

# AGRICULTURE ACQUISITION REGULATION

48 CFR Chapter 4, Parts 401 through 453

# USDA



**ISSUED BY:** Office of the Assistant Secretary for Administration  
Policy Analysis & Coordination Center  
Procurement & Property Management  
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## FOREWORD

The Agriculture Acquisition Regulation (AGAR), located in the Code of Federal Regulations (CFR) at Title 48, Chapter 4, is issued under the authorities of the Secretary of Agriculture. The AGAR prescribes policies and procedures that implement and supplement the Federal Acquisition Regulation (FAR), which is the primary regulation for use by all Federal Executive agencies in the acquisition of supplies and services with appropriated funds. All references in this loose-leaf version to "Chapter 4" or "this Chapter" refer to the AGAR.

The AGAR has been revised as part of the National Performance Review (NPR) program to eliminate unnecessary regulations and improve those that remain in effect.

This 1996 loose-leaf edition of the AGAR supersedes the previous editions.

Due to the dynamic nature of acquisition rules, the AGAR will be revised as necessary to implement FAR changes or to add supplementary material for which there is no FAR counterpart. In accordance with 41 U.S.C. 418b, the Department will publish in the Federal Register (48 CFR Chapter 4) those AGAR policies, procedures, and forms, which have a significant effect beyond the internal operating procedures of the Department, or a significant cost or administrative impact on contractors or prospective contractors. However, the Department may elect to publish or not to publish those rules in the Federal Register, which do not meet the above criteria of significant effect, cost, or administrative impact.

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**PART 401**

**AGRICULTURE ACQUISITION REGULATION SYSTEM**

**401.000 Scope of Part.**

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

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

**401.101 Purpose.**

(a) The AGAR provides for the codification and publication of uniform policies and procedures for acquisitions

by contracting activities within USDA.

(b) The purpose of the AGAR is to implement the Federal Acquisition Regulation (FAR), where further implementation is needed, and to supplement the FAR when coverage is needed for subject matter not covered in the FAR. The AGAR is not by itself a complete document, as it must be used in conjunction with the FAR.

**401.103 Authority.**

The AGAR and amendments thereto are issued under 5 U.S.C. 301 and

40 U.S.C. 486(c). The Senior Procurement Executive (SPE) has the delegated authority to promulgate Departmental acquisition regulations.

**401.104 Applicability.**

The FAR and AGAR apply to all USDA acquisitions of supplies and services (including construction) which obligate appropriated funds, unless otherwise specified in this chapter or excepted by law.

**401.105 Issuance.**

**401.105-1 Publication and code arrangement.**

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

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

(c) Section 553(a)(2) of the Administrative Procedure Act, 5 U.S.C. 553, provides an exception from the standard public rulemaking procedures to the extent that the rule involves a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts. In 1971, Secretary of Agriculture Hardin announced a voluntary partial waiver from the Administrative Procedure Act exception, and USDA agencies generally are required to provide notice and an opportunity for public comment on proposed rules (36 FR 13804, July 24, 1971). The AGAR has been promulgated and may be revised from time to time in accordance with the rulemaking procedures of the Administrative Procedure Act. The USDA also is required to publish for public comment procurement regulations in the Federal Register, pursuant to the Office of Federal Procurement Policy Act (41 U.S.C. 418b), and FAR 1.301.

**401.105-2 Arrangement of regulations.**

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AGAR coverage parallels the FAR in format, arrangement, and numbering system. However, subdivisions below the section and subsection levels may not always correlate directly to FAR designated paragraphs and subparagraphs.

### **401.105-3 Copies.**

Copies of the AGAR published in CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Requests should reference Chapter 4 of Title 48 CFR.

### **401.170 Electronic access to regulatory information.**

The USDA Departmental Administration Procurement Homepage provides access to the AGAR, AGAR amendments (circulars), AGAR Advisories, and other USDA procurement policy and guidance in electronic form. The Internet address for the Procurement Homepage is URL <http://www.usda.gov/procurement>.

## **SUBPART 401.2—ADMINISTRATION**

### **401.201 Maintenance of the FAR.**

#### **401.201-1 The two councils.**

(a) USDA's representative on the Civilian Agency Acquisition Council is designated by the SPE.

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

**SUBPART 401.3--AGENCY ACQUISITION REGULATIONS**

**401.301 Policy.**

(a) The SPE, subject to the authorities in 401.103 and FAR 1.301, may issue and publish Departmental regulations, that together with the FAR, constitute Department-wide policies, procedures, solicitation provisions, and contract clauses governing the contracting process or otherwise controlling the relationship between USDA (including any of its contracting activities) and contractors or prospective contractors.

(b) Each designated head of a contracting activity (HCA) is authorized to issue or authorize the issuance of, at any organizational level, internal guidance which does not have a significant effect beyond the internal operating procedures of the activity, or a significant cost or administrative impact on offerors or contractors. Internal guidance issued by contracting activities will not be published in the Federal Register. HCAs shall ensure that the guidance, procedures, or instructions issued--

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

(2) Follow the format, arrangement, and numbering system of this regulation to the extent practicable;

(3) Contain no material which duplicates, paraphrases, or is inconsistent with this chapter; and

(4) Are numbered and identified by use of alphabetical suffixes to the chapter number as follows:

4A [Reserved]

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4B Agricultural Research Service.

4C Farm Service Agency.

4D Rural Development (mission area).

4E Food Safety and Inspection Service.

4F [Reserved].

4G Forest Service.

4H [Reserved].

4I Natural Resources Conservation Service.

4J [Reserved]

4K Food and Nutrition Service.

4L Animal and Plant Health Inspection Service.

4M [Reserved].

4N Departmental Administration.

4O [Reserved]

4P [Reserved].

4R Office of Inspector General.

4S [Reserved].

**401.304 Agency control and compliance procedures.**

(a) The AGAR System is under the direct oversight and control of the SPE, who is responsible for review and issuance of all Department-wide acquisition regulations published in the Federal Register to assure compliance with FAR Part 1.

(b) The SPE is also responsible for review and issuance of unpublished, Department-wide internal guidance under the AGAR System.

(c) HCAs are responsible for establishment and implementation of formal procedures for oversight and control of unpublished internal guidance issued within the contracting activity to implement FAR or AGAR requirements. These procedures shall be subject to the review and approval by the SPE.

(d) The SPE is responsible for evaluating coverage under the AGAR System to determine applicability to other agencies and for recommending coverage to the FAR Secretariat for inclusion in the FAR.

(e) Recommendations for revision of existing FAR coverage or new FAR coverage shall be submitted by the HCA to the SPE for further action.

**401.370 Exclusions.**

Subject to the policies of FAR subpart 1.3, certain USDA acquisition policies and procedures may be excluded from the AGAR under appropriately justified circumstances, such as:

- (a) Subject matter which is effective for a period less than 12 months.
- (b) Subject matter which is instituted on an experimental basis for a reasonable period.
- (c) Acquisition procedures instituted on an interim basis to comply with the requirements of statute, regulation, Executive Order, OMB Circular, or OFPP Policy Letter.

**401.371 AGAR Advisories.**

The SPE may issue AGAR Advisories, consistent with the policies of the FAR and the AGAR, for the following purposes:

- (a) to communicate Department-wide policy and/or procedural guidance to contracting activities;
- (b) to delegate to procurement officials authority to make determinations or to take action to implement the policies of the FAR or the AGAR; and,
- (c) to establish internal policy and procedures on an interim basis, prior to incorporation in the AGAR or in a Departmental Directive.



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

### **401.372 Departmental directives.**

Subject to the policies of FAR 1.3, USDA from time to time may issue internal directives to establish procedures, standards, guidance, or methods of performing duties, functions, or operations. Such directives include Departmental Regulations (DR's), Departmental Notices, and Secretary's Memoranda.

## **SUBPART 401.4--DEVIATIONS FROM THE FAR AND AGAR**

### **401.402 Policy.**

### **401.403 Individual Deviations.**

In individual cases, deviations from either the FAR or the AGAR will be authorized only when essential to effect a necessary acquisition or where special circumstances make such deviations clearly in the best interest of the Government. Except for cost principles, HCAs may approve individual deviations from the AGAR, after coordinating with the General Counsel and the SPE. No deviations from the FAR or AGAR may be authorized at the contracting office level. A copy of each deviation and its supporting documentation shall be provided to the SPE. Deviations from the FAR shall not be made unless such action is authorized by the SPE after consultation with the Office of the General Counsel and any other appropriate office, on the basis of a written justification stating clearly the special circumstances involved.

### **401.404 Class deviations.**

Where deviations from the FAR or AGAR are considered necessary for classes of contracts, requests for authority to deviate shall be submitted in writing to the SPE for

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approval. The SPE may authorize class deviations from the FAR without consulting the Chairperson of the Civilian Agency Acquisition Council where urgency precludes consultation. The SPE shall subsequently inform the Chairperson of the Civilian Agency Acquisition Council of the deviation including the circumstances under which it was required.

### **SUBPART 401.6--CONTRACTING AUTHORITY AND RESPONSIBILITIES**

#### **401.601 General.**

(a) The authority and responsibility vested in the Secretary to manage USDA's acquisition function is delegated through the Assistant Secretary for Administration to the SPE. This broad authority includes, but is not limited to, the following responsibilities:

(1) Prescribing and publishing Departmental acquisition policies, regulations, and procedures.

(2) Taking any necessary actions consistent with policies, regulations, and procedures with respect to purchases, contracts, leases, and other transactions.

(3) Designating contracting officers.

(4) Establishing clear lines of contracting authority.

(5) Evaluating and monitoring the performance of USDA's acquisition system.

(6) Managing and enhancing career development of the contracting work force.

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(7) Participating in the development of Government-wide acquisition policies, regulations, and standards; and determining specific areas where government-wide performance standards should be established and applied.

(8) Determining areas of Department-unique standards and developing unique Department-wide standards.

(9) Certifying to the Secretary that the acquisition system meets approved standards.

(b) The SPE may delegate contracting authority to the Heads of Contracting Activities (HCAs) and the responsibility to manage their acquisition function.

(c) Unless prohibited by the FAR, the AGAR, or by other applicable statutes and regulations, the SPE may redelegate to HCAs the authority to make determinations as the agency head in order to implement the policies and procedures of the FAR. Such delegations shall be in writing, but need not be published. (d) Unless prohibited by the FAR, the AGAR, or by other applicable statutes or regulations, each HCA may designate one individual from the contracting activity to carry out the functions of the HCA (HCAD). The HCAD may exercise all authority delegated to the HCA.

**401.603 Selection, appointment, and termination of appointment.**

**401.603-1 General.**

An HCA may delegate contracting authority to the extent authorized by the SPE in a general delegation of acquisition authority, by appointing qualified individuals as contracting officers, in accordance with the USDA Contracting Officer Warrant System, Departmental Regulation 5001-1

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## PART 402

### DEFINITIONS OF WORDS AND TERMS

#### 402.000 Scope of part.

As used throughout this chapter, the following words and terms are used as defined in this subpart unless the context in which they are used clearly requires a different meaning, or a different definition is prescribed for a particular part or portion of a part.

#### SUBPART 402.1--DEFINITIONS

##### 402.101 Definitions.

"Agency head" or "Head of the Agency" means the Secretary of Agriculture, Deputy Secretary, or the Assistant Secretary for Administration.

"Acquisition official" means an individual who has been delegated authority to manage or to exercise acquisition functions and responsibilities.

"Head of the contracting activity" (HCA) means the official who has overall responsibility for managing the contracting activity (i.e., Chief, Forest Service; Administrator, Agricultural Research Service; etc.), or the individual designated by such an official to carry out the functions of the HCA.

"Senior Procurement Executive" (SPE) means the agency official appointed as such by the head of the agency pursuant to Executive Order 12931. The Director, Office of Procurement and Property Management, has been designated as the USDA SPE.

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**PART 403**

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

**SUBPART 403.1--SAFEGUARDS**

**403.101 Standards of Conduct**

**403.101-3 Agency Regulations.**

(a) The standards of conduct for USDA procurement officials are the uniform standards established by the Office of Government Ethics in 5 CFR Part 2635, Standards of Ethical Conduct for Employees of the Executive Branch, and FAR 3.104, Procurement Integrity.

(b) Procurement officials and other employees who require advice concerning the application of standards of conduct to any acquisition issue shall obtain ethics advisory opinions from ethics advisory officials in their agency personnel offices.

**403.104 Procurement integrity.**

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

**403.602 Exceptions.**

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

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**PART 404**

**ADMINISTRATIVE MATTERS**

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

**SUBPART 404.70--PRECONTRACT NOTICES**

**404.7001 Solicitation Provision.**

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

**PART 405**

**PUBLICIZING CONTRACT ACTIONS**

**SUBPART 405.4--RELEASE OF INFORMATION**

**405.403 Requests from Members of Congress.**

The head of the contracting activity (HCA) is the agency head designee pursuant to FAR 5.403.

**SUBPART 405.5--PAID ADVERTISEMENTS**

**405.502 Authority.**

(a) The authority vested in the agency head to authorize publication of paid advertisements in newspapers (44 U.S.C. 3702) is delegated, with power of redelegation, to HCAs. HCA redelegation of this authority shall be in writing.

**PART 406**

**COMPETITION REQUIREMENTS**

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

**406.202 Establishing or maintaining alternative sources.**

The Senior Procurement Executive is authorized to make determinations pursuant to FAR 6.202(a) and sign the determination and findings required by FAR 6.202(b).

**SUBPART 406.3--OTHER THAN FULL AND OPEN COMPETITION**

**406.302 Circumstances permitting other than full and open competition.**

**406.302-70 Otherwise authorized by law.**

(a) Authority. Section 1472 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3318) (the Act) authorizes the Secretary of Agriculture to award contracts, without competition, to further research, extension, or teaching programs in the food and agricultural sciences.

(b) Limitations. The use of this authority is limited to those instances where it can be determined that contracting without full and open competition is in the best interest of the Government and necessary to the accomplishment of the research, extension, or teaching program. Therefore:



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(1) Contracts under the authority of the Act shall be awarded on a competitive basis to the maximum practicable extent.

(2) When full and open competition is not deemed appropriate, the contracting officer shall make a written justification on a case-by-case basis in accordance with procedures in FAR 6.303 and 6.304.

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**PART 407**

**ACQUISITION PLANNING**

**SUBPART 407.1--ACQUISITION PLANS**

**407.103 Agency-head responsibilities.**

Heads of Contracting Activities (HCAs) shall develop procedures to comply with FAR 7.103.

**407.170 Advance acquisition plans.**

Each HCA shall maintain an advance acquisition planning system.

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**PART 408**

**REQUIRED SOURCES OF SUPPLIES AND SERVICES**

**SUBPART 408.8--ACQUISITION OF PRINTING AND RELATED SUPPLIES**

**408.802 Policy.**

(a) The Director, Office of Communications (OC) has been designated as the central printing authority in USDA, with the authority to represent the USDA before the Joint Committee on Printing (JCP), the Government Printing Office, and other Federal and State agencies on all matters related to printing.

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## PART 409

### CONTRACTOR QUALIFICATIONS

#### SUBPART 409.4--DEBARMENT, SUSPENSION AND INELIGIBILITY

##### **409.403 Definitions.**

"Debarring official." Pursuant to the Secretary's delegations of authority in 7 CFR 2.24, the Senior Procurement Executive (SPE) is designated as the debarring official (Department Debarring Officer) with the following exceptions:

- (a) for commodity contracts awarded on behalf of the Commodity Credit Corporation (CCC), the Executive Vice President, CCC, or his designee is designated as the debarring official pursuant to 7 CFR part 1407.
- (b) for contracts awarded under the School Lunch and Surplus Removal Programs (42 U.S.C. 1755 and 7 U.S.C. 612c), the Department Debarring Officer has delegated debarring authority to the Agricultural Marketing Service (AMS).

##### **409.405 Effect of listing.**

Compelling reasons are considered to be present where failure to contract with the debarred or suspended contractor would seriously harm the agency's programs and prevent accomplishment of mission requirements. The SPE is authorized to make the determinations under FAR 9.405. Requests for such determinations shall be submitted through the head of the contracting activity (HCA) to the

SPE.

##### **409.405-1 Continuation of current contracts.**

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The HCA is authorized to make the determinations under FAR 9.405-1.

### **409.405-2 Restrictions on subcontracting.**

The HCA is authorized to approve subcontracts with debarred or suspended subcontractors under FAR 9.405-2.

### **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.**

(a) The HCA, on a non-delegable basis, is authorized to waive any general rule or procedure in FAR 9.5 when in the Government's interest.

**PART 411**

**DESCRIBING AGENCY NEEDS**

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

**Order of precedence for requirements documents.**

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

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

**411.171 Solicitation provisions and contract clauses.**

(a) Contracting officers shall insert the provision at 452.211-70, Brand Name or Equal, in solicitations, other than those for construction, where "brand name or equal" purchase descriptions are used.

(b) Contracting officers shall insert the clause at 452.211-71, Equal Products Offered, in solicitations, other than those for construction, where the provision at 452.211-70 is included.

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(c) Contracting officers shall insert the clause at 452.211-72, Statement of Work/Specifications, when the description (statement of work) or specification(s) is included in Section J of the solicitation.

(d) Contracting officers shall insert the clause at 452.211-73, Attachment to Statement of Work/Specifications, when there are attachments to the description (statement of work) or specifications.

**SUBPART 411.4--DELIVERY OR PERFORMANCE SCHEDULES**

**411.404 Contract Clauses.**

(a) The contracting officer shall insert the clause at 452.211-74, Period of Performance, when it is necessary to specify a period of performance, beginning on the date of award, date of receipt of notice of award, or a specified date.

(b) The contracting officer shall insert the clause at 452.211-75, Effective Period of the Contract, when it is necessary to specify the effective period of the contract.

**PART 412**

**ACQUISITION OF COMMERCIAL ITEMS**

**SUBPART 412.3--SOLICITATION PROVISIONS AND CONTRACT CLAUSES  
FOR THE ACQUISITION OF COMMERCIAL ITEMS**

**412.302 Tailoring of provisions and clauses for the acquisition of commercial items.**

The head of the contracting activity is authorized to approve waivers in accordance with FAR 12.302(c). The approved waiver may be either for an individual contract or for a class of contracts for the specific item. The approved waiver and supporting documentation shall be incorporated into the contract file.



**PART 414**

**SEALED BIDDING**

**SUBPART 414.2--SOLICITATION OF BIDS**

**414.201 Preparation of invitations for bids.**

**414.201-6 Solicitation provisions.**

The contracting officer shall insert the provision 452.214-70, Award by Lot, when multiple items are segregated into clearly identifiable lots and the contracting officer wants to reserve the right to award by item within a lot, if award in that manner would be advantageous to the Government.

**SUBPART 414.4--OPENING OF BIDS AND AWARD OF CONTRACT**

**414.407 Mistakes in bids.**

**414.407-3 Other mistakes disclosed before award.**

The authority to make the determinations under FAR 14.407-3(a), (b), and (d) is delegated, without power of redelegation, to the head of the contracting activity.

**PART 415**

**CONTRACTING BY NEGOTIATION**

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

**415.204 Contract format.**

The Senior Procurement Executive is authorized to exempt contracts from the uniform contract format.

**415.209 Solicitation provisions and contract clauses.**

(a) The provision at 452.215-71, Instructions for the Preparation of Technical and Business Proposals, may be used when offerors will be required to submit technical and business proposals. Contracting officers should tailor the clause to reflect the degree of information required for the specific acquisition.

(b) The contracting officer shall insert the provision at 452.215-72, Amendments to Proposals, in solicitations which require the submittal of lengthy, complex technical proposals.

**SUBPART 415.3--SOURCE SELECTION**

**415.303 Responsibilities.**

The head of the contracting activity (HCA) is authorized to appoint an individual other than the contracting officer as the source selection authority.

**415.305 Proposal evaluation.**

HCA's are responsible for establishing procedures regarding the release of cost information to the members of the technical evaluation team.

**SUBPART 415.4--CONTRACT PRICING**

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

**SUBPART 415.5--PREAWARD, AWARD, AND POSTAWARD NOTIFICATIONS, PROTESTS AND MISTAKES**

**415.570 Post-Award Conference.**

If a postaward conference is necessary, the contracting officer shall insert clause 452.215-73, Post-Award Conference.

**SUBPART 415.6--UNSOLICITED PROPOSALS**

**415.604 Agency points of contact.**

HCA's are responsible for establishing procedures to ensure compliance with the requirements of FAR 15.604.

**415.606 Agency procedures.**

HCA's are responsible for establishing the procedures for control of unsolicited proposals required by FAR 15.606(a) and for identifying the contact points as required by FAR 15.606(b).

**PART 416**

**TYPES OF CONTRACTS**

**416.000 Scope of part.**

Heads of contracting activities (HCAs) are authorized to establish written procedures allowing the use of any contract type described in FAR part 16 for acquisitions made under simplified acquisition procedures in FAR part 13.

**SUBPART 416.2--FIXED-PRICE CONTRACTS**

**416.203-4 Contract clauses.**

An economic price adjustment clause based on cost indexes of labor or material may be used under the conditions listed in FAR 16.203-4(d) after approval by the HCA and consultation with the Office of the General Counsel.

**SUBPART 416.4--INCENTIVE CONTRACTS**

**416.406 Contract clauses.**

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

**416.470 Solicitation provision.**

The contracting officer shall insert the provision at 452.216-71, Base Fee and Award Fee Proposal, in solicitations which contemplate the award of a cost-plus-award-fee contract.

**SUBPART 416.5--INDEFINITE DELIVERY CONTRACTS**

**416.506 Solicitation provision and contract clauses.**

(a) The contracting officer shall insert a provision substantially the same as the provision at 452.216-72, Evaluation Quantities-Indefinite-Delivery Contract, in solicitations which contemplate the award of indefinite-quantity or requirements contracts to establish the basis on which offers will be evaluated.

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(b) The contracting officer shall insert the clause at 452.216-73, Minimum and Maximum Contract Amounts, in indefinite-delivery, indefinite-quantity contracts when the clause at FAR 52.216-18 is used.

### **SUBPART 416.6--TIME-AND-MATERIALS, LABOR-HOUR, AND LETTER CONTRACTS**

#### **416.603 Letter contracts.**

##### **416.603-2 Application.**

The HCA is authorized to extend the period for defining a letter contract required by FAR 16.603-2(c) in extreme cases where it is determined in writing that such action is in the best interest of the Government.

##### **416.603-4 Contract clauses.**

The contracting officer shall insert the clause at 452.216-75, Letter Contract, in a definitive contract superseding a letter contract.

##### **416.670 Contract Clauses.**

The contracting officer shall limit the Government's obligation under a time-and-materials or labor-hour contract by inserting the clause at 452.216-74, Ceiling Price.

### **SUBPART 416.7--AGREEMENTS**

#### **416.702 Basic Agreements.**

Promptly after execution by the Government, the HCA shall furnish to the Senior Procurement Executive a copy of each basic agreement negotiated with contractors in accordance with FAR 16.702.

**PART 417**

**SPECIAL CONTRACTING METHODS**

**SUBPART 417.2--OPTIONS**

**417.204 Contracts.**

The head of the contracting activity is authorized to approve contracts which exceed the 5 year limitation in FAR 17.204(e).

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**PART 419**

**SMALL BUSINESS PROGRAMS**

**SUBPART 419.2—POLICIES**

**419.201 General Policy.**

**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.

**419.201-73 Reports.**

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

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

**419.508 Solicitation provisions and contract clauses.**

The contracting officer shall insert the provision at 452.219-70, Size Standard and NAICS Code Information, in solicitations that are set aside for small businesses.

**SUBPART 419.6—CERTIFICATES OF COMPETENCY AND DETERMINATIONS OF RESPONSIBILITY**

**419.602 Procedures.**

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

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

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## **PART 422**

### **APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS**

#### **SUBPART 422.3--CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

##### **422.302 Liquidated damages and overtime pay.**

Heads of contracting activities (HCAs) are authorized to review determinations of liquidated damages due under section 104(c) of the Contract Work Hours and Safety Standards Act, and to take remedial action, if appropriate, in accordance with FAR 22.302(c). Contractors or subcontractors may request review of administrative determinations of liquidated damages by written notice to the contracting officer. The contracting officer shall promptly forward appeals of liquidated damages determinations to the HCA.

#### **SUBPART 422.4--LABOR STANDARDS FOR CONTRACTS INVOLVING CONSTRUCTION**

##### **422.404 Davis-Bacon Act wage determinations.**

##### **422.404-6 Modifications of wage determinations.**

HCAs are authorized to request extension of the 90 day period for award after bid opening as provided in FAR 22.404-6(b)(6).

##### **422.406 Administration and enforcement.**

##### **422.406-8 Investigations.**

Reports of violations shall be forwarded to the HCA, who shall process such reports in accordance with FAR 22.406-8(d).

#### **SUBPART 422.6--WALSH-HEALEY PUBLIC CONTRACTS ACT**

##### **422.604 Exemptions.**

##### **422.604-2 Regulatory exemptions.**

The Assistant Secretary for Administration can request the Secretary of Labor to exempt contracts from the Walsh-Healey Public Contracts Act pursuant to FAR 22.604-



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2(b). A written finding justifying the request for exemption shall be prepared for the Assistant Secretary's signature and submitted by the HCA to the Senior Procurement Executive (SPE) for referral to the Assistant Secretary.

### **SUBPART 422.8--EQUAL EMPLOYMENT OPPORTUNITY**

#### **422.804 Affirmative action programs.**

##### **422.804-2 Construction.**

The HCA shall ensure that each contracting office, awarding nonexempt construction contracts, maintains a current listing of covered geographical areas subject to affirmative action requirements specifying goals for minorities and women in covered construction trades.

##### **422.807 Exemptions.**

(a) The Deputy Assistant Secretary for Administration is authorized to make the determination in FAR 22.807(a)(1) that a contract is essential to the national security.

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

#### **422.1305 Waivers.**

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

### **SUBPART 422.14--EMPLOYMENT OF WORKERS WITH DISABILITIES**

#### **422.1403 Waivers.**

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

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## PART 423

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

#### SUBPART 423.4--USE OF RECOVERED MATERIALS

##### 423.400 Scope of subpart.

This subpart implements and supplements FAR policies and procedures for acquiring products and services when preference is given to offers of products containing recovered materials. This subpart further supplements FAR subpart 23.4 by providing guidance for affirmative procurement programs in accordance with Executive Order 13101 and 42 U.S.C. 6962.

##### 423.404 Agency affirmative procurement programs

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

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

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

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

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

**SUBPART 423.5--DRUG-FREE WORKPLACE**

**423.506 Suspension of payments, termination of contract, and debarment and suspension actions.**

(c) The SPE will submit the request for a waiver to the Secretary with a recommendation for action.

**SUBPART 423.6--NOTICE OF RADIOACTIVE MATERIAL**

**423.601 Requirements.**

The HCA shall establish a system of instructions to identify the installation/facility radiation protection officer.

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**PART 424**

**PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION**

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

**424.104 Contract clauses.**

When applicable, the contracting officer shall insert the clause at 452.224-70, Confidentiality of Information, in contracts involving confidential information.

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**PART 425**

**FOREIGN ACQUISITION**

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

**425.103 Exceptions.**

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

**425.105 Determining reasonableness of cost.**

The SPE may make the determination prescribed in FAR 25.105(a).

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

**425.202 Exceptions.**

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

**SUBPART 425.6—TRADE SANCTIONS**

**425.602 Exceptions.**

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

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

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

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

**PART 427**

**PATENTS, DATA AND COPYRIGHTS**

**SUBPART 427.1--GENERAL**

**427.104 General Guidance**

As used in FAR Part 27, the agency head or agency head designee is the Senior Procurement Executive, except under FAR 27.306(a) and (b). Under FAR 27.306(a) and (b), the agency head is the Secretary without power of redelegation.

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## **PART 428**

### **BONDS AND INSURANCE**

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

##### **428.101 Bid Guarantees.**

###### **428.101-1 Policy on use.**

The Senior Procurement Executive may authorize class waivers of the requirement to obtain bid guarantees.

##### **428.106 Administration.**

###### **428.106-6 Furnishing information.**

Heads of contracting activities (HCAs) or their designees may furnish certified copies of bonds and the contracts for which they were given as provided by FAR 28.106-6(c). Requesters may be required to pay costs of certification and copying established by the Departmental Fee Schedule for records requests (7 CFR Part 1, subpart A, appendix A).

#### **SUBPART 428.2--SURETIES AND OTHER SECURITY FOR BONDS**

##### **428.204 Alternatives in lieu of corporate or individual sureties.**

HCAs shall establish procedures to ensure protection and conveyance of deposited securities of the types listed in FAR 28.204-1 through 28.204-3.

###### **428.204-2 Certified or cashier's checks, bank drafts, money orders, or currency.**

The contracting officer shall insert the provision at 452.228-70, Alternative Forms of Security, in a solicitation if a bond is required.

#### **SUBPART 428.3--INSURANCE**

##### **428.310 Contract clause for work on a Government installation.**

The contracting officer shall insert the clause at 452.228-71, Insurance Coverage, in solicitations and contracts which include the clause at FAR 52.228-5, Insurance - Work on a Government Installation. If property liability insurance is required, the contracting officer shall use the clause with its Alternate I.

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**PART 430**

**COST ACCOUNTING STANDARDS ADMINISTRATION**

**430.070 Definitions.**

"ACO," as used in this part and in FAR Part 30, means "administrative contracting officer" as described in FAR Part 42.

**SUBPART 430.2---CAS PROGRAM REQUIREMENTS**

**430.201 Contract requirements.**

**430.201-5 Waiver.**

The Senior Procurement Executive (SPE), without the authority to further redelegate, is authorized to request the Cost Accounting Standards Board to waive the application of the Cost Accounting Standards (CAS).

**430.202 Disclosure requirements.**

**430.202-2 Impracticality of submission.**

(a) The Secretary, without the power to delegate, is authorized to determine, in accordance with FAR Part 99 (Appendix B), Subsection 9903.202-2, that the Disclosure Statement is impractical to secure and to authorize award without obtaining the Disclosure Statement.

**430.202-8 Subcontractor Disclosure Statements.**

(a) The Secretary, without the power to redelegate, is authorized to determine that the Disclosure Statement for a subcontractor is impractical to secure and to authorize award without obtaining the Disclosure Statement.

**PART 431**

**CONTRACT COST PRINCIPLES AND PROCEDURES**

**SUBPART 431.1---APPLICABILITY**

**431.101 Objectives.**

(a) The SPE is designated as the official authorized to give advance approval of an individual deviation concerning cost principles.

(b) The SPE is designated as the official authorized to give advance approval of an class deviation concerning cost principles after coordination with the Civilian Agency Acquisition Council.

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**PART 432**

**CONTRACT FINANCING**

**432.001 Definitions.**

The "agency contract finance office" is the office, other than the office of the requisitioner, providing funding or performing funding record keeping for the contract action.

"Responsible fiscal authority" is that officer in the agency contract finance office with the responsibility to ensure that adequate funds are available and usable for the intended purpose.

**432.003 Simplified acquisition procedures financing.**

**432.006 Reduction or suspension of contract payments upon finding of fraud.**

**432.006-2 Definitions.**

(a) The USDA "remedy coordination official" (RCO) is the Assistant Secretary for Administration.

(b) For the purposes of this part, "head of the agency" means, exclusively, the Secretary or the Deputy Secretary.

**432.006-5 Reporting.**

The annual report required by FAR 32.006-5 is to be prepared by the SPE and to be submitted to the Secretary within 90 calendar days after the end of the fiscal year. When signed by the Secretary, the report is to be maintained by the SPE.

**432.007 Contract financing payments.**

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

**SUBPART 432.1--NON-COMMERCIAL ITEM PURCHASE FINANCING**

**432.111 Contract clauses for non-commercial purchases.**

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The contracting officer shall insert the clause at 452.232-70, Reimbursement for Bond Premiums - Fixed Price Construction Contracts, whenever the clause at FAR 52.232-5, Payments under Fixed-Price Construction Contracts, is used in a contract.

### **432.114 Unusual contract financing.**

The HCA is authorized to approve unusual contract financing.

## **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.

### **432.206 Solicitation provisions and contract clauses.**

The responsibility for administration of the liquidation provisions of a contract may not be transferred from the contracting officer.

## **SUBPART 432.3--LOAN GUARANTEES FOR DEFENSE PRODUCTION**

### **432.301 Definitions.**

Within this subpart, the "agency" or "guaranteeing agency" is the "head of the contracting activity" (HCA) and may not be redelegated.

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

### **432.402 General.**

The HCA is designated as the individual responsible for making the findings and determination, and for approval of the contract terms concerning advance payments.

### **432.406 Letters of credit.**

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The HCA is designated as the individual responsible for coordination with the Department of Treasury concerning letters of credit.

### **432.407 Interest.**

(a) The HCA is designated as the individual who may authorize, on a case by case basis, advance payments without interest for the contract types described in FAR 32.407(d)(1), (2), (3), and (4). The signed determination and findings supporting these authorizations shall be included in the contract files.

(b) The SPE is designated as the individual who may authorize advance payments without interest other than those described in paragraph (a) of this section.

### **432.412 Contract clause.**

The decision to use Alternates I or III to clause 52.232-12 must be supported by a determination and finding.

## **SUBPART 432.7--CONTRACT FUNDING**

### **432.703 Contract funding requirements.**

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

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

Fixed-price contracts shall be fully funded except as permitted below:

1. A fixed-price contract may be incrementally funded only if the contract (excluding any options) or any exercised option:
  - a. Is for severable services;
  - b. Does not exceed one year in length; and
  - c. Is incrementally funded using funds available (unexpired) as of the date the funds are obligated; or
2. The contract uses funds available from multiple (two or more) fiscal years and Congress has otherwise authorized incremental funding.

An incrementally funded fixed-price contract shall be fully funded as soon as funds are available.

### **432.703-3 Contracts crossing fiscal years.**

Funds appropriated to USDA may be used for one year contracts which are to be performed in two fiscal years so long as the total amount for such contracts is obligated in the year for which the funds are appropriated (7 U.S.C. 2209c).

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### **432.770 USDA specific funding limitations.**

(a) The USDA is authorized to subscribe for newspapers as may be necessary to carry out its authorized work: *Provided*, that such subscriptions shall not be made unless provision is made therefor in the applicable appropriation and the cost thereof is not in excess of limitations prescribed therein (7 U.S.C. 2258).

(b) The expenditure of any USDA appropriation for any consulting service through any contract, pursuant to section 3109 of Title 5 of the U.S. Code shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive Order issued pursuant to existing law (7 U.S.C. 2225a).

### **SUBPART 432.8--ASSIGNMENT OF CLAIMS**

#### **432.802 Conditions.**

Written notices of assignment and a true copy of the assigned instrument are to be sent to the contracting officer rather than the agency head. Other copies are distributed as directed in FAR 32.802.

#### **432.803 Policies.**

The HCA may make a determination of need to include a no-setoff commitment in a contract.

#### **432.806 Contract clauses.**

The contracting officer may make the determination whether to include the clause at FAR 52.232-23 in any purchase order expected to exceed the micro-purchase threshold.

Use clause "Limitation of Government's Obligation", in solicitations and resultant incrementally funded fixed-price contracts. The contracting officer may revise the contractor's notification period, in paragraph (c) of the clause, from "ninety" to "thirty" or "sixty" days, as appropriate.

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

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

### **SUBPART 432.9---PROMPT PAYMENT**

#### **432.904 Determining Payment Due Dates.**

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The payment terms for supplies and services on the Procurement List and provided by a Javits-Wagner-O'Day Act participating nonprofit agency are governed by FAR 8.709.

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**PART 433**

**PROTESTS, DISPUTES AND APPEALS**

**SUBPART 433.1--PROTESTS**

**433.102 General.**

(a) The Senior Procurement Executive (SPE) is responsible for coordinating the handling of bid protests lodged with the Government Accountability Office (GAO).

(b) The head of the contracting activity (HCA), on a non-delegable basis, may resolve protests and authorize reimbursement of costs in accordance with FAR 33.102(b).

**433.103 Protests to the agency.**

(a) Actual or prospective bidders or offerors may file protests either with the HCA, as provided by 433.102(b), or with the contracting officer. Protesters who file protests with the HCA shall furnish a complete copy to the contracting officer no later than 1 day after the protest is filed with the HCA.

**SUBPART 433.2--DISPUTES AND APPEALS**

**433.203 Applicability.**

The Assistant Secretary for Administration is authorized to determine the applicability of the Contract Disputes Act to contracts with foreign governments pursuant to FAR 33.203.

**433.203-70 Agriculture Board of Contract Appeals.**

The organization, jurisdiction, and functions of the Agriculture Board of Contract Appeals, together with its Rules of Procedure, are set out in 7 CFR, Part 24.



**PART 434**

**MAJOR SYSTEM ACQUISITION**

**SUBPART 434.0--GENERAL**

**434.001 Definitions.**

Pursuant to OMB Circular No. A-109 (A-109) and the definition at FAR 2.101, within USDA, a system shall be considered a major system if:

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

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

**434.002 Policy.**

In addition to the policy guidance at FAR 34.002 and other parts of the FAR, the policies outlined in paragraph 6 of A-109 should serve as guidelines for all contracting activities in planning and developing systems, major or otherwise.

**434.003 Responsibilities.**

(a) The Secretary of Agriculture or other designated USDA key executive is responsible for making four key decisions in each major system acquisition process. These are listed in paragraph 9 of A-109 and elaborated on in paragraphs 10 through 13. The key executives of USDA (Secretary, Deputy Secretary, Under Secretaries and Assistant Secretaries) individually or as a group will participate in this decision making process.

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

(c) The Assistant Secretary for Administration (ASA) is the USDA Acquisition Executive for major system acquisition other than acquisitions of information technology. The ASA will ensure that A-109 is implemented in USDA and that the management objectives of the Circular are realized. The ASA is responsible for

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designating the program manager for each major system acquisition, designating an acquisition to be a major system acquisition, and approving the written charter and project control system for each major system acquisition.

(d) Heads of contracting activities must:

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

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

(3) Recommend qualified candidates for designation as program managers for each major system acquisition within their jurisdiction.

(4) Ensure that program managers fulfill their responsibilities and discharge their duties.

(5) Cooperate with the ASA and Major Information Technology Systems Executive in implementing the requirements of A-109.

(e) The program manager is responsible for planning and executing the major system acquisition, ensuring appropriate coordination with the USDA Acquisition Executive and Major Information Technology Systems Executive and other key USDA executives.

### **434.005-6 Full production.**

The Secretary or the USDA key executive designated by the Secretary for the specific program is the agency head for the purposes of FAR 34.005-6.

**PART 435**

**RESEARCH AND DEVELOPMENT CONTRACTING**

**435.010 Scientific and technical reports.**

Research and development contracts shall contain a provision requiring that the contractor send copies of all scientific and technical reports to the National Technical Information Service at the address indicated in FAR 35.010(b). The release of research and development contract results to other government activities and to the private sector is subject to the provisions of FAR Subpart 4.4.

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**PART 436**

**CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS**

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

**436.205 Statutory cost limitations.**

(a) When it appears that funds available for a project may be insufficient for all the desired features of construction, the contracting officer may provide in the solicitation for a base bid item covering the work generally as specified and for one or more additive or deductive bid items which progressively add or omit specified features of the work in a stated order of priority. In this case, the contracting officer shall insert the provision at 452.236-70, Additive or Deductive Items, in solicitations for construction.

(b) In the alternative to the process in paragraph (a) of this section, the contracting officer may use the policies and procedures found in FAR 17.2.

**436.209 Construction contracts with architect-engineer firms.**

The head of the contracting activity (HCA) is authorized to approve the award of a contract to construct a project, in whole or in part, to the firm (inclusive of its subsidiaries or affiliates) that designed the project.

**436.213 Special procedures for sealed bidding in construction contracting.**

**436.213-2 Presolicitation notices.**

The authority to waive a presolicitation notice is restricted to the HCA.

**SUBPART 436.5--CONTRACT CLAUSES**

**436.500 Scope of subpart.**

This subpart prescribes clauses for insertion in USDA solicitations and contracts for construction and for dismantling, demolition, or removal of improvements or structures. The contracting officer shall use the clauses as prescribed, in contracts that exceed the simplified acquisition threshold. The contracting officer may use the clauses if the contract amount is expected to be within the simplified acquisition threshold.

**436.571 Prohibition against the use of lead-based paint.**

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The contracting officer shall insert the clause at 452.236-71, Prohibition Against the Use of Lead-Based Paint, in solicitations and contracts, if the work involves construction or rehabilitation (including dismantling, demolition, or removal) of residential structures. This clause may be used in contracts for other than residential structures.

### **436.572 Use of premises.**

The contracting officer shall insert the clause at 452.236-72, Use of Premises, if the contractor will be permitted to use land or premises administered by USDA.

### **436.573 Archeological or historic sites.**

The contracting officer shall insert the clause at 452.236-73, Archeological or Historic Sites, if the contractor will be working in an area where such sites may be found. Use of the clause is optional in service contracts for on-the-ground work, e.g. reforestation, silvicultural, land stabilization, or other agricultural-related projects.

### **436.574 Control of erosion, sedimentation, and pollution.**

The contracting officer shall insert the clause at 452.236-74, Control of Erosion, Sedimentation and Pollution, if there is a need for applying environmental controls in the performance of work. Use of the clause is optional in service contracts for on-the-ground e.g., reforestation, silvicultural, land stabilization, or other agricultural-related projects.

### **436.575 Maximum workweek-construction schedule.**

The contracting officer shall insert the clause at 452.236-75, Maximum Workweek-Construction Schedule, if the clause at FAR 52.236-15 is used and the contractor's work schedule is restricted by access to the facility or must be coordinated with the schedule of contract administration personnel.

### **436.576 Samples and certificates.**

The contracting officer shall insert the clause at 452.236-76, Samples and Certificates, in all contracts.

### **436.577 Emergency response.**

The contracting officer may insert the clause at 452.236-77, Emergency Response, in construction contracts awarded for the Forest Service.

### **436.578 Fire Suppression and Liability**

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The contracting officer shall insert the clause at 452.236-78, Fire Suppression and Liability, in Integrated Resource Service Contracts (IRSC) awarded for the Forest Service.

### **436.579 Opted timber sale road requirements.**

The contracting officer shall insert the clause at 452.236-79, Opted Timber Sale Road Requirements, in road construction contracts resulting from a timber sale turnback.

## **SUBPART 436.6--ARCHITECT- ENGINEER SERVICES**

### **436.602 Selection of firms for architect-engineer contracts.**

#### **436.602-1 Selection criteria.**

The HCA is authorized to approve the use of design competition under the conditions in FAR 36.602-1(b).

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

HCAs shall establish written procedures for providing permanent or ad hoc architect-engineer evaluation boards as prescribed in FAR 36.602-2.

#### **436.602-4 Selection authority.**

(a) The HCA shall serve as the selection authority in accordance with FAR 36.602-4. The HCA may authorize an acquisition official above the level of the contracting officer to serve as the selection authority.

#### **436.602-5 Short selection process for contracts not to exceed the simplified acquisition threshold.**

The HCA may include either or both procedures in FAR 36.602-5 in the procedures for evaluation boards.

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

(a) HCAs which require architect-engineer services shall establish procedures to comply with the requirements of FAR 36.603.

**436.609 Contract clauses.**

**436.609-1 Design within funding limitations.**

(a) Should the head of the contracting activity appoint a designee to make the determination in FAR 36.609-1(c)(1), the appointment may be to one no lower than the official authorized to commit program funds for the work being acquired.

(b) The contracting officer, with the advice of appropriate technical representatives, may make the determination in FAR 36.609-1(c)(2) or (3).

**436.670 Firms ineligible for award — construction.**

The contracting officer shall insert the clause at 452.236-80, Firms Ineligible for Award — Construction, in the contract for architect-engineering services except as provided in FAR 36.209 and AGAR 436.209.

**PART 437**

**SERVICE CONTRACTING**

**SUBPART 437.1—SERVICE CONTRACTS--GENERAL**

**437.104 Personal services contracts.**

USDA has the following specific statutory authorities to contract for personal services:

(a) Section 706(a) of the Organic Act of 1944 (7 U.S.C. 2225) authorizes contracting with persons or organizations on a temporary basis, without regard to civil service compensation classification standards in 5 U.S.C., Chapter 51 and Subchapter III of Chapter 53, Provided:

(1) That no expenditures shall be made unless specifically provided for in the applicable appropriation, and

(2) Expenditures do not exceed any limitations prescribed in the appropriation.

(b) 7 U.S.C. 1627 authorizes the Secretary of Agriculture to contract with technically qualified persons, firms or organizations to perform research, inspection, classification, technical, or other special services, without regard to the civil-service laws, provided: it is for a temporary basis and for a term not to exceed six months in any fiscal year.

**437.110 Solicitation provisions and contract clauses.**

(a) The contracting officer shall insert a clause substantially the same as the clause at 452.237-70, Loss Damage, Destruction or Repair, in contracts for equipment rental, whether the equipment is furnished with or without operator.

(b) The contracting officer shall insert a provision substantially the same as the clause at 452.237-71, Pre-Bid/Pre-Proposal Conference, in all solicitations if a conference with prospective offerors will be held prior to the submittal of bids or proposals.

(c) The contracting officer shall insert the provision at 452.237-73, Equipment Inspection visit, in solicitations if work is to be done on Government equipment and an offeror's inspection is encouraged for an understanding of the work to be performed prior to submittal of bids or proposals.



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(d) The contracting officer shall insert a clause substantially the same as the clause at 452.237-74, Key Personnel, in contracts if contract performance requires identification of the contractor's key personnel.

(e) The contracting officer shall insert a clause substantially the same as the clause at 452.237-75, Restrictions Against Disclosure, in service contracts (including architect-engineer contracts) requiring restrictions on release of information developed or obtained in connection with performance of the contract.

### **SUBPART 437.2--ADVISORY AND ASSISTANCE SERVICES**

#### **437.204 Guidelines for determining availability of personnel.**

The head of the contracting activity (HCA) is authorized to approve the use of non-Government evaluators in proposal evaluation.

#### **437.270 Solicitation and contract clauses.**

(a) The contracting officer shall insert a clause substantially the same as the clause at 452.237-76, Progress Reporting, in all contracts for advisory and assistance services. It may also be used in other service contracts.

(b) The contracting officer shall insert a clause substantially the same as the clause at 452.237-78, Contracts with Consulting Firms for Services, in solicitations and contracts for consulting services which prohibit follow-on contracts with the contracting firm.

**PART 441**

**ACQUISITION OF UTILITY SERVICES**

**SUBPART 441.2--ACQUIRING UTILITY SERVICES**

**441.201 Policy.**

As used in FAR 41.201(d)(2)(i) and 41.201(d)(3) the Federal agency head designee is the head of the contracting activity.

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**PART 445**

**GOVERNMENT PROPERTY**

**SUBPART 445.3--PROVIDING GOVERNMENT PROPERTY TO CONTRACTORS**

**445.302 Providing facilities.**

**445.302-1 Policy.**

Heads of contracting activities (HCAs) are authorized to make determinations for providing facilities to a contractor as prescribed in FAR 45.302-1(a)(4).

**SUBPART 445.4--CONTRACTOR USE AND RENTAL OF GOVERNMENT PROPERTY**

**445.403 Rental--Use and Charges clause.**

HCAs are authorized to make determinations for charging rent on the basis of use under the Use and Charges clause in FAR 52.245-9 as prescribed in FAR 45.403(a).

**445.407 Non-Government use of plant equipment.**

Requests for non-Government use of plant equipment as prescribed in FAR 45.407 shall be submitted by the HCA to the Senior Procurement Executive (SPE) for approval.

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**PART 446**

**QUALITY ASSURANCE**

**SUBPART 446.3--CONTRACT CLAUSES**

**446.370 Inspection and acceptance.**

The Contracting Officer shall insert the clause at 452.246-70, Inspection and Acceptance, in contracts where inspection and acceptance will be performed at the same location. The clause with its Alternate I is for use when inspection and acceptance will be performed at different locations.

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**PART 447**

**TRANSPORTATION**

**SUBPART 447.3--TRANSPORTATION IN SUPPLY CONTRACTS**

**447.302 Place of delivery-F.O.B. point.**

The contracting officer shall insert a clause substantially the same as the clause at 452.247-70, Delivery Location, in supply contracts when it is necessary to specify delivery locations. If appropriate, the clause may reference an attachment which lists various delivery locations and other delivery details (e.g., quantities to be delivered to each location, etc.).

**447.305 Solicitation provisions, contract clauses, and transportation factors.**

**447.305-10 Packing, marking, and consignment instructions.**

(a) The contracting officer shall insert a clause substantially the same as the clause at 452.247-71, Marking Deliverables, in solicitations and contracts if special marking on deliverables (other than reports) are required.

(b) The contracting officer shall insert the clause at 452.247-72, Packing for Domestic Shipment, in contracts when item(s) will be delivered for immediate use to a destination in the continental United States; when the material specification or purchase description does not provide preservation, packaging, packing, and/or marking requirements; and/or when the requiring activity has not cited a specific specification for packaging.

(c) The contracting officer shall insert the clause at 452.247-73, Packing for Overseas Shipment, in contracts when item(s) will be delivered to an overseas destination for immediate use, the material specification does not specify packing levels, and the required activity has not specified such requirements.

**PART 449**

**TERMINATION OF CONTRACTS**

**SUBPART 449.5--CONTRACT TERMINATION CLAUSES**

**449.501 General.**

Use of special purpose termination clauses pursuant to the authority of FAR 49.501 shall be approved in advance by the HCA.

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**PART 450**

**EXTRAORDINARY CONTRACTUAL ACTIONS**

**450.001 Definitions.**

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

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

**SUBPART 450.2--DELEGATION OF AND LIMITATIONS ON EXERCISE OF AUTHORITY**

**450.201 Delegation of authority.**

The Assistant Secretary for Administration is authorized to approve all actions under FAR Part 50 except indemnification actions listed in FAR 50.201(d) which must be approved by the Secretary, without power of delegation.

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## SUBCHAPTER H--CLAUSES AND FORMS

### PART 452--SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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- 452.247-73 Packing for Overseas Shipment.

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

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## **PART 452**

### **SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

#### **SUBPART 452.2--TEXTS OF PROVISIONS AND CLAUSES**

##### **452.204-70 Inquiries.**

As prescribed in 404.7001, insert the following provision:

##### **INQUIRIES (FEB 1988)**

Inquiries and all correspondence concerning this solicitation should be submitted in writing to the Contracting Officer. Offerors should contact only the Contracting Officer issuing the solicitation about any aspect of this requirement prior to contract award.

(End of provision)

##### **452.211-70 Brand Name or Equal.**

As prescribed in 411.171, insert the following provision:

##### **BRAND NAME OR EQUAL (NOV 1996)**

(As used in this provision, the term "brand name" includes identification of products by make and model.)

(a) If items called for by this solicitation have been identified by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Offers of "equal" products (including products of the brand name manufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the offer (see clause 452.211-71) and are determined by the Contracting Officer to meet fully the salient characteristics requirements listed in the solicitation.

(b) Unless the offeror clearly indicates in its offer that it is offering an "equal" product, the offeror shall be considered as offering the brand name product(s) referenced in the solicitation.

(c)(1) If the offeror proposes to furnish an "equal" product or products, the brand name(s), if any, and any other required information about the product(s) to be furnished shall be inserted in the space provided in the solicitation. The evaluation of offers and the determination as to the equality of the product(s) offered shall be the responsibility of the Government and will be based on information furnished by the offeror or

identified in its offer as well as other information reasonably available to the contracting activity.

Caution to offerors: The contracting activity is not responsible for locating or securing any information which is not identified in the offer and is not reasonably available to the contracting activity. Accordingly, to assure that sufficient information is available, the offeror must furnish as a part of its offer all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the contracting activity to (i) determine whether the product offered meets the salient characteristics requirement of the solicitation, and (ii) establish exactly what the offeror proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific reference to information previously furnished or to information otherwise available to the contracting activity.

(c)(2) If an offeror proposes to modify a product so as to make it conform to the requirements of the solicitation, the offer shall include (i) a clear description of such proposed modifications and (ii) clearly marked descriptive material to show the proposed modifications.

(End of Provision)

**452.211-71 Equal Products Offered.**

As prescribed in 411.171, insert the following or substantially the same clause in solicitations seeking offers on a "brand name or equal" basis to allow offerors the opportunity to clearly identify the "equal" item being offered, and to illustrate how that item meets the salient characteristics requirements of the Government.

**EQUAL PRODUCTS OFFERED  
(NOV 1996)**

(a) Offerors proposing to furnish an "equal" product, in accordance with the "Brand Name or Equal" provision of this solicitation, shall provide the following information for each offered "equal" product:

Contract Line Item Number (if any): \_\_\_\_\_  
Brand Name or Equal Product identified by the Government in this solicitation:

Offered Product Name: \_\_\_\_\_

Catalog Description or part number: \_\_\_\_\_

Manufacturer's Name: \_\_\_\_\_

Manufacturer's Address: \_\_\_\_\_

(b) Offerors are responsible for submitting all additional information on the above product necessary for the Contracting Officer to determine whether the product offered meets the "brand name or equal" product's salient characteristics listed in the solicitation.

(End of Clause)

**452.211-72 Statement of Work/Specifications.**

As prescribed in 411.171, insert the following clause:

**STATEMENT OF WORK/  
SPECIFICATIONS (FEB 1988)**

The Contractor shall furnish the necessary personnel, material, equipment, services and facilities (except as otherwise specified), to perform the Statement of Work/Specifications referenced in Section J.

(End of Clause)

**452.211-73 Attachments to  
Statements of Work/Specifications.**

As prescribed in 411.171, insert the following clause:

**ATTACHMENTS TO STATEMENT OF WORK/SPECIFICATIONS  
(FEB 1988)**

The attachments to the Statement of Work/Specifications listed in Section J are hereby made part of this solicitation and any resultant contract.

(End of Clause)

**452.211-74 Period of Performance.**

As prescribed in 411.404(a), insert the following clause:

**PERIOD OF PERFORMANCE  
(FEB 1988)**

The period of performance of this contract is from \_\_\*\_\_ through \_\_\*\_\_.

(End of Clause)

\*Contracting Officer shall insert the appropriate dates.

**452.211-75 Effective Period of the Contract.**

As prescribed in 411.404(b), insert the following clause:

**EFFECTIVE PERIOD OF THE  
CONTRACT (FEB 1988)**

The effective period of this contract is from \_\_\_\*\_\_\_ through \_\_\_\*\_\_\_.

(End of Clause)

\*Contracting Officer shall insert the appropriate dates.

**452.214-70 Award by Lot.**

As prescribed in 414.201-6, insert a provision substantially as follows:

**AWARD BY LOT (NOV 1996)**

Subject to the Section L provision FAR 52.214-10, "Contract Award--Sealed Bidding," award will generally be made to a single bidder on each entire lot. However, the Government reserves the right to award by item within any lot when the contracting officer determines that it is advantageous to the Government.

(End of Provision)

**452.215-71 Instructions for the Preparation of Technical and Business Proposals.**

As prescribed in 415.209(a), insert a provision substantially as follows:

**INSTRUCTIONS FOR THE PREPARATION OF  
TECHNICAL AND BUSINESS PROPOSALS  
(SEP 1999)**

(a) General Instructions. Proposals submitted in response to this solicitation shall be furnished in the following format with the numbers of copies as specified below.

(1) The proposal must include a technical proposal and business proposal. Each of the parts shall be separate and complete so that evaluation of one may be accomplished independently from evaluation of the other. The technical proposal must not contain reference to cost; however, resource information (such as data concerning labor hours and categories, materials, subcontracts, etc.) must be contained in the technical proposal so that the contractor's understanding of the statement of work may be evaluated.

(2) Offerors may, at their discretion, submit alternate proposals or proposals which deviate from the requirement; provided, that an offeror also submit a proposal for performance of the work as specified in the statement of work. Any "alternate" proposal may be considered if overall performance would be improved or not compromised, and if it is in the best interest of the Government. Alternate proposals, or deviations from any requirement of this RFP, must be clearly identified.

(3) The Government will evaluate proposals in accordance with the evaluation criteria set forth in Section M of this RFP.

(4) Offerors shall submit their proposal(s) in the following format and the quantities specified:

- (a)   \* copies of the completed, signed offer (Sections A through K of the solicitation package)
- (b)   \* copies of the technical proposal
- (c)   \* copies of the business/cost proposal

(b) Technical Proposal Instructions. The technical proposal will be used to make an evaluation and arrive at a determination as to whether the proposal will meet the requirements of the Government. Therefore, the technical proposal must present sufficient information to reflect a thorough understanding of the requirements and a detailed, description of the techniques, procedures and program for achieving the objectives of the specifications/statement of work. Proposals which merely paraphrase the requirements of the Government's specifications/statement of work, or use such phrases as "will comply" or "standard techniques will be employed" will be considered unacceptable and will not be considered further. As a minimum, the proposal must clearly provide the following:

(Contracting Officer shall identify in this section the minimum information required to evaluate each technical evaluation factor listed in Section M.)

(c) Business Proposal Instructions.

(1) Cost Proposal. In addition to any other requirements for cost/pricing information required in clause FAR 52.215-20, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data (OCT 1997), the following is required:

(Contracting Officer shall identify additional information required if appropriate.)

(2) Business Proposal.

(a) Furnish financial statements for the last two years, including an interim statement for the current year, unless previously provided to the office issuing the RFP, in which case a statement as to when and where this information was provided may be furnished instead.

(b) Specify the financial capacity, working capital and other resources available to perform the contract without assistance from any outside source.

(c) Provide the name, location, and intercompany pricing policy for other divisions, subsidiaries, parent company, or affiliated companies that will perform work or furnish materials under this contract.

(End of Provision)

\*Contracting officer shall insert number of copies required.

**452.215-72 Amendments to Proposals.**

As prescribed in 415.209(b), insert the following provision:

**AMENDMENTS TO PROPOSALS  
(FEB 1988)**

Any changes to a proposal made by the offeror after its initial submittal shall be accomplished by replacement pages. Changes from the original page shall be indicated on the outside margin by vertical lines adjacent to the change. The offeror shall include the date of the amendment on the lower right corner of the changed pages.

(End of Provision)

**452.215-73 Postaward Conference.**

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

**POST AWARD CONFERENCE  
(NOV 1996)**

A post award conference with the successful offeror is required. It will be scheduled within \*  days after the date of contract award. The conference will be held at:  
\*

(End of Clause)

\*Contracting officer to insert number of days and location.

**452.216-70 Award Fee.**

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

**AWARD FEE (FEB 1988)**

The amount of award fee the Contractor earns, if any, is based on a subjective evaluation by the Government of the quality of the Contractor's performance in accordance with the award fee plan. The Government will determine the amount of award fee every \*  months beginning with \*\* . The Fee Determination Official (FDO) will unilaterally determine the amount of award fee. The FDO's determination will be in writing to the Contractor and is not subject to the "Disputes" clause. The

Government may unilaterally change the award fee plan at any time and will provide such changes in writing to the Contractor prior to the beginning of the applicable evaluation period. The Contractor may submit a voucher for the earned award fee. Available award fee not earned during one period does not carry over to subsequent periods. (End of Clause)

\*Contracting Officer shall insert appropriate number of months.

\*\*Contracting Officer shall insert appropriate date.

**452.216-71 Base Fee and Award Fee Proposal.**

As prescribed in 416.470, insert the following provision:

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

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

(End of Provision)

\*Contracting Officer shall insert appropriate percentages.

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

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

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

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

(End of Provision)

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

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

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



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

(End of Clause)

\*Contracting Officer shall insert appropriate quantity or dollar amounts.

**452.216-74 Ceiling Price.**

As prescribed in 416.670, insert the following clause:

**CEILING PRICE (FEB 1988)**

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

(End of Clause)

\*Contracting Officer shall insert appropriate dollar amount.

**452.216-75 Letter Contract.**

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

**LETTER CONTRACT (FEB 1988)**

This contract replaces letter contract No. \_\_\* dated \_\_\* and all amendments thereto.

(End of Clause)

\*Contracting Officer shall insert number and date.

**452.219-70 Size Standard and NAICS Code Information.**

As prescribed in 419.508, insert the following provision:

**SIZE STANDARD AND NAICS CODE INFORMATION (SEP 2001)**

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

Contract line item(s): \_\_\* \_\_\*

- NAICS Code \_\_\_\_\_\* \_\_\_\_\_  
-- Size Standard \_\_\_\_\_\* \_\_\_\_\_

(End of provision)

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

#### **452.224-70 Confidentiality of Information.**

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

##### **CONFIDENTIALITY OF INFORMATION (FEB 1988)**

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

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

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

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

(d) If it is established that information to be utilized under this contract is subject to the Privacy Act, the Contractor will follow the rules and procedures of disclosure set forth in the Privacy Act of 1974, 5 U.S.C. 552a, and implementing regulations and policies, with respect to systems of records determined to be subject to the Privacy Act.

(e) Confidential information, as defined in (a)(1) and (2) above, shall not be disclosed without the prior written consent of the individual, institution or organization.

(f) Written advance notice of at least 45 days will be provided to the Contracting Officer of the Contractor's intent to release findings of studies or research, which have the possibility of adverse effects on the public or the Federal agency, as described in (b) above. If the Contracting Officer does not pose any objections in writing within the 45

day period, the contractor may proceed with disclosure. Disagreements not resolved by the Contractor and Contracting Officer will be settled pursuant to the "Disputes" clause.

(g) Whenever the Contractor is uncertain with regard to the proper handling of material under the contract, or if the material in question is subject to the Privacy Act or is confidential information subject to the provisions of this clause, the Contractor shall obtain a written determination from the Contracting Officer prior to any release, disclosure, dissemination, or publication.

(h) The provisions of paragraph (e) of this clause shall not apply when the information is subject to conflicting or overlapping provisions in other Federal, State or local laws.

(End of Clause)

**452.228-70 Alternative Forms of Security.**

As prescribed in 428.204-2, insert the following provision:

**ALTERNATIVE FORMS OF SECURITY  
(NOV 1996)**

If furnished as security, money orders, drafts, cashiers checks, or certified checks shall be drawn payable to: \_\_\*\_\_.

(End of Provision)

\*Contracting Officer shall insert the name of the USDA contracting activity.

**452.228-71 Insurance Coverage.**

As prescribed in 428.310, insert the following clause:

**INSURANCE COVERAGE  
(NOV 1996)**

Pursuant to FAR clause 52.228-5, Insurance-Work on a Government Installation, the Contractor will be required to present evidence to show, as a minimum, the amounts of insurance coverage indicated below:

(a) Workers Compensation and Employer's Liability. The Contractor is required to comply with applicable Federal and State workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with a Contractor's commercial operations that it would not be practical to require this coverage. Employer's liability coverage of

at least \$100,000 shall be required, except in States with exclusive or monopolistic funds that do not permit worker's compensation to be written by private carriers.

(b) General Liability. The Contractor shall have bodily injury liability insurance coverage written on a comprehensive form of policy of at least \$500,000 per occurrence.

(c) Automobile Liability. The Contractor shall have automobile liability insurance written on a comprehensive form of policy. The policy shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing the contract. Policies covering automobiles operated in the United States shall provide coverage of at least \$200,000 per person and 500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage or loss.

(d) Aircraft Public and Passenger Liability. When aircraft are used in connection with performing the contract, the Contractor shall have aircraft public and passenger liability insurance. Coverage shall be at least \$200,000 per person and \$500,000 per occurrence for bodily injury, other than passenger injury. Coverage for passenger injury shall be at least \$200,000 multiplied by the number of seats or passengers, whichever is greater.

(End of Clause)

Alternate I (NOV 1996). As prescribed in 428.310, substitute the following paragraph (b), when additionally the contractor must have property damage liability coverage:

(b) General Liability. (1) The Contractor shall have bodily injury liability coverage written on a comprehensive form of policy of at least \$500,000 per occurrence.

(2) The Contractor shall have property damage liability insurance shall be required in the amount of \_\_\_\_\*\_\_\_\_ per occurrence.

\*Contracting Officer shall insert amount required.

#### **452.232-70 Reimbursement for Bond Premiums--Fixed-Price Construction Contracts.**

As prescribed in 432.111, insert the following clause:

#### **REIMBURSEMENT FOR BOND PREMIUMS--FIXED-PRICE CONSTRUCTION CONTRACTS (NOV 1996)**

The Contract Price includes the total amount for premiums that the Contractor attributes to the furnishing of performance and payment bonds required by the contract. Reimbursement for bond premiums under the clause at FAR 52.232-5, Payments Under Fixed-Price Construction Contracts, shall not cover any amount therefor not included in the contract price.

(End of clause)

**452.232-XX**

**LIMITATION OF GOVERNMENT’S OBLIGATION (SEPT 2018)**

As prescribed in Procurement Advisory 134,  
<https://www.dm.usda.gov/procurement/policy/advisories.htm>

(a) Contract line item(s) listed below is/are incrementally funded. For this/these item(s), the sum of \$ *[Contracting Officer insert after negotiations]* of the total price is presently available for payment and allotted to this contract. An allotment schedule is set forth in paragraph (j) below.

Line Item	Price	Currently Allotted Funding	Funds Required for Complete Funding

(b) For item(s) identified in paragraph (a) as not fully funded, the Contractor agrees to perform up to the point at which the total amount payable by the Government, including reimbursement of authorized termination costs in the event of termination of those item(s) for the Government’s convenience, does not exceed the total amount currently allotted to the items not fully funded under the contract. The Contractor is not authorized to continue work on those item(s) beyond that point. The Government will not be obligated in any event to reimburse the Contractor in excess of the amount allotted to the contract for those item(s) regardless of anything to the contrary in the clause entitled “Termination for Convenience of the Government.” The total amount payable by the Government in the event of termination of applicable contract line item(s) for convenience includes costs, profit, and estimated termination settlement costs for those item(s).

(c) Notwithstanding the dates specified in the allotment schedule in paragraph (j), the Contractor will notify the Contracting Officer in writing at least *[thirty, sixty, or ninety, as appropriate]* days prior to the date when, in the Contractor’s best judgment, the work will reach the point at which the total amount payable by the Government, including any cost for termination for convenience, will approximate 85 percent of the total amount currently allotted to the contract for performance of the applicable item(s). The notification will state (1) the estimated date when that point will be reached and (2) an estimate of additional funding, if any, needed to continue performance of applicable line items up to the next scheduled date for allotment of funds identified in paragraph (j), or to a mutually agreed upon substitute date. The notification will also advise the Contracting Officer of the estimated amount of additional funds that will be required for the timely performance of the item(s) funded, for a subsequent period as may be specified in the allotment schedule in paragraph (j) or otherwise agreed to by the parties. If after such notification additional funds are not allotted by the date identified in the Contractor’s notification, or by an agreed substitute date, the Contracting Officer will terminate any

item(s) for which additional funds have not been allotted, pursuant to the clause of this contract entitled "Termination for Convenience of the Government."

(d) When additional funds are allotted for continued performance of the contract line item(s) identified in paragraph (a) above, the parties will agree as to the period of contract performance which will be covered by the funds. The provisions of paragraphs (b) through (d) will apply similarly to the additional allotted funds and agreed substitute date, and the contract will be modified accordingly.

(e) If, solely by reason of failure of the Government to allot additional funds, by the dates indicated below, in amounts sufficient for timely performance of the contract line item(s) identified in paragraph (a), the Contractor incurs additional costs or is delayed in the performance of the work under this contract and if additional funds are allotted, an equitable adjustment will be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the item(s), or in the time of delivery, or both. Failure to agree to any such equitable adjustment hereunder will be a dispute concerning a question of fact within the meaning of the clause entitled "Disputes."

(f) The Government may at any time prior to termination allot additional funds for the performance of the contract line item(s) identified in paragraph (a) above.

(g) The termination provisions do not limit the rights of the Government under the clause entitled "Default" or "Termination for Cause". The provisions are limited to the work and allotment of funds for the contract line item(s) set forth in paragraph (a) above. These terms no longer apply once the contract is fully funded except with regard to the rights or obligations of the parties concerning equitable adjustments negotiated under paragraphs (e) and (f) above.

(h) Nothing herein affects the right of the Government to terminate this contract pursuant to the clause of this contract entitled "Termination for Convenience of the Government."

(i) Nothing herein shall be construed as authorization of voluntary services whose acceptance is otherwise prohibited under 31 U.S.C. 1342.

(j) The parties agree that the Government will allot funds to this contract in accordance with the following schedule:

On execution of contract	\$ _____
(month) (day), (year)	\$ _____
(month) (day), (year)	\$ _____
(month) (day), (year)	\$ _____

[End of clause]

**452.236-70 Additive or Deductive Items.**

As prescribed in 436.205, insert the following provision:

**ADDITIVE OR DEDUCTIVE ITEMS  
(FEB 1988)**

The low bidder for purposes of award shall be the conforming responsible bidder offering the low aggregate amount for the first or base bid item, plus or minus (in the order of priority listed in the schedule) those additive or deductive bid items providing the most features of the work within the funds determined by the government to be available before bids are opened. If addition of another bid item in the listed order of priority would make the award exceed such funds for all bidders, it shall be skipped and the next subsequent additive bid item in a lower amount shall be added if award therein can be made within such funds. For example, when the amount available is \$100,000 and a bidder's base bid and four successive additives are \$85,000, \$10,000, \$8,000, \$6,000, and \$4,000, the aggregate amount of the bid for purposes of award would be \$99,000 for the base bid plus the first and fourth additives, the second and third additives being skipped because of each of them would cause the aggregate bid to exceed \$100,000. In any case all bids shall be evaluated on the basis of the same additive or deductive bid items, determined as above provided. The listed order of priority need be followed only for determining the low bidder. After determination of the low bidder as stated, award in the best interests of the Government may be made on the selected first or base bid item and any combination of additive or deductive items for which funds are determined to be available at the time of the award, provided that award on such combination of bid items does not exceed the amount offered by any other conforming responsible bidder for the same combination of bid items.

(End of clause)

**452.236-71 Prohibition Against the Use of Lead-Based Paint.**

As prescribed in 436.571, insert the following clause:

**PROHIBITION AGAINST THE USE OF LEAD-BASED PAINT  
(NOV 1996)**

Neither the Contractor nor any subcontractor performing under this contract shall use paints containing more than 0.06 of 1 percent lead by weight (calculated as lead metal) in the total nonvolatile content of the paint, or the equivalent measure of lead in the dried film of paint already applied, or both.

(End of clause)

**452.236-72 Use of Premises.**

As prescribed in 436.572, insert the following clause:

**USE OF PREMISES  
(NOV 1996)**

(a) Before any camp, quarry, borrow pit, storage, detour, or bypass site, other than shown on the drawings, is opened or operated on USDA land or lands administered by the USDA, the Contractor shall obtain written permission from the Contracting Officer. A camp is interpreted to include a campsite or trailer parking area of any employee working on the project for the Contractor.

(b) Unless excepted elsewhere in the contract, the Contractor shall (i) provide and maintain sanitation facilities for the work force at the site and (ii) dispose of solid waste in accordance with applicable Federal, State and local regulations.

(End of clause)

**452.236-73 Archaeological or Historic Sites.**

As prescribed in 436.573, insert the following clause:

**ARCHAEOLOGICAL OR HISTORIC SITES  
(FEB 1988)**

If a previously unidentified archaeological or historic site(s) is encountered, the Contractor shall discontinue work in the general area of the site(s) and notify the Contracting Officer immediately.

(End of clause)

**452.236-74 Control of Erosion, Sedimentation, and Pollution.**

As prescribed in 436.574, insert the following clause:

**CONTROL OF EROSION, SEDIMENTATION, AND POLLUTION (NOV 1996)**

(a) Operations shall be scheduled and conducted to minimize erosion of soils and to prevent silting and muddying of streams, rivers, irrigation systems, and impoundments (lakes, reservoirs, etc.).

(b) Pollutants such as fuels, lubricants, bitumens, raw sewage, and other harmful materials shall not be discharged on the ground; into or nearby rivers, streams, or impoundments; or into natural or man-made channels. Wash water or waste from concrete or aggregate operations shall not be allowed to enter live streams prior to treatment by filtration, settling, or other means sufficient to reduce the sediment content to not more than that of the stream into which it is discharged.



(c) Mechanized equipment shall not be operated in flowing streams without written approval by the Contracting Officer.

(End of clause)

**452.236-75 Maximum Workweek--Construction Schedule.**

As prescribed in 436.575, insert the following clause:

**MAXIMUM WORKWEEK--  
CONSTRUCTION  
SCHEDULE (NOV 1996)**

Within \_\_\_\_ calendar days after receipt of a written request from the Contracting Officer, the Contractor must submit the following in writing for approval:

(a) A schedule as required by FAR clause 52.236-15, Schedules for Construction Contracts, and

(b) The hours (including the daily starting and stopping times) and days of the week the Contractor proposes to carry out the work.

The maximum workweek that will be approved is \_\_\_\_\_\*\_\_\_\_\_.

(End of clause)

\*Contracting Officer shall insert appropriate number of days and hours and/or days.

**452.236-76 Samples and Certificates.**

As prescribed in 436.576, insert the following clause:

**SAMPLES AND CERTIFICATES  
(FEB 1988)**

When required by the specifications or the Contracting Officer, samples, certificates, and test data shall be submitted after award of the contract, prepaid, in time for proper action by the Contracting Officer or his/her designated representative. Certificates and test data shall be submitted in triplicate to show compliance with materials and construction specified in the contract performance requirements.

Samples shall be submitted in duplicate by the Contractor, except as otherwise specified, to show compliance with the contract requirements. Materials or equipment for which samples, certifications or test data are required shall not be used in the work until approved in writing by the Contracting Officer.

(End of clause)

**452.236-77 Emergency Response.**

As prescribed in 436.577, the following clause may be used in Forest Service construction contracts:

**EMERGENCY RESPONSE  
(NOV 1996)**

(a) Contractor's Responsibility for Fire Fighting. (1) The Contractor, under the provisions of FAR clause 52.236-9, PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS, shall immediately extinguish all fires on the work site other than those fires in use as a part of the work. (2) The Contractor may be held liable for all damages and for all costs incurred by the Government for labor, subsistence, equipment, supplies, and transportation deemed necessary to control or suppress a fire set or caused by the Contractor or the Contractor's agents or employees.

(b) Contractor's Responsibility for Notification in Case of Fire. The Contractor shall immediately notify the Government of any fires sighted on or in the vicinity of the work site.

(c) Contractor's Responsibility for Responding to Emergencies. When directed by the Contracting Officer, the Contractor shall allow the Government to temporarily use employees and equipment from the work site for emergency work (anticipated to be restricted to fire fighting). An equitable adjustment for the temporary use of employees and equipment will be made under the CHANGES clause, FAR 52.243-4.

(End of clause)

**452.236-78 Fire Suppression and Liability.**

As prescribed in section 436.578, the following clause shall be inserted in Integrated Resource Service Contracts (IRSC) awarded for the Forest Service.

**FIRE SUPPRESSION AND LIABILITY CLAUSE (MAR 2016)**

(a) Contractor's Responsibility for Fire Fighting. The Contractor, under the provisions of FAR clause at 52.236-9, Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements, shall immediately extinguish all fires on the work site other than those fires in use as a part of the work. The Contractor may be held

liable for all damages and for all costs incurred by the Government for labor, subsistence, equipment, supplies, and transportation deemed necessary to control or suppress a fire set or caused by the Contractor or the Contractor's agents or employees subject to the following fire classifications listed in subsection (b).

(b) Fire Suppression Costs. The Contractor's obligations for cost of fire suppression vary according to three classifications of fires as follows:

(1) Operations Fire. An "operations fire" is a fire caused by the Contractor's operations other than a negligent fire. The Contractor agrees to reimburse Forest Service for such cost for each operations fire, subject to a maximum dollar amount of [Contracting Officer insert amount]. The cost of the Contractor's actions, supplies, and equipment on any such fire, or otherwise provided at the request of Forest Service, shall be credited toward such maximum. If the Contractor's actual cost exceeds contractor's obligation stated above, Forest Service shall reimburse the contractor for the excess.

(2) Negligent Fire. A "negligent fire" is a fire caused by the negligence or fault of the Contractor's operations including, but not limited to, one caused by smoking by persons engaged in the Contractor's operations during the course of their employment, or during rest or lunch periods; or if the Contractor's failure to comply with requirements under this contract results in a fire starting, or permits a fire to spread. Damages and the cost of suppressing negligent fires shall be borne by the Contractor.

(3) Other Fires on Contract Area. Forest Service shall pay the Contractor, at firefighting rates common in the area or at prior agreed rates, for equipment or personnel furnished by the Contractor at the request of Forest Service, on any fire on contract area other than an operations fire or a negligent fire.

(c) Contractor's Responsibility for Notification in Case of Fire. The Contractor shall immediately notify the Government of any fires sighted on or in the vicinity of the work site.

(d) Contractor's Responsibility for Responding to Emergencies. When directed by the Contracting Officer, the Contractor shall temporarily redirect employees and equipment from the work site for emergency work (anticipated to be restricted to firefighting). This is considered to be within the general scope of the contract. An equitable adjustment for any such redirection of employees and equipment will be made under the FAR clause at 52.243-4, Changes.

(e) Performance by the Contractor. Where the Contractor's employees, agents, contractors, subcontractors, or their employees or agents perform the Contractor's

operations in connection with fire responsibilities, the Contractor's obligations shall be the same as if performance was by Contractor.

(f) State Law. The Contractor shall not be relieved by the terms of this contract of any liability to the United States for fire suppression costs recovered in an action based on State law, except for such costs resulting from operations fires. Amounts due to the Contractor for firefighting expenditures on operations fires shall not be withheld pending settlement of any such claim or action based on State law.

(End of Clause)

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**452.236-79 Opted Timber Sale Road Requirements.**

As prescribed in 436.579, insert the following clause:

**OPTED TIMBER SALE ROAD REQUIREMENTS**

**(NOV 1996)**

This contract is for the construction of timber sale road(s) which a timber purchaser has opted to have the Government construct. The Government is obligated to make these roads available to the timber purchaser by \_\_\_\_\_\*\_\_\_\_\_. Failure to make these roads available by this date could result in Government liability for delay to the timber purchaser for which the Contractor might become liable should the Contractor fail to complete this contract within the specified and allowed contract time.

(End of clause)

\*Contracting Officer shall insert appropriate date.

**452.236-80 Firms Ineligible for Award -- Construction.**

As prescribed in 436.670, insert the following clause:

**FIRMS INELIGIBLE FOR AWARD--CONSTRUCTION**

**(NOV 1996)**

The firm(s) and its subsidiaries or affiliates signatory to this contract shall be ineligible for award of any construction contract resulting from the design work performed under this contract.

(End of clause)

**452.237-70 Loss, Damage, Destruction or Repair.**

(a) As prescribed in 437.110(a), insert a clause substantially as follows:

**LOSS, DAMAGE, DESTRUCTION**

**OR REPAIR (FEB 1988)**

(a) For equipment furnished under this contract without operator, the Government will assume liability for any loss, damage or destruction of such equipment, not to exceed a total of \$\_\_\_\*\_\_\_ except that no reimbursement will be made for loss, damage or destruction due to (1) ordinary wear or tear, (2) mechanical failure, or (3) the fault or negligence of the Contractor or the Contractor's agents or employees.

(b) For equipment furnished under this contract with operator, the Government shall not be liable for any loss, damage or destruction of such equipment, except for loss, damage or destruction resulting from the negligent or wrongful act(s) of Government employee(s) while acting within the scope of their employment.

(c) All repairs to equipment furnished under this contract shall be made by the Contractor and reimbursement, if any, shall be determined in accordance with (a) or (b) above. Repairs shall be made promptly and equipment returned to use within \_\_\_\*\*\_\_\_ hours. In lieu of repairing equipment, the Contractor may furnish similar replacement equipment within the time specified. The Contractor may authorize the Government to make repairs upon the request of the Contracting Officer. In such case, the Contractor will be billed for labor and parts costs.

(End of Clause)

\*Contracting Officer shall insert amount available in current funds to cover potential liability.

\*\*Contracting Officer shall insert appropriate number of hours.

**452.237-71 Pre-Bid/Pre-Proposal Conference.**

As prescribed in 437.110(b), insert a provision substantially as follows:

**PRE-BID/PRE-PROPOSAL**

**CONFERENCE (FEB 1988)**

- (a) The Government is planning a pre-bid/pre-proposal conference, during which potential offerors may obtain a better understanding of the work required.
- (b) Offerors are encouraged to submit all questions in writing at least five (5) days prior to the conference. Questions will be considered at any time prior to or during the conference; however, offerors will be asked to confirm verbal questions in writing. Subsequent to the conference, an amendment to the solicitation containing an abstract of the questions and answers, and a list of attendees, will be disseminated.
- (c) In order to facilitate conference preparations, it is requested that the person named on the Standard Form 33 of this solicitation be contacted and advised of the number of persons who will attend.
- (d) The Government assumes no responsibility for any expense incurred by an offeror prior to contract award.
- (e) Offerors are cautioned that, notwithstanding any remarks or clarifications given at the conference, all terms and conditions of the solicitation remain unchanged unless they are changed by amendment to the solicitation. If the answers to conference questions, or any solicitation amendment, create ambiguities, it is the responsibility of the offeror to seek clarification prior to submitting an offer.

(f) The conference will be held:

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Location: \_\_\_\_\_

(End of Clause)

**452.237-73 Equipment Inspection Visit.**

As prescribed in 437.110(c), insert the following provision:

**EQUIPMENT INSPECTION VISIT**

**(FEB 1988)**

Offerors are urged and expected to inspect the equipment on which maintenance or repairs are to be performed and to satisfy themselves regarding all conditions that may affect the cost of contract performance, to the extent that the information is reasonably obtainable. In no event shall failure to inspect the equipment constitute grounds for a claim after contract award.

Offerors are invited to inspect the \_\_\_\_\_\*\_\_\_\_\_ at \_\_\_\_\_\*\_\_\_\_\_ by telephoning \_\_\_\_\_\*\_\_\_\_\_ on \_\_\_\_\_\*\_\_\_\_\_ for an appointment.

(End of Clause)

\*Contracting Officer shall insert appropriate data.

**452.237-74 Key Personnel.**

As prescribed in 437.110(d), insert a clause substantially as follows:

**KEY PERSONNEL**

**(FEB 1988)**

(a) The Contractor shall assign to this contract the following key personnel:

\_\_\_\_\_



(b) During the first ninety (90) days of performance, the Contractor shall make no substitutions of key personnel unless the substitution is necessitated by illness, death, or termination of employment. The Contractor shall notify the Contracting Officer within 15 calendar days after the occurrence of any of these events and provide the information required by paragraph (c) below. After the initial 90-day period, the Contractor shall submit the information required by paragraph (c) to the Contracting Officer at least 15 days prior to making any permanent substitutions.

(c) The Contractor shall provide a detailed explanation of the circumstances necessitating the proposed substitutions, complete resumes for the proposed substitutes, and any additional information requested by the Contracting Officer. Proposed substitutes should have comparable qualifications to those of the persons being replaced. The Contracting Officer will notify the Contractor within 15 calendar days after receipt of all required information of the decision on substitutions. The contract will be modified to reflect any approved changes of key personnel.

(End of Clause)

#### **452.237-75 Restrictions Against Disclosure.**

As prescribed in 437.110(e), insert a clause substantially as follows:

#### **RESTRICTIONS AGAINST DISCLOSURE**

**(FEB 1988)**

(a) The Contractor agrees, in the performance of this contract, to keep all information contained in source documents or other media furnished by the Government in the strictest confidence. The Contractor also agrees not to publish or otherwise divulge such information in whole or in part in any manner or form, or to authorize or permit others to do so, taking such reasonable measures as are necessary to restrict access to such information while in the Contractor's possession, to those employees needing such information to perform the work provided herein, i.e., on a "need to know" basis. The Contractor agrees to immediately notify in writing, the Contracting Officer, named

herein, in the event that the Contractor determines or has reason to suspect a breach of this requirement.

(b) The Contractor agrees not to disclose any information concerning the work under this contract to any persons or individual unless prior written approval is obtained from the Contracting Officer. The Contractor agrees to insert the substance of this clause in any consultant agreement or subcontract hereunder.

(End of Clause)

#### **452.237-76 Progress Reporting.**

As prescribed in 437.270(a), insert a clause substantially as follows:

#### **PROGRESS REPORTING**

**(FEB 1988)**

The Contractor shall submit a progress report \_\_\_\*\_\_\_, covering work accomplished during that period of the contract performance. The progress report shall be brief and factual and shall be prepared in accordance with the following format:

(a) A cover page containing:

(1) Contract number and title;

(2) Type of report, sequence number of report, and period of performance being reported;

(3) Contractor's name and address;

(4) Author(s); and

(5) Date of report.

(b) SECTION I - An introduction covering the purpose and scope of the contract effort. This shall be limited to one paragraph in all but the first and final month's narrative.

(c) SECTION II - A description of overall progress plus a separate description of each task or other logical segment of work on which effort was expended during the report period. The description shall include pertinent data and/or graphs in sufficient detail to explain any significant results achieved.

(d) SECTION III - A description of current technical or substantive performance, and any problem(s) which may impede performance along with proposed corrective action.

(e) SECTION IV - A planning schedule shall be included with the first progress report for all assigned tasks required under the contract, along with the estimated starting and completion dates for each task. The planning schedule shall be updated and submitted with each subsequent technical progress report, including an explanation of any difference between actual progress and planned progress, why the differences have occurred, and--if behind planned progress--what corrective steps are planned.

(f) SECTION V - If applicable, financial information shall be submitted for each major task or line item cost.

Data shall include:

(1) The total estimated cost budgeted (fee excluded).

(2) The estimated cost expended during the current reporting period.

(3) Identification of direct labor hours of prime contractor and subcontractor(s) and/or consultant(s), if applicable.

(4) Total project to-date expenditures.

(5) Total remaining funds.

(End of Clause)

\*Contracting Officer shall insert frequency of reporting requirement.

**452.237-78 Contracts with Consulting Firms for Services.**

As prescribed in 437.270(b), insert a clause substantially as follows:

**CONTRACTS WITH CONSULTING FIRMS FOR SERVICES**

**(FEB 1988)**

Offerors are specifically cautioned that any firm(s) receiving a contract award to provide the services described herein will be prohibited from competing for or receiving a follow-on contract to perform \_\_\_\_ \* \_\_\_\_.

(End of Clause)

\*Contracting Officer shall insert the appropriate information.

**452.246-70 Inspection and Acceptance.**

As prescribed in 446.370, insert the following clause:

**INSPECTION AND ACCEPTANCE**

**(FEB 1988)**

(a) The Contracting Officer or the Contracting Officer's duly authorized representative will inspect and accept the supplies and/or services to be provided under this contract.

(b) Inspection and acceptance will be performed at: \_\_\_\_\_\*\_\_\_\_\_.

(End of clause)

\*Contracting Officer shall insert appropriate identifying data.

**Alternate I (FEB 1988).** As prescribed in 446.370, substitute a paragraph (b) and add a paragraph (c):

(b) Inspection will be performed at: \_\_\_\_\_\*\_\_\_\_\_

(c) Acceptance will be performed at: \_\_\_\_\_\*\_\_\_\_\_

(End of clause)

**452.247-70 Delivery Location.**

As prescribed in 447.302, insert a clause substantially as follows:

**DELIVERY LOCATION (FEB 1988)**

Shipment of deliverable items, other than reports, shall be to: \_\_\_\_\_\*\_\_\_\_\_.

(End of Clause)

\*Contracting Officer shall insert appropriate identifying data.

**452.247-71 Marking Deliverables.**

As prescribed in 447.305-10(a), insert a clause substantially as follows:

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**MARKING DELIVERABLES**

**(FEB 1988)**

(a) The contract number shall be placed on or adjacent to all exterior mailing or shipping labels of deliverable items called for by the contract.

(b) Mark deliverables, except reports, for: \_\_\_\_\_\*\_\_\_\_\_.

(End of Clause)

\*Contracting Officer shall insert the appropriate information.

**452.247-72 Packing for Domestic Shipment.**

As prescribed in 447.305-10(b), insert the following clause:

**PACKING FOR DOMESTIC SHIPMENT (FEB 1988)**

Material shall be packed for shipment in such a manner that will insure acceptance by common carriers and safe delivery at destination. Containers and closures shall comply with the Interstate Commerce Commission regulations, Uniform Freight Classification Rules, or regulations of other carriers as applicable to the mode of transportation.

(End of Clause)

**452.247-73 Packing for Overseas Shipment.**

As prescribed in 447.305-10(c), insert the following clause:

**PACKING FOR OVERSEAS SHIPMENT (FEB 1988)**

Supplies shall be packed for overseas shipment in accordance with the best commercial export practice suitable for water movement to arrive undamaged at ultimate destination.

(End of Clause)

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## **PART 453**

### **FORMS**

#### **453.000 Scope of part.**

This part: (a) Prescribes USDA (AD) forms for use in acquisition, (b) Contains requirements and information generally applicable to AD forms and forms prescribed by FAR Part 53, and (c) illustrates AD forms.

#### **SUBPART 453.1--GENERAL**

##### **453.103 Exceptions.**

(a) The contracting officer shall submit a request for exceptions to forms prescribed in FAR Part 53 through the head of the contracting activity (HCA) to the Senior Procurement Executive (SPE) for referral to the GSA.

(b) Requests for exceptions to AD forms prescribed in Part 453 shall be handled as individual or class deviations, as appropriate (see Subpart 401.4).

##### **453.108 Recommendations concerning forms.**

Contracting officers shall submit recommendations for new forms or to revise, eliminate, or consolidate forms prescribed by FAR 53 and Part 453 through the HCA to the SPE.

#### **SUBPART 453.2--PRESCRIPTION**

##### **OF FORMS**

##### **453.200 Scope of subpart.**

This subpart prescribes USDA (AD) forms for use in acquisition. Consistent with the approach used in FAR Subpart 53.2, this subpart is arranged by subject matter, in the same order as, and keyed to, the parts of the AGAR in which the form usage requirements are addressed.

#### **453.213 Simplified Acquisition and other simplified purchase procedures (AD-838).**

Form AD-838, Purchase Order, is prescribed for use as a Simplified Acquisition Procedure /delivery order/task order document in lieu of OF 347 and OF 348, except that use of the OF 347 and OF 348 is authorized when utilizing the USDA Integrated Acquisition System. (See 413.307).

#### **453.270 Request for contract action (AD-700).**

Form AD-700, Procurement Request, may be used as a contract requisition document by contracting activities in USDA.

### **SUBPART 453.3 ILLUSTRATIONS OF FORMS**

#### **453.300 Scope of subpart.**

This subpart contains illustrations of USDA (AD) forms for use in acquisitions. Forms are not illustrated in the FEDERAL REGISTER or Code of Federal Regulations. Individual copies may be obtained from any USDA contracting activity or the office of the SPE.

#### **453.303 Agency forms.**

#### **453.303-700 Procurement Request (AD-700).**

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