

**US DEPARTMENT OF AGRICULTURE (USDA)**  
**CONTRACTING DESK BOOK**



ISSUED BY: Office of Contracting & Procurement (OCP)  
Procurement Policy Division (PPD)

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\*All information presented is as issued by USDA or the subagencies as of September 30, 2018. No changes to content have been made except to adjust the location of the information. Updates to content will be made as an iterative process and notices of changes issued.

## **FOREWORD**

The USDA Contracting Desk Book is intended to be a depiction of departmental and subagency/mission area acquisition regulations, policies, procedures guidance and information.

The Desk Book is for internal use by USDA personnel. For any questions or discrepancies, contact the USDA Procurement Policy Branch.

Procedures, Guidance, and Information (PGI) is a companion resource to the Agriculture Acquisition Regulation (AGAR). The PGI is a web-based tool to simply and rapidly access guidance and information relevant to the Federal Acquisition Regulations (FAR) and AGAR topics. The AGAR remains the source for regulations, which include the implementation of statutes and USDA-wide contracting policies, authorities and delegations. The PGI contains both mandatory and non-mandatory internal USDA procedures, guidance, and supplemental information.

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Version	Date	Changes
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## **PART 401—PROCEDURES, GUIDANCE AND INSTRUCTIONS INFORMATION (PGI)**

### **SUBPART 401.1—PURPOSE, AUTHORITY, ISSUANCE**

401.102 Statement of guiding principles for the Federal Acquisition System.

#### *401.102-2 Performance Standards.*

All USDA Contracting Officers and other members of the acquisition workforce are required to read and implement the procedures outlined in the USDA Vendor Communication Plan and to initiate practices that will ensure early, frequent, and constructive communication during key phases of the acquisition

process. All workforce members are encouraged to share the Vendor Communication Plan with existing vendors and those that are interested in doing business with USDA.

**Procurement Advisory 102, USDA Vendor Communication Plan,**  
<https://www.dm.usda.gov/procurement/policy/docs/Proc%20Adv%20102.pdf>.

#### *401.105-2 Arrangement of PGI.*

PGI 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.

#### *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:

AGAR segment	OMB Control Number
411.170	0505-0014
415.2	0505-0013
437.270	0505-0016
452.211-1	0505-0014
452.215-71	0505-0013
452.236-75	0505-0011
452.237-74	0505-0015
452.237-76	0505-0016

#### *401.170 Electronic Access to Regulatory Information.*

The USDA Departmental Administration Procurement Homepage provides access to the PGI and other USDA procurement policy and guidance in electronic form. The internet address for the Procurement Homepage is URL <http://www.usda.gov/procurement/>.

### **SUBPART 401.2 AMINISTRATION**

### **SUPBART 401.3--AGENCY ACQUISITION REGULATIONS**

401.301 Policy.

**Procurement Advisory 107, USDA Procurement Advisory Established,**  
<https://www.dm.usda.gov/procurement/policy/docs/Proc%20Adv%20107.pdf>.

### **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.

## SUBPART 401.6—CAREER DEVELOPMENT, CONTRACTING AUTHORITY AND RESPONSIBILITIES

### 401.601 General.

### 401.602 Contracting Officers.

#### *401.602-3 Ratification of Unauthorized Commitments.*

(a) Definitions. "Ratification," as used in this section, means the signed, documented action taken by an authorized official to approve and sanction a previously unauthorized commitment.

"Unauthorized commitment," as used in this section, means an agreement made by a Government representative who lacked the authority to enter into a contract on behalf of the Government.

(b) Policy. The HCA may delegate ratification authority to the chief of the contracting office.

(c) Procedure. Whenever an official of the cognizant contracting activity who is authorized to ratify unauthorized commitments learns that a person or firm has assumed work as a result of an unauthorized commitment, that official shall take the following actions:

(1) Immediately inform any person who is performing work as a result of an unauthorized commitment that the work is being performed at that person's risk;

(2) Inform the individual who made the unauthorized commitment of the seriousness of the act and the possible consequences;

(3) Ensure that the individual who made the unauthorized commitment furnishes all records and documents concerning the commitment and a complete, written statement of facts, including, but not limited to: a statement as to why a Contracting Officer was not used; why the vendor was selected and a list of sources considered; a description of work to be performed or products to be furnished; the estimated or agreed price; whether an appropriation is available for the work; and whether performance has begun. Under exceptional circumstances, such as when the individual who made the unauthorized commitment is no longer available to attest to the circumstances of the unauthorized commitment, the ratifying official may waive these requirements; and

(4) Decide whether ratification is proper and proceed as follows:

- (i) If ratification is not justifiable, provide the cognizant program office, contracting office, and the unauthorized contractor with an explanation of the decision not to ratify.
- (ii) If ratification appears adequately justified, ratify the action and retain or assign the contract to a successor Contracting Officer if necessary.
- (iii) Maintain related approval, decisional, and background documents in the contract file for audit purposes.
- (iv) Notify the cognizant program supervisor or line officer about the final disposition of the case; the notification may include a recommendation that the unauthorized commitment should be further considered a violation of USDA's employee conduct regulations.

401.603 Selection, appointment, and termination of appointment.

*401.603-1 General.*

**Procurement Advisory 85, Acquisition Workforce Training, Certification, Delegation, and Management System.**

<https://www.dm.usda.gov/procurement/policy/docs/Procurement%20Advisory%2085A.doc>

**Procurement Advisory 100, USDA Contracting Officers Warrant Guidelines,**

<https://www.dm.usda.gov/procurement/policy/docs/Procurement%20Advisory%20100%20Revision%20E%2005.04.2018.pdf>.

**Procurement Advisory 112, Continuous Learning Management for USDA's Acquisition Workforce,**

<https://www.dm.usda.gov/procurement/policy/Procurement%20Advisory%20112B.pdf>.

## PART 402--DEFINITIONS OF WORDS AND TERMS

### ~~402.101 Definitions.~~

~~["Emergency" as used in 6.208, 13.201, 13.500, 18.001, 18.202, 18.203 and subpart 26.2 means an occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States (42 U.S.C. 5122).]"Major disaster" as used in 6.208, 13.201, 13.500, 18.001, 18.202, 18.203 and subpart 26.2 means any natural catastrophe (including any hurricane, tornado, storm, high water, wind driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or regardless of cause, any fire, flood, or explosion, in any part of the United States, which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Stafford Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby (42 U.S.C. 5122).]~~

~~"Micro-purchase threshold" means \$3,500, except it means--(1)For acquisitions of construction subject to 40 U.S.C. chapter 31, subchapter IV, Wage Rate Requirements (Construction), \$2,000; (2)For acquisitions of services subject to 41 U.S.C. chapter 67, Service Contract Labor Standards, \$2,500; and (3)For acquisitions of supplies or services that, as determined by the head of the agency, are~~



to be used to support a contingency operation or to facilitate defense against or recovery from (cyber,) nuclear, biological, chemical or radiological attack[; international disaster assistance (22 U.S.C. 2292 et seq.); or an emergency or major disaster (42 U.S.C. 5122)], as described in 13.201(g)(1), except for construction subject to 40 U.S.C. chapter 31, subchapter IV, Wage Rate Requirements (Construction) (41 U.S.C. 1903) — (i) \$20,000 in the case of any contract to be awarded and performed, or purchase to be made, inside the United States; and (ii) \$30,000 in the case of any contract to be awarded and performed, or purchase to be made, outside the United States.

"Simplified acquisition threshold" means \$150,000 (41 U.S.C. 134), except for — (1) Acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation or to facilitate defense against or recovery from (cyber,) nuclear, biological, chemical, or radiological attack[; international disaster assistance (22 U.S.C. 2292 et seq.); or an emergency or major disaster (42 U.S.C. 5122)], (41 U.S.C. 1903), the term means — (i) \$750,000 for any contract to be awarded and performed, or purchase to be made, inside the United States; and (ii) \$1.5 million for any contract to be awarded and performed, or purchase to be made, outside the United States; and (2) Acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a humanitarian or peacekeeping operation (10 U.S.C. 2302), the term means \$300,000 for any contract to be awarded and performed, or purchase to be made, outside the United States.

**Procurement Advisory 129, FAR Class Deviation to Exercise Special Emergency Procurement Authorities,**

<https://www.dm.usda.gov/procurement/policy/docs/Procurement%20Advisory%20129%20-%20FAR%20Class%20Deviation%20to%20Exercise%20Special%20Emergency%20Procurement%20Authorities.pdf>.

**Procurement Advisory 132, FAR Class Deviation to Increase the Micro Purchase and the Simplified Acquisition Thresholds,**

[https://www.dm.usda.gov/procurement/policy/docs/ProcurementAdvisory132,FARClassDeviationtoIncreaseTheMicro-PurchaseandSimplifiedAcquisitionThresholds\\_Final.pdf](https://www.dm.usda.gov/procurement/policy/docs/ProcurementAdvisory132,FARClassDeviationtoIncreaseTheMicro-PurchaseandSimplifiedAcquisitionThresholds_Final.pdf).

**402.101 Definitions.**

"Chief of the Contracting Office" (COCO) has overall responsibility for contracting services in their designated office and for the quality, accuracy, and completeness of documents submitted by their offices to the MASCO. The degree of COCO authority will vary, depending on organizational workload, breadth of responsibility, Federal Acquisition Certification in Contracting (FAC-C) certification level, warrant authority, and individual experience.

The COCO must be appointed in writing by the MASCO.

The COCO is required to maintain at least a Simplified B warrant and Level III FAC-C certification.

FAR 2.101 is changed to read, "Emergency" as used in 6.208, 13.201, 13.500, 18.001, 18.202, 18.203 and subpart 26.2 means an occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States (42 U.S.C. 5122)."

“Level above the contracting officer” means a supervisory contracting officer. If the contracting officer is the highest level contract specialist or purchasing agent on the unit, this term means the warranted acquisition employee in charge of the procurement function at the next higher organizational level within the acquisition organizational levels of authority.

“Level higher than the contracting officer” is the same as “level above the contracting officer”.

FAR 2.101 is changed to read, “Major disaster” as used in 6.208, 13.201, 13.500, 18.001, 18.202, 18.203 and subpart 26.2 means any natural catastrophe (including any hurricane, tornado, storm, high water, wind driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or regardless of cause, any fire, flood, or explosion, in any part of the United States, which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Stafford Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby (42 U.S.C. 5122).”

FAR 2.101 is changed to read, “Micro-purchase threshold” means \$3,500, except it means- (1)For acquisitions of construction subject to 40 U.S.C. chapter 31, subchapter IV, Wage Rate Requirements (Construction), \$2,000; (2)For acquisitions of services subject to 41 U.S.C. chapter 67, Service Contract Labor Standards, \$2,500; and (3)For acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation or to facilitate defense against or recovery from (cyber,) nuclear, biological, chemical or radiological attack; international disaster assistance (22 U.S.C. 2292 et seq.); or an emergency or major disaster (42 U.S.C. 5122), as described in 13.201(g)(1), except for construction subject to 40 U.S.C. chapter 31, subchapter IV, Wage Rate Requirements (Construction) ( 41 U.S.C. 1903)–(i) \$20,000 in the case of any contract to be awarded and performed, or purchase to be made, inside the United States; and (ii) \$30,000 in the case of any contract to be awarded and performed, or purchase to be made, outside the United States.”

FAR 2.101 is changed to read, “Micro-purchase threshold” means ~~\$3,500~~ **[\$10,000]**, except it means—

(1)For acquisitions of construction subject to 40 U.S.C. chapter 31, subchapter IV, Wage Rate Requirements (Construction), \$2,000;

(2) For acquisitions of services subject to 41 U.S.C. chapter 67, Service Contract Labor Standards, \$2,500; and

**([3]) For acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation or ; [to] facilitate defense against or recovery from [cyber], nuclear, biological, chemical or radiological attack; [to support a request from the Secretary of State or the Administrator of the United States Agency for International Development to facilitate provision of international disaster assistance pursuant to 22 U.S.C. 2292 et seq.; or to support response to an emergency or major disaster (42 U.S.C. 5122),]** as described in 13.201(g)(1), except for construction subject to 40 U.S.C. chapter 31, subchapter IV, Wage Rate Requirements (Construction) (41 U.S.C. 1903)—

(i) \$20,000 in the case of any contract to be awarded and performed, or purchase to be made, inside the United States; and

(ii) \$30,000 in the case of any contract to be awarded and performed, or purchase to be made, outside the United States.**]; and]**

**[(4) For acquisitions of supplies or services from institutions of higher education 20 U.S.C. 1001(a)) or related or affiliated nonprofit entities, or from nonprofit research organizations or independent research institutes—**

**(i) \$10,000; or**

**(ii) A higher threshold, as determined appropriate by the head of the agency and consistent with clean audit findings under 31 U.S.C. chapter 75, Requirements for Single Audits; an internal institutional risk assessment; or State law.]”**

“Mission Area Senior Contracting Official” (MASCO) is the single senior staff official for a contracting activity responsible for the performance of contracting functions delegated by the Senior Procurement Executive (SPE). The MASCO was previously known as the Head of the Contract Activity Designee (HCAD).

FAR 2.101 is changed to read, "Simplified acquisition threshold" means \$150,000 (41 U.S.C. 134), except for- (1)Acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation or to facilitate defense against or recovery from [cyber,] nuclear, biological, chemical, or radiological attack[;international disaster assistance(22U.S.C.2292et seq.);or an emergency or major disaster(42U.S.C.5122),](41 U.S.C. 1903), the term means-(i) \$750,000 for any contract to be awarded and performed, or purchase to be made, inside the United States; and(ii) \$1.5millionforanycontractto be awarded and performed, or purchase to be made, outside the United States; and (2)Acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a humanitarian or peacekeeping operation (10.U.S.C. 2302), the term means \$300,000 for any contract to be awarded and performed, or purchase to be made, outside the United States.”

FAR 2.101 is changed to read, “Simplified acquisition threshold” means ~~\$150,000~~ **[\$250,000]** (41 U.S.C. 134), except for—

(1) Acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation; **[to]** facilitate defense against or recovery from **[cyber,]** nuclear, biological, chemical, or radiological attack; **[to support a request from the Secretary of State or the Administrator of the United States Agency for International Development to facilitate provision of international disaster assistance pursuant to 22 U.S.C. 2292 et seq.; or to support response to an emergency or major disaster (42 U.S.C. 5122),]** (41 U.S.C. 1903), the term means—

(i) \$750,000 for any contract to be awarded and performed, or purchase to be made, inside the United States; and

(ii) \$1.5 million for any contract to be awarded and performed, or purchase to be made, outside the United States; and

(2) Acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a humanitarian or peacekeeping operation (10 U.S.C. 2302), the term means ~~\$300,000~~ **[\$500,000]** for any contract to be awarded and performed, or purchase to be made, outside the United States.”

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

### SUBPART 403.1--SAFEGUARDS

#### 403.101 Standards of Conduct.

(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.

USDA acquisition workforce personnel must comply with existing conflict of interest regulations/laws, and file the approved forms as required. At a minimum, all individuals whose duties involve procurement and contracting shall file a financial disclosure statement. AW employees must also comply with the high standards of ethical behavior to assure complete trust in the integrity of the acquisition system.

#### ~~403.104-7 Violations or possible violations.~~

The Contracting Officer shall forward information concerning any violation or possible violation of the Procurement Integrity Act (41 U.S.C. 423) to the chief of the contracting office.

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

#### 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

### 403.603 Responsibilities of the Contracting Officer.

The Contracting Officer, when requesting authorization under 403.602, shall prepare a written determination and findings for the signature of the HCA. The determination shall document compliance with FAR 3.603, specifying the compelling reason(s) for award, and shall be placed in the contract file.

## SUBPART 403.8--LIMITATION ON THE PAYMENT OF FUNDS TO INFLUENCE FEDERAL TRANSACTIONS

#### 403.806 Processing Suspected Violations.

Suspected violations of the requirements of 31 U.S.C. 1352 shall be referred to the Office of Inspector General in accordance with procedures in Departmental Regulations (1700 series).

### SUBPART 403.9—WHISTLEBLOWER PROTECTIONS FOR CONTRACTOR EMPLOYEES

#### 403.900 Scope of Subpart.

##### *The following is the FAR deviation:*

This subpart implements various statutory whistleblower programs. This subpart does not implement 10 U.S.C. 2409, which is applicable only to DoD, NASA, and the Coast Guard.

(a) 41 U.S.C. 4705 (in effect before July 1, 2013). Sections 3.901 through 3.906 of this subpart implemented 41 U.S.C. 4705, applicable to civilian agencies other than NASA and the Coast Guard.

(b) 41 U.S.C. 4712 (in effect on and after July 1, 2013). Section 3.908 of this subpart implements the pilot program, applicable to civilian agencies other than NASA and the Coast Guard, except as provided in paragraph (d) of this section.

(c) Section 743 of Division E, Title VII of the Consolidated and further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions), implemented in 3.909, applicable to all agencies.

(d) Contracts funded by the American Recovery and Reinvestment Act. Section 3.907 of this subpart implements section 1553 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111- 5), and applies to all contracts funded in whole or in part by that Act.

#### 403.908 Pilot Program for Enhancement of Contractor Employee Whistleblower Protections.

##### *FAR Class Deviation*

Contracting Officers shall take the following immediate steps:

- a) Use the text (including the revised FAR clauses and the FAR solicitations provisions/contract clauses matrix) provided in Procurement Advisory 128.
- b) Modify existing noncommercial contracts awarded since January 2, 2017, to include FAR clause 52.203-17, if the contract exceeds the simplified acquisition threshold and has a year or more of performance left.
- c) Amend solicitations for noncommercial items issued since January 2, 2017, for which an award has not yet been made to include FAR clause 52.203-17, if the resultant contract is anticipated to exceed the simplified acquisition threshold.

##### *Contract Clause.*

The contracting officer shall insert the clause at 52.203-17, Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights, in all solicitations and contracts that

exceed the simplified acquisition threshold, [for both commercial items and for other than commercial items].

Modify existing noncommercial contracts awarded since January 2, 2017, to include FAR clause 52.203-17, if the contract exceeds the simplified acquisition threshold and has a year or more of performance remaining.

Amend solicitations for noncommercial items issued since January 2, 2017, for which an award has not yet been made to include FAR clause 52.203-17, if the resultant contract is anticipated to exceed the simplified acquisition threshold.

**Procurement Advisory 128, FAR Class Deviation to Implement an Act to Enhance Whistleblower Protection for Contractor Employees,**

<https://www.dm.usda.gov/procurement/policy/Procurement%20Advisory%20128,%20FAR%20Class%20Deviation%20to%20Implement%20an%20Act%20to%20Enh.pdf>.

## PART 404--ADMINISTRATIVE MATTERS

### 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—SAFEGUARDING 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.

**Procurement Advisory 61, Safeguarding Classified National Security Information,**

<https://www.dm.usda.gov/procurement/policy/docs/Procurement%20Advisory%2061B.pdf>.

### SUBPART 404.5—ELECTRONIC COMMERCE IN CONTRACTING

**Procurement Advisory 105, Use of Automated Procurement Systems,**

<https://www.dm.usda.gov/procurement/policy/Procurement%20Advisory%20105C%20Final.pdf>.



## SUBPART 404.6--CONTRACT REPORTING

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 “AG12”.

**Procurement Advisory 87, USDA Federal Procurement Data Quality Plan,**

<https://www.dm.usda.gov/procurement/policy/Procurement%20Advisory%2087D.pdf>.

## SUBPART 404.8—GOVERNMENT CONTRACT FILES

404.804 Closeout of Contract Files

**Procurement Advisory 93, Contract Closeout Procedures,**

[https://www.dm.usda.gov/procurement/policy/Procurement%20Advisory%2093C\\_Contract%20Closeout%20Procedures\\_Final.pdf](https://www.dm.usda.gov/procurement/policy/Procurement%20Advisory%2093C_Contract%20Closeout%20Procedures_Final.pdf).

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 404.10—UNIFORM USE OF LINE ITEMS

404.1000 Establishing.

LINE ITEMS (LIN):

- a. Identify the items or services to be acquired
- b. Impose duties, responsibilities and obligations upon the contractor

LINs have all of the following characteristics:

- a. Single unit price/extended amount. NSP (Not Separately Priced), and pricing at contract level for cost contracts is acceptable
- b. Separately identifiable
  - 1. Supplies: no more than one National Stock Number (NSN), item description, or manufacturer part number
  - 2. Services: no more than one scope of work or description of services



- c. Separate delivery schedule, period of performance or completion date. If a contract line item has more than one destination or delivery date, the contracting officer may create individual contract line items for the different destinations or delivery dates

#### SUBLINE ITEMS (SLIN)<sup>1</sup>

- a. Provide flexibility to identify elements within a SLIN for tracking performance or for simplifying administration
- b. Two types:
  - 1. Deliverable subline items
  - 2. Informational subline items

#### SLINs have all of the following characteristics:

- a. Single unit price/extended amount
- b. Separately identifiable
- c. Separate delivery schedule, period of performance or completion date
- d. Single contract pricing type

#### SLINs shall be used when items bought under one contract line item number:

- a. Are to be paid for from more than one accounting classification (shorthand code)
- b. Are to be packaged in different sizes, each represented by its own National Stock Number (NSN)
- c. Have collateral costs, such as packaging costs, but those costs are not a part of the unit price of the LIN
- d. Have different delivery dates, destinations and/or requisitions. OR,
- e. Identify parts of an assembly or kit which:
  - 1. have to be separately identified at the time of shipment or performance; and
  - 2. are separately priced

#### LINE ITEMS NUMBERING PROCEDURES

- a. Line items shall consist of four numeric digits 0001 through 9999. Do not use numbers beyond 9999.
- b. Within a given contract, the item numbers shall be sequential but need not be consecutive.
- c. The contract line item number shall be the same as the solicitation line item number unless there is a valid reason for using different numbers.
- d. Once a contract line item number has been assigned, it shall not be assigned to another, different, contract line item in the same contract.

#### LINE ITEM STRUCTURE

In structuring line items, due consideration shall be given to the effect of the chosen units of measure on administration and payment. Contracting officers shall consider the need for periodic deliveries and payments in selecting a unit of measure. Included in this analysis shall be the applicability of any financing arrangements under FAR part 32.

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<sup>1</sup> Subline item capabilities will be available in IAS no later than October 1, 2019, per FAR 4.10.

- a. **Supplies:** Line item quantities shall match the actual count of the supplies to be provided. For instance, if more than one delivery is expected, the quantity cannot be "1".
- b. **Services:** Line item quantities should match the frequency with which performance will be reviewed, and on fixed-price line items, payments made, at the maximum extent possible. For example, a contract with a twelve-month period of performance should have a quantity and unit of measure suited to how the contract will be managed. If the intent is to review, accept, and pay for the services monthly, then the quantity should be 12, with a unit of measure such as "Months" or "Lots". If the intent is to review, accept, and pay for the services quarterly, then the quantity should be 4, with a unit of measure such as "Lot". If the quantity used is 1, then no payment for delivery can occur until the end of the period of performance. The total price shall be equally divisible by the unit of measure. For example, a total price of \$75,000 divided by 12 months is \$6,250 per month. Services with tangible deliveries, such as repairs, shall be structured like supply line items.

#### OPTION LINE ITEMS

- a. Option line items shall be created at the time of solicitation/award, when applicable.
- b. Option line items shall consist of four numeric digits with the beginning number aligning with the option year. For example, line item 1001, is option year 1; 2001 is option year 2, etc.

Best practice for option year line items is to include the option year period of performance in the line item description. For example, "Option year 1, October 1, 2019 through September 30, 2020."

#### SUBLINE ITEMS NUMBERING PROCEDURES

- a. Number subline items by adding either two numeric characters or two alpha characters to the basic contract line item number. Use alpha characters only for separately identified subline items, running AA through ZZ. Do not use spaces or special characters to separate the subline item number from the contract line item number that is its root. For example, if the contract line item number is 0001, the first three subline items would be 0001AA, 0001AB, and 0001AC.
  1. Do not use the letters I or O as alpha characters.
  2. Use all 24 available alpha characters in the second position before selecting a different alpha character for the first position. For example, AA, AB, AC, through AZ before beginning BA, BB, and BC.
- b. Within a given line item, the subline item numbers shall be sequential but need not be consecutive.
- c. If a line item involves ancillary functions, like packaging and handling, transportation, payment of state or local taxes, or use of reusable containers, and these functions are normally performed by the contractor and the contractor is normally entitled to reimbursement for performing these functions, do not establish a separate subline item solely to account for these functions. However, do identify the functions in the contract schedule. If an offeror separately prices these functions, the contracting officer may establish separate line or subline items for the functions.

#### EXAMPLE OF LINE ITEM AND SUBLINE ITEM STRUCTURE:

Item	Supplies/Services	Qty	Unit of Issue	Unit Price	Total Price
0001	1 <sup>st</sup> line item, Supplies				

0001AA	1 <sup>st</sup> line item, 1 <sup>st</sup> subline item	500	EA	\$100.00	\$50,000.00
0001AB	1 <sup>st</sup> line item, 2 <sup>nd</sup> subline item	100	EA	\$50.00	\$5,000.00
0002	2 <sup>nd</sup> line item, Services				
0002AA	2 <sup>nd</sup> line item, 1 <sup>st</sup> subline item	12	MO	\$1100.00	\$13,200.00
000201	2 <sup>nd</sup> line item, 1 <sup>st</sup> informational subline item				
0003	3 <sup>rd</sup> line item				
1001	Option Period 1, POP, 1 <sup>st</sup> line item				
1002	Option Period 1, POP, 2 <sup>nd</sup> line item				
2001	Option Period 2, POP, 1 <sup>st</sup> line item				

#### INTEGRATED ACQUISITION SYSTEM (IAS) Procedures

##### Indefinite Delivery-Indefinite Quantity (IDIQ) Contracts In IAS

(a) The “Primary Type of Contract” field under General, Additional Info, shall be identified as “Indefinite-quantity”. The “Contract Type” field under Line Item, General, shall be identified as “Indefinite-quantity”.

(b) At least one line item must be created on the base contract for delivery orders to be issued from it. The “Allow Delivery/Task Order” field under Line Item, General must be checked Yes.

(c) The Contracting Officer shall enter the maximum amount to be ordered, including all orders placed against the contract.

Supplies or Services, select the appropriate selection. For Supplies enter the Type of Supply applicable to the purchase – Intellectual, Personal or Real Property.

##### Qualifier:

(a) By Quantity – when the Qualifier is By Quantity, there will be a Quantity field and Unit of Issue field.

(b) By Dollars – used for purchases for a one time/lump sum payment. When the Qualifier is By Dollars, there will be an Amount field only.

(c) Not Separately Priced – used when the price is included in the unit price of another LIN.

Unit of Measure is “Unit of Issue” in IAS.

IAS is currently testing a 4 digit line item structure. 3 digits will be used and accepted in IAS until the 4 digit structure is fully tested and implemented.

#### SUBPART 404.11—CENTRAL CONTRACTOR REGISTRATION SYSTEM FOR AWARD MANAGEMENT

##### 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 404.13—PERSONAL IDENTITY VERIFICATION

404.1301 Policy.

**Procurement Advisory 81, Common Identification Shared for Contractors,**

<https://www.dm.usda.gov/procurement/policy/docs/Proc%20Adv%20081%20C.pdf>.

**Procurement Advisory 115, Continued Implementation of LincPass at USDA,**

[https://www.dm.usda.gov/procurement/policy/Advisory%20115\\_Continued%20Implement%20of%20LincPass%20at%20USDA\\_08-07-2013.pdf](https://www.dm.usda.gov/procurement/policy/Advisory%20115_Continued%20Implement%20of%20LincPass%20at%20USDA_08-07-2013.pdf).

## SUBPART 404.16— UNIQUE PROCUREMENT INSTRUMENT IDENTIFIERS

404.1603 Procedures.

**Procurement Advisory 126, Use of Unique Procurement Instrument Identifiers,**

[https://www.dm.usda.gov/procurement/policy/Procurement%20Advisory%20126A\\_Final.pdf](https://www.dm.usda.gov/procurement/policy/Procurement%20Advisory%20126A_Final.pdf).

## 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

405.404 Release of Long-Range Acquisition Estimates.

#### ~~405.404-1 Release Procedures.~~

- (a) ~~The HCA's MASCO~~ 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.

Policies and procedures regarding prior authorization required for media other than newspapers are contained in USDA Departmental Regulations 1400 series.

USDA Contracting Officers shall ensure that all procurement requests for services involving writing, publishing, or producing articles, news items, new stories, pamphlets, logos, print media, exhibits, scripts for radio or television, scripts for film presentations, radio broadcasts, television broadcasts, films, or filmed material have been reviewed and approved by the Office of Communications or by agency information officials if required by DRs in the DR 1400 series (see References, above). USDA Contracting Officers shall ensure that statements of work for the creation, preparation, production, or distribution of prepackaged news stories require the contractor to clearly state in the text or scripts of the story that the story was prepared and funded by USDA. USDA Contracting Officer's Representatives shall ensure, during review of any prepackaged news story prepared for USDA by a contractor that it is clear that the story was prepared at the request of USDA and was funded by USDA.

~~Procurement Advisory 77, Contracting for Prepackaged News Stories,~~  
~~<https://www.dm.usda.gov/procurement/policy/docs/Proc%20Adv%20077%20A.pdf>~~

### PART 406--COMPETITION REQUIREMENTS

#### SUBPART 406.2--FULL AND OPEN COMPETITION AFTER EXCLUSION OF SOURCES

#### 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

### 407.170 Advance acquisition plans.

(f) A written Acquisition Plan (AP) under FAR Part 7 shall be prepared for each acquisition meeting or exceeding the dollar value, or designated to be a major system, pursuant to AGAR 434.001 and shall, to the greatest extent practicable, be written on a systems versus individual contract basis. Without power of delegation the AP shall be signed by and include the concurrence or non-concurrence of the HCA, the Program Manager and the Contracting Officer and others as determined by the HCA. The AP shall be submitted to the USDA Procurement Policy Division (PPD) at [procurement.policy@dm.usda.gov](mailto:procurement.policy@dm.usda.gov) and OCIO Capital Planning and IT Governance Division (CPITGD) [capitalplanningdivision@ocio.usda.gov](mailto:capitalplanningdivision@ocio.usda.gov) in sufficient time to allow review and coordination by the Secretary and Assistant Secretary for Administration and their staffs. The Senior Procurement Executive (SPE) has approval authority of the AP and no solicitation shall be released prior to SPE approval or SPE waiver.

(g) Except as found appropriate in writing by the HCA, without delegation, no written AP under FAR Part 7 is required for any proposed action when the contract file evidences each of the following: (1) that market research supports the expectation that offers will be received from at least two responsible firms; (2) the action does not exceed the dollar values specified in AGAR 434.001(a); and (3) award will be Firm Fixed Price.

(h) For any Information Technology action that is estimated to meet or exceed \$25,000, the Contracting Officer shall not issue a solicitation unless an AAR number has been granted for the full estimated price of the action or the Chief of the OCIO has granted a written waiver which must be placed in the file.

**Procurement Advisory 130, Acquisition Planning and Major System Reviews,**

<https://www.dm.usda.gov/procurement/policy/docs/Procurement%20Advisory-%20130A.pdf>.

## 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.

## PART 408--REQUIRED SOURCES OF SUPPLIES AND SERVICES

### 408.002 Priorities for Use of Mandatory Sources.

The General Services Administration, through the Federal Strategic Sourcing Initiative (FSSI) has awarded Indefinite Delivery, Indefinite Quantity (IDIQ) contracts for office supplies. This FSSI initiative is called Office Supplies 3 (OS3) and it is a mandatory source for office supplies for the USDA.

**Procurement Advisory 97, USDA Mandatory Sources for Office Supplies,**

<https://www.dm.usda.gov/procurement/policy/docs/Procurement%20Advisory%2097B.pdf>.

### 408.003 Use of Other Mandatory Sources.

**Procurement Advisory, 98, USDA Mandatory Source for Small Package Delivery Services-Next Generation Delivery Services (NGDS),**

<https://www.dm.usda.gov/procurement/policy/docs/Procurement%20Advisory%2098D,%20Next%20Generation%20Delivery%20Services.pdf>.

## 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.

*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.

(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 Office of Communications (OC) or the approval authority designated by OC shall be maintained in the contract file.

### **Procurement Advisory 86, Business Cards Available at Government Expense,**

<https://www.dm.usda.gov/procurement/policy/docs/Procurement%20Advisory%2086A%20Business%20Cards%20Available%20at%20Government%20Expense%20FINAL.pdf>.

## 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.

## PART 409--CONTRACTOR QUALIFICATIONS

### SUBPART 409.2—QUALIFICATIONS REQUIREMENTS

#### 409.202 Policy.

For each contracting activity, the information in FAR Subpart 9.2 is to be prepared and submitted to the Head of Contracting Activity Designee (HCAD) for approval to establish or change a QR.

For each contracting activity, the HCAD will maintain information on the QRs established by USDA.

The HCAD may not redelegate the authority to establish QRs under FAR Subpart 9.2.

QRs that are applicable to requirements managed or directed by USDA activities (such as wildfire suppression programs) must be approved and posted to

<http://www.dm.usda.gov/procurement/business/qualifications.htm>. QRs not posted will not be enforceable by a USDA activity for its acquisitions or the acquisitions of others.

The HCAD is responsible for maintaining data that supports the need for a QR, and for making this data available to the public. The HCAD must submit the data to complete the listing matrix in adequate time for the Office of Procurement and Property Management (OPPM) to update the matrix on the Acquisition Toolkit. All data necessary for the update must be submitted at one time to the Chief, Procurement Policy Division (PPD). The posting will require approximately 20 calendar days to accomplish. In the case of deficient data, the HCAD will be notified of the deficiencies and the QR will not be posted.

If only one vendor (other than a mandatory source) is qualified to provide a product or service under a QR, the agency shall publish a notice at least annually in FedBizOpps to seek additional sources.

**Procurement Advisory 60, Management of Qualification Requirements for USDA,**  
<https://www.dm.usda.gov/procurement/policy/docs/Proc%20Adv%20060%20B.pdf>.

## SUBPART 409.4--DEBARMENT, SUSPENSION AND INELIGIBILITY

409.404 List of Parties Excluded from Federal Procurement and Non-procurement Programs. The Department Debarring Officer is USDA's single point of contact with GSA for debarment and suspension actions taken under this subpart. The debarring official for AMS shall notify the Department Debarring Officer of each debarment and suspension action by promptly submitting a copy of the debarment or suspension notice and any later changes to the debarment or suspension status. The Department Debarring Officer will forward a copy of each notice to GSA for inclusion in the Government-wide list.

### 409.406 Debarment.

#### *409.406-3 Procedures.*

(a) Investigation and referral. When a Contracting Officer becomes aware of possible irregularities or any information which may be sufficient cause for debarment, the case shall be immediately referred through the HCA to the debarring official. The case must be accompanied by a complete statement of the facts (including a copy of any criminal indictments, if applicable) along with a recommendation for action. Where the statement of facts indicates the irregularities to be possible criminal offenses, or for any other reason further investigation is considered necessary, the matter shall be referred to the HCA who should consult with the Office of Inspector General to determine if further investigation is required prior to referring to the Debarring Official.

(b) Decision-making process. If, after reviewing the recommendations and consulting with the Office of Inspector General and Office of the General Counsel, as appropriate, the debarring official determines debarment is justified, the debarring official shall initiate the proposed debarment in accordance with FAR 9.406-3(c) and notify the HCA of the action taken.

(c) Fact-finding proceeding. For actions listed under FAR 9.406-3(b) (2), the contractor shall be given the opportunity to appear at an informal hearing. The hearing should be held at a location and time that is convenient to the parties concerned, if at all possible. The contractor and any specifically named affiliates may be represented by counsel or any duly authorized representative. Witnesses may be called by either party. The proceedings shall be conducted expeditiously and in such a manner that each party will have an opportunity to present all information considered pertinent to the proposed debarment. The contractor shall be provided a copy of a transcript of the proceedings under the conditions established in FAR 9.406-3(b)(2)(ii).

### 409.407 Suspension.

#### *409.407-3 Procedures.*

(a) Investigation and referral. When a Contracting Officer becomes aware of possible irregularities or any information which may be sufficient cause for suspension, the case shall be immediately referred through the HCA to the debarring official. The case must be accompanied by a complete statement of the facts along with a recommendation for action. Where the statement of facts indicates the

irregularities to be possible criminal offenses, or for any other reason further investigation is considered necessary, the matter shall be referred to the HCA who should consult with the Office of Inspector General to determine if further investigation is required prior to referring it to the Debarring Official.

(b) Decision-making process. If, after reviewing the recommendations and consulting with the Office of Inspector General and Office of the General Counsel, as appropriate, the debarring official determines suspension is justified, the Debarring Official shall initiate the proposed suspension in accordance with FAR 9.407-3(c) and notify the HCA of the action taken.

(c) Fact-finding proceedings. For actions listed under FAR 9.407-3(b)(2), the contractor shall be given the opportunity to appear at an informal hearing, similar in nature to the hearing for debarments as discussed in 409.406-3(c).

#### 409.470 Appeals.

A debarred or suspended contractor may appeal the debarring official's decision by mailing or otherwise furnishing a written notice within 90 days from the date of the decision to the U.S. Department of Agriculture Board of Contract Appeals, Washington, D.C. 20250. A copy of the notice of appeal shall be furnished to the Debarring Officer from whose decision the appeal is taken. Appeals under Subpart 409.4 shall be governed by the rules and procedures of the U.S. Department of Agriculture Board of Contract Appeals set forth in 7 CFR, Part 24.

### SUBPART 409.5--ORGANIZATIONAL AND CONSULTANT CONFLICTS OF INTEREST

#### 409.503 Waiver.

(b) Each request for waiver shall include:

- (1) The general rule or procedure proposed to be waived;
- (2) An analysis of the potential conflict, including the benefits and detriments to the Government and prospective contractors;
- (3) A discussion of why the conflict cannot be avoided, neutralized, or mitigated; and
- (4) Advice of counsel obtained under FAR 9.504(b).

## 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.
- FAR 10.001(a)(2)(vi)(A) changed to read "A contingency operation or defense against or recovery from [cyber,] nuclear, biological, chemical, or radiological attack;..."

**Procurement Advisory 129, FAR Class Deviation to Exercise Special Emergency Procurement Authorities,**

<https://www.dm.usda.gov/procurement/policy/docs/Procurement%20Advisory%20129%20->

[%20FAR%20Class%20Deviation%20to%20Exercise%20Special%20Emergency%20Procurement%20Authorities.pdf](#).

#### 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.

## PART 411--DESCRIBING AGENCY NEEDS

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

#### 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.

**Procurement Advisory, 113, Discontinuance of a Provision and a Clause from the AGAR,**

<https://www.dm.usda.gov/procurement/policy/docs/Proc%20Adv%20113.pdf>.

### 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 411.6---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 412--ACQUISITION OF COMMERCIAL ITEMS

### SUBPART 412.1—ACQUISITION OF COMMERCIAL ITEMS—GENERAL

412.101 Policy.

**Procurement Advisory 73, Purchase of Online Courseware Libraries and Learning Management Systems or Services,**

<https://www.dm.usda.gov/procurement/policy/docs/Proc%20Adv%20073.pdf>.

412.102 Applicability.

FAR 12.102(f)(1) changed to read “Contracting officers may treat any acquisition of supplies or services that, as determined by the head of the agency, are to be used to facilitate defense against or recovery from **[cyber,]** nuclear, biological, chemical, or radiological attack as an acquisition of commercial items....”.

**Procurement Advisory 129, FAR Class Deviation to Exercise Special Emergency Procurement Authorities,**

[https://www.dm.usda.gov/procurement/policy/docs/Procurement%20Advisory%20129%20-%20FAR%20Class%20Deviation%20to%20Exercise%20Special%20Emergency%20Procurement%20Autho-  
rities.pdf](https://www.dm.usda.gov/procurement/policy/docs/Procurement%20Advisory%20129%20-%20FAR%20Class%20Deviation%20to%20Exercise%20Special%20Emergency%20Procurement%20Authorities.pdf).

## PART 413--SIMPLIFIED ACQUISITION PROCEDURES

413.003 Policy.

**Procurement Advisory 132, FAR Class Deviation to Increase the Micro-Purchase and the Simplified Acquisition Thresholds,**

[https://www.dm.usda.gov/procurement/policy/docs/ProcurementAdvisory132,FARClassDeviationtoIncreaseTheMicro-PurchaseandSimplifiedAcquisitionThresholds\\_Final.pdf](https://www.dm.usda.gov/procurement/policy/docs/ProcurementAdvisory132,FARClassDeviationtoIncreaseTheMicro-PurchaseandSimplifiedAcquisitionThresholds_Final.pdf).

### SUBPART 413.201—GENERAL

FAR 13.201(G)(1) changed to read “For acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation or to facilitate defense against or recovery from **[cyber,]** nuclear, biological, chemical, or radiological attack, **[; international disaster assistance; an emergency or major disaster,]** the micropurchase threshold is -

(i) \$20,000 in the case of any contract to be awarded and performed, or purchase to be made, inside the United States; and

(ii) \$30,000 in the case of any contract to be awarded and performed, or purchase to be made, outside the United States.

(2) Purchases using this authority must have a clear and direct relationship to the support of a contingency operation or the defense against or recovery from [cyber,] nuclear, biological, chemical, or radiological attack [; international disaster assistance; or an emergency or major disaster].”

**Procurement Advisory 129, FAR Class Deviation to Exercise Special Emergency Procurement Authorities,**

<https://www.dm.usda.gov/procurement/policy/docs/Procurement%20Advisory%20129%20-%20FAR%20Class%20Deviation%20to%20Exercise%20Special%20Emergency%20Procurement%20Authorities.pdf>.

## SUBPART 413.3--SIMPLIFIED ACQUISITION METHODS

413.301 Governmentwide commercial purchase card.

USDA policy and procedures on use of the Government-wide commercial purchase card are established in Departmental Regulation Series 5000.

**Procurement Advisory 116, Interim Purchase Authority for Fuel,**

[https://www.dm.usda.gov/procurement/policy/Fuel%20Advisory%20116A\\_04022015.pdf](https://www.dm.usda.gov/procurement/policy/Fuel%20Advisory%20116A_04022015.pdf).

**Procurement Advisory 123, Acquiring Rental Storage Space Short and Long Term with USDA Purchase Card,** <https://www.dm.usda.gov/procurement/policy/Procurement%20Advisory%20123-Storage%20space.pdf>.

**Procurement Advisory 125, USDA Purchase Card Program – Mandatory, Annual Refresher Training Requirements,** <https://www.dm.usda.gov/procurement/policy/Procurement%20Advisory125.pdf>.

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.

## SUBPART 413.5--SIMPLIFIED PROCEDURES FOR CERTAIN COMMERCIAL ITEMS

413.500 General.

FAR 13.500 (c) changed to read “Under 41 U.S.C. 1903, the simplified acquisition procedures authorized in this subpart may be used for acquisitions that do not exceed \$13 million when-

(1) The acquisition is for commercial items that, as determined by the head of the agency, are to be used in support of a contingency operation or to facilitate the defense against or recovery from [cyber,] nuclear, biological, chemical, or radiological attack[; international disaster assistance; or an emergency or major disaster,]; or

(2) The acquisition will be treated as an acquisition of commercial items in accordance with 12.102(f)(1).”

**Procurement Advisory 129, FAR Class Deviation to Exercise Special Emergency Procurement Authorities,**

<https://www.dm.usda.gov/procurement/policy/docs/Procurement%20Advisory%20129%20-%20FAR%20Class%20Deviation%20to%20Exercise%20Special%20Emergency%20Procurement%20Authorities.pdf>.

**Procurement Advisory 132, FAR Class Deviation to Increase the Micro-Purchase and the Simplified Acquisition Thresholds,**

[https://www.dm.usda.gov/procurement/policy/docs/ProcurementAdvisory132,FARClassDeviationtoIncreaseTheMicro-PurchaseandSimplifiedAcquisitionThresholds\\_Final.pdf](https://www.dm.usda.gov/procurement/policy/docs/ProcurementAdvisory132,FARClassDeviationtoIncreaseTheMicro-PurchaseandSimplifiedAcquisitionThresholds_Final.pdf).

## PART 414--SEALED BIDDING

### SUBPART 414.2--SOLICITATION OF BIDS

### 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 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.

## PART 415--CONTRACTING BY NEGOTIATION

### SUBPART 415.2--SOLICITATION AND RECEIPT OF PROPOSALS AND INFORMATION

#### 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 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.

## SUBPART 415.4--CONTRACT PRICING

415.403 Obtaining certified cost or pricing data.

### *415.403-4 Requiring Certified Cost or Pricing Data*

**Procurement Advisory 133, FAR Class Deviation to Increase the Threshold for Requiring Certified Cost or Pricing Data,**

[https://www.dm.usda.gov/procurement/policy/docs/ProcurementAdvisory133FAR\\_Class\\_Deviation\\_to\\_Increase\\_the\\_Threshold\\_for\\_Requiring\\_Certified\\_Cost\\_andPricingData.pdf](https://www.dm.usda.gov/procurement/policy/docs/ProcurementAdvisory133FAR_Class_Deviation_to_Increase_the_Threshold_for_Requiring_Certified_Cost_andPricingData.pdf).

415.404 Proposal Analysis.

### *415.404-4 Profit.*

(a) (1) USDA will use a structured approach to determine the profit or fee pre-negotiation objective in acquisition actions when price negotiation is based on cost analysis. (2) The following types of acquisitions are exempt from the requirements of the structured approach, but the Contracting Officer shall comply with FAR 15.404-4(d) when analyzing profit for these contracts or actions:

- (i) Architect-engineer contracts;
- (ii) Construction contracts;
- (iii) Contracts primarily requiring delivery of material supplied by subcontractors;
- (iv) Termination settlements; and
- (v) Cost-plus-award-fee contracts;

(b) Unless otherwise restricted by contracting activity procedures, the Contracting Officer may use another Federal agency's structured approach if that approach has been formalized and is maintained as part of that Agency's acquisition regulations (i.e., included in that Agency's assigned chapter of Title 48 of the Code of Federal Regulations).

(c) The HCA is responsible for establishing procedures to ensure compliance with this subpart.

## PART 416--TYPES OF CONTRACTS

### 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.

## 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.

## SUBPART 416.7--AGREEMENTS

416.702 Basic Agreements.

**Procurement Advisory 101, Shared First Policy in USDA Contracts,**

<https://www.dm.usda.gov/procurement/policy/docs/Procurement%20Advisory%20101B.pdf>.

## PART 417--SPECIAL CONTRACTING METHODS

### SUBPART 417.2--OPTIONS

417.202 Use of Options.

Effective immediately, contracting officers shall not use unpriced options in contracts. All options must be priced at the time of the original contract award.

**Procurement Advisory 117, Prohibition on Use of Unpriced Options,**

<https://www.dm.usda.gov/procurement/policy/Proc%20Adv%20117%20Unpriced%20Options%2005-15-2014.pdf>.

### SUBPART 417.5—INTERAGENCY ACQUISITIONS

## 417.502 Procedures

### 417.502-1 General.

**Procurement Advisory 98, USDA Mandatory Source for Small Package Delivery Services-Next Generation Delivery Services (NGDS),**

<https://www.dm.usda.gov/procurement/policy/docs/Procurement%20Advisory%2098D,%20Next%20Generation%20Delivery%20Services.pdf>.

**Procurement Advisory 101, Shared First Policy in USDA Contracts,**

<https://www.dm.usda.gov/procurement/policy/docs/Procurement%20Advisory%20101B.pdf>.

**Procurement Advisory No. 135, FAR Class Deviation – Removal of Best Procurement Approach Determination for Interagency Acquisitions**

<https://www.dm.usda.gov/procurement/policy/advisories.htm>

## PART 418—EMERGENCY ACQUISITIONS

### 418.001 Definition.

FAR 18.001 changed to read, "Emergency acquisition flexibilities", as used in this part, means flexibilities provided with respect to any acquisition of supplies or services by or for an executive agency that, as determined by the head of an executive agency, may be used-

(a) In support of a contingency operation as defined in 2.101;

(b) To facilitate the defense against or recovery from [cyber,] nuclear, biological, chemical, or radiological attack against the United States; or

**[(c) In support of a request from the Secretary of State or the Administrator of the United States Agency for International Development to facilitate the provision of international disaster assistance; or]**

**(c)[d])** When the President issues an emergency declaration or a major disaster declaration.

**Procurement Advisory 129, FAR Class Deviation to Exercise Special Emergency Procurement Authorities,**

<https://www.dm.usda.gov/procurement/policy/docs/Procurement%20Advisory%20129%20-%20FAR%20Class%20Deviation%20to%20Exercise%20Special%20Emergency%20Procurement%20Authorities.pdf>.

## SUBPART 418.2 EMERGENCY ACQUISITION FLEXIBILITIES

### 418.202 Defense or Recovery from Certain Attacks.

**Procurement Advisory 129, FAR Class Deviation to Exercise Special Emergency Procurement Authorities,**

<https://www.dm.usda.gov/procurement/policy/docs/Procurement%20Advisory%20129%20-%20FAR%20Class%20Deviation%20to%20Exercise%20Special%20Emergency%20Procurement%20Authorities.pdf>.

418.203 Emergency Declaration or Major Disaster Declaration.

**Procurement Advisory 106, Emergency Acquisition in Support of Hurricane Sandy Relief Efforts,**  
<https://www.dm.usda.gov/procurement/policy/docs/Proc%20Adv%20106.pdf>.

## 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.*

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.

(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.

#### 419.203 Relationship Among Small Business Programs.

#### **Procurement Advisory 132, FAR Class Deviation to Increase the Micro-Purchase and the Simplified Acquisition Thresholds,**

[https://www.dm.usda.gov/procurement/policy/docs/ProcurementAdvisory132,FARClassDeviationtoIncreaseTheMicro-PurchaseandSimplifiedAcquisitionThresholds\\_Final.pdf](https://www.dm.usda.gov/procurement/policy/docs/ProcurementAdvisory132,FARClassDeviationtoIncreaseTheMicro-PurchaseandSimplifiedAcquisitionThresholds_Final.pdf).

### SUBPART 419.4—COOPERATION WITH THE SMALL BUSINESS ADMINISTRATION

#### 19.401 General.

#### **Procurement Advisory 71, Partnership Agreement between The US Small Business Administration and the US Department of Agriculture,**

<https://www.dm.usda.gov/procurement/policy/docs/Proc%20Adv%20071%20C.pdf>.

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

#### 419.502 Setting Aside Acquisitions

#### **Procurement Advisory 132, FAR Class Deviation to Increase the Micro-Purchase and the Simplified Acquisition Thresholds,**

[https://www.dm.usda.gov/procurement/policy/docs/ProcurementAdvisory132,FARClassDeviationtoIncreaseTheMicro-PurchaseandSimplifiedAcquisitionThresholds\\_Final.pdf](https://www.dm.usda.gov/procurement/policy/docs/ProcurementAdvisory132,FARClassDeviationtoIncreaseTheMicro-PurchaseandSimplifiedAcquisitionThresholds_Final.pdf).

419.508 Solicitation provisions and contract clauses.

**Procurement Advisory 132, FAR Class Deviation to Increase the Micro-Purchase and the Simplified Acquisition Thresholds,**

[https://www.dm.usda.gov/procurement/policy/docs/ProcurementAdvisory132,FARClassDeviationtoIncreaseTheMicro-PurchaseandSimplifiedAcquisitionThresholds\\_Final.pdf](https://www.dm.usda.gov/procurement/policy/docs/ProcurementAdvisory132,FARClassDeviationtoIncreaseTheMicro-PurchaseandSimplifiedAcquisitionThresholds_Final.pdf).

## 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.

## 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 422.8--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.

422.807 Exemptions.

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—EQUAL OPPORTUNITY FOR VETERANS

#### 422.1305 Waivers.

(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.

(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.

## PART 423--ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

### 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

#### 423.403 Policy.

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

#### 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](http://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.

**Procurement Advisory, 82, USDA BioPreferred Program – Designated Biobased Items for Contract Requirements,**

<https://www.dm.usda.gov/procurement/policy/docs/Procurement%20Advisory%2082A-Final.pdf>.

## 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.

## 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 biobased products in contacts with vendors, in written materials, and other appropriate opportunities.

## 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.

### 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.

## PART 425--FOREIGN ACQUISITION

### SUBPART 425.1--BUY AMERICAN ACT--SUPPLIES

#### 425.103 Exceptions.

(b) Copies of determinations of non-availability 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.

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.

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

#### 425.202 Exceptions.

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.

## PART 426—OTHER SCIOECONOMIC PROGRAMS

### SUBPART 426.2—DISASTER OR EMERGENCY ASSISTANCE ACTIVITIES

#### 426.202 Local Area Preference

FAR 26.202 changed to read, “[**(a)**] When awarding emergency response contracts during the term of a major disaster or emergency declaration by the President of the United States under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121, et seq.), preference shall be given, to the extent feasible and practicable, to local firms. Preference may be given through a local area set-aside or an evaluation preference.

**[(b) When using the authority under the Stafford Act, see 2.101 for the authority to increase the micro-purchase and simplified acquisition thresholds.]”**

**Procurement Advisory 129, FAR Class Deviation to Exercise Special Emergency Procurement Authorities,**

<https://www.dm.usda.gov/procurement/policy/docs/Procurement%20Advisory%20129%20-%20FAR%20Class%20Deviation%20to%20Exercise%20Special%20Emergency%20Procurement%20Authorities.pdf>.

## PART 427--PATENTS, DATA AND COPYRIGHTS

## PART 428--BONDS AND INSURANCE

### 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).

### 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.

428.370 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).

## PART 430---COST ACCOUNTING STANDARDS ADMINISTRATION

### SUBPART 430.2--CAS PROGRAM REQUIREMENTS

430.201 Contract requirements.

#### *430.201-4 Contract clauses.*

FAR 30.201-4 (b)(1) changed to read, "Insert the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, in negotiated contracts when the contract amount is over \$750,000 [**\$2,000,000**], but less than \$50 million, and the offeror certifies it is eligible for and elects to use modified CAS coverage (see 48 CFR 9903.201-2 (FAR Appendix)), unless the clause prescribed in paragraph (c) of this subsection is used."

**Procurement Advisory 133, FAR Class Deviation to Increase the Threshold Requiring Certified Cost or Pricing Data,**

[https://www.dm.usda.gov/procurement/policy/docs/ProcurementAdvisory133FAR\\_Class\\_Deviation\\_to\\_Increase\\_the\\_Threshold\\_for\\_Requiring\\_Certified\\_Cost\\_andPricingData.pdf](https://www.dm.usda.gov/procurement/policy/docs/ProcurementAdvisory133FAR_Class_Deviation_to_Increase_the_Threshold_for_Requiring_Certified_Cost_andPricingData.pdf).

*430.201-5 Waiver.*

Contracting Officers shall prepare waiver requests in accordance with 48 CFR Chapter 99 (Appendix B, FAR loose-leaf edition), Subsection 9903.201-5, and submit them to the SPE through the head of the contracting activity (HCA).

430.202 Disclosure requirements.

*430.202-2 Impracticability of submission. .*

(a) The request for this determination is to be prepared in accordance with FAR Part 99 (Appendix B), Subsection 9903.202-2 and is to contain the proposed report to the CASB.

(b) Requests for a determination under paragraph (a) of this section shall be prepared by the Contracting Officer and submitted through the HCA to the SPE for concurrence and submittal to the Secretary.

*430.202-8 Subcontractor Disclosure Statements.*

(b) Requests for this determination are to be prepared and forwarded as described in 430.202-2.

## PART 431--CONTRACT COST PRINCIPLES AND PROCEDURES

### SUBPART 431.1--APPLICABILITY

431.101 Objectives.

Requests for advance approval of class deviations concerning cost principles must be submitted to the SPE through the HCA.

## PART 432--CONTRACT FINANCING

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.

##### *432.006-3 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.

## 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 for construction, alteration or repair, and shipbuilding and conversion. Such payments also are authorized for service contracts, if the Contracting Officer determines that progress payments based on costs are not practicable and adequate safeguards are provided to administer progress payments based on a percentage or stage of completion. For all other contracts, progress payment provisions shall be based on costs except that the HCA may authorize progress payments based on a percentage or stage of completion on a case-by-case basis. Each authorization by the HCA shall include a determination and finding that progress payments based on costs cannot be employed practically and that there are adequate safeguards provided for the administration of progress payments based on a percentage or stage of completion.

#### 432.103 Progress payments under construction contracts.

(a) When approving a progress payment under a construction contract, the contracting officer shall indicate the amount to be paid by the payment office and include in the contract file the rationale in support of the payment.

(b) When a retainage is made on a progress payment under a construction contract, the contracting officer shall place in the contract file a written determination stating the reason(s) for the retainage.

(c) When a progress payment under a construction contract has been approved, the amount to be paid, the amount of any retainage withheld, and the reason(s) for the retainage shall be provided to the contractor by the contracting officer in writing before the payment due date.

(d) When the contractor, under a fixed-price construction contract, furnishes evidence to the contracting officer that the surety has been paid in full for bond premiums and requests reimbursement, the first subsequent progress payment shall include the total amount attributable to such bond premiums and the Government shall pay that amount in full. This amount paid for the bond premiums is not an amount in addition to the stated contract price.

#### 432.113 Customary contract financing.

The contracting officer may determine the necessity for customary contract financing. The determination and finding that customary contract financing is needed shall be placed in the contract file.

#### 432.114 Unusual contract financing.

The signed determination and finding supporting this approval shall be included in the contract file.

### SUBPART 432.2--COMMERCIAL ITEM PURCHASE FINANCING

#### 432.202 General.

##### 432.202-1 Policy.

In the case of unusual contract financing, the approval by the HCA shall be recorded in a determination and finding and maintained in the contract file.

*432.202-4 Security for Government financing.*

Prior to determining that an offeror's financial condition is adequate security, the Contracting Officer must obtain the concurrence of the funding activity in the proposed determination.

*432.207 Administration and payment of commercial financing payments.*

The responsibility for receiving, reviewing, and approval of contract financing requests may not be transferred from the contracting officer.

## SUBPART 432.4--ADVANCE PAYMENTS FOR NON-COMMERCIAL ITEMS

*432.407 Interest.*

The signed determination and findings supporting these authorizations shall be included in the contract files.

## 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

*32.703 Contract funding requirements.*

**Procurement Advisory 134, Incrementally Funded Fixed-Price Contracts,**

<https://www.dm.usda.gov/procurement/policy/advisories.htm>

*32.706 Contract clauses.*

LIMITATION OF GOVERNMENT'S OBLIGATION (SEPT 2018)

**Procurement Advisory 134, Incrementally Funded Fixed-Price Contracts,**

<https://www.dm.usda.gov/procurement/policy/advisories.htm>

## SUBPART 432.8--ASSIGNMENT OF CLAIMS

432.805 Procedure.

The information described in FAR 32.805 shall be filed with the Contracting Officer.

## 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.

## SUBPART 432.11---ELECTRONIC FUNDS TRANSFER

432.1108 Payment by Governmentwide Commercial Purchase Card.

Agencies and cardholders may not use convenience checks for purchases or payments unless an applicable Treasury check waiver allows such use.

**Procurement Advisory 52, Prohibitions on Using Convenience Checks for Purchases or Payments,**  
<https://www.dm.usda.gov/procurement/policy/docs/Procurement%20Advisory%2052A.pdf>.

USDA procurement personnel are reminded to ensure that appropriate information is entered into the Electronic Access System (EAS) (i.e., the correct accounting code(s) and Budget Object Classification Code (BOC).

**Procurement Advisory 55, Reminder Regarding the Use of Purchase Cards to Acquire Personal Property Costing \$5,000 or More and Agency-Determined Sensitive Property,**  
[https://www.dm.usda.gov/procurement/policy/docs/Procurement%20Advisory%2055A\\_Final07102017.pdf](https://www.dm.usda.gov/procurement/policy/docs/Procurement%20Advisory%2055A_Final07102017.pdf).

## PART 433--PROTESTS, DISPUTES AND APPEALS

### SUBPART 433.1--PROTESTS

433.102 General.

433.103 Protests to the agency.

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.

### SUBPART 433.2--DISPUTES AND APPEALS

#### 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

#### 434.002 Policy.

**Procurement Advisory 130, Acquisition Planning and Major System Reviews,**

<https://www.dm.usda.gov/procurement/policy/docs/Procurement%20Advisory-%20130A.pdf>.

#### 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>.

### SUBPART 434.2—EARNED VALUE MANAGEMENT SYSTEM

**Procurement Advisory 80, Requirement for User of an Earned Value Management System (EVMS),**

<https://www.dm.usda.gov/procurement/policy/docs/Proc%20Adv%20080.pdf>.

## PART 435--RESEARCH AND DEVELOPMENT CONTRACTING

## PART 436--CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

### SUBPART 436.2—SPECIAL ASPECTS OF CONTRACTING FOR CONSTRUCTION

#### 436.201 Evaluation of contractor performance.

Preparation of performance evaluation reports. In addition to the requirements of FAR 36.201, performance evaluation reports shall be prepared for indefinite-delivery type contracts when either the



contract maximum or the contracting activity's reasonable estimate of services to be ordered exceeds \$500,000.00. For these contracts, performance evaluation reports shall be prepared for each order at the time of final acceptance of the work under the order.

#### 436.203 Government estimate of construction costs.

For acquisitions using sealed bid procedures, the Contracting Officer may disclose the overall amount of the Government's estimate of construction costs following identification of the responsive bid most advantageous to the Government; verification of that bid's price reasonableness; and verification of the bidder's responsibility. For acquisitions using other than sealed bid procedures (e.g., negotiation), the Contracting Officer may disclose the overall amount of the estimate after contract award.

#### 436.204 Disclosure of the magnitude of construction projects.

In the case of indefinite-delivery type contracts, the reasonable estimate of work to be done or the maximum in the solicitation, both including all options, is to be used to select the price range. Contracting Officers may elect to use both a price range for the base period of services and the total, inclusive of options, to best describe the magnitude of the solicitation.

### SUBPART 436.5--CONTRACT CLAUSES

#### 436.575 Maximum workweek-construction schedule.

**Procurement Advisory 113, Discontinuance of a Provision and a Clause from the AGAR,**  
<https://www.dm.usda.gov/procurement/policy/docs/Proc%20Adv%20113.pdf>.

### 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.

##### *436.602-2 Evaluation boards.*

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 copy of the final selection, inclusive of the supporting documents, shall be provided to the Contracting Officer and maintained in the solicitation file.

*436.603 Collecting data on and appraising firms' qualifications.*

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.*

A copy of the determinations described in paragraphs (a) and (b) of this section of the AGAR shall be maintained in the contract file.

## PART 437--SERVICE CONTRACTING

### SUBPART 437.2--ADVISORY AND ASSISTANCE SERVICES

*437.203 Policy.*

Contracting for advisory and assistance services is subject to the policy and procedures in Departmental Regulations (5000 series).

**Procurement Advisory 91, Review of Advisory and Assistance Services and All Professional Services,**  
<https://www.dm.usda.gov/procurement/policy/docs/Procurement%20Advisory%2091D.pdf>.

**Procurement Advisory 91, Attachment A,**

<https://www.dm.usda.gov/procurement/policy/docs/Attach%20A%20to%20Proc%20Adv%2091C%20%2062014.pdf>.

437.204 Guidelines for determining availability of personnel.

Each such decision shall be supported by a written determination in accordance with FAR 37.204.

## **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.

**Procurement Advisory 49, Implementation of Section 508 of the Rehabilitation Act of 1973, as Amended,** <https://www.dm.usda.gov/procurement/policy/docs/AGARAD49.pdf>.

**Procurement Advisory 53, Procurement Procedure for Information Technology Acquisition Approval Request (AAR),** <https://www.dm.usda.gov/procurement/policy/docs/Proc%20Advisory%2053A.pdf>.

**Procurement Advisory 58, Partially Removes the Prohibition on Use of the Purchase Card To Acquire Telecommunications,** <https://www.dm.usda.gov/procurement/policy/docs/Proc%20Advisory%2058B%2006-05-2014%20.pdf>.

**Procurement Advisory 121, Procurement of Communications / Information Products and Services,** <https://www.dm.usda.gov/procurement/policy/Proc%20Advisory%20121%20Communication%2012-19-2014.pdf>.

**Procurement Advisory 127, Acquiring Information Technology - Recommended Language to Comply with Internet Protocol version 6 (IPv6),**

<https://www.dm.usda.gov/procurement/policy/Procurement%20Advisory127.pdf>.

## PART 441--ACQUISITION OF UTILITY SERVICES

## PART 442--CONTRACT ADMINISTRATION AND AUDIT SERVICES

### 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 442.7—INDIRECT COST RATES

#### 442.703 General

##### *42.703.2 Certificate of Indirect Costs.*

**Procurement Advisory 133, FAR Class Deviation to Increase the Threshold for Requiring Certified Cost or Pricing Data,**

[https://www.dm.usda.gov/procurement/policy/docs/ProcurementAdvisory133FAR\\_Class\\_Deviation\\_to\\_Increase\\_the\\_Threshold\\_for\\_Requiring\\_Certified\\_Cost\\_andPricingData.pdf](https://www.dm.usda.gov/procurement/policy/docs/ProcurementAdvisory133FAR_Class_Deviation_to_Increase_the_Threshold_for_Requiring_Certified_Cost_andPricingData.pdf).

#### 442.708 Quick Closeout Procedure.

**Procurement Advisory 93, Contract Closeout Procedures,**

[https://www.dm.usda.gov/procurement/policy/Procurement%20Advisory%2093C\\_Contract%20Closeout%20Procedures\\_Final.pdf](https://www.dm.usda.gov/procurement/policy/Procurement%20Advisory%2093C_Contract%20Closeout%20Procedures_Final.pdf).

### 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/>.

**Procurement Advisory 96, Contractor Performance Information and Contractor Performance Assessment Reporting System (CPARS) Evaluations,**  
[https://www.dm.usda.gov/procurement/policy/docs/Procurement%20Advisory%2096B\\_Final.pdf](https://www.dm.usda.gov/procurement/policy/docs/Procurement%20Advisory%2096B_Final.pdf).

## PART 445--GOVERNMENT PROPERTY

### SUBPART 445.1—GENERAL

#### 445.103 General

**Procurement Advisory 55, Reminder Regarding the Use of Purchase Cards to Acquire Personal Property Costing \$5,000 or More and Agency-Determined Sensitive Property,**  
[https://www.dm.usda.gov/procurement/policy/docs/Procurement%20Advisory%2055A\\_Final07102017.pdf](https://www.dm.usda.gov/procurement/policy/docs/Procurement%20Advisory%2055A_Final07102017.pdf).

**Procurement Advisory 93, Contract Closeout Procedures,**  
[https://www.dm.usda.gov/procurement/policy/Procurement%20Advisory%2093C\\_Contract%20Closeout%20Procedures\\_Final.pdf](https://www.dm.usda.gov/procurement/policy/Procurement%20Advisory%2093C_Contract%20Closeout%20Procedures_Final.pdf).

## PART 446--QUALITY ASSURANCE

## PART 447--TRANSPORTATION

## PART 449--TERMINATION OF CONTRACTS

### SUBPART 449.1--GENERAL PRINCIPLES

#### 449.106 Fraud or other criminal conduct.

(a) If the Contracting Officer suspects fraud or other criminal conduct a written report documenting the facts shall be submitted by the head of the contracting activity (HCA) to the Office of Inspector General. Copies of documents or other information connected with the suspected fraud or criminal conduct shall be provided with the report. Concurrently, a copy of the report shall also be submitted to the Senior Procurement Executive.

(b) Depending on the findings of the Office of Inspector General, the HCA may initiate suspension or debarment action as prescribed in FAR part 9.4 and part 409.4.

#### 449.111 Review of proposed settlements.

Proposed settlement agreements shall be reviewed and approved in accordance with contracting activity procedures.

## SUBPART 449.4--TERMINATION FOR DEFAULT

449.402 Termination of fixed-price contracts for default.

### *449.402-3 Procedure for default.*

In addition to the requirements of FAR 49.402-3(g), the notice of termination shall contain instructions regarding the disposition of any Government property in the possession of the contractor (see FAR 45.508-1) and, in the case of construction contracts, such materials, appliances, and structures as may be on the site of the construction work. The notice shall also contain a statement concerning the liability of the contractor or its surety for any liquidated damages (see FAR 49.402-7).

## PART 450--EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

### SUBPART 450.303--CONTRACT ADJUSTMENTS

450.303 Contract adjustment.

### *450.303-1 Contractor requests.*

Contractor requests shall be submitted to the contracting officer.

## PART 452--SOLICITATION PROVISIONS AND CONTRACT CLAUSES

**Procurement Advisory 80, Requirement for Use of an Earned Value Management System (EVMS),**

<https://www.dm.usda.gov/procurement/policy/docs/Proc%20Adv%20080.pdf>.

**Procurement Advisory 113, Discontinuance of a Provision and a Clause from the AGAR,**

<https://www.dm.usda.gov/procurement/policy/docs/Proc%20Adv%20113.pdf>.

**Procurement Advisory 128, FAR Class Deviation to Implement an Act to Enhance Whistleblower Protection for Contractor Employees,**

<https://www.dm.usda.gov/procurement/policy/Procurement%20Advisory%20128,%20FAR%20Class%20Deviation%20to%20Implement%20an%20Act%20to%20Enh.pdf>.

**52.212-4 Contract Terms and Conditions-Commercial Items (Deviation 2017-1).**

As prescribed in 12.301(b)(3), insert the following clause:

**CONTRACT TERMS AND CONDITIONS-COMMERCIAL ITEMS**

**(DEVIATION 2017-1) (AUG 2017)**

**(a) \* \* \* \* \***

**\* \* \* \* \***

**(r) Compliance with laws unique to Government contracts. The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. chapter 37, Contract Work Hours and Safety Standards; 41 U.S.C. chapter 87, Kickbacks; 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly**

American; and 41 U.S.C. chapter 21 relating to procurement integrity.

\* \* \* \* \*

52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders-Commercial Items (Deviation 2017-1).

As prescribed in 12.301(b)(4), insert the following clause:

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS-COMMERCIAL ITEMS (DEVIATION 2017-1) (AUG 2017)

\* \* \* \* \*

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

[Contracting Officer check as appropriate.]

(1) 52.203-6, Restrictions on Subcontractor Sales to the Government (Sept 2006), with Alternate I (Oct 1995) (41 U.S.C. 4704 and 10 U.S.C. 2402).

(2) 52.203-13, Contractor Code of Business Ethics and Conduct (Oct 2015)(41 U.S.C. 3509)).

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(3) 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (June 2010) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)

(4) 52.203-17, Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights (April 2014) (41 U.S.C. 4712) relating to whistleblower protections).

**Procurement Advisory 129, FAR Class Deviation to Exercise Special Emergency Procurement Authorities,**

<https://www.dm.usda.gov/procurement/policy/docs/Procurement%20Advisory%20129%20-%20FAR%20Class%20Deviation%20to%20Exercise%20Special%20Emergency%20Procurement%20Authorities.pdf>.

**Procurement Advisory 132, FAR Class Deviation to Increase the Micro-Purchase and the Simplified Acquisition Thresholds,**

[https://www.dm.usda.gov/procurement/policy/docs/ProcurementAdvisory132,FARClassDeviationtoIncreaseTheMicro-PurchaseandSimplifiedAcquisitionThresholds\\_Final.pdf](https://www.dm.usda.gov/procurement/policy/docs/ProcurementAdvisory132,FARClassDeviationtoIncreaseTheMicro-PurchaseandSimplifiedAcquisitionThresholds_Final.pdf).

**Procurement Advisory 133, FAR Class Deviation to Increase the Threshold for Requiring Certified Cost or Pricing Data,**

[https://www.dm.usda.gov/procurement/policy/docs/ProcurementAdvisory133FAR\\_Class\\_Deviation\\_to\\_Increase\\_the\\_Threshold\\_for\\_Requiring\\_Certified\\_Cost\\_andPricingData.pdf](https://www.dm.usda.gov/procurement/policy/docs/ProcurementAdvisory133FAR_Class_Deviation_to_Increase_the_Threshold_for_Requiring_Certified_Cost_andPricingData.pdf).