



AGRICULTURE ACQUISITION CIRCULAR

April 20, 2005

AAC 96-04

Agriculture Acquisition Circular (AAC) 96-04 is issued under the authority of the Senior Procurement Executive. The policies, provisions, and clauses of this Circular are effective for all solicitations issued after the dates appearing in the List of Subjects.

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I	Miscellaneous Amendments	April 4, 2005

Issued by: Office of the Assistant Secretary for Administration
Office of Procurement and Property Management
Procurement Policy Division

AAC 96-04 Filing Instructions

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AAC 96-04 ITEM SUMMARY

Item I– Miscellaneous Amendments

This final rule (AGAR Case 2004-01) becomes effective April 4, 2005. It amends AGAR Parts 401, 403, 404, 405, 406, 407, 408, 410, 411, 413, 414, 415, 416, 419, 422, 423, 424, 425, 426, 428, 432, 433, 434, 436, 439, 445, 450, 452, and 453 to update organizational references to USDA components; to update citations to statutes and to Executive Orders; to update or clarify internal procedures; and to reflect changes in the Federal Acquisition Regulation (FAR) through Federal Acquisition Circular 2001-24.

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PART 401

**AGRICULTURE ACQUISITION
REGULATION SYSTEM**

401.000 Scope of Part.

This part presents basic policies and general information about the Department of Agriculture's (USDA) Acquisition Regulation, subsequently referred to as the AGAR. The AGAR is an integral part of the Federal Acquisition Regulations System.

**SUBPART 401.1--PURPOSE,
AUTHORITY, ISSUANCE**

401.101 Purpose.

(a) The AGAR provides for the codification 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 implementation is needed, and to supplement the FAR when coverage is needed for subject matter not covered in the FAR. The AGAR is not by itself a complete 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 authority 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 arrangement.

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

(b) The AGAR and its subsequent changes are published in: (1) daily issues of the Federal Register, (2) cumulative form in the CFR, and (3) electronic form on the USDA Departmental Administration Procurement Homepage (see AGAR 401.170).

(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. In 1971, Secretary of Agriculture Hardin announced a voluntary partial waiver from the Administrative Procedure Act exception,

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401.105-2 AGRICULTURE ACQUISITION REGULATION (AGAR)

and USDA agencies generally are required to provide notice and an opportunity for public comment on proposed rules (36 FR 13804, July 24, 1971). The AGAR has been promulgated and may be revised from time to time in accordance with the rulemaking procedures of the Administrative Procedure Act. The USDA also is required to publish for public comment procurement regulations in the Federal Register, pursuant to the Office of Federal Procurement Policy Act (41 U.S.C. 418b), and FAR 1.301.	AGAR segment	OMB Control Number
	411.170	0505-0014
	415.2	0505-0013
	436.575	0505-0011
	437.110	0505-0015
	437.270	0505-0016

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.

452.211-1	0505-0014
452.215-71	0505-0013
452.236-75	0505-0011
452.237-74	0505-0015

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.

401.170 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/procurement/>

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:

**SUBPART 401.2—
ADMINISTRATION**

Civilian Agency Acquisition Council is designated by the SPE.

401.201 Maintenance of the FAR.

401.201-1 The two councils.

(b) The Procurement Policy Division will coordinate proposed FAR revisions within USDA.

(a) USDA's representative on the

**SUBPART 401.3--AGENCY
ACQUISITION REGULATIONS**

[The next page is 401-3.]

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--

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

(2) Follow the format, arrangement, and numbering system of this regulation 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 Nutrition Service.

4L Animal and Plant Health Inspection Service.

4M [Reserved].

4N Departmental Administration.

4O [Reserved]

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.

(d) AGAR Advisories are only available in electronic format on the USDA Procurement Website at <http://www.usda.gov/procurement/>.

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 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 Acquisition 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.

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PART 403--IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

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

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PART 403

**IMPROPER BUSINESS
PRACTICES AND PERSONAL
CONFLICTS OF INTEREST**

Procurement Integrity Act
(41 U.S.C. 423) to the chief of the
contracting office.

SUBPART 403.1--SAFEGUARDS

**SUBPART 403.2--CONTRACTOR
GRATUITIES TO GOVERNMENT
PERSONNEL**

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
ethics advisory officials in their agency
personnel offices.

403.104 Procurement integrity.

403.104-5 [Reserved]

**403.104- 7 Violations or possible
violations.**

The contracting officer shall
forward information concerning any
violation or possible violation of the

**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**

403.405 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 3.405(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. 51-58) to the Office of Inspector General in accordance with procedures in Departmental Regulations (1700 series).

**SUBPART 403.6--CONTRACTS
WITH GOVERNMENT
EMPLOYEES OR
ORGANIZATIONS OWNED OR
CONTROLLED BY THEM**

403.602 Exceptions.

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

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PART 404--ADMINISTRATIVE MATTERS

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

PART 404

**ADMINISTRATIVE MATTERS
SUBPART 404.4--SAFEGUARDING
CLASSIFIED INFORMATION
WITHIN INDUSTRY**

**SUBPART 404.2 CONTRACT
DISTRIBUTION**

**404.203 Taxpayer identification
information.**

(a) If the contractor furnishes taxpayer identification number (TIN) and type of organization information pursuant to solicitation provision 52.204-3 or 52.212-3, and the USDA Office of the Chief Financial Officer, Controller Operations Division, New Orleans will be the payment office, that information will be entered into the Foundation Financial Information System (FFIS) in accordance with FFIS Vendor Table Maintenance Procedures set forth in FFIS Bulletins issued by the Office of the Chief Financial Officer and AGAR Advisories issued by the Office of Procurement and Property Management.

(b) Separate submission of the TIN or type of organization information, in accordance with 52.204-3 or 52.212-3, is not required for contractors registered in the Central Contractor Registration (CCR) database.

**SUBPART 404.4--SAFEGAURDING
CLASSIFIED INFORMATION
WITHIN INDUSTRY**

**404.403 Responsibilities of
contracting officers.**

When a proposed solicitation is likely to require access to classified information, the contracting officer shall consult with the Information Security Staff, Personnel and Document Security Division, Office of Procurement and Property Management, regarding the procedures that must be followed.

**SUBPART 404.6--CONTRACT
REPORTING**

404.601 [Reserved]

**404.602 Federal Procurement Data
System.**

(a) Contracting activities shall report contract actions into the Federal Procurement Data System in accordance with the instructions issued or distributed by the SPE.

(b) The unique identifier for each contract action reported to the Federal Procurement Data System shall begin with the two-letter USDA Agency Prefix "AG".

**SUBPART 404.8--GOVERNMENT
CONTRACT FILES**

404.870 Document numbering system.

The SPE shall issue AGAR Advisories to establish and maintain a numbering system for USDA contracts, modifications, and delivery/task orders. USDA contracting offices shall number contracts, modifications, and orders in accordance with this numbering system.

SUBPART 404.11—CENTRAL CONTRACTOR REGISTRATION

404.1103 Procedures.

(a) Contracting officers and other USDA employees shall not enter information into the Central Contractor Registration (CCR) database on behalf of prospective contractors. Prospective contractors who are unable to register on-line at the CCR website should be advised to submit a written application to CCR for registration into the CCR database. USDA employees may assist prospective contractors by downloading the registration template, CCR handbook and other information from the CCR website and providing copies of that material to requesters. Written applications for registration may be submitted to Department of Defense Central Contractor Registration, 74 Washington Ave., Suite 7, Battle Creek, MI 49017-3084.

(b) Verification that the prospective contractor is registered in the CCR database shall be done via the CCR Internet website <http://www.ccr.gov>.

This verification process using the CCR website applies both to acquisitions executed using USDA legacy procurement systems and the USDA Integrated Acquisition System.

(c) AGAR Advisories issued by the Office of Procurement and Property Management will address internal procedures for integration of contractor information in the CCR database with the USDA FFIS payment system.

SUBPART 404.70--PRECONTRACT NOTICES

404.7001 Solicitation Provision.

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

PART 405

**PUBLICIZING CONTRACT
ACTIONS**

**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.

**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 Information Security Staff, Personnel and Document Security Division, Office of Procurement and Property Management. Departmental Manuals and Regulations (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.

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PART 406

COMPETITION REQUIREMENTS

**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, Office of Procurement and Property Management, has been designated as the Competition Advocate for USDA.

(b) Each HCA shall designate a competition advocate for the contracting activity. The HCA shall forward a copy of the designation memorandum to the Competition Advocate for USDA.

PART 407

ACQUISITION PLANNING

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 maintain an advance acquisition planning system.

SUBPART 407.3-- [Reserved]

SUBPART 407.5--INHERENTLY GOVERNMENTAL FUNCTIONS

407.503 Policy.

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

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PART 407--ACQUISITION PLANNING

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SUBPART 407.3-- [Reserved]

SUBPART 407.5--INHERENTLY GOVERNMENTAL FUNCTIONS

407.503 Policy.

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

PART 408

**REQUIRED SOURCES OF
SUPPLIES AND SERVICES**

**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 Under Secretary or Assistant Secretary of a mission area 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) Liaison to

represent the organization and to coordinate the organization's actions with the Committee Member.

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

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

(d) The performance 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; (3) provide for the JWOD Liaison'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 Liaison who will inform the USDA Committee Member.

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408.705-3

AGRICULTURE ACQUISITION REGULATION (AGAR)

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 Liaison 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 Liaison 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 Liaison 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 Liaison 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 Liaison 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 Liaison 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 Liaison 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 fueling, lubrication, or other fluid changes or replenishment, the contracting officer shall include in the contract:

(1) a requirement for the use of fluids and lubricants containing the maximum available, amounts of recovered materials and alternative fuels whenever available; and

(2) a preference for retreaded tires meeting the Federal retread specifications, tires with the maximum recovered material content, or retreading services for the tires on the vehicle.

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- 410.002 Procedures.

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

PART 410

MARKET RESEARCH

410.001 Policy.

In addition to those uses listed in FAR 10.001, agencies must use the results of market research to—

- (a) Ensure the minimum use of hazardous or toxic materials;
- (b) Ensure the maximum use of biobased products and biofuels; and
- (c) Identify products and services on or eligible for addition to the Javits-Wagner-O'Day Act Procurement List in order to achieve USDA's goal to increase participation in this program.

410.002 Procedures.

Market research must include obtaining information on the commercial quality assurance practices as an alternative for Government inspection and testing prior to tender for acceptance.

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SUBPART 411.2--USING AND MAINTAINING REQUIREMENTS DOCUMENTS

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411.600 Scope of subpart.

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

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**PART 411
DESCRIBING AGENCY NEEDS**

**SUBPART 411.1--SELECTING AND
DEVELOPING REQUIREMENTS
DOCUMENTS**

**411.101 Order of precedence for
requirements documents.**

(a) Office of Management and Budget (OMB) Circular A-119 establishes a Federal policy requiring the use of voluntary consensus standards in lieu of government-unique standards except where inconsistent with law or otherwise impractical.

(b) The HCA is authorized to submit the determination required by OMB Circular A-119 that a voluntary standard is inconsistent with law or otherwise impracticable. The HCA must submit the determination to OMB through the National Institute of Standards and Technology in accordance with the Circular with a copy provided to the SPE.

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.

**411.106 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:

(i) Identification of the item by generic description.

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

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

(iv) 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.

**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.

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411.202 AGRICULTURE ACQUISITION REGULATION (AGAR)

(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.

SUBPART 411.2---USING AND MAINTAINING REQUIREMENTS DOCUMENTS

411.202 Maintenance of standardization documents.

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.

SUBPART 411.4---DELIVERY OR PERFORMANCE SCHEDULES

411.404 Contract Clauses.

(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.

(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.

SUBPART 411.6---PRIORITIES AND ALLOCATIONS

411.600 Scope of subpart.

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.

PART 413

**SIMPLIFIED ACQUISITION
PROCEDURES**

**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 (OFs) 347 and 348, except that use of the OF 347 and OF 348 is authorized when utilizing the USDA Integrated Acquisition System.

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PART 414

SEALED BIDDING

**SUBPART 414.2--SOLICITATION
OF BIDS**

414.201 Preparation of invitations for bids.

414.201-6 Solicitation provisions.

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 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 Information Security Staff, Personnel and Document Security Division, Office of Procurement and Property Management.

AAC 96-02 NOVEMBER 29, 1999

**PART 415
CONTRACTING BY
NEGOTIATION**

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

3. I agree to return to the Government

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415.209 AGRICULTURE ACQUISITION REGULATION (AGAR)

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- 4, FAR 15.207, and AGAR 415.207.

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.

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.

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PART 416

TYPES OF CONTRACTS

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.

416.406 Contract clauses.

The contracting officer shall insert a clause substantially the same as the clause at 452.216-70, Award Fee, in solicitations and contracts which contemplate the award of cost-plus-award-fee contracts.

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, Office of Procurement and Property Management, has been designated as the Departmental Task Order Ombudsman.

(b) Each HCA shall designate a task order ombudsman for the contracting activity. The HCA shall forward a copy of the designation memorandum to the Departmental Task Order Ombudsman. 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.

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.

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SUBCHAPTER D--SOCIOECONOMIC PROGRAMS

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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).

PART 419

SMALL BUSINESS PROGRAMS

SUBPART 419.2—POLICIES

419.201 General Policy.

It is the policy of USDA to provide maximum practicable contracting and subcontracting opportunities to small business (SB), small disadvantaged business (SDB), HUBZone small business, women-owned business (WOB), veteran-owned small business (VOSB), and service-disabled veteran-owned small business (SDVOSB) concerns.

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 business program that includes all categories named under Part 419.201.

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

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

(2) Identify available SDB, WOB, and VOSB to be solicited by competitive procedures. Coordinators shall document the contract file with recommendations made and actions taken.

(b) Participating in goal-setting procedures and planning activities and establishing aggressive SDB, WOB, and SDVOSB goals based on the annual review of advance acquisition plans.

(c) Participating in the review of those contracts which require the successful offeror to submit written plans for the utilization of small businesses as subcontractors to include all preference program areas in 419.201.

(d) Ensuring that purchases exceeding \$2,500 and not exceeding the simplified acquisition threshold are reserved exclusively for small businesses, including all preference program areas named in 419.201. 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) Maintaining comprehensive source listings of small businesses.

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(f) Upon written request, providing small businesses (in the preference program areas named in 419.201) the bidders' mailing lists of individuals receiving solicitations which will contain the subcontracting clause entitled "Utilization of Small Business Concerns" (FAR 52.219-8). These lists may be limited to those supplies or services of major interest to the requesting firms.

(g) Developing a program of contacts with local, small (to include all preference program areas named in 419.201) 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 meeting with program managers to discuss requirements of the small business preference program, to explore the feasibility of breaking large complex requirements into smaller lots suitable for participation by small firms, and to encourage program managers to meet with these firms so that their capabilities can be demonstrated.

(i) Establishing internal operating procedures which implement the requirements of the regulations as set forth in this Part 419.

(j) Compiling data and preparing all reports pertaining to the small business program activities, and ensuring that these reports are accurate, complete and up-to-date.

(k) Assisting and counseling small business firms.

(l) Reviewing proposed large contract requirements that may be bundled to determine the potential for breaking out components suitable for purchase from small business firms.

(m) Ensuring 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 (including all preference program areas named in 419.201) subcontracting plans.

419.201-73 Reports.

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

SUBPART 419.5--SET-ASIDES FOR SMALL BUSINESS

419.508 Solicitation provisions and contract clauses.

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.

SUBPART 419.6--CERTIFICATES OF COMPETENCY AND DETERMINATIONS OF RESPONSIBILITY

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).

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- 422.1403 Waivers.
- 422.1406 Complaint procedures.

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

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PART 422

**APPLICATION OF LABOR LAWS
TO GOVERNMENT
ACQUISITIONS**

**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(b). 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

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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 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 Deputy 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 for Administration or referral to the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor, as appropriate.

**SUBPART 422.13--SPECIAL
DISABLED VETERANS,
VETERANS OF THE VIETNAM
ERA, AND OTHER ELIGIBLE
VETERANS**

422.1305 Waivers.

(a) The Assistant Secretary for Administration is authorized to make the waiver determination in FAR 22.1305(b) that a contract is essential to the national security.

(b) The contracting officer shall submit requests for exemptions under FAR 22.1305(a) and (b) through the HCA to the SPE for determination by the Assistant Secretary for Administration or referral to the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor, as appropriate.

422.1308 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 as prescribed in FAR 22.1308.

SUBPART 422.14--EMPLOYMENT OF WORKERS WITH DISABILITIES

422.1403 Waivers.

(a) The Assistant Secretary for Administration is authorized to make the waiver determinations under FAR 22.1403(a) and FAR 22.1403(b) with the concurrence of the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor.

(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.

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**PART 423--ENVIRONMENT, ENERGY AND WATER EFFICIENCY,
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SUBPART 423.6--NOTICE OF RADIOACTIVE MATERIAL

423.601 Requirements.

**SUBPART 423.7--CONTRACTING FOR ENVIRONMENTALLY PREFERABLE
PRODUCTS AND SERVICES**

423.703 Policy.

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

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PART 423

**ENVIRONMENT,
ENERGY AND WATER
EFFICIENCY, RENEWABLE
ENERGY TECHNOLOGIES,
OCCUPATIONAL SAFETY, AND
DRUG-FREE WORKPLACE**

SUBPART 423.1-- [Reserved]

**SUBPART 423.2--ENERGY AND
WATER EFFICIENCY AND
RENEWABLE ENERGY**

423.202 Policy.

Information on Energy Star, energy efficient, water efficient, and low standby products covered by this policy is available via the Internet at <http://www.eere.energy.gov/femp/technologies/eeproducts.cfm>.

**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 affirmative procurement programs in accordance with Executive Order 13101 and 42 U.S.C. 6962.

423.402 [Reserved]

423.403 Policy.

It is the policy of USDA to acquire and use Environmental Protection Agency (EPA) designated recycled content products.

**423.404 Agency affirmative
procurement programs**

The USDA affirmative procurement program (APP) policy applicable to all USDA agencies and staff offices is hereby established. The components of this APP include:

(a) Recovered materials preference program. In accord with the requirements of Section 402(c) of Executive Order 13101, Greening the Government Through Recycling, Waste Prevention, and Federal Acquisition, USDA agencies will include, in all applicable solicitations and contracts, a preference for products and services which meet or exceed the EPA purchasing guidelines as contained in the EPA product Recovered Materials Advisory Notices (RMANs). Agencies may choose an evaluation factor preference, or other method of indicating preference in accord with their agency needs. Agencies will, as appropriate, eliminate virgin material requirements in contract specifications and replace them with a statement of preference for recycled materials.

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(b) Promotion program. USDA agencies will actively promote a preference for recovered materials, environmentally preferable products, and biobased products in contacts with vendors, in written materials, and other appropriate opportunities.

(c) Reasonable estimation of recovered materials used in the performance of contracts. USDA agencies annually will provide in writing to the USDA Senior Procurement Executive, in response to a call for data for the Resource Conservation and Recovery report, reasonable estimates, certification, and verification of recovered material used in the performance of contracts.

(d) Annual review and monitoring of effectiveness of the program. USDA agencies will provide an annual assessment of the effectiveness of their affirmative procurement program actions in increasing the purchase and use of EPA designated products.

(e) Purchase of EPA designated products. USDA agencies will require that 100% of purchases of EPA-designated products contain recovered material, unless the item cannot be acquired-

- (1) Competitively within a reasonable time frame;
- (2) Meeting appropriate performance standards; or
- (3) At a reasonable price.

(f) The 100% purchase requirement of paragraph (e) of this section applies to all USDA agency purchases, including those at or below the micro-purchase threshold.

423.405 Procedures

(a) The threshold of purchase for EPA designated items is \$10,000 per year at the USDA departmental, not individual agency, level. Therefore, the APP requirements above, including the 100% purchase requirement, apply at the individual agency and staff office level.

(b) Contracting officers should refer to EPA's list of designated products and products identified as recycled content when purchasing supplies or services. Information on EPA designated products is available at: www.epa.gov/cpg/products.htm.

(c) All agencies and USDA Contracting Officers must take necessary actions to carry out the provisions of the USDA APP policy described in this subpart.

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 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 PRODUCTS AND
SERVICES**

423.703 Policy.

(a) USDA's Affirmative Procurement Program promotes energy-efficiency, water conservation, and the acquisition of environmentally preferable products and services. In its acquisitions, USDA will support federal "green purchasing" principles in the acquisition of products and services that are environmentally preferable or that are biobased content products and services.

(b) USDA agencies will actively promote this preference for environmentally preferable products and services, biobased products in contracts with vendors, in written materials, and other appropriate opportunities.

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PART 424

**PROTECTION OF PRIVACY AND
FREEDOM OF INFORMATION**

**SUBPART 424.1--PROTECTION OF
INDIVIDUAL PRIVACY**

424.103 Procedures.

USDA regulations implementing the Privacy Act are found in 7 CFR, Subtitle 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.

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- 425.1001 Waiver of right to examination of records.

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

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PART 425

FOREIGN ACQUISITION

**SUBPART 425.1--BUY AMERICAN
ACT--SUPPLIES**

425.102 [Reserved]

425.103 Exceptions.

(a) The Senior Procurement Executive (SPE) shall make the determination prescribed in FAR 25.103(a).

(b) Copies of determinations of nonavailability in accordance with FAR 25.103(b)(2) or 25.202(a)(2), for articles, material or supplies not listed in FAR 25.104, may be submitted to the SPE for submission to the Civilian Agency Acquisition Council (CAAC).

425.104 Nonavailable articles.

Information required by FAR 25.104(b) shall be submitted to the SPE for submission to the CAAC.

425.105 Determining reasonableness of cost.

The SPE may make the determination prescribed in FAR 25.105(a). Requests for determination by the SPE shall be submitted by the HCA, in writing, and shall provide a detailed justification supporting why evaluation factors higher than those listed in FAR 25.102(b)(1) and (2) should be applied to determine whether

the offered price of a domestic end product is unreasonable.

425.108 [Reserved]

**SUBPART 425.2--BUY AMERICAN
ACT--CONSTRUCTION
MATERIALS**

425.202 Exceptions.

(a) The SPE shall make the determination prescribed in FAR 25.202(a)(1).

(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 information through the HCA to the SPE for approval or disapproval.

425.203 [Reserved]

425.204 [Reserved]

SUBPART 425.3-- [Reserved]

SUBPART 425.4-- [Reserved]

**SUBPART 425.6—TRADE
SANCTIONS**

425.602 Exceptions.

The Secretary, without power of redelegation, has the authority to make the necessary determination(s) and authorize award(s) of contract(s) in accordance with FAR 25.602(b).

SUBPART 425.9-- [Reserved]

**SUBPART 425.10--ADDITIONAL
FOREIGN ACQUISITION
REGULATIONS**

**425.1001 Waiver of right to
examination of records.**

The SPE shall make the determination under FAR 25.1001(a)(2)(iii).

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- 428.370 Government-owned vehicles operated in foreign countries.

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

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PART 428

BONDS AND INSURANCE

**SUBPART 428.1--BONDS AND
OTHER FINANCIAL
PROTECTIONS**

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 AND
OTHER SECURITY FOR BONDS**

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 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

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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).

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PART 432--CONTRACT FINANCING

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

PART 432

CONTRACT FINANCING

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 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.

(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.

432.007 Contract financing payments.

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

**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

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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.

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

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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**

**432.904 Determining Payment Due
Dates.**

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.

**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.

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

PART 433
PROTESTS, DISPUTES AND
APPEALS

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 Government Accountability 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 Government Accountability Office in accordance with 4 CFR Part 21. Neither the filing of a

protest with USDA nor the filing of a protest with the Government Accountability Office affects your right to file an action in a district court of the United States or the United States Court of Federal Claims.

433.104 [Reserved]

SUBPART 433.2--DISPUTES AND APPEALS

433.203 Applicability.

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

PART 434

MAJOR SYSTEM ACQUISITION

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 (for information technology, life cycle costs) are estimated to be \$50 million or more, or

(b) The system, regardless of estimated acquisition or life cycle costs, has been specifically designated to be a major system by the USDA Acquisition Executive or by the Major Information Technology Systems Executive.

434.002 Policy.

In addition to the policy guidance at FAR 34.002 and other parts of the FAR, 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 Chief Information Officer (CIO) is the Major Information Technology Systems Executive. For acquisitions of information technology, the CIO will ensure that A-109 is implemented in USDA and that the management objectives of the Circular are realized. The CIO is responsible for designating the program manager for each major information technology system acquisition, designating an acquisition to be a major information technology system acquisition, and approving the written charter and project control system for each major information technology system acquisition.

(c) The Assistant Secretary for Administration (ASA) is the USDA Acquisition Executive for major system acquisition other than acquisitions of information technology. 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.

(d) Heads of contracting activities must:

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

434.004 AGRICULTURE ACQUISITION REGULATION (AGAR)

(2) Ensure that potential major system acquisitions are brought to the attention of the USDA Acquisition Executive or the Major Information Technology Systems Executive, as appropriate.

(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 and Major Information Technology Systems Executive 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 Major Information Technology Systems Executive and other key USDA executives.

434.004 Acquisition strategy.

(a) The program manager will develop, in coordination with the Acquisition Executive or Major Information Technology Systems 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 or Major Information Technology Systems Executive, a project control system to schedule, monitor, and regularly report on all aspects of the 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 or Major Information Technology Systems Executive.

(d) Specific procedures and requirements for information technology systems are included in the USDA Information Technology Capital Planning and Investment Control Guide which can be accessed on the USDA OCIO Website at <http://www.ocio.usda.gov>.

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.

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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).

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.

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 [Reserved]

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.

SUBPART 436.6--ARCHITECT-ENGINEER SERVICES

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.

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.**

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

PART 439

ACQUISITION OF INFORMATION
TECHNOLOGY

SUBPART 439.1--GENERAL

439.101 Policy.

(a) In addition to policy and regulatory guidance contained in the FAR and AGAR:

(1) The USDA Information Technology Capital Planning and Investment Control Guide (CPIC) establishes requirements for the acquisition of information technology.

(2) Specific thresholds at which USDA Office of the Chief Information Officer Information Technology Acquisition Approval is required have been established.

(3) The procurement authority delegated to USDA Agencies is established in Departmental Regulations 5000 series.

(4) The CPIC Guide and USDA CIO policy and procedural guidance are available on the USDA OCIO Website at <http://www.ocio.usda.gov>. Notices of changes in the Information Technology Acquisition Approval Thresholds are also promulgated by AGAR Advisory.

(b) Acquisition of on-line courseware libraries and learning management system services requires specific approval of the ASA and CIO. Information regarding the specific approval requirements and processes is promulgated by AGAR Advisory.

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

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PART 445

SUBPART 445.6-- [Reserved]

GOVERNMENT PROPERTY

**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).

**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.

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450.303-1 Contractor Requests.

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

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PART 450

**EXTRAORDINARY
CONTRACTUAL ACTIONS**

450.303-1 Contractor requests.

Contractor requests shall be submitted to the contracting officer.

450.001 Definitions.

"Approving authority," as used in this part, means the Assistant Secretary for Administration.

"Secretarial level," as used in this part means the Assistant Secretary for Administration.

SUBPART 450.1-- [Reserved]

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

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PART 452

**SOLICITATION PROVISIONS AND
CONTRACT CLAUSES**

**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 452.211-71) and are determined by the Contracting Officer to meet fully the salient characteristics requirements listed in the solicitation.

(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

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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)

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 "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)

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

(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 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 intercompany 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.

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)

452.215-73 Postaward Conference.

As prescribed in 415.570, insert a clause substantially as follows:

**POST AWARD CONFERENCE
(NOV 1996)**

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452.216-70

AGRICULTURE ACQUISITION REGULATION (AGAR)

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 shall insert appropriate number of months.

(End of Clause)

**Contracting Officer shall insert appropriate date.

*Contracting officer to insert number of days and location.

452.216-71 Base Fee and Award Fee Proposal.

452.216-70 Award Fee.

As prescribed in 416.470, insert the following provision:

As prescribed in 416.405, insert a clause substantially as follows:

(The next page is 452-7)

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.

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. 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 [Reserved]

452.226-71 [Reserved]

452.226-72 [Reserved]

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.

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452.228-71

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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 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:

[The next page is 452-11.]

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 Contracts, shall not cover any amount therefor not included in the contract price.

(End of clause)

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 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.

(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:

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)

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452.236-77

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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 [Reserved]

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

PART 453

FORMS

453.000 Scope of part.

This part: (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 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, except that use of the OF 347 and OF 348 is authorized when utilizing the USDA Integrated Acquisition System. (see 413.307).

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

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453.303 AGRICULTURE ACQUISITION REGULATION (AGAR)

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).**