
452.236-75 Maximum Workweek—Construction Schedule.  
452.236-76 Samples and Certificates.  
452.236-77 Emergency Response.  
452.236-78 Forest Service Standard Specifications for Construction of Roads and Bridges.  
452.236-79 Opted Timber Sale Road Requirements.  
452.236-80 Firms Ineligible for Award—Construction.  
452.237-70 Loss, Damage, Destruction or Repair.  
452.237-71 Pre-Bid/Pre-Proposal Conference.

452.237-73 Equipment Inspection Visit.  
452.237-74 Key Personnel.  
452.237-75 Restrictions Against Disclosure.  
452.237-76 Progress Reporting.  
452.237-78 Contracts with Consulting Firms for Services.  
452.246-70 Inspection and Acceptance.  
452.247-70 Delivery Location.  
452.247-71 Marking Deliverables.  
452.247-72 Packing for Domestic Shipment.  
452.247-73 Packing for Overseas Shipment.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

#### Subpart 452.2—Texts of Provisions and Clauses

##### 452.204-70 Inquiries.

As prescribed in 404.7001, insert the following provision:

INQUIRIES (FEB 1988)

Inquiries and all correspondence concerning this solicitation should be submitted in writing to the Contracting Officer. Offerors should contact only the Contracting Officer issuing the solicitation about any aspect of this requirement prior to contract award.

(End of provision)

##### 452.211-70 Brand Name or Equal.

As prescribed in 411.171, insert the following provision:

BRAND NAME OR EQUAL (NOV 1996)

(As used in this provision, the term “brand name” includes identification of products by make and model.)

(a) If items called for by this solicitation have been identified by a “brand name or equal” description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Offers of “equal” products (including products of the brand name manufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the offer (see clause 452.211-2) and are determined by the Contracting Officer to meet fully the salient characteristics requirements listed in the solicitation.

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(b) Unless the offeror clearly indicates in its offer that it is offering an "equal" product, the offeror shall be considered as offering the brand name product(s) referenced in the solicitation.

(c)(1) If the offeror proposes to furnish an "equal" product or products, the brand name(s), if any, and any other required information about the product(s) to be furnished shall be inserted in the space provided in the solicitation. The evaluation of offers and the determination as to the equality of the product(s) offered shall be the responsibility of the Government and will be based on information furnished by the offeror or identified in its offer as well as other information reasonably available to the contracting activity. Caution to offerors: The contracting activity is not responsible for locating or securing any information which is not identified in the offer and is not reasonably available to the contracting activity. Accordingly, to assure that sufficient information is available, the offeror must furnish as a part of its offer all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the contracting activity to (i) determine whether the product offered meets the salient characteristics requirement of the solicitation, and (ii) establish exactly what the offeror proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific reference to information previously furnished or to information otherwise available to the contracting activity.

(2) If an offeror proposes to modify a product so as to make it conform to the requirements of the solicitation, the offer shall include (i) a clear description of such proposed modifications and (ii) clearly marked descriptive material to show the proposed modifications.

(End of provision)

[61 FR 53646, Oct. 15, 1996. Redesignated at 63 FR 26996, May 15, 1998.]

**452.211-71 Equal Products Offered.**

As prescribed in 411.171, insert the following or substantially the same clause in solicitations seeking offers on a "brand name or equal" basis to allow offerors the opportunity to clearly identify the "equal" item being offered, and to illustrate how that item meets the salient characteristics requirements of the Government.

EQUAL PRODUCTS OFFERED (NOV 1996)

(a) Offerors proposing to furnish an "equal" product, in accordance with the

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"Brand Name or Equal" provision of this solicitation, shall provide the following information for each offered "equal" product:

Contract Line Item Number (if any): \_\_\_\_\_  
Brand Name or Equal Product identified by the Government in this solicitation: \_\_\_\_\_  
Offered Product Name: \_\_\_\_\_  
Catalog Description or part number: \_\_\_\_\_

Manufacturer's Name: \_\_\_\_\_  
Manufacturer's Address: \_\_\_\_\_

(b) Offerors are responsible for submitting all additional information on the above product necessary for the Contracting Officer to determine whether the product offered meets the "brand name or equal" product's salient characteristics listed in the solicitation.

(End of clause)

[61 FR 53646, Oct. 15, 1996. Redesignated at 63 FR 26996, May 15, 1998.]

**452.211-72 Statement of Work/Specifications.**

As prescribed in 411.171, insert the following clause:

STATEMENT OF WORK/SPECIFICATIONS (FEB 1988)

The Contractor shall furnish the necessary personnel, material, equipment, services and facilities (except as otherwise specified), to perform the Statement of Work/Specifications referenced in Section J.

(End of clause)

[61 FR 53646, Oct. 15, 1996. Redesignated at 63 FR 26996, May 15, 1998.]

**452.211-73 Attachments to Statement of Work/Specifications.**

As prescribed in 411.171, insert the following clause:

ATTACHMENTS TO STATEMENT OF WORK/SPECIFICATIONS (FEB 1988)

The attachments to the Statement of Work/Specifications listed in Section J are hereby made part of this solicitation and any resultant contract.

(End of clause)

[61 FR 53646, Oct. 15, 1996. Redesignated at 63 FR 26996, May 15, 1998.]

**452.211-74 Period of Performance.**

As prescribed in 411.404(a), insert the following clause:

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### PERIOD OF PERFORMANCE (FEB 1988)

The period of performance of this contract is from \_\_\_\_\_ through \_\_\_\_\_.\*

(End of clause)

\* *Contracting Officer shall insert the appropriate dates.*

[61 FR 53646, Oct. 15, 1996. Redesignated at 63 FR 26996, May 15, 1998.]

### 452.211-75 Effective Period of the Contract.

As prescribed in 411.404(b), insert the following clause:

#### EFFECTIVE PERIOD OF THE CONTRACT (FEB 1988)

The effective period of this contract is from \_\_\_\_\_ through \_\_\_\_\_.\*

(End of clause)

\* *Contracting Officer shall insert the appropriate dates.*

[61 FR 53646, Oct. 15, 1996. Redesignated at 63 FR 26996, May 15, 1998.]

### 452.214-70 Award by Lot.

As prescribed in 414.201-6, insert a provision substantially as follows:

#### AWARD BY LOT (NOV 1996)

Subject to the Section L provision FAR 52.214-10, "Contract Award—Sealed Bidding," award will generally be made to a single bidder on each entire lot. However, the Government reserves the right to award by item within any lot when the contracting officer determines that it is advantageous to the Government.

(End of provision)

### 452.215-71 Instructions for the Preparation of Technical and Business Proposals.

As prescribed in 415.209(a), insert a provision substantially as follows:

#### INSTRUCTIONS FOR THE PREPARATION OF TECHNICAL AND BUSINESS PROPOSALS (SEP 1999)

(a) *General Instructions.* Proposals submitted in response to this solicitation shall be furnished in the following format with the numbers of copies as specified below.

(1) The proposal must include a technical proposal and business proposal. Each of the parts shall be separate and complete so that evaluation of one may be accomplished independently from evaluation of the other. The technical proposal must not contain reference to cost; however, resource informa-

tion (such as data concerning labor hours and categories, materials, subcontracts, etc.) must be contained in the technical proposal so that the contractor's understanding of the statement of work may be evaluated.

(2) Offerors may, at their discretion, submit alternate proposals or proposals which deviate from the requirement; provided, that an offeror also submit a proposal for performance of the work as specified in the statement of work. Any "alternate" proposal may be considered if overall performance would be improved or not compromised, and if it is in the best interest of the Government. Alternate proposals, or deviations from any requirement of this RFP, must be clearly identified.

(3) The Government will evaluate proposals in accordance with the evaluation criteria set forth in Section M of this RFP.

(4) Offerors shall submit their proposal(s) in the following format and the quantities specified:

(a) \_\_\_\_\_ \* copies of the completed, signed offer (Sections A through K of the solicitation package)

(b) \_\_\_\_\_ \* copies of the technical proposal

(c) \_\_\_\_\_ \* copies of the business/cost proposal

(b) *Technical Proposal Instructions.* The technical proposal will be used to make an evaluation and arrive at a determination as to whether the proposal will meet the requirements of the Government. Therefore, the technical proposal must present sufficient information to reflect a thorough understanding of the requirements and a detailed, description of the techniques, procedures and program for achieving the objectives of the specifications/statement of work. Proposals which merely paraphrase the requirements of the Government's specifications/ statement of work, or use such phrases as "will comply" or "standard techniques will be employed" will be considered unacceptable and will not be considered further. As a minimum, the proposal must clearly provide the following:

(*Contracting Officer shall identify in this section the minimum information required to evaluate each technical evaluation factor listed in Section M.*)

(c) *Business Proposal Instructions.*

(1) Cost Proposal.

In addition to any other requirements for cost/pricing information required in clause FAR 52.215-20, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data (OCT 1997), the following is required:

(*Contracting Officer shall identify additional information required if appropriate.*)

(2) Business Proposal.

(a) Furnish financial statements for the last two years, including an interim statement for the current year, unless previously provided to the office issuing the RFP, in

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which case a statement as to when and where this information was provided may be furnished instead.

(b) Specify the financial capacity, working capital and other resources available to perform the contract without assistance from any outside source.

(c) Provide the name, location, and inter-company pricing policy for other divisions, subsidiaries, parent company, or affiliated companies that will perform work or furnish materials under this contract.

(End of provision)

*\*Contracting officer shall insert number of copies required.*

[61 FR 53646, Oct. 15, 1996, as amended at 64 FR 52675, Sept. 30, 1999]

**452.215-72 Amendments to Proposals.**

As prescribed in 415.209(b), insert the following provision:

AMENDMENTS TO PROPOSALS (FEB 1988)

Any changes to a proposal made by the offeror after its initial submittal shall be accomplished by replacement pages. Changes from the original page shall be indicated on the outside margin by vertical lines adjacent to the change. The offeror shall include the date of the amendment on the lower right corner of the changed pages.

(End of provision)

[61 FR 53646, Oct. 15, 1996, as amended at 64 FR 52675, Sept. 30, 1999]

**452.215-73 Post Award Conference.**

As prescribed in 415.570, insert a clause substantially as follows:

POST AWARD CONFERENCE (NOV 1996)

A post award conference with the successful offeror is required. It will be scheduled within \_\_\_\_\* days after the date of contract award. The conference will be held at: \_\_\_\_\*.

(End of clause)

*\*Contracting officer to insert number of days and location.*

[61 FR 53646, Oct. 15, 1996, as amended at 64 FR 52675, Sept. 30, 1999]

**452.216-70 Award Fee.**

As prescribed in 416.405, insert a clause substantially as follows:

**48 CFR Ch. 4 (10-1-02 Edition)**

AWARD FEE (FEB 1988)

The amount of award fee the Contractor earns, if any, is based on a subjective evaluation by the Government of the quality of the Contractor's performance in accordance with the award fee plan. The Government will determine the amount of award fee every \_\_\_\_\* months beginning with \_\_\_\_\*. The Fee Determination Official (FDO) will unilaterally determine the amount of award fee. The FDO's determination will be in writing to the Contractor and is not subject to the "Disputes" clause. The Government may unilaterally change the award fee plan at any time and will provide such changes in writing to the Contractor prior to the beginning of the applicable evaluation period. The Contractor may submit a voucher for the earned award fee. Available award fee not earned during one period does not carry over to subsequent periods.

(End of clause)

*\*Contracting Officer shall insert appropriate number of months.*

*\*\*Contracting Officer shall insert appropriate date.*

**452.216-71 Base Fee and Award Fee Proposal.**

As prescribed in 416.470, insert the following provision:

BASE FEE AND AWARD PROPOSAL (FEB 1988)

For the purpose of this solicitation, offerors shall propose a base fee of \_\_\_\_\* percent of the total estimated cost proposed. The award fee shall not exceed \_\_\_\_\* percent of the total estimated cost.

(End of provision)

*\*Contracting Officer shall insert appropriate percentages.*

**452.216-72 Evaluation Quantities—Indefinite-Delivery Contract.**

As prescribed in 416.506(a), insert a provision substantially as follows:

EVALUATION QUANTITIES—INDEFINITE-DELIVERY CONTRACT (FEB 1988)

To evaluate offers for award purposes, the Government will apply the offeror's proposed fixed-prices/rates to the estimated quantities included in the solicitation, and will add other direct costs if applicable.

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(End of provision)

Contract line item(s): \_\_\_\_\_ \* NAICS Code  
\_\_\_\_\_ \* Size Standard \_\_\_\_\_ \*

**452.216-73 Minimum and Maximum Contract Amounts.**

As prescribed in 416.506(b), insert the following clause:

MINIMUM AND MAXIMUM CONTRACT AMOUNTS  
(FEB 1988)

During the period specified in FAR clause 52.216-18, ORDERING, the Government shall place orders totaling a minimum of \_\_\_\_\_\*, but not in excess of \_\_\_\_\_\*.

(End of clause)

*\*Contracting Officer shall insert appropriate quantity or dollar amounts.*

**452.216-74 Ceiling Price.**

As prescribed in 416.670, insert the following clause:

CEILING PRICE (FEB 1988)

The ceiling price of this contract is \$\_\_\_\_\_\* . The Contractor shall not make expenditures or incur obligations in the performance of this contract which exceed the ceiling price specified herein, except at the Contractor's own risk.

(End of clause)

*\*Contracting Officer shall insert appropriate dollar amount.*

**452.216-75 Letter Contract.**

As prescribed in 416.603-4, insert the following clause:

LETTER CONTRACT (FEB 1988)

This contract replaces letter contract No. \_\_\_\_\_\* dated \_\_\_\_\_\* and all amendments thereto.

(End of clause)

*\*Contracting Officer shall insert number and date.*

**452.219-70 Size Standard and NAICS Code Information.**

As prescribed in 419.508, insert the following provision:

SIZE STANDARD AND NAICS CODE  
INFORMATION (SEP 2001)

The North American Industrial Classification System Code(s) and business size standard(s) describing the products and/or services to be acquired under this solicitation are listed below:

(End of provision)

*\*Contracting Officer shall insert the appropriate data for each contract line item in the solicitation. The data entry line may be duplicated as required to describe all of the contract line items or sub-items.*

[61 FR 53646, Oct. 15, 1996, as amended at 66 FR 49317, Sept. 27, 2001]

**452.224-70 Confidentiality of Information.**

As prescribed in 424.104, insert a clause substantially as follows:

CONFIDENTIALITY OF INFORMATION (FEB 1988)

(a) Confidential information, as used in this clause, means—

(1) information or data of a personal nature, proprietary about an individual, or (2) information or data submitted by or pertaining to an organization.

(b) In addition to the types of confidential information described in (a)(1) and (2) above, information which might require special consideration with regard to the timing of its disclosure may derive from studies or research, during which public disclosure of primarily invalidated findings could create an erroneous conclusion which might threaten public health or safety if acted upon.

(c) The Contracting Officer and the Contractor may, by mutual consent, identify elsewhere in this contract specific information and/or categories of information which the Government will furnish to the Contractor or that the Contractor is expected to generate which is confidential. Similarly, the Contracting Officer and the Contractor may, by mutual consent, identify such confidential information from time to time during the performance of the contract. Failure to agree will be settled pursuant to the "Disputes" clause.

(d) If it is established that information to be utilized under this contract is subject to the Privacy Act, the Contractor will follow the rules and procedures of disclosure set forth in the Privacy Act of 1974, 5 U.S.C. 552a, and implementing regulations and policies, with respect to systems of records determined to be subject to the Privacy Act.

(e) Confidential information, as defined in (a)(1) and (2) above, shall not be disclosed without the prior written consent of the individual, institution or organization.

(f) Written advance notice of at least 45 days will be provided to the Contracting Officer of the Contractor's intent to release findings of studies or research, which have the possibility of adverse effects on the public or the Federal agency, as described in (b) above.

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If the Contracting Officer does not pose any objections in writing within the 45 day period, the Contractor may proceed with disclosure. Disagreements not resolved by the Contractor and Contracting Officer will be settled pursuant to the "Disputes" clause.

(g) Whenever the Contractor is uncertain with regard to the proper handling of material under the contract, or if the material in question is subject to the Privacy Act or is confidential information subject to the provisions of this clause, the Contractor shall obtain a written determination from the Contracting Officer prior to any release, disclosure, dissemination, or publication.

(h) The provisions of paragraph (e) of this clause shall not apply when the information is subject to conflicting or overlapping provisions in other Federal, State or local laws.

(End of clause)

**452.226-70 Preferred Products.**

As prescribed in 426.7009(a), include the following provision:

PREFERRED PRODUCTS (MAY 1998)

Specific products required by this solicitation and resulting contract are subject to a price or a technical preference. A list of these products, the specific preference, and the manufacturer or producer is included below.

Contract Line Item (or other location in this solicitation): \* \_\_\_\_\_

Product: \_\_\_\_\_

Manufacturer/Producer: \* \_\_\_\_\_

Preference: \* \_\_\_\_\_

(End of provision)

*\* For each line item to which a preference applies, Contracting Officer shall insert appropriate information.*

[63 FR 26998, May 15, 1998]

**452.226-71 Set-aside for Mandatory Products.**

As prescribed in 426.7009(b), include the following provision:

SET-ASIDE FOR MANDATORY PRODUCTS (MAY 1998)

Specific products are set-aside as mandatory products. These are separately listed in the schedule, specifications, or performance work statement. Specific terms governing the set-aside, and source information for the products are shown below.

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Contract Line Item (or other location in this solicitation): \* \_\_\_\_\_

Product: \* \_\_\_\_\_

Manufacturer/Producer: \* \_\_\_\_\_

Set-Aside Terms: \* \_\_\_\_\_

(End of provision)

*\* For each line item to which a set-aside applies, Contracting Officer shall insert appropriate information.*

[63 FR 26998, May 15, 1998]

**452.226-72 Price Preference for Award.**

As prescribed in 426.7009(c), include the following provision:

PRICE PREFERENCE FOR AWARD (MAY 1998)

Certain products listed in the schedule of this solicitation are subject to a price preference. A list of these products, the amount of the preference, and source information is included in provision 452.226-70, Preferred Products. For purposes of evaluation of offers only, the offered prices for these products will be reduced by the price preference listed in the solicitation.

(End of provision)

[63 FR 26998, May 15, 1998]

**452.228-70 Alternative Forms of Security.**

As prescribed in 428.204-2, insert the following provision:

ALTERNATIVE FORMS OF SECURITY (NOV 1996)

If furnished as security, money orders, drafts, cashiers checks, or certified checks shall be drawn payable to: \_\_\_\_\_\*.

(End of provision)

*\* Contracting Officer shall insert the name of the USDA contracting activity.*

**452.228-71 Insurance Coverage.**

As prescribed in 428.310, insert the following clause:

INSURANCE COVERAGE (NOV 1996)

Pursuant to FAR clause 52.228-5, Insurance-Work on a Government Installation, the Contractor will be required to present evidence to show, as a minimum, the

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amounts of insurance coverage indicated below:

(a) Workers Compensation and Employer's Liability. The Contractor is required to comply with applicable Federal and State workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with a Contractor's commercial operations that it would not be practical to require this coverage. Employer's liability coverage of at least \$100,000 shall be required, except in States with exclusive or monopolistic funds that do not permit worker's compensation to be written by private carriers.

(b) General Liability. The Contractor shall have bodily injury liability insurance coverage written on a comprehensive form of policy of at least \$500,000 per occurrence.

(c) Automobile Liability. The Contractor shall have automobile liability insurance written on a comprehensive form of policy. The policy shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing the contract. Policies covering automobiles operated in the United States shall provide coverage of at least \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage or loss.

(d) Aircraft Public and Passenger Liability. When aircraft are used in connection with performing the contract, the Contractor shall have aircraft public and passenger liability insurance. Coverage shall be at least \$200,000 per person and \$500,000 per occurrence for bodily injury, other than passenger injury. Coverage for passenger injury shall be at least \$200,000 multiplied by the number of seats or passengers, whichever is greater.

(End of clause)

*Alternate I* (NOV 1996). As prescribed in 428.310, substitute the following paragraph (b), when additionally the contractor must have property damage liability coverage:

(b) General Liability. (1) The Contractor shall have bodily injury liability coverage written on a comprehensive form of policy of at least \$500,000 per occurrence.

(2) The Contractor shall have property damage liability insurance shall be required in the amount of \_\_\_\_\_\* per occurrence.

*\*Contracting Officer shall insert amount required.*

### 452.232-70 Reimbursement for Bond Premiums—Fixed-Price Construction Contracts.

As prescribed in 432.111, insert the following clause:

REIMBURSEMENT FOR BOND PREMIUMS—FIXED-PRICE CONSTRUCTION CONTRACTS (NOV 1996)

The Contract Price includes the total amount for premiums that the Contractor attributes to the furnishing of performance and payment bonds required by the contract. Reimbursement for bond premiums under the clause at FAR 52.232-5, Payments Under Fixed-Price Construction Contract, shall not cover any amount therefor not included in the contract price.

(End of clause)

[61 FR 53646, Oct. 15, 1996. Redesignated at 63 FR 26996, May 15, 1998.]

### 452.236-70 Additive or Deductive Items.

As prescribed in 436.205, insert the following provision:

ADDITIVE OR DEDUCTIVE ITEMS (FEB 1988)

The low bidder for purposes of award shall be the conforming responsible bidder offering the low aggregate amount for the first or base bid item, plus or minus (in the order of priority listed in the schedule) those additive or deductive bid items providing the most features of the work within the funds determined by the government to be available before bids are opened. If addition of another bid item in the listed order of priority would make the award exceed such funds for all bidders, it shall be skipped and the next subsequent additive bid item in a lower amount shall be added if award therein can be made within such funds. For example, when the amount available is \$100,000 and a bidder's base bid and four successive additives are \$85,000, \$10,000, \$8,000, \$6,000, and \$4,000, the aggregate amount of the bid for purposes of award would be \$99,000 for the base bid plus the first and fourth additives, the second and third additives being skipped because of each of them would cause the aggregate bid to exceed \$100,000. In any case all bids shall be evaluated on the basis of the same additive or deductive bid items, determined as above provided. The listed order of priority need be followed only for determining the low bidder. After determination of the low bidder as stated, award in the best interests of the Government may be made on the selected first or base bid item and any combination of additive or deductive items for which funds are determined to be available at the time of the award, provided that

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award on such combination of bid items does not exceed the amount offered by any other conforming responsible bidder for the same combination of bid items.

(End of clause)

**452.236-71 Prohibition Against the Use of Lead-Based Paint.**

As prescribed in 436.571, insert the following clause:

PROHIBITION AGAINST THE USE OF LEAD-BASED PAINT (NOV 1996)

Neither the Contractor nor any subcontractor performing under this contract shall use paints containing more than 0.06 of 1 percent lead by weight (calculated as lead metal) in the total nonvolatile content of the paint, or the equivalent measure of lead in the dried film of paint already applied, or both.

(End of clause)

**452.236-72 Use of Premises.**

As prescribed in 436.572, insert the following clause:

USE OF PREMISES (NOV 1996)

(a) Before any camp, quarry, borrow pit, storage, detour, or bypass site, other than shown on the drawings, is opened or operated on USDA land or lands administered by the USDA, the Contractor shall obtain written permission from the Contracting Officer. A camp is interpreted to include a campsite or trailer parking area of any employee working on the project for the Contractor.

(b) Unless excepted elsewhere in the contract, the Contractor shall (i) provide and maintain sanitation facilities for the work force at the site and (ii) dispose of solid waste in accordance with applicable Federal, State and local regulations.

(End of clause)

**452.236-73 Archaeological or Historic Sites.**

As prescribed in 436.573, insert the following clause:

ARCHAEOLOGICAL OR HISTORIC SITES (FEB 1988)

If a previously unidentified archaeological or historic site(s) is encountered, the Contractor shall discontinue work in the general area of the site(s) and notify the Contracting Officer immediately.

**48 CFR Ch. 4 (10-1-02 Edition)**

(End of clause)

**452.236-74 Control of Erosion, Sedimentation, and Pollution.**

As prescribed in 436.574, insert the following clause:

CONTROL OF EROSION, SEDIMENTATION, AND POLLUTION (NOV 1996)

(a) Operations shall be scheduled and conducted to minimize erosion of soils and to prevent silting and muddying of streams, rivers, irrigation systems, and impoundments (lakes, reservoirs, etc.).

(b) Pollutants such as fuels, lubricants, bitumens, raw sewage, and other harmful materials shall not be discharged on the ground; into or nearby rivers, streams, or impoundments; or into natural or man-made channels. Wash water or waste from concrete or aggregate operations shall not be allowed to enter live streams prior to treatment by filtration, settling, or other means sufficient to reduce the sediment content to not more than that of the stream into which it is discharged.

(c) Mechanized equipment shall not be operated in flowing streams without written approval by the Contracting Officer.

(End of clause)

**452.236-75 Maximum Workweek—Construction Schedule.**

As prescribed in 436.575, insert the following clause:

MAXIMUM WORKWEEK—CONSTRUCTION SCHEDULE (NOV 1996)

Within \_\_\_ calendar days after receipt of a written request from the Contracting Officer, the Contractor must submit the following in writing for approval:

(a) A schedule as required by FAR clause 52.236-15, Schedules for Construction Contracts, and

(b) The hours (including the daily starting and stopping times) and days of the week the Contractor proposes to carry out the work.

The maximum workweek that will be approved is \_\_\_\*.

(End of clause)

*\*Contracting Officer shall insert appropriate number of days and hours and/or days.*

**452.236-76 Samples and Certificates.**

As prescribed in 436.576, insert the following clause:

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### SAMPLES AND CERTIFICATES (FEB 1988)

When required by the specifications or the Contracting Officer, samples, certificates, and test data shall be submitted after award of the contract, prepaid, in time for proper action by the Contracting Officer or his/her designated representative. Certificates and test data shall be submitted in triplicate to show compliance with materials and construction specified in the contract performance requirements.

Samples shall be submitted in duplicate by the Contractor, except as otherwise specified, to show compliance with the contract requirements. Materials or equipment for which samples, certifications or test data are required shall not be used in the work until approved in writing by the Contracting Officer.

(End of clause)

### 452.236-77 Emergency Response.

As prescribed in 436.577, the following clause may be used in Forest Service construction contracts:

#### EMERGENCY RESPONSE (NOV 1996)

(a) *Contractor's Responsibility for Fire Fighting.* (1) The Contractor, under the provisions of FAR clause 52.236-9, Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements, shall immediately extinguish all fires on the work site other than those fires in use as a part of the work.

(2) The Contractor may be held liable for all damages and for all costs incurred by the Government for labor, subsistence, equipment, supplies, and transportation deemed necessary to control or suppress a fire set or caused by the Contractor or the Contractor's agents or employees.

(b) *Contractor's Responsibility for Notification in Case of Fire.* The Contractor shall immediately notify the Government of any fires sighted on or in the vicinity of the work site.

(c) *Contractor's Responsibility for Responding to Emergencies.* When directed by the Contracting Officer, the Contractor shall allow the Government to temporarily use employees and equipment from the work site for emergency work (anticipated to be restricted to fire fighting). An equitable adjustment for the temporary use of employees and equipment will be made under the Changes clause, FAR 52.243-4.

(End of clause)

### 452.236-78 Forest Service Standard Specifications for Construction of Roads and Bridges.

As prescribed in 436.578, insert the following clause:

### FOREST SERVICE STANDARD SPECIFICATIONS FOR CONSTRUCTION OF ROADS AND BRIDGES (NOV 1996)

The Forest Service Standard Specifications for Construction of Roads and Bridges, \_\_\_\_\_ 199 are included by reference. The requirements contained in these specifications are hereby made a part of this solicitation and any resultant contract.

(End of clause)

### 452.236-79 Opted Timber Sale Road Requirements.

As prescribed in 436.579, insert the following clause:

#### OPTED TIMBER SALE ROAD REQUIREMENTS (NOV 1996)

This contract is for the construction of timber sale road(s) which a timber purchaser has opted to have the Government construct. The Government is obligated to make these roads available to the timber purchaser by \_\_\_\_\*. Failure to make these roads available by this date could result in Government liability for delay to the timber purchaser for which the Contractor might become liable should the Contractor fail to complete this contract within the specified and allowed contract time.

(End of clause)

\* *Contracting Officer shall insert appropriate date.*

### 452.236-80 Firms Ineligible for Award—Construction.

As prescribed in 436.670, insert the following clause:

#### FIRMS INELIGIBLE FOR AWARD—CONSTRUCTION (NOV 1996)

The firm(s) and its subsidiaries or affiliates signatory to this contract shall be ineligible for award of any construction contract resulting from the design work performed under this contract.

(End of clause)

### 452.237-70 Loss, Damage, Destruction or Repair.

(a) As prescribed in 437.110(a), insert a clause substantially as follows:

#### LOSS, DAMAGE, DESTRUCTION OR REPAIR (FEB 1988)

(a) For equipment furnished under this contract without operator, the Government will assume liability for any loss, damage or destruction of such equipment, not to exceed

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a total of \$ \_\_\_\_ \* except that no reimbursement will be made for loss, damage or destruction due to (1) ordinary wear or tear, (2) mechanical failure, or (3) the fault or negligence of the Contractor or the Contractor's agents or employees.

(b) For equipment furnished under this contract with operator, the Government shall not be liable for any loss, damage or destruction of such equipment, except for loss, damage or destruction resulting from the negligent or wrongful act(s) of Government employee(s) while acting within the scope of their employment.

(c) All repairs to equipment furnished under this contract shall be made by the Contractor and reimbursement, if any, shall be determined in accordance with (a) or (b) above. Repairs shall be made promptly and equipment returned to use within \_\_\_\_ \*\* hours. In lieu of repairing equipment, the Contractor may furnish similar replacement equipment within the time specified. The Contractor may authorize the Government to make repairs upon the request of the Contracting Officer. In such case, the Contractor will be billed for labor and parts costs.

(End of clause)

*\* Contracting Officer shall insert amount available in current funds to cover potential liability.*

*\*\* Contracting Officer shall insert appropriate number of hours.*

**452.237-71 Pre-Bid/Pre-Proposal Conference.**

As prescribed in 437.110(b), insert a provision substantially as follows:

PRE-BID/PRE-PROPOSAL CONFERENCE (FEB 1988)

(a) The Government is planning a pre-bid/pre-proposal conference, during which potential offerors may obtain a better understanding of the work required.

(b) Offerors are encouraged to submit all questions in writing at least five (5) days prior to the conference. Questions will be considered at any time prior to or during the conference; however, offerors will be asked to confirm verbal questions in writing. Subsequent to the conference, an amendment to the solicitation containing an abstract of the questions and answers, and a list of attendees, will be disseminated.

(c) In order to facilitate conference preparations, it is requested that the person named on the Standard Form 33 of this solicitation be contacted and advised of the number of persons who will attend.

(d) The Government assumes no responsibility for any expense incurred by an offeror prior to contract award.

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(e) Offerors are cautioned that, notwithstanding any remarks or clarifications given at the conference, all terms and conditions of the solicitation remain unchanged unless they are changed by amendment to the solicitation. If the answers to conference questions, or any solicitation amendment, create ambiguities, it is the responsibility of the offeror to seek clarification prior to submitting an offer.

(f) The conference will be held:

Date: \_\_\_\_\_  
Time: \_\_\_\_\_  
Location: \_\_\_\_\_

(End of clause)

**452.237-73 Equipment Inspection Visit.**

As prescribed in 437.110(c), insert the following provision:

EQUIPMENT INSPECTION VISIT (FEB 1988)

Offerors are urged and expected to inspect the equipment on which maintenance or repairs are to be performed and to satisfy themselves regarding all conditions that may affect the cost of contract performance, to the extent that the information is reasonably obtainable. In no event shall failure to inspect the equipment constitute grounds for a claim after contract award.

Offerors are invited to inspect the \_\_\_\_ \* at \_\_\_\_ \* by telephoning \_\_\_\_ \* on \_\_\_\_ \* for an appointment.

(End of clause)

*\* Contracting Officer shall insert appropriate data.*

**452.237-74 Key Personnel.**

As prescribed in 437.110(d), insert a clause substantially as follows:

KEY PERSONNEL (FEB 1988)

(a) The Contractor shall assign to this contract the following key personnel: \_\_\_\_\_

(b) During the first ninety (90) days of performance, the Contractor shall make no substitutions of key personnel unless the substitution is necessitated by illness, death, or termination of employment. The Contractor shall notify the Contracting Officer within 15 calendar days after the occurrence of any of these events and provide the information required by paragraph (c) below. After the initial 90-day period, the Contractor shall submit the information required by paragraph (c) to the Contracting Officer at least 15 days prior to making any permanent substitutions.

(c) The Contractor shall provide a detailed explanation of the circumstances necessitating the proposed substitutions, complete

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resumes for the proposed substitutes, and any additional information requested by the Contracting Officer. Proposed substitutes should have comparable qualifications to those of the persons being replaced. The Contracting Officer will notify the Contractor within 15 calendar days after receipt of all required information of the decision on substitutions. The contract will be modified to reflect any approved changes of key personnel.

(End of clause)

**452.237-75 Restrictions Against Disclosure.**

As prescribed in 437.110(e), insert a clause substantially as follows:

**RESTRICTIONS AGAINST DISCLOSURE (FEB 1988)**

(a) The Contractor agrees, in the performance of this contract, to keep all information contained in source documents or other media furnished by the Government in the strictest confidence. The Contractor also agrees not to publish or otherwise divulge such information in whole or in part in any manner or form, or to authorize or permit others to do so, taking such reasonable measures as are necessary to restrict access to such information while in the Contractor's possession, to those employees needing such information to perform the work provided herein, i.e., on a "need to know" basis. The Contractor agrees to immediately notify in writing, the Contracting Officer, named herein, in the event that the Contractor determines or has reason to suspect a breach of this requirement.

(b) The Contractor agrees not to disclose any information concerning the work under this contract to any persons or individual unless prior written approval is obtained from the Contracting Officer. The Contractor agrees to insert the substance of this clause in any consultant agreement or subcontract hereunder.

(End of clause)

**452.237-76 Progress Reporting.**

As prescribed in 437.270(a), insert a clause substantially as follows:

**PROGRESS REPORTING (FEB 1988)**

The Contractor shall submit a progress report \_\_\_\_\_\*, covering work accomplished during that period of the contract performance. The progress report shall be brief and factual and shall be prepared in accordance with the following format:

- (a) A cover page containing:
  - (1) Contract number and title;

(2) Type of report, sequence number of report, and period of performance being reported;

- (3) Contractor's name and address;
- (4) Author(s); and
- (5) Date of report.

(b) Section I—An introduction covering the purpose and scope of the contract effort. This shall be limited to one paragraph in all but the first and final month's narrative.

(c) Section II—A description of overall progress plus a separate description of each task or other logical segment of work on which effort was expended during the report period. The description shall include pertinent data and/or graphs in sufficient detail to explain any significant results achieved.

(d) Section III—A description of current technical or substantive performance, and any problem(s) which may impede performance along with proposed corrective action.

(e) Section IV—A planning schedule shall be included with the first progress report for all assigned tasks required under the contract, along with the estimated starting and completion dates for each task. The planning schedule shall be updated and submitted with each subsequent technical progress report, including an explanation of any difference between actual progress and planned progress, why the differences have occurred, and—if behind planned progress—what corrective steps are planned.

(f) Section V—If applicable, financial information shall be submitted for each major task or line item cost.

Data shall include:

- (1) The total estimated cost budgeted (fee excluded).
- (2) The estimated cost expended during the current reporting period.
- (3) Identification of direct labor hours of prime contractor and subcontractor(s) and/or consultant(s), if applicable.
- (4) Total project to-date expenditures.
- (5) Total remaining funds.

(End of clause)

*\*Contracting Officer shall insert frequency of reporting requirement.*

**452.237-78 Contracts with Consulting Firms for Services.**

As prescribed in 437.270(b), insert a clause substantially as follows:

**CONTRACTS WITH CONSULTING FIRMS FOR SERVICES (FEB 1988)**

Offerors are specifically cautioned that any firm(s) receiving a contract award to provide the services described herein will be prohibited from competing for or receiving a follow-on contract to perform \_\_\_\_.\*

**452.246-70**

(End of clause)

*\*Contracting Officer shall insert the appropriate information.*

**452.246-70 Inspection and Acceptance.**

As prescribed in 446.370, insert the following clause:

INSPECTION AND ACCEPTANCE (FEB 1988)

(a) The Contracting Officer or the Contracting Officer's duly authorized representative will inspect and accept the supplies and/or services to be provided under this contract.

(b) Inspection and acceptance will be performed at: \_\_\_\_.\*

(End of clause)

*\*Contracting Officer shall insert appropriate identifying data.*

*Alternate I (FEB 1988).* As prescribed in 446.370, substitute a paragraph (b) and add a paragraph (c):

(b) Inspection will be performed at: \_\_\_\_.\*

(c) Acceptance will be performed at: \_\_\_\_.\*

(End of clause)

**452.247-70 Delivery Location.**

As prescribed in 447.302, insert a clause substantially as follows:

DELIVERY LOCATION (FEB 1988)

Shipment of deliverable items, other than reports, shall be to: \_\_\_\_.\*

(End of clause)

*\*Contracting Officer shall insert appropriate identifying data.*

**452.247-71 Marking Deliverables.**

As prescribed in 447.305-10(a), insert a clause substantially as follows:

MARKING DELIVERABLES (FEB 1988)

(a) The contract number shall be placed on or adjacent to all exterior mailing or shipping labels of deliverable items called for by the contract.

(b) Mark deliverables, except reports, for: \_\_\_\_.\*

(End of clause)

*\*Contracting Officer shall insert the appropriate information.*

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**452.247-72 Packing for Domestic Shipment.**

As prescribed in 447.305-10(b), insert the following clause:

PACKING FOR DOMESTIC SHIPMENT (FEB 1988)

Material shall be packed for shipment in such a manner that will insure acceptance by common carriers and safe delivery at destination. Containers and closures shall comply with the Interstate Commerce Commission regulations, Uniform Freight Classification Rules, or regulations of other carriers as applicable to the mode of transportation.

(End of clause)

**452.247-73 Packing for Overseas Shipment.**

As prescribed in 447.305-10(c), insert the following clause:

PACKING FOR OVERSEAS SHIPMENT (FEB 1988)

Supplies shall be packed for overseas shipment in accordance with the best commercial export practice suitable for water movement to arrive undamaged at ultimate destination.

(End of clause)

**PART 453—FORMS**

Sec.

453.000 Scope of part.

**Subpart 453.1—General**

453.103 Exceptions.

453.108 Recommendations concerning forms.

**Subpart 453.2—Prescription of Forms**

453.200 Scope of subpart.

453.213 Simplified Acquisition and other simplified purchase procedures (AD-838).

453.270 Request for contract action (AD-700).

**Subpart 453.3—Illustrations of Forms**

453.300 Scope of subpart.

453.303 Agency forms.

453.303-700 Procurement Request (AD-700).

453.303-838 Purchase Order (AD-838).

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

**453.000 Scope of part.**

This part:

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(a) Prescribes USDA (AD) forms for use in acquisition,

(b) Contains requirements and information generally applicable to AD forms and forms prescribed by FAR part 53, and

(c) Illustrates AD forms.

### Subpart 453.1—General

#### 453.103 Exceptions.

(a) The contracting officer shall submit a request for exceptions to forms prescribed in FAR part 53 through the head of the contracting activity (HCA) to the Senior Procurement Executive (SPE) for referral to the GSA.

(b) Requests for exceptions to AD forms prescribed in part 453 shall be handled as individual or class deviations, as appropriate (see subpart 401.4).

#### 453.108 Recommendations concerning forms.

Contracting officers shall submit recommendations for new forms or to revise, eliminate, or consolidate forms prescribed by FAR part 53 and part 453 through the HCA to the SPE.

### Subpart 453.2—Prescription of Forms

#### 453.200 Scope of subpart.

This subpart prescribes USDA (AD) forms for use in acquisition. Consistent with the approach used in FAR subpart 53.2, this subpart is arranged by subject matter, in the same order as, and

keyed to, the parts of the AGAR in which the form usage requirements are addressed.

#### 453.213 Simplified Acquisition and other simplified purchase procedures (AD-838).

Form AD-838, *Purchase Order*, is prescribed for use as a Simplified Acquisition Procedure/delivery order/task order document in lieu of OF 347 and OF 348 (see 413.307).

[61 FR 53646, Oct. 15, 1996, as amended at 64 FR 45895, Aug. 23, 1999]

#### 453.270 Request for contract action (AD-700).

Form AD-700, *Procurement Request*, may be used as a contract requisition document by contracting activities in USDA.

### Subpart 453.3—Illustrations of Forms

#### 453.300 Scope of subpart.

This subpart contains illustrations of USDA (AD) forms for use in acquisitions. Forms are not illustrated in the FEDERAL REGISTER or Code of Federal Regulations. Individual copies may be obtained from any USDA contracting activity or the office of the SPE.

#### 453.303 Agency forms.

#### 453.303-700 Procurement Request (AD-700).

#### 453.303-838 Purchase Order (AD-838).