

### 23.405

products from “designated countries,” as defined in 25.003, provided that those products—

(1) Meet the criteria for the definition of biobased product, except that the products need not meet the requirement that renewable agricultural materials or forestry materials in such product must be domestic; and

(2) Otherwise meet all requirements for participation in the preference program.

[72 FR 63043, Nov. 7, 2007, as amended at 77 FR 23367, Apr. 18, 2012]

### 23.405 Procedures

(a) *Designated items and procurement guidelines*—(1) *Recovered Materials*. Contracting officers should refer to EPA’s list of EPA-designated items (available via the Internet at <http://www.epa.gov/cpg/products.htm> and to their agencies’ affirmative procurement program when purchasing products that contain recovered material, or services that could include the use of products that contain recovered material.

(2) *Biobased products*. Contracting officers should refer to USDA’s list of USDA-designated items (available through the Internet at <http://www.biopreferred.gov>) and to their agencies’ affirmative procurement program when purchasing supplies that contain biobased material or when purchasing services that could include supplies that contain biobased material.

(3) When acquiring recovered material or biobased products, the contracting officer may request information or data on such products, including recycled or biobased content or related standards of the products (see 11.302(c)).

(b) *Procurement exemptions*. (1) Once an item has been designated by either EPA or USDA, agencies shall purchase conforming products unless an exemption applies (see 23.404(b)).

(2) When an exemption is used for an EPA-designated item or the procurement of a product containing recovered material does not meet or exceed the EPA recovered material content guidelines, the contracting officer shall place a written justification in the contract file.

(c) *Program priorities*. When both the USDA-designated item and the EPA-

### 48 CFR Ch. 1 (10–1–13 Edition)

designated item will be used for the same purposes, and both meet the agency’s needs, the agency shall purchase the EPA-designated item.

[72 FR 63043, Nov. 7, 2007, as amended at 73 FR 21790, Apr. 22, 2008; 77 FR 23367, Apr. 18, 2012]

### 23.406 Solicitation provisions and contract clauses.

(a) Insert the provision at 52.223–1, Biobased Product Certification, in solicitations that—

(1) Require the delivery or specify the use of USDA-designated items; or

(2) Include the clause at 52.223–2.

(b) Insert the clause at 52.223–2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts, in service or construction solicitations and contracts, unless the contract will not involve the use of USDA-designated items at <http://www.biopreferred.gov> or 7 CFR part 3201.

(c) Except for the acquisition of commercially available off-the-shelf items, insert the provision at 52.223–4, Recovered Material Certification, in solicitations that—

(1) Require the delivery or specify the use of EPA-designated items; or

(2) Include the clause at 52.223–17, Affirmative Procurement of EPA-designated Items in Service and Construction Contracts.

(d) Except for the acquisition of commercially available off-the-shelf items, insert the clause at 52.223–9, Estimate of Percentage of Recovered Material Content for EPA-designated Items, in solicitations and contracts exceeding \$150,000 that are for, or specify the use of, EPA-designated items containing recovered materials. If technical personnel advise that estimates can be verified, use the clause with its Alternate I.

(e) Insert the clause at 52.223–17, Affirmative Procurement of EPA-designated Items in Service and Construction Contracts, in service or construction solicitations and contracts unless the contract will not involve the use of EPA-designated items.

[72 FR 63043, Nov. 7, 2007, as amended at 73 FR 21790, Apr. 22, 2008; 74 FR 2721, Jan. 15, 2009; 75 FR 53134, Aug. 30, 2010; 77 FR 23367, Apr. 18, 2012]