

§ 3017.210

§ 3017.210 Which nonprocurement transactions are covered transactions?

All nonprocurement transactions, as defined in § 3017.970, are covered transactions unless listed in § 3017.215. (See appendix to this part.)

§ 3017.215 Which nonprocurement transactions are not covered transactions?

The following types of nonprocurement transactions are not covered transactions:

- (a) A direct award to—
 - (1) A foreign government or foreign governmental entity;
 - (2) A public international organization;
 - (3) An entity owned (in whole or in part) or controlled by a foreign government; or
 - (4) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.
- (b) A benefit to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted). For example, if a person receives social security benefits under the Supplemental Security Income provisions of the Social Security Act, 42 U.S.C. 1301 et seq., those benefits are not covered transactions and, therefore, are not affected if the person is excluded.
- (c) Federal employment.
- (d) A transaction that the Department of Agriculture needs to respond to a national or agency-recognized emergency or disaster.
- (e) A permit, license, certificate, or similar instrument issued as a means to regulate public health, safety, or the environment, unless the Department of Agriculture specifically designates it to be a covered transaction.
- (f) An incidental benefit that results from ordinary governmental operations.
- (g) Any other transaction if the application of an exclusion to the transaction is prohibited by law.
- (h) An entitlement or mandatory award required by a statute, including a lower tier entitlement or mandatory award that is required by a statute.

(i) With respect to the Department of Agriculture's export and foreign assistance programs, any transaction below the primary tier covered transaction other than a nonprocurement transaction under the Market Access Program between a nonprofit trade association or state regional group and a U.S. entity, as defined in part 1485 of this title.

(j) Any transaction under the Department of Agriculture's conservation programs, warehouse licensing programs, or programs that provide statutory entitlements and make available loans to individuals and entities in their capacity as producers of agricultural commodities.

(k) The export or substitution of Federal timber governed by the Forest Resources Conservation and Shortage Relief Act of 1990, 16 U.S.C. 620 *et seq.* (The "Export Act"), which provides separate statutory authority to debar.

(l) The receipt of licenses, permits, certificates, and indemnification under regulatory programs conducted in the interest of public health and safety, and animal and plant health and safety.

(m) The receipt of official grading and inspection services, animal damage control services, public health and safety inspection services, and animal and plant health and safety inspection services.

(n) If the person is a State or local government, the provision of official grading and inspection services, animal damage control services, animal and plant health and safety inspection services.

(o) The receipt of licenses, permit, or certificates under regulatory programs conducted in the interest of ensuring fair trade practices.

(p) Permits, licenses, exchanges and other acquisitions of real property, rights of way, and easements under natural resource management programs.

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§ 3017.220 Are any procurement contracts included as covered transactions?

(a) Covered transactions under this part—

(1) Do not include any procurement contracts awarded directly by a Federal agency; but

(2) Do include some procurement contracts awarded by non-Federal participants in nonprocurement covered transactions (see appendix to this part).

(b) Specifically, a contract for goods or services is a covered transaction if any of the following applies:

(1) The contract is awarded by a participant in a nonprocurement transaction that is covered under § 3017.210, and the amount of the contract is expected to equal or exceed \$25,000.

(2) The contract requires the consent of a(n) Department of Agriculture official. In that case, the contract, regardless of the amount, always is a covered transaction, and it does not matter who awarded it. For example, it could be a subcontract awarded by a contractor at a tier below a nonprocurement transaction, as shown in the appendix to this part.

(3) The contract is for federally-required audit services.

(c) A contract for the procurement of ocean transportation in connection with the Department of Agriculture's foreign assistance programs is a covered transaction. With respect to the Department of Agriculture's export and foreign assistance programs, such contracts are the only procurement contracts included as covered transactions, notwithstanding the provisions in paragraphs (a) and (b) of this section.

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§ 3017.225 How do I know if a transaction in which I may participate is a covered transaction?

As a participant in a transaction, you will know that it is a covered transaction because the agency regulations governing the transaction, the appropriate agency official, or participant at the next higher tier who enters into the transaction with you, will tell you that you must comply with applicable portions of this part.

Subpart C—Responsibilities of Participants Regarding Transactions

DOING BUSINESS WITH OTHER PERSONS

§ 3017.300 What must I do before I enter into a covered transaction with another person at the next lower tier?

When you enter into a covered transaction with another person at the next lower tier, you must verify that the person with whom you intend to do business is not excluded or disqualified. You do this by:

(a) Checking the *EPLS*; or

(b) Collecting a certification from that person if allowed by this rule; or

(c) Adding a clause or condition to the covered transaction with that person.

§ 3017.305 May I enter into a covered transaction with an excluded or disqualified person?

(a) You as a participant may not enter into a covered transaction with an excluded person, unless the Department of Agriculture grants an exception under § 3017.120.

(b) You may not enter into any transaction with a person who is disqualified from that transaction, unless you have obtained an exception under the disqualifying statute, Executive order, or regulation.

§ 3017.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?

(a) You as a participant may continue covered transactions with an excluded person if the transactions were in existence when the agency excluded the person. However, you are not required to continue the transactions, and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, unless the Department of Agriculture grants an exception under § 3017.120.