28. Section 436.575 is revised to read as follows:

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.

452.211–1—452.211–6 [Redesignated as 452.211–70—452.211–75]

29.–30. Sections 452.211–1 through 452.211–6 are redesignated sections 452.211–70 through 452.211–75, respectively.

452.232–1 [Redesignated as 452.232–70]

31. Section 452.232–1 is redesignated as 452.232–70.

Done at Washington, D.C., this 7th day of May, 1998.

W.R. Ashworth,

Director, Office of Procurement and Property Management.

[FR Doc. 98–12841 Filed 5–14–98; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Office of Procurement and Property Management

48 CFR Parts 426 and 452

[AGAR Case 96–01]

RIN 0599–AA00

Agriculture Acquisition Regulation; Preference for Selected Biobased Products

AGENCY: Office of Procurement and Property Management, USDA.

ACTION: Final rule.

SUMMARY: This document amends the Agriculture Acquisition Regulation (AGAR) to establish policy and procedures for set-asides and preferences for products developed with assistance provided by the Alternative Agricultural Research and Commercialization Corporation (AARCC). This amendment is needed 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). USDA will use these new policies and procedures to increase its acquisition of AARCC supported products.

DATES: This rule is effective July 14, 1998.

FOR FURTHER INFORMATION CONTACT: J.R. Holcombe, Jr., (202) 720–8484.

SUPPLEMENTARY INFORMATION:

I. Background
II. Analysis of Comments
III. Procedural Requirements
A. Executive Order Nos. 12866 and 12988.
B. Regulatory Flexibility Act.
C. Paperwork Reduction Act.
D. Small Business Regulatory Enforcement Fairness Act
IV. Electronic Access Addresses

I. Background

The AGAR implements the Federal Acquisition Regulation (FAR) (48 CFR Ch. 1) where further implementation is needed, and supplements the FAR when coverage is needed for subject matter not covered by the FAR. This rule amends the AGAR to establish acquisition preferences for selected biobased products; i.e., nonfood, nonfeed products made from agricultural and forestry materials and animal by-products.

The Alternative Agricultural Research and Commercialization Corporation (AARCC), a wholly-owned government corporation of the Department of Agriculture (USDA), provides financial assistance to private companies and other parties to commercialize biobased products. Section 1665 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 5909), added by section 729 of the Federal Agriculture Improvement and Reform Act of 1996 (Section 1665), authorizes Federal executive agencies to establish set-asides and preferences for biobased products that have been commercialized with assistance provided by AARCC.

In a Notice of Proposed Rulemaking (62 FR 52081, October 6, 1997), USDA announced that this proposed amendment to the AGAR was available for public review and comment during a 60-day comment period. One commenter, a trade association, submitted comments on the proposed rule to USDA. We considered these comments and concluded that no changes to the proposed rule were required. In this rulemaking document, USDA is finalizing the proposed amendment to the AGAR.

We are making the following changes to the AGAR:

(a) We are adding AGAR part 426, Other Socioeconomic Programs, with a subpart 426.70, Preference for Selected Biobased Products. This subpart establishes policy and procedures for preferences and set-asides for products developed with AARCC assistance.

(b) Provisions 452.226–70, Preferred Products, 452.226–71, Set-aside for Mandatory Products, and 452.226–72, Price Preference for Award, are added to AGAR part 452.

II. Analysis of Comments

We received one comment in response to the Notice of Public Rulemaking. A trade association commented that it would be appropriate to include biodiesel fuels and related biobased products on Preference Lists for biobased products established in accordance with AGAR 426.7005. To the extent that such fuels are products developed with assistance from AARCC (AARCC products), they would be eligible for inclusion on the Preference List. Biodiesel fuels that are not AARCC products are outside the scope of the rule and of Section 1665. Since establishing preferences for other than AARCC products is outside the scope of this rule, we did not make any change to the rule.

III. Procedural Requirements

A. Executive Order Nos. 12866 and 12988

A work plan was prepared for this regulation and submitted to the Office of Management and Budget pursuant to Executive Order No. 12866. The rule has been determined to be not significant for the purposes of Executive Order No. 12866. Therefore, the rule has not been reviewed by the Office of Management and Budget. This rule has been reviewed in accordance with Executive Order No. 12988, Civil Justice Reform. The rule meets the applicable standards in section 3 of Executive Order No. 12988.

B. Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601–611, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. This final rule will not have an adverse impact on a substantial number of small businesses. In Fiscal Year 1997, USDA contract purchases from small business concerns totaled $710 million, not including commodity purchases. USDA purchases of AARCC products are unlikely to exceed $1 million annually, even with preferences. The anticipated dollar volume of AARCC product purchases thus would be less than 0.1% of the volume of products and services USDA now purchases from small businesses. Furthermore, AARCC product purchases will be made almost entirely from small businesses.

Our analysis of the impact of AARCC preferences suggests that the AARCC

preference program will benefit small business concerns. While Section 1665 does not require that all AARCC products be manufactured by or provided by small business concerns, the AARCC program concentrates on assistance for small businesses in the development of new commercial items. Almost all AARCC products eligible for set-asides or preferences under this rule will be provided by small businesses. The majority of businesses supported by AARCC are start-up companies. Thus, the overall impact of this final rule on small entities will be positive.

USDA solicited comments from small entities concerning the impact of the proposed rule in the Notice of Proposed Rulemaking publicizing the proposed rule for comment (62 FR 52081, October 6, 1997). No comments from small entities were received.

USDA certifies that this rule will not have a significant economic effect on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared.

C. Paperwork Reduction Act

No information collection or recordkeeping requirements are imposed on the public by this rule. Accordingly no OMB clearance is required by section 350(h) of the Paperwork Reduction Act, 44 U.S.C. 3501, et. seq., or OMB's implementing regulation at 5 CFR Part 1320.

D. Small Business Regulatory Enforcement Fairness Act

This rule has been submitted to each House of Congress and the Comptroller General in accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801, et seq.

IV. Electronic Access Addresses

You may send electronic mail (E-mail) to RHOLCOMBE@USDA.GOV, or contact us via fax at (202) 720–8972, if you would like additional information about this rule.

List of Subjects in 48 CFR Parts 426 and 452

Agriculture, Government procurement.

For the reasons set out in this preamble, the Department is amending Chapter 4 of Title 48 of the Code of Federal Regulations as follows:

1. Add Part 426 to read as follows:

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).

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 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.

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.

PART 452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2. The authority citation for Part 452 continues to read as follows:

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

3. Add sections 452.226–70, 452.226–71, and 452.226–72 to read as follows:

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.*

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.

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.

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)

Done at Washington, D.C., this 7th day of May, 1998.

W.R. Ashworth,

Director, Office of Procurement and Property Management.

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