



AGRICULTURE ACQUISITION CIRCULAR

December 6, 2001

AAC 96-03

Agriculture Acquisition Circular (AAC) 96-03 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.

List of Subjects

<u>Item</u>	<u>Title</u>	<u>Effective Date</u>
I	Designation and Mandatory Use of Contractor Performance System	November 30, 2001
II	North American Industrial Classification System	November 26, 2001

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

AAC 96-03 Filing Instructions

Item I, Designation and Mandatory Use of Contractor Performance System

Remove Pages

442-1

Insert Pages

442-1

Item II, North American Industrial Classification System

Remove Pages

419-3

Part 452 TOC
452-7 and 452-8

Insert Pages

419-3

Part 452 TOC
452-7 and 452-8

AAC 96-03 ITEM SUMMARY

Item I– Designation and Mandatory Use of Contractor Performance System

This final rule (AGAR Case 99-02) becomes effective November 30, 2001. It amends AGAR part 442 to establish the National Institutes of Health (NIH) Contractor Performance System as the single USDA-wide automated performance system.

Replacement pages: 442-1.

Item II– North American Industrial Classification System

This final rule (AGAR Case 2001-01) becomes effective November 26, 2001. It amends AGAR Parts 419 and 452 to replace references to Standard Industrial Classification (SIC) Codes with references to North American Industrial Classification System (NAICS) Codes. This change amends the AGAR to conform to the Federal Acquisition Regulations adoption of NAICS Codes. Two changes were made to the AGAR:

1. AGAR 419.508, Solicitation Provisions, is amended to refer to the new title of AGAR provision 452.219-70, Size Standard and NAICS Code Information.

2. AGAR provision 452.219-70 is re-titled Size Standard and NAICS Code Information, and references to SIC Codes in the provision are amended to refer to NAICS Codes.

Replacement pages: 419-3; Part 452 TOC; 452-7 and 452-8

PART 442

CONTRACT ADMINISTRATION

**SUBPART 442.1--INTERAGENCY
CONTRACT ADMINISTRATION
AND AUDIT SERVICES**

442.102 Procedures.

(a) The Office of Inspector General (OIG), Audit Division, has established a cross-servicing arrangement with the Defense Contract Audit Agency (DCAA) to provide contract audit services required by the FAR.

(b) All contract audit services required by contracting officers, except those which can be accomplished in-house, shall be coordinated through the cognizant OIG Regional Inspector General--Auditing (RIG-A). Cognizance is determined on the basis of the contractor's location. There is no charge for DCAA audit services coordinated through OIG.

(c) In order to ensure compliance with this requirement and to evaluate the results of audits, contracting officers shall forward to the RIG-A copies of all price negotiation memoranda prepared for contracts and contract modifications in excess of \$500,000.

**SUBPART 442.15--CONTRACTOR
PERFORMANCE INFORMATION**

442.1502 Policy.

The Contractor Performance System (CPS), developed by the National Institutes of Health, is designated as the

single USDA-wide system for maintaining contractor performance/evaluation information. Use of the CPS is mandatory. As a minimum, the CPS shall be accessed for contractor past performance information as part of proposal evaluation in accordance with FAR part 15.3, and information resulting from the evaluation of contractor performance in accordance with FAR part 42.15 shall be entered into and maintained in this system. The CPS is part of the USDA Acquisition Toolkit which can be accessed from the USDA Procurement Homepage at <http://www.usda.gov/procurement/>.

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419.602-3

Cut-off date (Reporting
period ending): September 30
Date due at Contracting
Activity: October 30

**419.602-3 Resolving differences
between the agency and the Small
Business Administration.**

SF-295 Reports

Frequency: Once A Year
Cut-off date (12 month
period ending): September 30
Date due at OSDDBU: October 30

The HCA is authorized to appeal the
issuance of a COC to SBA Headquarters
as provided by FAR 19.602-3(a).

**SUBPART 419.5--SET-ASIDES FOR
SMALL BUSINESS**

419.508 Solicitation provisions.

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
ELIGIBILITY**

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.

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SUBCHAPTER H--CLAUSES AND FORMS

PART 452--SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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

**BASE FEE AND AWARD FEE
PROPOSAL (FEB 1988)**

For the purpose of this solicitation, offerors shall propose a base fee of ___* percent of the total estimated cost proposed. The award fee shall not exceed ___* percent of the total estimated cost.

(End of Provision)

*Contracting Officer shall insert appropriate percentages.

**452.216-72 Evaluation Quantities--
Indefinite Delivery Contract.**

As prescribed in 416.506(a), insert a provision substantially as follows:

**EVALUATION QUANTITIES--
INDEFINITE-DELIVERY
CONTRACT
(FEB 1988)**

To evaluate offers for award purposes, the Government will apply the offeror's proposed fixed-prices/rates to the estimated quantities included in the solicitation, and will add other direct costs if applicable.

(End of Provision)

**452.216-73 Minimum and Maximum
Contract Amounts.**

As prescribed in 416.506(b), insert the following clause:

**MINIMUM AND MAXIMUM
CONTRACT AMOUNTS (FEB 1988)**

During the period specified in FAR clause 52.216-18, ORDERING, the Government shall place orders totaling a minimum of ___*, but not in excess of ___*.

(End of Clause)

*Contracting Officer shall insert appropriate quantity or dollar amounts.

452.216-74 Ceiling Price.

As prescribed in 416.670, insert the following clause:

CEILING PRICE (FEB 1988)

The ceiling price of this contract is \$ ___*. The Contractor shall not make expenditures or incur obligations in the performance of this contract which exceed the ceiling price specified herein, except at the Contractor's own risk.

(End of Clause)

*Contracting Officer shall insert appropriate dollar amount.

452.216-75 Letter Contract.

As prescribed in 416.603-4, insert the following clause:

LETTER CONTRACT (FEB 1988)

This contract replaces letter contract

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No. * dated * and all amendments thereto.

(End of Clause)

*Contracting Officer shall insert number and date.

452.219-70 Size Standard and NAICS Code Information.

As prescribed in 419.508, insert the following provision:

SIZE STANDARD AND NAICS CODE INFORMATION (SEP 2001)

The North American Industrial Classification System Code(s) and business size standard(s) describing the products and/or services to be acquired under this solicitation are listed below:

Contract line item(s): ____*____
-- NAICS Code ____*____
-- Size Standard ____*____

(End of provision)

*Contracting Officer shall insert the appropriate data for each contract line item in the solicitation. The data entry line may be duplicated as required to describe all of the contract line items or sub-items.

452.224-70 Confidentiality of Information.

As prescribed in 424.104, insert a clause substantially as follows:

CONFIDENTIALITY OF INFORMATION (FEB 1988)

(a) Confidential information, as used in this clause, means --

(1) information or data of a personal nature, proprietary about an individual, or (2) information or data submitted by or pertaining to an organization.

(b) In addition to the types of confidential information described in (a)(1) and (2) above, information which might require special consideration with regard to the timing of its disclosure may derive from studies or research, during which public disclosure of primarily invalidated findings could create an erroneous conclusion which might threaten public health or safety if acted upon.

(c) The Contracting Officer and the Contractor may, by mutual consent, identify elsewhere in this contract specific information and/or categories of information which the Government will furnish to the Contractor or that the Contractor is expected to generate which is confidential. Similarly, the contracting Officer and the Contractor may, by mutual consent, identify such confidential information from time to time during the performance of the contract. Failure to agree will be settled pursuant to the "Disputes" clause.

(d) If it is established that information to be utilized under this