

SAMPLE BIOBASED CONTRACT LANGUAGE FOR MINOR CONSTRUCTION

To assist you in meeting your BioPreferredSM requirements and including biobased products in your contracts, USDA has created sample contract language that can be used throughout a Minor Construction contract.

The document includes the BioPreferred program requirements that have been made to the Federal Acquisition Regulation (FAR) and should be revised to reflect additional or unique tasks peculiar to an activity's operation.

You can find more information about the BioPreferred program, how to find biobased products, and how other Federal agencies are purchasing biobased products by visiting **www.biopreferred.gov**.

Section C – Performance Work Statement/Descriptions/Specifications

The Contractor must comply with Section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), Executive Order (EO) 13423, “*Strengthening Federal Environmental, Energy, and Transportation Management*,” and the Federal Acquisition Regulation to provide biobased products.

The Contractor shall utilize products and material made from biobased materials (e.g., insulating foam, composite panels, and concrete and asphalt release fluids) to the maximum extent possible without jeopardizing the intended end use or detracting from the overall quality delivered to the end user. All supplies and materials shall be of a type and quality that conform to applicable Federal specifications and standards. All supplies and materials to be used in the performance of work described herein are subject to the approval of the Contracting Officer Representative (COR).

The following is an example list of products that may be used in this contract for minor construction for which biobased products are available. The list is not all inclusive. It is desirable that vendors be able to supply the greatest number of biobased products listed meeting the health and environmental specifications.

Graffiti and grease removers
Concrete and asphalt release fluids
Wood and concrete sealers
Adhesive and mastic removers

Insulating foams
Fluid-filled transformers
Composite panels
Carpets

Concrete and asphalt release fluids
Hydraulic fluid

Roof coatings
Water tank coatings

Biobased products that are designated for preferred procurement under USDA's BioPreferred program must meet the required minimum biobased content as stated in the USDA Final Rule available at www.biopreferred.gov. The Contractor should provide data for their biobased products such as biobased content and source of biobased material (i.e. particular crop or livestock).

In addition to the biobased products designated by the U.S. Department of Agriculture in the BioPreferred Program, the Contractor is encouraged to use other commercially available biobased products.

The Contractor shall submit with the initial proposal a complete list of biobased products, indicating the name of the manufacturer, cost of each material, and the intended use of each of the materials that are to be used in carrying out the requirements of the contract. Additionally, the winning Contractor on each anniversary date of the contract shall compile a complete list of biobased products, including the information above, purchased to carry out the contract requirements. The Contractor shall list volume to be used and total cost for each individual product. This information will be used for reporting purposes.

The Contractor shall comply with the provision at FAR 52.223-1, Biobased Product Certification.

The Contractor shall comply with the clause at FAR 52.223-2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts.

Within thirty (30) days of contract award, the Contractor shall submit a Minor Construction Plan. This submittal shall be approved by the COR in writing. The Contractor shall not commence work until this submittal is approved by the COR in writing.

The Plan must be reviewed and updated annually, and as required by the COR. The Plan must contain and define the following elements:

The Contractor's written policy stating its commitment to the use of biobased products, employee health and safety, and sound environmental management practices.

Detail on how the Contractor intends to keep abreast of the development and increasing availability of designated and non-designated biobased products and how any new or improved products will be incorporated on an ongoing basis into contract performance.

Proposed biobased construction products which must be selected in accordance with the criteria included above. At a minimum, the Plan must identify products by brand name for each of the product types.

NOTE: A Contractor may propose more than one product within a product category and/or propose a product or products addressing more than one product category.

The product guides which define standard operating procedures for instructing staff in the proper use, storage, and disposal of biobased products; proper maintenance of equipment; and other procedures/instructions to accomplish work under this contract.

The Contractor shall provide data on the quantity and dollar values of biobased products used in this contract. The data will be submitted to the COR quarterly.

A demonstration of proper use, an effective training program, and technical assistance are essential to the success of purchasing and using of some biobased products that may function differently than a conventional product. Therefore we will look for a Contractor who will 1) demonstrate products, and 2) when selected, offer any necessary training to all of the construction staff and 3) be available with technical assistance to trouble shoot problems.

Performance Requirements Summary

Add the following service, task number, performance indicator, performance standard, surveillance methodology, Acceptable Quality Level (AQL) and deduction to the present Performance Requirements Summary for Operations and Maintenance:

Required Service - Ensure the mandatory purchasing of biobased products.

Task Paragraph Number - XXX

Performance Indicator – Quantitative Factor

Performance Standard - Contractor compliance with FSIRA, EO 13423, and FAR

Surveillance Methodology – 100% Inspection

AQL – 100%

Deduction – Dollar Amount deduction for noncompliance

Section I – Contract Clauses

I.1 52.223-2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts

(a) In the performance of this contract, the Contractor shall make maximum use of biobased products that are USDA-designated items, unless the product cannot be acquired-

- (1) Competitively within a time frame providing for compliance with the contract performance schedule;
 - (2) Meeting contract performance requirements; or
 - (3) At a reasonable price.
- (b) Information about this requirement and these products is available at www.biopreferred.gov.

Section K – Representations, Certifications, And Other Statements of Bidders

K.1 52.223-1, Biobased Product Certification

The Contractor shall execute the following certification required by the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8102(c) (3):

I, _____ (name of certifier), am an offeror or employee responsible for the performance of this contract and I hereby certify that biobased products (within categories of products listed by the United States Department of Agriculture in 7 CFR part 2902, subpart B) to be used or delivered in the performance of the contract, other than biobased products that are not purchased by the offeror as a direct result of this contract, will comply with the applicable specifications of other contractual requirements.

{Signature of the Officer or Employee}

{Typed Name of the Officer or Employee}

{Title}

{Name of Company, Firm, or Organization}

{Date}

Section L – Instructions to Offerors

In the technical proposal, the offeror shall identify the biobased products to be purchased and used under this minor construction contract. For each biobased product, the offeror shall specify the percentage of biobased content, and for the USDA-designated biobased content products, the offeror shall demonstrate that the products to be used under this contract will contain the percentage specified in the USDA recommendations or the highest level of biobased material practicable, consistent with USDA's recommended percentages of biobased content.

The offeror shall document prior experience in specifying, purchasing, using, and installing biobased products. The offeror shall provide a list for all relevant contracts over the past two years involving the specification, purchase, and/or use of biobased products. The offeror shall include a list of the biobased products specified, purchased, used, and installed.

Sample Section M – Evaluation Factors for Award

[This section is applicable for procurements that will be using best value procedures.]

M.1 Technical Evaluation Factor

Criterion X – Designated BioPreferred Items

- (a) Identification of all biobased products to be acquired, used, and installed in the performance of minor construction;
- (b) Proposed past performance experience with the use of biobased products in minor construction; and
- (c) Identification of past biobased project management experience in the following areas: contracts performed using biobased products and dollar amount.

M.2 Cost Evaluation

[NOTE: In an effort to provide a fair evaluation to the respondents, USDA recommends adding the following Cost Evaluation Criterion to allow the contracting officer to evaluate the proposals based on the use of products requiring preferred procurement through BioPreferred and non-designated products.]

Criterion X – Designated BioPreferred Products

To receive full credit/consideration as it relates to the Technical criteria above for qualifying BioPreferred products, the Contractor should provide information such as life cycle costing data or other relevant data.

Criterion Y – Non-Designated Products

If the Contractor proposes to use non-designated products, the Contractor should provide information such as life cycle costing data or other relevant data.