United States Department of Agriculture (USDA)

Agriculture Acquisition Regulation (AGAR)

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Part 401 FEDERAL ACQUSITION REGULATION (FAR) SYSTEM

Subpart 401.1 Framework

401.101 Framework.

(a)(2) The United States Department of Agriculture's (USDA's) Acquisition Regulation (AGAR) supplements the Federal Acquisition Regulation (FAR) by providing USDA-specific acquisition policies and procedures. The Agriculture Acquisition Manual (AGAM) implements and supplements the AGAR and provides internal USDA acquisition procedures. The FAR, AGAR, and AGAM apply to all USDA procurement actions obligating appropriated funds, unless otherwise exempted by statute. The following order of precedence applies to resolve any acquisition regulation or procedural inconsistency found within AGAR or the AGAM:

1. Statute;
2. FAR
3. Applicable Executive Order, unless it specifically states that it supersedes the FAR;
4. AGAR;
5. Departmental Directives; and
6. AGAM.

401.103 Authority.

(b) The AGAR and subsequent amendments 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 transmit Departmental acquisition regulations.

401.104 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. 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. The AGAR may be revised from time to time in accordance with the rulemaking procedures of the Administrative Procedure Act. The USDA is also required to publish for public comment procurement regulations in the Federal Register, pursuant to the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. 418b), and FAR 1.301. 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 website.

(b) The AGAR conforms to the arrangement and numbering system of 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. Guidance unique to a specific Contracting Activity will be clearly identified. This information will be prominently labeled either directly following the title or preceding the relevant text if only a single section applies to that particular Contracting Activity.

Subpart 401.2 Agency Acquisition Regulations

401.201 Policy.

(a) The AGAR and AGAM are under the direct oversight and control of the SPE, who is responsible for review and issuance of all Department-wide acquisitions.

(c) Chiefs of Contracting Offices (COCOs) are not authorized to issue or authorize the issuance of, at any organizational level, internal guidance supplements, or deviations from the FAR, AGAR, or AGAM.

401.201-70 Exclusions.

(a) Subject to the policies of FAR Subpart 1.3, and with approval from the SPE, certain USDA acquisition policies and procedures may be excluded from the AGAR under appropriately justified circumstances, such as:

1. Subject matter which is effective for a period of less than 12 months.

2. Subject matter which is instituted on an experimental basis for a reasonable period.

3. Acquisition procedures instituted on an interim basis to comply with the requirements of statute, regulation, Executive Order, Office of Management and Budget (OMB) Circular, or OFPP Policy Letter.

401.201-71 Departmental directives.

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

Subpart 401.3 Deviations from the FAR

401.303 Individual deviations.

The Head of the Contracting Activity will authorize deviations. Deviations from either the FAR, AGAR, or AGAM 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. Requests to deviate from the FAR, AGAR, or AGAM will be submitted in accordance with (IAW) AGAR 404.000-71. Each request for deviation will contain the following:

1. A statement of the deviation desired, including identification of the specific paragraph number(s) of the FAR, AGAR, or AGAM;
2. The reason why the deviation is considered necessary or would be in the best interest of the Government;
3. If applicable, the name of the contractor and identification of the affected contract;
4. A statement as to whether the deviation has been requested previously and, if so, circumstances of the previous request;
5. A description of the intended effect of the deviation;
6. A statement of how long the deviation is needed; and
7. Any pertinent background information which will contribute to a full understanding of the desired deviation.

401.304 Class deviations.

(b) See AGAR 401.303

Subpart 401.4 Career Development, Contracting Authority, and Responsibilities

401.401 Contracting functions.

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. Unless prohibited by the FAR, the AGAR, or by other applicable statutes and regulations, the SPE may redelegate specified authority to make determinations to implement the policies and procedures of the FAR. Such delegations will be in writing but need not be published. Such delegations may be made by the HCA if the SPE has delegated authority. This broad authority includes, but is not limited to, the following responsibilities:

1. Prescribing and publishing Departmental regulations and procedures to implement federal acquisition policies.
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 acquisition workforce.

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.

10. Delegating specified contracting authority and responsibility to manage related acquisition functions.

401.401-70 Designations.

(a) The SPE is delegated the authority to appoint the HCA.

(b) The HCA, without redelegation, will designate COCOs. COCOs only have authority over the designated Contracting Activity unless other Contracting Activities are identified in writing by the HCA.

401.402 Contracting officers.

401.402-1 Authority.

(a) Contracting Officers will not authorize an individual transaction that exceeds their delegated warrant authority. Additionally, Contracting Officers are prohibited from circumventing their authority by splitting requirements into multiple contracts, modifications, or orders to remain within their delegated warrant limits. The determination of individual transactions is as follows:

1. Multiple Award Vehicles: For agreements such as Basic Ordering Agreements (BOAs), Blanket Purchase Agreements (BPAs), Indefinite Delivery Vehicles (IDVs), and Multiple Award Task Order Contracts (MATOCs), the contracting officers' warrant authority must meet or exceed the total potential value of the contract, including the base amount, all options, the maximum order amount, the total contract value, etc.

2. Individual Orders and Contracts: For specific transactions such as individual BPA calls, delivery orders, task orders, purchase orders, or other types of contracts, the contracting officer's warrant authority must meet or exceed the obligated amount for each respective order or contract.

3. Modifications: For modifications, the contracting officer's warrant authority must meet or exceed the aggregate value of both additions and deductions. For example, if a modification adds $35,000 in work and deducts $80,000, the total value of the modification is $115,000.

4. Warranted contracting officers may use Government-wide purchase cards as a payment mechanism for contractual actions or invoices over the micro-purchase threshold and up to their delegated warrant authority after confirming receipt of goods and services.

Cardholders must confirm the receipt of goods and services and comply with AGAM requirements.

5. Contracting officers are legally responsible for their signed procurement documents. Contracting Officers cannot sign "for" or over the name of another contracting officer.

401.403 Selecting, appointing, and terminating the appointment for contracting officers.

401.403-1 General.

(a) Contracting Officers will be appointed IAW the Contracting Officer's Warrant Guide.

401.403-73 Appointment and termination of non-warranted ordering officials.

(a) This policy applies only to non-warranted, non-GS-1102/1105 ordering officials placing orders above the micro-purchase threshold. Contracts must have established fixed terms and prices, as ordering officials are not authorized to negotiate, determine price reasonableness, or determine best value.

(b) Non-Warranted Ordering Official Requirements. The HCA may allow a non-warranted federal employee to be appointed as an ordering official to place delivery orders for supplies and services against IDV contracts and BPAs, if the following conditions are met:

1. The HCA must determine that the appointment of ordering officials is essential for the operation of the contracting mission, for contract actions deemed appropriate.
2. A USDA contracting officer must award the indefinite delivery contract or BPA.
3. The contract terms must permit placement of the orders and orders placed are within monetary limitations specified in the contract.
4. The HCA must approve business case requests to utilize ordering officials on a case-by-case basis. Each business case must be addressed in an HCA approved acquisition plan or other planning document.
5. The HCA may require an eligible ordering official to complete additional specialized training relevant to a contract for assignment. This specialized training is in addition to any certification requirements and may be required for the ordering official to meet the needs of the appointment.
6. The COCO will provide technical supervision of ordering officials and must annually review activities of ordering officials by physical inspection of purchase documents and records to ensure compliance with policies and demonstration of sound judgment.
7. The HCA may terminate an ordering official authority at any time.

(c) Incident Ordering Official (IOO) is an ordering official (i.e., dispatcher) that is nominated, approved by an employee's supervisor of record, and appointed in writing by the contracting officer. Contracting Officers will comply with IOO Standard Operation Procedures No. IPOSOP-002. The use of the Nomination and Appointment Templates is required. IOOs will:

1. Operate under an approved Business Case;
2. Adhere to ordering procedures; and
3. Complete all required training.

401.404 Contracting officer's representative (COR).

(a)(2)(iii) If the COR is unable to perform their duties, including invoice payments, for a period exceeding two weeks, the contracting officer must either assume the COR's responsibilities or appoint an alternate COR. The COR is not permitted to delegate an additional invoice approver in the payment system without the contracting officer's approval.

(b) All contracts must have either:

1. A COR; or
2. A designated invoice approver if a COR is not required per FAR 1.404 (b). The designee does not have to be COR certified to approve an invoice.

401.405 Ratification of unauthorized commitments.

(b)(2)(ii) Ratification approval is delegated to the COCO unless otherwise notified by the HCA or SPE.

401.405-70 Unauthorized commitment timeline.

(a) Unauthorized Commitments will be adjudicated within 180 days of initial notification. If the 180-day timeline is not met, the COCO will provide a corrective action plan to the HCA. The plan is required to provide an explanation of the delay and detail the steps that are being taken to prevent future delays.

PART 402 DEFINITIONS OF WORDS AND TERMS

Subpart 402.1 Definitions

402.101 Definitions.

Automated Procurement System (APS) means to the suite of USDA information systems used to conduct, manage, and document contracting actions. USDA currently uses three primary APS platforms:

1. Integrated Acquisition System (IAS) which is USDA's enterprise contract-writing and acquisition management system supporting the full contracting lifecycle.

2. Virtual Incident Procurement (VIPR) which is a web-based system designed to administer preseason Incident blanket purchase agreements in support of Forest Service wildfire and incident-response acquisitions; and

3. Web-Based Supply Chain Management (WBSCM) which is a system used for food-commodity procurement, logistics, and supply-chain management.

Chief of the Contracting Office (COCO) means the official designated by the Senior Procurement Executive or Head of the Contracting Activity with specific responsibilities within an individual Mission Area's contracting activity.

Level Above the contracting officer means the next higher-level warranted 1102 in the acquisition chain who holds supervisory or oversight authority over the contracting officer (CO).

Procurement Action means any acquisition-related activity that requires the signature or approval of a warranted contracting officer. This includes, but is not limited to, the creation, issuance, or modification of contracts, purchase orders, blanket purchase agreements, basic ordering agreements, task orders, delivery orders, and any subsequent amendments or administrative or funding changes that require contracting signatory authority.

Requiring Activity is the USDA branch, office, or program unit responsible for identifying and defining a mission need and for initiating, funding, and documenting requirements for supplies or services. It prepares statements of need, develops program objectives, and provides a COR. A requiring activity may include program offices, requirements staff, program/ project managers, CORs, and related personnel.

Senior Procurement Executive (SPE) means the agency official designated by the Head of the Agency. The Director, Office of Contracting and Procurement, has been designated as the USDA SPE.

Will indicates a mandatory action or requirement. Within USDA acquisition policy language, will has the same binding effect as shall or must, and is used to express obligations that are not discretionary.

PART 403 IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS

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 (OGE) in 5 CFR part 2635, Standards of Ethical Conduct for Employees of the Executive Branch, and FAR 3.104, Procurement Integrity. Procurement officials and other employees who require advice concerning the application of standards of conduct to any acquisition issue will obtain opinions from the USDA OGE or the ethics advisory officials within their agency.

(1) There are no agency exceptions to FAR 3.101-2.

(2) Employees are subject to 5 C.F.R. part 2635, Standards of Ethical Conduct for Employees of the Executive Branch.

403.103 Independent pricing.

403.103-2 Evaluating the certification.

(b)(3) Before rejecting an offer, the contracting officer will consult with the Office of General Counsel (OGC) and the Office of the Inspector General (OIG). If both concur with the rejection, the contracting officer submits the report to the COCO for review. With COCO concurrence, the report is forwarded to the HCA for approval. If either OGC or OIG disagree with the rejection, the report will be submitted IAW AGAR 404.000-71 to HCA for a final decision. HCA approval is required before proceeding with the rejection and filing with the Attorney General.

403.104-4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(a) This authority is delegated to the contracting officer.

403.104-70 Actions before evaluations.

(a) Contracting officers will ensure protection and nondisclosure of sensitive and/or confidential information. Examples of sensitive and/or confidential information include, but are not limited to, the Independent Government Cost Estimate (IGCE), evaluation criteria, business plans, financial information, technical data, trade secrets, quotations, proposals, and other proprietary information. Prior to providing information to an evaluator or any other person with a need to know, the contracting officer will take the following actions:

1. Obtain signed Nondisclosure Agreements.
2. Obtained signed Conflict of Interest Acknowledgement and Disclosures.

(b) All procurement actions with a total estimated value, including all options, of $10 million or more, and all CAPs and MSAs regardless of value, must include a documented ethics briefing conducted by USDA Office of Ethics (OE). Use the procedures outlined in the Ethics Briefing Scheduling Procedures to request and schedule ethics briefings. Contracting personnel must notify OE at least 10 working days before evaluations or source selection to allow sufficient time for scheduling and delivery of the required briefing. The briefing must be completed before evaluations or source selection begin. Documentation must specify the briefing date, presenter, list of attendees (that includes at a minimum, all evaluation participants), and must be retained in the contract file. Awards may not be made without proof that the ethics briefing was completed. If OE is unable to support the briefing, documented approval from the HCA is required to proceed with evaluation or source selection.

403.104-6 Ethics advisory opinions regarding prohibition on a former official's acceptance of compensation from a contractor.

(a) Requests for advice will be referred to the Ethics Office following the procedures described at FAR 3.104-6. The individual requesting advice will notify the COCO prior to contacting the Ethics Office.

403.104-7 Violations or possible violations.

(a)(1) The contracting officer will submit "no impact" determinations to the COCO for review and approval.

(a)(2) The contracting officer will submit determinations IAW AGAR 404.000-71.

(b) The HCA should seek guidance from OGC and the OIG prior to taking any action.

(b)(5) The SPE will make this determination.

(d)(ii)(B) The SPE will make this determination.

(f) Submit a report of facts and circumstances IAW AGAR 404.000-71 for HCA approval. The HCA will provide written notification to the SPE before authorizing the contracting officer to make an award or execute a modification.

Subpart 403.2 Contractor Gratuities to Government Personnel

403.203 Reporting suspected violations of the gratuities clause.

(a) Suspected violations of the contract clause, FAR 52.203-3, Gratuities, must be reported immediately to the cognizant contracting officer in writing, stating the circumstances surrounding the incident(s), the date(s), and names of all parties involved.

(b) The contracting officer will review the report for completeness, add any additional information deemed necessary, include a recommendation for action, and submit the report IAW AGAR 404.000-71 for HCA approval.

403.204 Treatment of violations.

(a) The HCA is designated authority to determine violations.

(b) Upon receipt of an allegation or evidence of a violation of the Gratuities clause, the contracting officer will prepare a report of facts and circumstances and submit it IAW AGAR 404.000-71. The HCA will review the report and consult with OGC and OIG to determine whether further action should be pursued. If there is a basis for further action, a signed notice will be prepared and sent to the contractor using a method that provides signed evidence of receipt. If a reply is not received from the contractor within forty-five calendar days of sending the notice, a decision will be made on the appropriate action to be taken. If a reply is received from the contractor within forty-five calendar days of sending the notice, the information in the reply must be considered before deciding on the appropriate action to be taken. Upon request, the contractor will be provided with an opportunity to appear in person utilizing the procedures in FAR 3.204 (b) to present information concerning the matter. A report will be prepared following the presentation and the information will be considered when making a decision. A decision will be made based on all available information, including findings of facts and oral or written information submitted by the contractor. All mitigating factors will be considered prior to making a final decision concerning what action will be taken. The HCA will inform the COCO, the Contracting Officer, and the Department Debarring Official, if necessary, of their final determination.

Subpart 403.3 Reports of Suspected Antitrust Violations

403.303 Reporting suspected anti-trust violations.

(b) Potential anti-competitive practices, such as those described in 48 CFR 3.301, and Anti-Trust law violations as described in 48 CFR 3.303, evidenced in bids or proposals, will be reported to the OIG through the HCA with a copy to the Department Debarring Official. The OIG will coordinate with OGC and provide reports to the Attorney General, as appropriate.

Subpart 403.4 Contingent Fees

403.405 Misrepresentations or violations of the covenant against contingent fees.

(a) A suspected misrepresentation or violation of the Covenant against Contingent Fees will be documented in writing by the contracting officer and reported immediately to the COCO. The COCO will determine if a violation occurred and report any violation to the HCA and the OIG. If the COCO decides to refer the case to the Department of Justice, it should be referred through the OIG with a copy of the report and referral submitted through the HCA to the SPE.

Subpart 403.5 Other Improper Business Practices

403.502 Subcontractor kickbacks.

403.502-2 Subcontractor kickbacks.

(d)(1) Contracting Officers will report the circumstances of suspected violations of the Anti-Kickback Act (41 U.S.C. 51- 58) to the OIG in accordance with procedures in Departmental Regulation DR 1700-002.

403.570 Ending illegal discrimination and restoring merit-based opportunity.

(a) In compliance with Executive Order 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity:

1. Include the provision at 452.203-70, Anti-Discrimination and Diversity, Equity, and Inclusion (DEI) Certification in all solicitations and contracts.

2. Include the clause at 452.203-71, Anti-Discrimination and Diversity, Equity, and Inclusion (DEI) Compliance in all solicitations and contracts.

403.571 Limitations on supplier terms.

(a) Supplier agreements, end-user license agreements, terms of use, clickthrough agreements, online portal terms, or any similar commercial terms will not be incorporated by reference into any USDA solicitation, contract, purchase order, modification, or Government system entry.

(b) A Supplier Terms Authorization Form is required whenever a supplier seeks to have any of its terms adopted, accepted, or made binding upon the Government, and the contracting officer determines that inclusion of the specific term is in the best interest of the Government.

1. The form will identify each specific supplier term proposed for inclusion. Broad acceptance of an entire supplier agreement is expressly prohibited.

2. COCO approval of the Supplier Terms Authorization Form is required.

3. The completed form and the authorized term(s) will be incorporated into the contract at time of award or by bilateral modification after award.

4. The completed authorization form will be maintained in the contract file.

(c) Include AGAR Clause 452.203-72 in all solicitations and contracts.

Subpart 403.6 Contracts with Government Employees or Organizations Owned or Controlled by Them

403.602 Exceptions.

The HCA may authorize exceptions.

403.603 Responsibilities of the contracting officer.

(a) The contracting officer will submit a written determination and findings IAW AGAR 404.000-71. No contract will be awarded without HCA approval.

Subpart 403.7 Voiding and rescinding contracts.

403.701 Purpose.

(a)(2) Determinations to void or rescind a contract will be made by the HCA.

403.703 Authority.

(a)(2) The HCA will make this determination.

403.704 Policy.

(a) and (c) This determination will be made by the HCA.

403.705 Procedures.

The HCA, without redelegation, is delegated the responsibilities at FAR 3.705. The HCA will provide written notification to the SPE before notifying the Department of Justice.

Subpart 403.8 Limitations on the Payment of Funds to Influence Federal Transactions

403.804 Policy.

Contracting officers will forward a copy of all contractor disclosures to the HCA IAW AGAR 404.000-71.

403.806 Processing suspected violations.

Suspected violations of the requirements of 31 U.S.C. 1352 will be referred to the OIG in accordance with procedures in Departmental Regulation 1700-002. The contracting officer will copy the COCO and the HCA on all correspondence.

Subpart 403.9 Whistleblower Protections for Contractor Employees

403.904 Complaints.

403.904-21 Procedures for filing complaints.

Information on how to file complaints can be found at the USDA Whistleblower Site.

Subpart 403.10 Contractor Code of Business Ethics and Conduct

403.1003 Requirements.

(a)(3) “Significant overpayment” is not limited to dollar value alone and depends on the circumstances of the overpayment as well as the amount. Because contractors are required by the Payment clauses to report and return overpayments of any amount, it is within the discretion of the suspending or debarring official to determine whether an overpayment is significant when determining whether suspension or debarment would be the appropriate outcome for failure to report such overpayment.

(b)(2) Agency Procedures.

1. Upon receipt of a written notification received from the contractor under the clause at FAR 52.203-13, other notification provided by the contractor in compliance with FAR 3.1003, notification from another Federal agency to which the contractor has made a disclosure, or if the contracting officer learns of a knowing failure by a contractor to

disclose credible evidence of a covered violation or a significant overpayment the contracting officer will notify and coordinate with:

i. The USDA OIG;

ii. The COCO, HCA, and OGC; and

iii. If the violation applies to an order placed under another agency's contract, the contracting officer for the servicing agency contract.

2. Access to information obtained pursuant to the disclosure will be limited to authorized people and treated as For Official Use Only. In addition, any USDA employee with access to information obtained pursuant to a disclosure, to the extent permitted by law and regulation, will safeguard and treat the information as confidential where the information has been marked "confidential" or "proprietary" by the contractor.

3. Actions taken pursuant to a disclosure of credible evidence of a violation will vary based on the circumstances of each case. After investigation or review, USDA may determine that the contractor has adequately addressed the violation and no further action is necessary or consider the full range of contractual and administrative remedies available, up to and including debarment or suspension, as well as civil and criminal penalties. USDA officials should consider the severity of the violation and mitigating circumstances described in FAR 9.406-1(a) in assessing the contractor's present responsibility and, as merited, determining the appropriate remedy.

Subpart 3.11 Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions

403.1102 Policy.

403.1102-70 Use of non-government evaluators.

(a) Before using non-Government evaluators, contracting officers will review FAR 7.503, FAR 37.3, FAR 3.11, and Office of Federal Procurement Policy Letter 11-1, Performance of Inherently Governmental and Critical Functions to ensure the function is not inherently governmental or otherwise restricted. Non-Government evaluators may be used only when their participation is permitted under these authorities.

(b) The contracting officer may disclose proposal information outside the Government before the Government's decision to award the contract only to the extent necessary for evaluation. Disclosure and handling will comply with FAR 3.1 and AGAR 403.104-70. contracting officers will ensure all requirements in FAR 3.1103

(c) Release of a proposal outside the Government for evaluation does not constitute the release of information under the Freedom of Information Act (5 U.S.C. 552).

(d) When using Non-Government Evaluators, the following text will be included in all solicitations:

Notification to Offerors Regarding Contractor Support Services

Offerors are advised that employees of the firms listed below may assist the Government in the evaluation of offers or quotes submitted in response to this solicitation. These individuals will have access only to the information necessary to perform their duties and are prohibited from participating in scoring, rating, or recommending any source for award. These firms are also excluded from competing on this acquisition.

[Insert Company Name, Address, Phone Number, Point of Contact]

To protect proprietary information, each firm will execute a Non-Disclosure Agreement (NDA) with offerors and, if applicable, their subcontractors. The NDA will confirm that proprietary data will be safeguarded and used solely for evaluation purposes. Offerors are responsible for coordinating NDA execution with the listed firms prior to submission and must include signed copies with their proposal or quote.

Offerors will also notify any subcontractors submitting proprietary information that these support contractors may require access. Subcontractors may execute NDAs directly or authorize the prime offeror to grant access under specified terms. Copies of any subcontractor NDAs must be included in the submission.

If an offeror objects to the participation of any listed support contractor or wishes to propose conditions to protect the integrity of the process, they must notify the Contracting Officer in writing prior to submission. The objection must include a clear rationale. The Contracting Officer will review and make a final determination, which will be communicated to the offeror before evaluation begins. If the objection is denied, the offeror may withdraw their submission.

403.1103 Procedures.

(a)(1)(i) Contractors will provide copies of the disclosure of interests form to the contracting officer. The contractor may use their own format or the Conflict of Interest Acknowledgement and Disclosures, which can be provided by the contracting officer. If the contracting officer is made aware of a potential or actual personal conflict of interest, the contracting officer will follow the procedures in FAR 3.1103 (b) or FAR 3.1104.

(a)(2)(ii) Contracting Offices will obtain signed Nondisclosure Agreements.

PART 404 ADMINISTRATIVE AND INFORMATION MATTERS

404.000 Scope of Part

404.000-70 Required Language

English is required for all procurements actions, unless otherwise specified in the solicitation.

404.000-71 Document Routing

Documents specified throughout the FAR, AGAR, or AGAM that require HCA or higher-level review, concurrence, or approval must be routed following the USDA Acquisition Document Routing Procedure Guide.

404.000-72 Solicitation/Award Clearance

(a) Solicitation clearance is the required internal review and approval process that occurs before a solicitation is issued. Award clearance is required prior to award of a procurement action.

(b) The following procurement actions are excluded from solicitation/award clearance:

1. Orders or modifications issued against an existing Indefinite Delivery Vehicle (IDV), Basic Ordering Agreement (BOA), Blanket Purchase Agreement (BPA), or other contract type if:

   i. Fair and reasonable prices were established in the base contract.

   ii. All applicable terms and conditions were established in the base contract.

   iii. The base contract was reviewed and approved at the required level; and

   iv. The award will be made solely on the terms, conditions, and prices established in the base contract, and no negotiations or proposal evaluations of any kind are required.

2. Procurement actions, including modifications, that only provide funding within scope, adjust wage rates, or fringe benefits, or make other administrative changes. See the matrix in AGAR 443.203-71 for other modification review thresholds.

3. Options established in the basic contract/agreement, exercised at the established prices and terms.

(c) The following matrix details required review (R) and approval (A) requirements for solicitations and awards requiring higher level clearance. All reviews by contracting officer. Level above the contracting officer, branch chief/procurement analyst, COCO, and HCA must be completed by warranted 1102s. All comments provided during the review process must be fully adjudicated prior to final document approval and before any associated action can proceed. The HCA, without redelegation, may expand the list, as appropriate.

Procurement Action	Dollar Threshold	CO	Level Above CO	Branch Chief or Procurement Analyst	COCO	HCA	Legal Review
Any	Less than $1M	A*					As Needed
Any	$1M to less than $9M	R	A				As Needed
Any	$9M to less than $25M	R	R	A			As Needed
Any	$25M and greater	R	R	R	A		As Needed
BOAs	Any	R	R	R	A		
Bridge actions of any type for any length of time	Any	R	R	R	R	A	As Needed
Letter Contracts or other Undefinitized Contract Actions	Less than $1M	R	R	R	A		As Needed
	$1M and Greater	R	R	R	R	A	
All Interagency Acquisition Agreements (New or Modification)	Any	R	R	R	A		As Needed
Any action designated as a Major Systems Acquisition or Critical Acquisition Program (see AGAR Part 407)	Any	R	R	R	R	A	As Needed
Ratifications	Any	R	R	R	A		Required

* If prepared by CS, then the contracting officer can approve. If prepared by contracting officer, then approval by another contracting officer with a warrant authority equal to or higher than the procurement action is required.

404.002 Electronic commerce in contracting.

404.002-70 USDA electronic commerce in contracting.

(a) For procurement actions that exceed the micro-purchase threshold, except those identified in the exclusions below, agencies will use their approved Automated Procurement System (APS).

(b) The requiring activity will use the APS to create requisitions, when required, for procurement actions.

(c) Each COCO will periodically review contracts processed directly in Financial Management Modernization Initiative (FMMI) to ensure they are properly recorded in the appropriate APS and will also ensure that all contracts awarded in the APS are promptly uploaded with a complete contract file.

(d) The following actions are excluded from this requirement:

1. Acquisitions from Federal agencies, which are processed through Intragovernmental Payments and Collections (IPAC), unless marked in IAS to be withheld from FMMI with a Procurement Type of "PCARD" or "OTHER";
2. Acquisitions in support of documented emergencies, in accordance with AGAR 418, when a suitable system is not available due to emergent or geographic limitations.
3. General Services Administration (GSA) Capital Leasing transactions;

(e) Emerging Technologies (ET), such as Robotic Process Automation (RPA), Artificial Intelligence (AI), and Machine Learning (ML), BOTs, etc., that support the planning, soliciting, evaluating, administering, closing, or reporting contracts or contract information will be developed in coordination with the OCP Procurement Policy Division (PPD). ET will not be used without the written permission of the OCP/PPD Chief. ET currently approved for USDA Procurement use can be found on the Procurement Related Bots page.

Subpart 4.1 Presolicitation

404.101 Contract files.

404.101-70 USDA contract files.

(a) The contracting officer will create and maintain an official contract file in the Acquisition Processing System (APS), unless otherwise approved in writing by the HCA.

(b) Contracting officers will use the standardized electronic contract file folder structure in IAS for all procurement actions processed in IAS. The standardized templates are available in PRISM under "Supporting Documents" and may not be modified without written approval from the OCP/PPD Chief.

(c) Use of the contract file checklists and document-naming conventions is mandatory for all procurement actions, regardless of the APS used. While comprehensive, the checklists are not all-inclusive. The Contracting Officer is responsible for ensuring that all required waivers, justifications, determinations, approvals, and any other mandated documentation are included and maintained in the contract file.

(d) For APS platforms that do not include an electronic file-folder structure consistent with IAS, contracting officers must still apply the standardized contract file checklists and required document naming conventions. All documents must be organized in a manner that clearly aligns with the checklist structure and supports efficient review, oversight, and audit.

(e) Contract files shall be uploaded to the APS as soon as each document is completed, and in no case later than three (3) business days after completion of the document. Files must be updated continually throughout the acquisition process, not only after award. For emergency acquisitions, follow AGAR 418.001-73(f).

Subpart 404.2 Solicitation, Evaluation, and Award

404.201 Unique procurement instrument identifiers.

(a) Contracting Activities will use the Procurement Instrument Identifier (PIID) numbering procedures, as established in FAR 4.201, on all procurement actions. USDA PIIDs consist of 13 alphanumeric positions.

(b)(1) The unique identifier for each procurement action reported to the Federal Procurement Data System will begin with the two-letter USDA Agency Prefix "12".

(b)(3) The following letters will be used for USDA procurement actions. Use of any code in position nine, other than those listed in FAR 4.201(b)(3) or below, is prohibited without prior approval from the OCP/PPD Chief.

Letter Designation	Purpose
K	NRE at-incident resource orders and awards
N	USDA Interagency Agreements: Use when placing an interagency acquisition agreement with any other Government agency or Component. FAR 17.5 applies.
T	NRE preseason incident awards

404.202 Uniform use of line items.

404.202-3 Establishing subline items.

404.270 USDA contract data requirements list.

404.270-1 Policy.

(a) A Contract Data Requirements List (CDRL) provides a standardized method to clearly define the Government's essential data needs, including required content, submission method, and deadlines. These requirements are part of the contract.

(b) CDRLs are not separately priced (NSP) items. An NSP contract line item (CLIN) will be created to identify that a CDRL is a part of the contract. NSP means that the unit price for the

NSP line or subline item is included in the unit price of another, related line or subline item. The CDRLs should then be linked directly to the Statement of Work (SOW) or Performance Work Statement (PWS).

404.270-2 USDA CDRLs.

(a) CDRL 1 - Subcontracts. CDRL 1 is required for food commodities and Natural Resources and Environment (NRE) labor-intensive procurement actions.

1. Labor-intensive NRE services are contracts involving predominantly manual forestry work requiring Department of Labor Migrant and Seasonal Agricultural Workers Protection Act certification (e.g., tree planting, brush clearing, weed control, fuels-reduction thinning, hand piling, beaver trapping, and certain trail maintenance).

2. Subsistence commodity procurements are procurement actions for food procured for U.S. domestic or international food assistance programs.

3. The following will be included in each PWS/SOW that requires CDRL1:

No later than thirty days after award, successful offerors will submit an initial Subcontractor Contract Data Requirements List (CDRL) containing the following information, using the template provided by the Contracting Officer, for all subcontractors performing work on this contract. A subcontract is defined as an instrument, at any tier, used for the purpose of acquiring supplies or services for the performance of this contract:

1. Prime contract number (PIID);

2. Subcontractor name(s);

3. Unique Entity ID for subcontractors (if available);

4. Subcontractor size/status representation(s);

5. Description of subcontracted services for each subcontractor;

6. Category and specifics of services performed;

7. Estimated percentage of work performed;

8. Physical worksite location(s); and

9. Affiliated staffing companies used (if applicable)

Subcontractor CDRL 1 will be submitted via the unmodified template to SM.OCP.Subcontractor@usda.gov with "CDRL - Contract Number" in the subject line and the Contracting Officer copied. Updates are required every six months or whenever subcontractor information materially changes (e.g., subcontractors added or removed, changes in percentage of work, or changes in worksite location).

USDA may share subcontractor information with the Department of Labor.   Proprietary information must be clearly marked "confidential and proprietary information" to receive appropriate protection.

Failure to comply with submission requirements may result in invoice payment withholding, poor past performance, or termination.

4.203   System for award management.

4.203-1   Policy.

(b) When awarding to a vendor that is not required to be registered in SAM, coordinate to manually establish a vendor record with the Office of the Chief Financial Officer (OCFO) if the award is not created in the APS, or with the help desk if the award is created in the APS.

404.204   Taxpayer identification information.

404.204-70   USDA taxpayer identification information.

(a) Vendors doing business with USDA must have a taxpayer identification number (TIN) and be registered in SAM with an active (unexpired) account, unless exempt per FAR 4.203-1(b).

404.205   Personal identity verification.

(a) USDA policy for Personal Identity Verification (PIV) is found in Departmental Manual (DM) 4620-002. PIV Sponsors and the site security officer will determine the applicability of HSPD-12, FIPS PUB 201 (supplement), DM 4620-002, and AGAR 404.205-70.

404.205-70   USDA procedures for personal identity verification.

(a) Requiring Activities will serve as PIV Sponsors and utilize GSA's USAccess to process PIV requests. When specified in the contract contractors may also act as PIV sponsors and use USAccess.

(b) Activators and Credential Inventory Tool (CIT) Operators require a Tier 1 Background Investigation (BI), while Federal personnel and contractors using USAccess require a Tier 2 BI (see "BI Requirements for USAccess Role Holders"). USDA pays the expense of Tier 1 and Tier 2 BIs.

(c) USDA solicitations and contracts will state that anyone requiring routine physical access to Federally controlled facilities or information systems will have a successful Tier 1 BI (e.g., cleaning crew that requires routine access but not access to information systems will require a Tier 1 BI and LincPass). The BI includes identity proofing, registration, a National Agency Check with Inquiries (NACI) or Office of Personnel Management (OPM)/National Security community BI.

(d) If contractor employees will not have routine unaccompanied physical access to Federally controlled facilities or information systems, they may be excluded from this requirement. Examples include mail, package, and delivery personnel.

(e) All contracts will specify a period of performance. If an option is exercised, contractors must renew their credentials when the modification is issued. If an option is not exercised, contractors must return all ID credentials (e.g., LincPass) at the end of the performance period or when their work ends.

(f) When the requiring activity determines that contractor employees require a LincPass, the PIV Sponsor will notify the contracting officer in writing. Upon notification of an HSPD-12 requirement, the contracting officer will:

1. Include AGAR 452.204-71 in accordance with AGAR 404.208;
2. Identify PIV Sponsor duties when delegating responsibilities in the designation memorandum to the COR or other designated program/project manager;
3. Provide required contract information (e.g., contract number, period of performance, contractor name) to the PIV Sponsor or designated coordinator for PIV enrollment;
4. Notify the contractor in writing if the PIV process results in exclusion of an employee, including the specific reasons for exclusion;
5. Follow procedures for acquiring PIV-related products and services;
6. Maintain a log tracking PIV card distribution and return; and
7. Verify all PIV cards are returned to the appropriate security office prior to final payment and contract closeout.

(g) Privacy of PIV information will be maintained in accordance with the Privacy Act of 1974, Office of Privacy and Civil Liberties | Privacy Act of 1974.

404.206 Contracting officer's signature.

In the APS, "releasing" a procurement action is equivalent to signing a hard copy contract. Only a warranted contracting officer or a non-warranted ordering official may create an official award obligation by releasing a procurement action that does not exceed their warrant authority.

404.208 Solicitation provisions and contract clauses.

(d) Insert the clause at AGAR 452.204-71 in all solicitations and contracts that include FAR 52.204-9 or where the contractor will have access to any Government system whether in office or remotely.

404.208-70 USDA solicitation provisions and contract clauses.

(a) Insert the clause at AGAR 452.204–70, Modification for Contract Closeout, in all non-cost reimbursement solicitations and contracts.

(b) Insert the clause at AGAR 452.404-72, Use of Electronic Data Interchange (EDI) or Other Automation Technologies in all solicitations and contracts that will interface with USDA electronic systems.

Subpart 4.3 Post-Award

404.301 Contract reporting.

(e)(1)(i)(C) and (e)(1)(iii) In order to protect vendor partners in Afghanistan, USDA agencies will use a generic entity identifier in FPDS when reporting contracts and awards to vendors located within or having a place of performance in Afghanistan. Contracting Officers will contact OCP/PPD prior to awarding to a vendor located within, or having a place of performance in, Afghanistan.

(f)(1) Contracting Activities are responsible for performing quarterly verification and validation of FPDS data. COCOs are responsible for submitting an annual confirmation that the FPDS data has been reviewed for completeness and accuracy to the HCA no later than 30 November each year. The confirmation will be accompanied by a statement describing, at a minimum, the methods used to review the data, any actions taken to correct data previously submitted, and measures implemented for process improvement, such as training and periodic internal reviews.

404.308 Contract closeout.

404.308-2 Closeout by the office administering the contract.

(a) These closeout procedures apply to all procurement actions, including orders that are placed using a government purchase card. Calls and orders should be closed before the base contract or agreement. Procurement actions are considered closed once receipt and acceptance are verified, final payment is made, and all disputes are resolved. Contracts may not be closed if they are in litigation, under appeal or investigation, pending termination, or have an outstanding claim.

404.308-70 USDA closeout procedures.

(a) The contracting officer is responsible for overseeing contract close-out, with support from the COR or technical representative. Except for actions requiring a warrant, the contracting officer or COCO may delegate close out duties to procurement personnel. All closeouts will be completed within the timelines established in FAR 4.308-2.

(b) The closeout functionality available in the APS, whether the closeout utility tool in IAS or comparable features in other APS platforms, serves as verification of receipt, acceptance and final payment for all supplies and services. Closeout functionality will be used as follows:

1. Contracting Activities will use the APS closeout functionality for all actions using Simplified Acquisition Procedures (SAP) within 30 days of completion. In IAS, the system will complete all required documentation and automatically upload it into the electronic contract file.

2. For non-SAP actions, the APS closeout functionality should be used to the maximum extent practicable. When used in IAS, the bot will email partially complete templates. The templates will be completed and uploaded into the electronic contract file. Multiple contract numbers may be referenced on one template, when a contractor has multiple contracts that will be closed out at the same time.

3. For contracts where APS closeout functionality is not available, the contract is required to be manually closed. contracting officers will ensure the following documents are completed and included in the electronic contract file:

Document	Requirement
COR Closeout Memo	All contracts
Contract Closeout Checklist	All contracts
COR Closeout Certification	All contracts
Contractor Release of Claims	• Cost reimbursable or time-and-materials (other than commercial products or commercial services). • Fixed price construction and architect-engineer. • Time-and-material and labor-hour. • Other contract types at the contracting officer's discretion if deemed in the Government's best interest or when it is required in the contract.
Deobligation Memo to the Office of the Chief Financial Officer	All contracts, not in an APS, when deobligations are required.

(c) Contracting officers may utilize the quick closeout procedures for cost reimbursement contracts meeting the conditions of FAR 42.507. Otherwise, in addition to the actions required in sections (a) and (b), the contracting officer will take the following actions for Cost Reimbursement contracts:

1. Request a final contract audit from the cognizant audit office, if applicable, following receipt of the contractor's response.

2. Forward required reports to the appropriate parties, as applicable.   These include:

   i. Reports and documentation related to patents, royalties, warranties, and inventions will be forwarded to the COR and OGC.   (See FAR 12.105, 27.3, 27.4 and 46.7.)

   ii. Reports, actions, documentation for Government furnished equipment (GFE) or Government furnished property (GFP) will be forwarded to the COR and the Government property administrator.

3. Complete a desk audit of the contract, as applicable, within 60 days after receipt of contractor's response.   The desk audit will include review of relevant items such as engineering estimates, audited cost information from current or recent contracts, subcontract data, commercial product or service pricing, forward pricing or overhead rates, labor, and overhead rates, per diem rates, and recent audit reports or price negotiation memoranda.   Contracting officers are encouraged to coordinate with the

cognizant auditor to verify information. Information obtained will be retained in the contract file.

4. Determine the final equitable price adjustment, as applicable, within 30 days of completion of the desk audit or 90 days after receipt of the final audit.

5. Issue the final modification to the contractor after completing all required reviews and clearances.

6. Obtain the contractor's signed modification within 30 days after issuance, file the fully executed modification, and provide a copy to the contractor.

7. Make final payment after receipt of the contractor's request.

(d) Deobligation is the cancellation of any unused (obligated, but not invoiced) funds, referred to as unliquidated obligations (ULOs), from a contract or order. Deobligated funds regain availability following deobligation and may be re-obligated within the period of availability of the appropriation. The contracting officer will verify that any ULOs remaining on the contract are available to be deobligated.

1. If a decision is made not to deobligate funds, notify the OCFO within 5 days with the reason. This notification is only required for non-APS transactions. For APS actions, put the award "on hold" and note the rationale in status notes.

2. If a determination has been made to deobligate the funds, promptly issue a bilateral modification to deobligate funds. Unilateral modifications are authorized for the following:

   i. When the ULO on a contract or order is $1,000 or less.

   ii. When the ULO is over $1,000, and the bilateral modification is not signed by the contractor and returned within 60 days from the date the modification was originally sent to the contractor.

   iii. When a release of claims is required, unilateral modifications are allowed if the ULO is over $1,000, and the bilateral modification and Release of Claims is not signed by the contractor and returned within 120 days from the date the modification and/or release of claims was originally sent to the contractor.

3. If a contractor is no longer active in SAM, contact the vendor and ask them to renew their SAM registration. If the contractor won't or can't reactivate their SAM account, contact the responsible APS help desk for assistance with creating a modification in APS.

4. If there are no funds to deobligate, a modification isn't required to close the award; however, a Release of Claims may still be required.

5. The COCO will assist in the quarterly review of ULOs. The list of ULOs is provided by the OCFO to the COCO. The COCO responsibility may be delegated to staff within the contracting Activity. Review of ULOs is covered in DR 2230-001.

(e) To ensure a timely closeout, the contractor must:

1. Prepare and submit a final invoice or completion voucher with request for final payment.
2. When required by the payment clause, complete and return the Release of Claims form provided by the contracting officer.
3. Settle all subcontract costs and any subcontract issues. Submit subcontracting compliance reports for all years in SAM.gov.
4. Submit the final patent and royalty reports and a final property inventory, if applicable.
5. For cost–reimbursement contracts, submit indirect cost rate proposals for all years in which a proposal was not previously submitted.
6. Ensure SAM registration remains active until contract closeout is complete.

404.309 Storage, handling, and contract files.

(a) For activities using an APS, contracting officers will store the complete award or contract file in the system, which serves as the official record. Requisitions maintained in a USDA APS, FPDS records, IPP-retained invoices, and CPARS evaluations are the only exceptions and do not need to be duplicated in the APS; all other documents will be included in the electronic file. For activities not using an APS, contract files will be kept in a shared electronic folder to ensure access. When a contract file is requested for review, audit, or litigation, the contracting officer will provide all relevant documents, regardless of storage location, within ten business days or sooner if required. The HCA may waive the requirement for electronic filing on a case-by-case basis.

(a)(3) Unsolicited proposals not accepted by the agency will be retained for one year after the contractor is notified that the proposal will not be accepted.

(b) Records retention is handled by OCP for all records in the Integrated Acquisition System (IAS). No further action is required if the complete contract file is saved in IAS. For other than IAS records, all records whether in an APS or in an electronic folder will be stored and accessible per the retention periods in FAR 4.309.

404.309-70 USDA records management.

(a) Contracting officers will incorporate standard records management language for contracts, and ensure compliance with, but not limited to, the Federal Records Act (44 U.S.C. chapters. 21, 29, 31, 33), the Freedom of Information Act (FOIA) (5 U.S.C. 552) as amended, and the Privacy Act of 1974 (5 U.S.C. 552a), as amended, and Continuity of Operations (COOP) requirements.

(b) Contracts and sub-contracts for contractors handling USDA information will adhere to cybersecurity, and information security requirements, as well as those requirements for the safeguarding of national security information.

(c) Requiring Activities will ensure that requirements include language to specify desired formats for USDA data and information delivery, to avoid contractors delivering USDA data to USDA in proprietary formats that would render the information useless to USDA without the contractor system.

(d) When USDA deletes their data in any system offered by the contractor, the contractor will also ensure to delete backup copies at the time that records are deleted from the system to ensure no issues with discovery or litigation in accordance with USDA needs.

(e) Upon termination of a contracts, contractors will turn over USDA records and information and ensure deletion of USDA information from their systems as outlined in paragraph 10 of the Records Management Language for Contracts (included in DR3080-001, Records Management Appendix A), and FAR 52.227-11 through FAR 52.227-20.

(f) Requiring Activities will include the following mandatory language and training courses in their requirements documents, e.g., Statement of Work (SOW), Performance Work Statement (PWS), in all service contracts:

Mandatory Contractor Training

The contractor will ensure their employees, including subcontractor personnel, complete the training course(s) listed below in the frequency identified. The contractor will maintain records of course completion and provide them to the contracting officer or COR upon request.

Course Name	**Frequency**	**Method of Training**	**Length of Training**	**Required Completion Date**
Information Security Awareness	Annually	AgLearn	60 minutes	1 year since last date of completion
Section 508 Compliance	Annually	AgLearn or paper-based	60 minutes	45 days after assignment
USDA Records Management	Annually	AgLearn or paper-based	60 minutes	60 days after assignment
If needed, add other courses as approved by the contracting officer				

404.70 Contractor recognition.

(a) Only a contracting officer may make official assessments or public statements about contractor performance. Non-contracting officers may not issue recommendations, testimonials, endorsements, or any other statements about contractor performance, since such statements may conflict with CPARS ratings, affect potential remedies, or compromise the Government's position in disputes.

(b) The Government is not authorized to provide awards or monetary recognition to the contractor's employees. Any permitted recognition will be approved by the contracting officer, limited to items of minimal intrinsic value (e.g., certificates or letters of appreciation), and will comply with contract terms.

(c) All proposed assessments, recommendations, commendations, or recognition involving contractor employees must be submitted to the contracting officer. No communication may be sent directly to a contractor or contractor employee. The contracting officer will determine whether the communication is appropriate, within the scope of the contract, and suitable for release.

PART 405 PUBLICIZING CONTRACT ACTIONS

Subpart 405.1 Presolicitation

405.101 Presolicitation notice.

(b) The contracting officer will document the file with the reason(s) why a presolicitation notice was not issued using the Presolicitation Notice Exception. The following exceptions to this documentation apply:

1. Acquisitions using a combined synopsis/solicitation in accordance with the streamlined solicitation procedures for commercial products or commercial services in FAR Part 12, regardless of dollar value.
2. The order is issued under a requirements, task order, or delivery order contract. The exception to issue a presolicitation notice does not apply to orders placed against Basic Ordering Agreements or calls placed against Blanket Purchase Agreements.
3. Acquisitions that use other than full and open competition (see 6.103). (Note: The exception to not issue a presolicitation notice does not apply to the authorities at 6.103-1 (only one responsible source) and 6.103-6 (national security) IAW FAR 5.101(b)(2).)

(b)(3) The SPE will make the written determination after consultation with the Office of Federal Procurement Policy (OFPP) and the Small Business Administration (SBA).

405.102 Paid advertisements.

The authority to authorize publication of paid advertisements in newspapers is delegated, with power of redelegation, to COCOs. A COCO's redelegation of this authority will be in writing.

Subpart 405.3 Award

405.302-70 USDA procedures for public announcement.

(a) Use the Congressional Notification template for awards that meet the threshold in FAR 5.302 (a). The form will be sent to the Office of Congressional Relations at OCR@usda.gov with a courtesy copy (CC) to the Contracting Activity OCR representative. A list of representatives may be found at OCR staff.

(b) Send the Contract Award Announcement to OCR staff at least three days before the award date. OCR will reply within three days with questions, concerns, or approval. The Contracting Activity will contact the congressional office by 5 pm Washington, DC time on the award date. OCR may notify the Office of the Secretary. If OCR does not respond by the award date, contact OCP/PPD.

(c) A Contract Award Announcement is not required for a delivery/task order if one was done for the base contract. If it wasn't or if it is unknown whether it was completed, complete one for each order. It's not required for BPAs but is required for BPA calls meeting the threshold.

PART 406 COMPETITION REQUIREMENTS

406.003 Advocates for competition.

(a) The USDA HCA has been designated as the Competition Advocate for USDA. Each COCO serves as the competition advocate for their contracting activity.

Subpart 406.1 Presolicitation

406.102 Full and open competition after excluding sources.

406.102-1 Establishing or maintaining alternative sources.

(b)(1) Submit the D&F IAW AGAR 404.000-71 for HCA approval.

406.103 Other than full and open competition.

406.103–70 Otherwise authorized by law.

(a) 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) 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 for the accomplishment of the research, extension, or teaching program. Therefore:

1. Contracts under the authority of the Act will be awarded on a competitive basis to the maximum practicable extent.
2. When full and open competition is not deemed appropriate, the contracting officer will make a written justification on a case-by-case basis in accordance with procedures in FAR 6.104.

406.104 Justification and approval.

406.104-2 Approval of justification.

(a) Justifications and Approvals (J&As) above $75 million require review and approval by OGC prior to approval by the SPE. The HCA may require that OGC review and approval of specific J&As between $15M and $75M. Emailed concurrence from OGC to the COCO is acceptable but will be included with the request for review by OCP. The Contracting Officer will amend a justification and obtain required approval when any of the following occurs prior to award of a procurement action:

1. The dollar value of the prospective procurement action increases beyond the authority of the previous approving official.
2. A change in the competitive strategy further reduces competition.
3. A change in requirements affects the basis for the justification.

4. When a modification to a competitive procurement action is out of scope triggering a sole source justification, the value of the justification is based solely on the value of the sole source action (and not the complete value of the procurement).

PART 407 Acquisition Planning

Subpart 407.1 Acquisition Plans

407.101-70 USDA definitions.

Acquisition Planning means the process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling the agency's needs in a timely manner and at a reasonable cost.

Acquisition Project means a project that involves a single contract. The acquisition project begins when the program identifies a procurement need and initiates the Acquisition Management Lifecycle.

Assistant Chief Information Officer (CIO) means the CIO at the Mission Area level.

CIO means the CIO at the USDA level.

Associate CIO means Associate CIO at the USDA Level

Deputy ACIO means Deputy Associate CIO at the USDA Level

Critical Acquisition Program (CAP) means a USDA-designated acquisition or group of acquisitions that requires enhanced oversight, resources, and program management due to its dollar value, complexity, political sensitivity, or strategic importance. CAPs receive additional support and oversight from the Office of Contracting and Procurement (OCP), will follow stricter planning and documentation requirements, and are managed by certified Program Managers to ensure successful execution.

Formal Acquisition Plan means a comprehensive planning document that includes detailed market research, acquisition strategy, risk assessments, milestone schedules, and documentation of compliance with applicable laws, regulations, and policies. It is intended for high-value, complex, or mission-critical procurements requiring thorough oversight and coordination.

Information Technology (IT) Investment means a grouping of one or more IT services, IT programs, projects, activities, pieces of equipment or interconnected systems or subsystems of equipment used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. Unique investments are identified by OCIO and assigned a Unique Investment Identifier (UII). IT assets have the same UII and are part of the same IT Investment. IT Investments can be either Major, defined in Departmental Regulation (DR)-3130-008, or Non-Major, defined in DR-3130-009.

Major Systems Acquisition means the acquisition of a combination of elements that will function together to produce the capabilities required to fulfill a mission need. The elements may include hardware, equipment, software, or any combination thereof, but exclude construction or other improvements to real property. This is not limited to IT procurements and could encompass complex systems such as weapons platforms, transportation systems, communications networks, or integrated operational solutions that require coordinated management and oversight. When an acquisition is determined to be an MSA, the procedures in AGAR 407.103-70 will apply. A system is considered a major system if-

1. The USDA is responsible for the system and total expenditures for the non-IT portions of the system are estimated to be $50 million or more.

2. The system is designated a "major system" by the head of the agency.

Streamlined Acquisition Plan means a simplified planning document that consolidates market research and acquisition planning into a single document, reducing administrative burden while ensuring essential planning elements are addressed. It is designed for lower-risk, less complex procurements.

407.102 Requirements.

(d) the USDA defines Firm-Fixed-Price (FFP) contracts as any procurement action that utilizes pricing methodologies consistent with:

1. FAR 16.202 – FFP contracts;

2. FAR 16.203 – FFP contracts with Economic Price Adjustment; or

3. Hybrid contracts using a combination of pricing types where the non-FFP portion is below the Simplified Acquisition Threshold (SAT).

4. All other pricing arrangements are considered high-risk.

407.103 Agency-Head responsibilities.

(a) Requiring Activities and Contracting staff will follow the procedures in AGAR 407.103-70 for acquisition planning.

407.103-70 USDA acquisition planning criteria.

(a) In addition to fostering full and open competition to the maximum extent practicable and encouraging the acquisition of commercial products and services, acquisition planning will ensure the selection of appropriate contract types and address all relevant technical, business, management, and other significant considerations, in accordance with FAR Part 7 and the supplemental guidance provided herein.

(b) In order to meet the requirement for acquisition planning on all acquisitions, and to streamline processes, the USDA will use a combined market research/acquisition planning approach. The following table details documentation requirements using this approach. The review thresholds can be found in paragraph (g) of this section.

Procurement Action	Threshold	Documentation Requirement
FFP commercial and non-commercial actions	Any dollar value	Streamlined Acquisition Plan
OTFFP commercial actions	Any dollar value	Streamlined Acquisition Plan

Procurement Action	Threshold	Documentation Requirement
OTFFP non-commercial actions	Under $9M	Streamlined Acquisition Plan
OTFFP non-commercial actions	Over $9M	Formal Acquisition Plan
MSAs/CAPs	Any	Formal Acquisition Plan

(c) To ensure consistent tracking and identification, Formal Acquisition Plans will be assigned a unique control number formatted as [Mission Area] - [Fiscal Year] - [Requisition Number] (example: NRE-26-123456).

(d) Exceptions: Neither streamlined nor formal APs are required for the following:

1. Cooperative Agreements, Reimbursable Work Agreements, or other non-contractual agreements between USDA and another federal agency that are not interagency acquisitions per FAR 17.5;

2. Transactions or agreements under which USDA personnel perform all work;

3. Emergency acquisitions. An acquisition is considered an emergency acquisition when it meets the requirements in AGAR 418.001-70;

4. Task or delivery orders under a USDA IDV, and orders or calls under USDA BOAs or BPAs, do not require a separate AP when the base award's approved AP covers the overall anticipated requirement, such as the total estimated quantity or scope, even if the specific number or timing of orders is not known. However, if the vehicle is broad in scope and an individual order or call requires its own PWS/SOW to define the requirement, a separate AP is required. See AGAR 410.001 and AGAM 4010.001 for orders and calls over the SAT.

5. Contracts awarded as a result of a Broad Agency Announcement (BAA) where a written AP has been approved prior to issuing the BAA and the AP addresses the total value of all awards to be made as a result of the BAA; the types of awards to be made, e.g., FFP, time and materials (T&M), cost reimbursement, etc.; and the AP specifically states that the AP covers all awards made as a result of the BAA; and

6. Acquisitions conducted under the Small Business Innovative Research Program (SBIR) or Small Business Technology Transfer (STTR).

(e) Solicitations will not be issued until the required AP has been approved.

(f) Department-wide vehicles may include planning for all task or delivery orders and calls when the base Acquisition Plan (AP) covers the overall anticipated requirement, such as total estimated quantities or scope, even if individual orders cannot be predicted in advance. The AP must clearly state when it applies to all orders or calls within the scope of the vehicle. If an individual order requires a new or separate PWS/SOW to define the requirement, a separate AP is required for that order.

(g) Review Thresholds. The following matrix details review (R) and approval (A) requirements for APs. All reviews by contracting officer. Level above the contracting officer, branch chief/procurement analyst, COCO, and HCA must be completed by warranted 1102s. All comments provided during the review process must be fully adjudicated prior to final document approval and before any associated action can proceed. The HCA, without redelegation, may expand the list, as appropriate.

Acquisition Value	**Requiring Activity (RA)**	**CO**	**Level Above CO**	**Branch Chief or Procurement Analyst**	**IT Actions[i]**	**COCO**	**HCA**	**SPE**
Less than $9M	Submitter	A[ii]			Concurrence[iii] by Deputy Associate CIO			
$9M to less than $50M	Review by RA's SES or GS15 for services	R	R	R	Concurrence by Deputy Associate CIO	A		
$50M or greater	Review by RA's SES GS15 for services and the MASPM	R	R	R	Concurrence by Deputy Associate CIO	R	A	
MSA or CAP Less than $50M	Review by RA's SES or GS15 for services and the MASPM	R	R	R	Concurrence by Deputy Associate CIO	R	A	
MSA or CAP $50M or greater	Review by RA's SES or GS15 for services, the MASPM, and the Mission Area Undersecretary	R	R	R	Concurrence by Deputy Associate CIO	R	R	R/A[iv]

Acquisition Value	Requiring Activity (RA)	CO	Level Above CO	Branch Chief or Procurement Analyst	IT Actions[i]	COCO	HCA	SPE
All Interagency Agreements (New or Modification) for assisted acquisitions	Review by RA's MASPM	R	R	R	Concurrence by Deputy Associate CIO	R	A	

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[i] If acquisition plan includes financial IT of any amount, the Chief Financial Officer or designee is required to review the AP.

[ii] If prepared by CS, then the contracting officer can approve. If prepared by contracting officer, then approval by another contracting officer with a warrant authority equal to or higher than the procurement action is required.

[iii] APs will not be approved without concurrence from the CIO.

[iv] The USDA Deputy Secretary will be the final approving authority, unless the responsibility is delegated to the Chief Acquisition Officer or the SPE.

Note 1: Per FAR 7.104 (b)(4), If the plan proposes using other than full and open competition when awarding a procurement action, coordinate the plan with the appropriate advocate for competition.

Note 2: Per FAR 7.104 (b) (5), Coordinate the plan with the appropriate small business specialist from the agency Office of Small and Disadvantaged Business Utilization or the Office of Small Business Programs when the plan strategy involves consolidation or bundling (see FAR 7.107).

407.103-71 USDA critical acquisition programs.

(a) The USDA's CAP Program includes the following key personnel:

1. The Chief Acquisition Officer (CAO) approves or removes CAP designations based on program needs or appeals from Mission Area Chief Operating Officers (COOs). The USDA Assistant Secretary for Administration holds this role.

2. The SPE reviews USDA's acquisition portfolio, determines CAP designations, oversees OCP support and resources for CAPs, and manages CAP oversight. This responsibility can be delegated to the HCA.

3. The HCA provides oversight for CAPs by reviewing and approving key acquisition actions at major milestones and may designate acquisitions as CAPs when warranted based on risk, complexity, or strategic importance.

4. The COCO ensures CAPs follow policy and formally designates Program Managers/CORs, who are assigned by the requiring activity, for each CAP.

5. Contracting officers are responsible for tagging CAP related contracts in USDA systems (e.g., IAS), adding new CAP contracts to the program of work, completing required documentation, and co-leading annual CAP reviews with the Program Manager.

6. The CAP Program Manager (PM) oversees the full scope of the CAP's program of work, ensuring delivery within cost, schedule, performance, and risk parameters. PMs are responsible for maintaining key program documentation, including project plans, requirements, deliverables, risk, and budget plans, and will coordinate with the contracting officer to co-lead annual reviews. When assigned, PMs will hold and maintain a valid Federal Acquisition Certification for Program and Project Managers (FAC-P/PM) at a level mutually agreed to by the program and OCP. This may be a collateral duty. The HCA may waive the requirement for a designated PM and instead require the assignment of one or more CORs to provide program oversight and coordination.

(b) CAPs will be identified prior to solicitation whenever feasible. For new programs, CAP designation occurs when the program is created or when specific funding is authorized (e.g., special appropriations). For existing programs, CAPs are identified during planning for the upcoming fiscal year's acquisition program of work. However, a program may be designated as a CAP at any time if determined necessary by the CAO or SPE.

(c) Individual acquisition projects will be designated as CAPs if they meet one or more of the following criteria:

1. The Secretary or Deputy Secretary of USDA designates the acquisition as a CAP.

2. The procurement action is essential to delivering the program of work for an already designated CAP.

3. Total estimated cost for the full period of performance is estimated at $50 Million or more.

4. There is significant political interest in the program and its outcomes, which may be considered sensitive or controversial, as indicated by Congressional inquiries or testimony related to the program or its contracts. The SPE, HCA, or COCO may determine this.

5. The procurement action involves unusual complexity due to structure, approach, supply chain challenges, or other factors, as determined by the SPE, HCA, or COCO.

(d) CAPs are subject to enhanced documentation, review, and oversight to ensure optimal performance and adequate support for mission success. The HCA will review and approve the following:

1. Prior to solicitation release:

i. Acquisition Plan, which must be completed and approved early to enable OCP engagement in acquisition planning;

ii. Any applicable sole source justification - requires legal review;

iii. Source Selection Plans - require legal review; and

iv. Solicitation documents - require legal review.

2. Prior to award:

i. Documentation of ethics briefing IAW AGAR 403.104-70 (b);

ii. Any pre/price negotiation memorandums;

ii. Final award determination document; and

iv. Award documents.

3. Each year, the contracting activity, in coordination with the requiring activity, will prepare and present a CAP review briefing to the HCA. Additionally, the HCA will review and approve either the BPA Annual Review or the Determination and Findings for exercising options.

(e) All USDA IT contracts are aligned to one or more IT Investments. These investments are subject to oversight that exceeds standard acquisition requirements. As such, IT contracts will not be designated as CAPs. Instead, they follow established processes for IT Investments outlined in the USDA AGAR, AGAM, and the CIO Acquisition Approval Request (AAR) process.

(f) Contracts that meet CAP designation criteria will be reviewed by the SPE to determine if they warrant the additional oversight and support provided to CAPs. The SPE will then notify the CAO of the determination. CAP designation may not be recommended for contracts that:

1. Have consistently met cost, schedule, and performance goals for at least two years;

2. Are subject to continuous, hands-on oversight by a qualified Program Manager who proactively monitors performance, manages risks, and ensures alignment with cost, schedule, and mission objectives.

3. Previously had Congressional interest but are now in a stable phase with no inquiries in the preceding twelve months.

(g) If a Mission Area disagrees with a CAP designation, the COO may submit an appeal to the CAO. The appeal must clearly identify the applicable CAP criteria and provide a detailed justification explaining why the program does not require CAP-level oversight. Submission of an appeal does not guarantee approval. All appeals will be evaluated on a case-by-case basis, and the original CAP designation will remain in effect until a final decision on the appeal is issued.

(h) Non-IT MSAs will follow the procedures in this section.

407.103-72 Acquisition approval request (AAR).

(a) To comply with USDA appropriation law, any IT-related action expected to obligate $25,000 or more in a fiscal year requires an Approved Acquisition Request (AAR).

(b) All IT contracts must have CIO approval for funding and technical requirements via the AAR process in AgMAX. Requiring Activities should coordinate with their agency CIO for guidance and approval.

(c) The requiring activity must submit one or more approved AAR numbers and the corresponding OCIO Investment ID at time of requisition. If AARs are not yet approved, the AAR Submission ID must be provided to indicate submission to OCIO via AgMAX. This allows the Contracting Office to track approval status through the AgMAX-IAS interface. All AARs must be in "approved" status in both systems before procurement action award.

(d) A single AAR may include CIO approval for IT spend for a single procurement action, multiple contracts, and/or multiple IT Investments. New AARs are required each fiscal year or more frequently if additional IT-spend approvals are needed.

(e) The AAR approval requirement does not prohibit the contracting office from accepting the requisition (note: an AAR Submission ID must be populated on the requisition which means it has been formally submitted to AgMAX and is awaiting approvals), issuing a solicitation, and collaborating with the requiring activity in the development of the award. However, contracting officers will not award IT contracts without approved AAR(s). AAR numbers will be imported to IAS.

407.104 General Procedures

407.104-70 Acquisition planning team (APT).

(a) Planning should be a collaborative process between the requiring activity, contracting office, technical subject matter experts (SMEs), and other stakeholders, as appropriate. To ensure timely award of contracts, Acquisition Planning Teams will be formed as soon as a need is identified. Early team formation ensures timely planning, compliance with procurement lead times (PALT) listed in AGAM 4007.XX, and alignment with legal, regulatory, and policy requirements.

(b) At a minimum, the APT will include:

1. Requiring activity and/or COR (if assigned);
2. Contracting officer;
3. Contract specialist; and
4. Additional members may include representatives from CIO, legal, budget, security, logistics, environmental, privacy, and other functional areas as needed.

(c) The requiring activity/COR is responsible for, but is not limited to the following:

1. Defining requirements;
2. Coordinating technical input;
3. Developing the Independent Government Cost Estimate (IGCE). See AGAM 407.XX for information on IGCEs;
4. Completing all requirements documents (e.g., APs, Performance Work Statements, Statements of Work, etc.);
5. Collaborating on evaluation teams, as required;
6. Managing contract execution; and
7. Tracking deliverables.

(d) The contracting officer/contract specialist is responsible for, but is not limited to the following:

1. Approving requirements documents;
2. Determining contract type;
3. Determining acquisition strategy and evaluation factors/methodology;
4. Drafting and issuing solicitation;
5. Overseeing quotation/proposal receipt and evaluation;
6. Finalizing award decision; and
7. Ensuring all required documentation is maintained in the contract file.

(d) All team members are responsible for ensuring compliance with FAR, AGAR, AGAM, Departmental Directives, and applicable Executive Orders.

407.104-71 Contracts for sign language interpreters.

(a) USDA requiring activities may support the planning phase of contracts for sign language interpreters or other deaf or hard of hearing services in the following ways:

1. Invite one or more employees who are deaf or hard of hearing and who regularly communicate using sign language interpreters and/or captioning services to participate as technical subject matter experts (SMEs).
2. Consider the technical advice from the SME's during the procurement process.

3. Give SMEs the opportunity to review draft statements of work/performance work statements.

4. Request SME advice for proposed technical evaluation factors in Requests for Proposals.

5. Request SME reviews of received technical proposals.

6. After a company is selected for award, consider nominating a USDA employee, who is deaf or hard of hearing, to be the COR. Invitations to participate in this process should be initiated through the requiring activity's employee resource group (ERG) or the respective Deaf, Deafblind, and Hard of Hearing Accommodations point of contact.

407.107 Additional requirements for acquisitions involving consolidation, bundling, or substantial bundling.

407.107-2 Policy.

(a) The SPE is the decision authority for consolidation and bundling determinations.

(c) Contracting officers will submit written determinations IAW AGAR 404.000-71.

(e) The USDA Deputy Secretary, without redelegation, will determine that bundling is necessary and justified under the circumstances at FAR 7.107(e). When the contracting officer believes these circumstances apply to the acquisition, submit the required determination IAW AGAR 404.000-71.

407.107-3 Notifications.

(b) The contracting officer will draft the public notification and provide it with the determination for the SPE to review. Upon approval by the SPE, the contracting officers will post the notice in the GPE.

407.108 Additional requirements for teleworking.

407.107-70 Contract Clause

Insert the clause at AGAR 452.207-70 in all solicitations and contracts where teleworking is authorized.

Subpart 407.4 Equipment acquisition.

407.401 Acquisition considerations.

(a) The contracting officer will make any required comparison and document the contract file. See FAR 7.401 for factors that should be considered.

Subpart 407.5 Inherently governmental functions.

407.503-70 USDA inherently governmental procedures.

(a) Both requiring activity and contracting officers are required to be familiar with FAR 7.503 and ensure contractors are not performing inherently governmental functions.

(b) Requiring activity will:

1. Select the Product Service Code (PSC) that is most appropriate for the requirement.
2. Review criteria in FAR 7.503 and ensure that none of the requirements are inherently governmental. Document the determination on the AP.

(c) Contracting officers will:

1. Conduct an independent review of the requirements document to ensure that inherently governmental functions are not included.
2. Take prompt post award corrective actions if a determination is made that a contractor is performing work that is inherently governmental.
3. If the contracting officer intends to award with a different PSC than the PSC identified by the requiring activity, the contracting officer will work with the requirements official and appropriately document the contract file.

(d) If the requiring activity and the contracting officer disagree as to whether a function is inherently governmental or closely associated with an inherently governmental function the COCO will make the final determination, and the contract file will be documented appropriately.

(e) For IDVs, BOAs, and BPAs, the Inherently Governmental Analysis may be completed at the vehicle level when the requirements documents are detailed enough to support a full analysis. If the vehicle-level documents are not sufficiently detailed, an Inherently Governmental Determination must be completed for each individual task or call order, unless an applicable exception applies.

(f) The requirements in this section apply to emergency acquisitions as described in FAR 18 and AGAR 418, Emergency Acquisitions.

PART 408 REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 408.1 Presolicitation

408.101 Mandatory sources for specified supplies and services.

408.101-70 Small package delivery.

(a) The Office of Management and Budget (OMB) mandates the use of the Next Generation Delivery Services (NGDS) contract and directs all Federal agencies to use a government-wide contract to meet their global air and ground small package delivery services.

(b) Copies of each contract and attachments (to include pricing sheets) are posted on the Acquisition Gateway. NGDS contracts may also be found at SharePoint | Policies & Regulations under "Next Generation Delivery Service (NGDS)". Prices, terms, and conditions are negotiated up front with the contractor. No further price reductions, waiving of accessories, or changes to terms and conditions can be negotiated at the shipper level. Overhead fees are paid by the contractor on a transactional basis and embedded with their rate (~1.3% of shipment cost).

(c) Under the NGDS multiple award process and in accordance with FAR 16.505(b)(1), all multiple award carriers must be provided a fair opportunity to be considered for each order more than the micro-purchase threshold for acquisitions of services subject to 41 U.S.C. chapter 67, Service Contract Labor Standards unless an exemption applies.

(d) For approval to obtain a delivery service provider other than NGDS, a waiver will be submitted to OCP/PPD. The NGDS waivers will provide:

1. Substantial evidence/determination of a cost benefit;
2. Pertinent background information (market research/justification); and
3. Copy of the waiver request signed by the COCO.

(e) The "NGDS Shipper's Guide" and an "NGDS CO's Ordering Guide" can be found at SharePoint | Policies & Regulations under "Next Generation Delivery Service (NGDS)".

408.103 Mandatory sources of supplies.

(a)(1) To the maximum extent practicable, contracting activities must utilize the priority USDA-wide instruments identified below. Only the SPE has the exclusive authority to add to the li. of mandatory sources. No other entity is permitted to designate a source as mandatory without explicit approval from the SPE.

i. Excess property should be coordinated through the Material Management Service Center.

ii. USDA-wide Contracts - USDA wide contracts should be used to the maximum extent practicable.

iii. Information Technology Products must be ordered through USDA Office of the Chief Information Officer (OCIO) BPAs. Information can be found at

iv. Category Management - Review the Category Management Buying Guide.

408.104 Use of existing contracts.

(a) Before placing orders against contracts under other agency agreements, including Federal Supply Schedules, the contracting officer will review the contract terms to ensure they meet USDA requirements. If the necessary terms are absent, they may be added, provided they do not conflict with the terms and conditions established in the contract. If any terms conflict, the order cannot be placed until an exception is requested and approved in accordance with 408.104(a)(1). Additionally, if any terms are added to the order, written acceptance by the contractor is required.

(a)(1) The Office of Federal Procurement Policy has not designated any contracts as "required use" as of October 15, 2025. This section will be updated to include information on required use contracts as it becomes available. The contracting officer will submit exception requests IAW AGAR 404.000-71 for HCA approval.

408.170 Blanket purchase agreements (BPAs)

(a) When establishing BPAs under this part, the following requirements apply:

1. BPAs will be established with a total estimated dollar value. See AGAR 443.203-71 (b) for review and approval requirements when increasing the estimated dollar value.
2. If the total dollar value of a BPA exceeds twenty percent of the estimated total value, the increase will be justified and reviewed one level above the contracting officer, prior to the increase.
3. Rationale to support the call limit will be justified and documented in the BPA file. Call limits for each acquisition should be established based on actual need and not arbitrarily set at the maximum allowable threshold.
4. If BPA holders are added after initial award, the contracting officer will document the rationale for the number and selection of additional awardees.
5. If a single ordering period of a proposed BPA exceeds one year, excluding any option periods, contracting officers must obtain prior approval from the HCA before issuing the solicitation. Additionally, if the total period of performance of the BPA, including all option periods, exceeds five years, HCA approval is also required.

Subpart 408.2 Acquisition from AbilityOne Participating Nonprofit Agencies

408.202 Presolicitation.

(a) Purchases from AbilityOne participating nonprofit agencies are governed by 41 CFR chapter 51, with procurement procedures detailed in 41 CFR chapter 51, Part 51-6, and FAR Subpart 8.2. Therefore, except for the inclusion of commercial provisions and clauses where appropriate, contracts, orders, or agreements placed with AbilityOne are not subject to the procedures outlined in FAR Part 12 or FAR 8.4. These awards may be negotiated directly with AbilityOne sources in accordance with applicable statutory and regulatory authorities.

Subpart 408.4 Ordering under the Federal Supply Schedule

408.401 General.

408.401-70 Order-level materials (OLMs).

The value of OLMs included in any individual task order, delivery order, or agreement issued against an FSS will not exceed 33.33 percent of the total value of that order. This applies both to the value of a single OLM and to the cumulative value of all OLMs within the order.

PART 409 CONTRACTOR QUALIFICATIONS

Subpart 409.1 Responsible Prospective Contractors

409.104-1 General standards.

(b) Insert the provision at AGAR 452.209-70 in all solicitations for commodity procurements.

409.104-5 Representation and certification regarding responsibility matters.

(a)(2) Refer to the procedures in AGAR 409.406-3(a).

(b)(2) Refer to the procedures in AGAR 409.406-3(a).

409.104-6 Federal awardee performance and integrity information system.

(c)(2) Refer to the procedures in AGAR 409.406-3(a).

409.105-2 Determination and documentation.

(b) (1) For all awards, the contracting officer will include a copy of the System for Award Management (SAM) Exclusions Report and the Assessment Report retrieved via the View Performance Records module of the Contractor Performance Assessment Reporting System (CPARS) in the contract file to support responsibility or non-responsibility. For access to the View Performance Records module, contact the Contracting Activity Focal Point. A responsibility determination is not required when placing orders under indefinite delivery contracts, including orders placed under the GSA Federal Supply Schedule. However, the contracting officer will check SAM to verify that the contractor is not excluded.

409.108-5 Waiver.

The SPE is delegated authority to issue waivers under FAR 9.108. This authority is not delegable below the HCA. The contracting officer will submit requests IAW AGAR 404.000-71. The determination must include a legal sufficiency review by the responsible OGC.

Subpart 409.2 Qualification Requirements

409.202 Policy.

(a) The HCA is delegated the authority at FAR 9.202. The requiring activity must prepare and submit a written justification to the contracting officer. Submit the justification through the Competition Advocate IAW AGAR 404.000-71 for HCA approval.

(b) The requiring activity must prepare a written determination when applicable and submit it to the contracting officer. Submit the determination through the Competition Advocate IAW AGAR 404.000-71 for HCA approval.

(e) The requiring activity must prepare and submit a written justification to the contracting officer. The contracting officer will submit the justification IAW AGAR 404.000-71 for HCA approval.

409.202-70 Procedures to establish qualification requirements.

(a) USDA requires vendors to supply high-quality, reliable products that are compatible with existing inventory and other vendors' products. Therefore, QRs may be defined for USDA Activities including systems of application, testing and record keeping, to ensure that products, vendors, or manufacturers are tested and qualified prior to award. Since QRs can restrict competition, their use is strictly managed.

(b) Each Mission Area will prepare and submit the written justification required in FAR Subpart 9.2 IAW AGAR 404.000-71. Approved QRs will be posted to Qualification Requirements | USDA. QRs not posted will not be enforceable by a USDA activity for its acquisitions or the acquisitions of others.

(c) Once a QR has been approved, provide the following information to the OCP/PPD:

1. USDA Qualification Requirement by Name or Number (ex. RCCD-OD-01- 0003)
2. QR Submission Procedures for Testing (Location, Contact Person, Office, or URL
3. OMB Control # Paperwork Reduction
4. Version Date
5. Expiration Date
6. Determination of need for QR (Location, Contact Person, Office, or URL)
7. Market Research Report Supporting QR (Location, Contact Person, Office, or URL)
8. GPE Notice for QR (Contact Person, Office, or URL)
9. Technical Contact for QR
10. Address for Submittal of Application for Listing on QR

(d) Posting takes approximately 20 calendar days. If data is deficient, the Mission Area will be notified, and the QR will not be posted. If only one vendor (aside from mandatory sources) is qualified, the agency must annually publish a notice in Contract Opportunities to seek additional sources.

409.202-71 Vendor qualification requirements for commodity procurements.

(a) The USDA has established qualification requirements that apply to specific commodity purchases. The qualification requirements are posted on the "Become a USDA Food Vendor" website. Potential contractors can apply to meet these qualification requirements and be added to the QBL at any time.

(b) In accordance with FAR 9.202(c), potential offerors not currently listed on the Qualified Bidders List may submit documentation to the Contracting Officer demonstrating that they meet the qualification standards. Offerors are cautioned that all qualification standards must be met prior to the specified award date.

(c) Any vendors proposed for removal from the QBL must receive due process from the USDA Contracting Officer.

409.204 Responsibilities when establishing qualification requirements.

(a)(2) A written determination will be completed and placed in the contract file. At a minimum, the determination will include the name of the firm for which the qualification tests will be performed, the amount of increased competition expected, and the dollar value of anticipated future requirements for the qualified product. The cognizant requiring activity must assist the contracting officer in preparing the determination.

(b) (2) The cognizant requiring activity must provide the list of qualified manufacturers and suppliers to the contracting officer.

409.205 Opportunity for qualification before award.

(b) Approved QRs will be maintained at Qualification Requirements | USDA. QRs not posted will not be enforceable by a USDA activity for its acquisitions or the acquisitions of others.

409.206 Acquisitions subject to qualification requirements.

409.206-1 General.

(b) The authorities at FAR 9.206-1 are delegated to the HCA. The requiring activity must prepare and submit a written justification for the emergency to the contracting officer. The contracting officer will submit the justification IAW AGAR 404.000-71 for HCA approval.

(e)(3) The requiring activity must prepare a written request that a QR not be enforced on a particular acquisition and submit it to the contracting officer. The contracting officer must submit the determination IAW AGAR 404.000-71 for HCA approval.

Subpart 409.3 First Article Testing and Approval

409.302 General.

The requiring activity must prepare a statement addressing the factors in FAR 9.302 when first article testing and approval is required and forward it with the requisition to the contracting office.

409.306 Solicitation requirements.

The clauses at FAR 52.209-3 and 52.209-4 do not cover all the solicitation requirements described in FAR 9.306. If a solicitation contains a testing and approval requirement, the contracting officer will address the requirements in FAR 9.306(d) and (f) through (j) in the solicitation and/or resulting contract.

Subpart 409.4 Debarment, Suspension, and Ineligibility

409.400 Scope of subpart.

(a)(1) The SPE is designated as the as the agency's Suspension and Debarring Official (SDO) for all USDA acquisitions which also includes:

1. School Lunch and Surplus Removal Programs; and
2. Commodity contracts awarded on behalf of the Commodity Credit Corporation (CCC) in accordance with 7 CFR part 1407.3.

409.402 Policy.

(c) and (e) Using the procedures in AGAR 409.406 and 409.407, referrals for contractor suspension and debarment and possible criminal or fraudulent activities will be made to the SDO via the COCO.

409.404 Exclusions in the System for Award Management.

(c)(1) The SPE, as the SDO, is the primary contact with GSA for suspension and debarment (S&D) actions. This may be delegated as determined necessary by the SPE. Each contracting activity has a debarring official who informs the OCP S&D Coordinator of potential actions. If suspension or debarment is decided, the SDO will send a notice to GSA for the Government-wide list. The Chief, OCP/PPD, is USDA's point of contact for agency coordination.

409.405 Effect of listing.

(a) The SPE will approve the determination under FAR 9.405(a), (e)(2), and (e)(3). This authority is not delegable below the HCA. Submit determinations IAW AGAR 404.000-71 for SPE approval. The determination must include a legal sufficiency review by OGC.

409.405-1 Continuation of current contracts.

(a) The SPE is delegated the authority under FAR 9.405-1(a) (1) and (2). This authority is not delegable below the HCA. Submit requests IAW AGAR 404.000-71 for SPE approval. The determination must include a legal sufficiency review by OGC.

409.405-2 Restrictions on subcontracting.

(a) The SPE is delegated the authority under FAR 9.405-2. This authority is not delegable below the HCA. Submit requests IAW AGAR 404.000-71 for SPE approval. The determination must include a legal sufficiency review by OGC.

409.406 Debarment.

(d) The SPE is designated authority to justify continued business dealings between the agency and the contractor. Submit requests IAW AGAR 404.000-71 for SPE approval.

409.406-3 Procedures

(a) When a contracting officer becomes aware of possible irregularities or information sufficient for debarment, refer the case IAW AGAR 404.000-71 for SDO review. Include a complete statement of facts (and any relevant criminal indictments) and a recommendation for action. If the facts suggest possible criminal offenses or if further investigation is needed, refer the matter to the COCO, who should consult with the Office of Inspector General (OIG) to decide if further investigation is required before referring to the SDO. The statement of facts to the SDO will contain:

1. The recommendation and supporting rationale.
2. A list of parties to be considered for possible debarment, including the contractor, principals, and affiliates. Include last known home and business addresses, zip codes, and unique entity identifiers.
3. Copies of documentary evidence and a list of witnesses. Include addresses and telephone numbers. Determine their availability to appear at a fact-finding proceeding and identify the subject matter of their testimony.
4. USDA's acquisition history with the contractor. Include recent experience, copies of the pertinent contracts, and an explanation of impact debarment would have on USDA programs. OIG referrals do not require this explanation; the SDO will obtain the information directly from the contracting activity(s).
5. A list of any known active or potential criminal investigations, criminal or civil proceedings, or administrative claims before the Board of Contract Appeals.

(b)(1) The SDO will afford the contractor, and any named affiliates, an opportunity to submit information and arguments in opposition to the proposed debarment. This may be done in person, in writing or through a representative. In actions not based upon a conviction or civil judgment, where the contractor's submission raises a genuine dispute over facts material to the proposed debarment, the following procedures will be followed:

i. Provide the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents;

ii. A transcribed record of the proceedings will be made, unless the agency and contractor mutually agree to waive the requirement for a transcript. If a transcript is requested, provide a copy as established in FAR 9.406-3(b)(2)(ii).

If the SDO determines debarment is justified, after reviewing the recommendations and consulting with the OIG and Office of the General Counsel (OGC), as appropriate, the SDO will initiate the proposed debarment in accordance with FAR 9.406-3(c) and notify the COCO of the action taken.

(e)(1)(vi) The SDO is delegated the authority to make this determination.

Subpart 409.407 Suspension

409.407-1 General.

(d) The SPE is delegated the authority under FAR 9.405-1(a) (1) and (2). This authority is not delegable below the HCA. Submit requests IAW AGAR 404.000-71 for SPE approval.

409.407-3 Procedures.

(a) Use the procedures in AGAR 409.406-3 (a).

(b) Use the procedures in AGAR 409.406-3 (b) (1).

(b)(2) Use the procedures in AGAR 409.403-3 (b) (2).

Subpart 409.5 Organizational and Consultant Conflicts of Interest

409.503 Waiver.

The contracting officer will submit a written waiver request to the COCO for review and approval. The waiver request will include:

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

PART 410 MARKET RESEARCH

410.001 Market Research Requirements

410.001-70 Market Research Considerations

(a) While Category Management must be considered, the achievement of Made in America requirements and socioeconomic/other small business goals will be prioritized over achievement of category management goals if the achievement of all goals is not possible.

(b) Efforts should be taken to identify products and services on or eligible for addition to the AbilityOne Procurement List to achieve USDA's goal to increase participation in this program.

PART 411 DESCRIBING AGENCY NEEDS

Subpart 411.2 Selecting and Developing Requirements Documents

411.202 Standardization program,

Recommendations for changes to standardization documents are to be submitted through the SPE, who will coordinate the submission of these recommendations to the cognizant preparing activity.

411.203 Market acceptance.

(a) The HCA has redelegated authority to the COCO to require offerors to demonstrate market acceptability of their items per FAR 11.203. The contracting officer will include the COCO's signed determination in the solicitation file.

411.204 Items peculiar to one manufacturer.

411.204-70 Brand name or equal acquisitions.

Insert provision 452.411-70 when brand name or equal purchase descriptions are included in a solicitation,

Subpart 411.3 Acceptable Material

411.301-70 Variation in quantity.

(a) A fixed-price supply contract may allow a variation in item quantity due to loading, shipping, packing, or manufacturing allowances. This variation, stated as a percentage, can be an increase, decrease, or both; subsistence item contracts may use other terms. Insert clause 452.211-71, Variation in Quantity, in solicitations and contracts that permit quantity variations in fixed-price supply or service contracts involving supplies.

(b) There should be no standard variation percentage. Each contract's overrun or underrun should align with the normal commercial practices of the industry for that item and be no larger than necessary to protect the contractor. The variation should not exceed plus or minus 10 percent. Consider the quantity to which the percentage applies. For example, if delivery to multiple destinations requires the variation to apply to each destination's item quantity, this must be stated in the contract.

(c) Contractors must deliver the specified quantity in a fixed-price contract within any allowable variations. Delivering excess items, especially low value over shipments, creates unnecessary administrative costs for the Government. The contracting officer may insert clause 452.211-72, Delivery of Excess Quantities, in solicitations and contracts when a fixed-price construction contract is contemplated that authorizes a variation in the estimated quantity of unit-priced items, which allows:

1. Excess quantities up to $250 may be retained without compensating the contractor.

2. Excess quantities over $250 may, at the Government's option, be returned at the contractor's expense or retained and paid for at the contract unit price.

(d) Construction contracts can allow variations in estimated quantities of unit-priced items. If the actual quantity varies by more than plus or minus 15% from the estimate, either party can request an equitable price adjustment. Contractors may request a time extension if the variation delays completion; such requests must be in writing within 10 days of the delay's start. The contracting officer can extend the completion date, if justified, before the final settlement and will adjust the completion date as necessary. Include clause 452.211-73, Variation in Estimated Quantity, in solicitations and fixed-price construction contracts that allow a variation in the estimated quantity of unit-priced items.

411.301-71 Commodity procurements.

(a) Insert the following clauses in all domestic commodity solicitations and contracts:

1. 452.211.74, Delivery Instructions;
2. 452.211.75, Advance Shipment Notice (ASN) and Unloading Appointment;
3. 452.211-76, Regulatory Requirements for Commodities and Packaging - Domestic;
4. 452.211-77, Commodity/Packaging Labeling Requirements;
5. 452.211-78, Compensation for Delays in Delivery;
6. 452.211-79, Unitization Requirements; and
7. Liquidated damages clause in accordance with 411.403(a)

(b) Insert following clauses in all international commodity solicitations and contracts:

1. 452.211.74, Delivery Instructions;
2. 452.211-78, Compensation for Delays in Delivery;
3. 452.211-80, Regulatory Requirements for Commodities and Packaging - International;
4. 452.211-81, Carrying Charges - International; and
5. Liquidated damages clause in accordance with 411.403(a)

Subpart 411.4 Liquidated Damages

411.403 Contract clauses - commodity procurement.

(a) Use FAR clause 52.211-11, in all domestic and foreign commodity purchases. Use the following chart as the fill-in for the payment of liquidated damages on domestic purchases:

Commodity	Rate	Per Net Weight
Animal Slaughtering (except Poultry)	$0.0025	Lb/day
Fine Ground/Coarse Ground Beef/Beef Patties/Pork Products	$0.0025	Lb/day

Commodity	**Rate**	**Per Net Weight**
Canned Dried Beans	$0.0025	Lb/day
Canned Fruit	$0.0025	Lb/day
Canned Juice	$0.0025	Lb/day
Canned Vegetables	$0.0025	Lb/day
Canning, Specialty (Canned Beef Chili without the beans/Beef Stew)	$0.0025	Lb/day
Chicken Products / Chicken Bulk	$0.0025	Lb/day
Turkey Products	$0.0025	Lb/day
Corn Syrup	$0.0025	Lb/day
Dehydrated Products,	$0.0025	Lb/day
Dried Fruit Dry Beans / Legumes	$0.0025	Lb/day
Eggs Products	$0.0025	Lb/day
Frozen Fruit/ Frozen Juice/ Frozen Vegetables	$0.0025	Lb/day
Nuts, Roasted	$0.0025	Lb/day
Peanuts, Raw Shelled	$0.0025	Lb/day
Perishable Prepared Food Manufacturing	$0.0025	Lb/day
Fresh Fruits and Vegetables, Fresh Sliced Apples, Baby Carrots, etc.	$0.0025	Lb/day
Seafood Products Preparation and Packaging (Fresh and Frozen Seafood)	$0.0025	Lb/day
Bakery Flour Products	$ 0.15	Cwt/day
Bakery Flour Mix	$ 0.15	Cwt/day
Corn Products	$ 0.15	Cwt/day
Wheat Flour	$ 0.15	Cwt/day
Whole Wheat Pancakes	$ 0.15	Cwt/day
Whole Wheat Tortillas	$ 0.15	Cwt/day
Rice Products/Wild Rice	$ 0.20	Cwt/day
Crackers (Saltine)	$ 0.30	Cwt/day
Instant Rice	$ 0.30	Cwt/day
Baby Cereal	$ 0.30	Cwt/day
Pasta Product	$ 0.30	Cwt/day
Macaroni and Cheese	$ 0.30	Cwt/day
Processed Cereal Products	$ 0.35	Cwt/day
Vegetable Oil Products	$ 0.35	Cwt/day

Commodity	Rate	Per Net Weight
Milk, Fresh Fluid	$ 0.30	Cwt/day
Butter	$ 0.45	Cwt/day
Cheese (Bulk)/Cheese (Processed)	$ 0.45	Cwt/day
Evaporated Milk	$ 0.45	Cwt/day
Fortified R-T-E Cereals	$ 0.45	Cwt/day
Infant Formula	$ 0.45	Cwt/day
Instant Nonfat Dry Milk Mozzarella Cheese	$ 0.45	Cwt/day
Non-fortified Nonfat Dry Milk	$ 0.45	Cwt/day
Non-fortified Nonfat Dry Milk-Export	$ 0.45	Cwt/day
Peanut Products	$ 0.45	Cwt/day
Sunflower Seed Butter	$ 0.45	Cwt/day
Ultra-High Temperature Milk Yogurt	$ 0.45	Cwt/day

Use the following chart as the fill-in for the payment of liquidated damages on foreign purchases. Be sure to include Note 1 under the chart:

Commodity Liquidated Damages	USDA Commodity Requirement	Rate	Per Net Weight
All Purpose Wheat Flour/Bread Flour	See Note 1	$ 0.11	Cwt/day
Bagged Grain	See Note 1	$ 0.11	Cwt/day
Bulgur Wheat/Soy - Fortified Bulgur	See Note 1	$ 0.11	Cwt/day
Canned Salmon	See Note 1	$ 0.11	Cwt/day
Corn Oil	See Note 1	$ 0.11	Cwt/day
Cornmeal	See Note 1	$ 0.11	Cwt/day
Corn-Soy Blend Plus	See Note 1	$ 0.11	Cwt/day
Dehydrated Potato Products	See Note 1	$ 0.11	Cwt/day
Dried Dairy Ingredients	See Note 1	$ 0.11	Cwt/day
Dry Edible Beans	See Note 1	$ 0.11	Cwt/day
Fortified Poultry-Based Spread	See Note 1	$ 0.11	Cwt/day
High Energy Biscuits	See Note 1	$ 0.11	Cwt/day
Milled Rice/Fortified Milled Rice (bagged)	See Note 1	$ 0.11	Cwt/day
Peas & Lentils	See Note 1	$ 0.11	Cwt/day

Commodity Liquidated Damages	USDA Commodity Requirement	Rate	Per Net Weight
Ready-To-Use Supplementary Food	See Note 1	$ 0.11	Cwt/day
Ready-To-Use Therapeutic Food	See Note 1	$ 0.11	Cwt/day
Soy-Fortified Cornmeal	See Note 1	$ 0.11	Cwt/day
Sunflower Seed Oil	See Note 1	$ 0.11	Cwt/day
Super Cereal Plus	See Note 1	$ 0.11	Cwt/day
Value Added Soy Products	See Note 1	$ 0.11	Cwt/day
Vegetable Oil	See Note 1	$ 0.11	Cwt/day
Wheat Soy Blend	See Note 1	$ 0.11	Cwt/day
Nonfortified Nonfat Dry Milk-Export	(DME)	$0.45	Cwt/day
Bags	(KCP BAGS)	$25.00	1,000 bags/day

Note1: The USDA commodity requirements for this item include (WFBF), (KCBG), (BWSF), (CPS), (CO), (CM), (CSBP), (DPP), (DDI), (DEB), (FPBS), (HEB), (MR), (PL), (RUSF), (RUTF), (SFCM), (SFSO), (SCP), (VASP), (VO), (WSB)

Subpart 411.5 Priorities and Allocations

411.502 General.

(b) USDA has authority to issue rated orders under section 202(c) of Executive Order 13603 and the Defense Production Act of 1950, as amended (50 U.S.C. 4501 et seq.). The Agriculture Priorities and Allocation System (APAS) allows USDA to prioritize contracts for national defense, including emergency preparedness for food resources, facilities, livestock, veterinary resources, plant health, and domestic distribution of farm equipment and fertilizer under 15 CFR 700.10(c)(1)(i).

411.503-70 USDA procedures.

(a) The Under Secretary for Farm Production and Conservation (FPAC) has delegated the authority to administer APAS to the Administrator of the Farm Service Agency (FSA) per 7 CFR Chapter 2. The FSA Administrator will coordinate APAS implementation and administration through the Director of the USDA Office of Homeland Security and Emergency Coordination, as delegated by the Assistant Secretary for Administration.

(b) The USDA is authorized to use four ratings, and special care should be taken to ensure the correct rating is selected for applicable orders. "DX" ratings are the highest priority, followed by "DO" ratings, which are still critical but of a lower priority. The four USDA ratings are:

1. DO-P1 Food and Food Resources Processing and Storage;
2. DO-P2 Agriculture and Food Critical Infrastructure Protection and Restoration;

3. DX-P1 Food and Food Resources Processing and Storage; or
4. DX-P2 Agriculture and Food Critical Infrastructure Protection and Restoration

(b) For a USDA priority rating request for emergency preparedness or national defense, submit a determination IAW AGAR 404.000-71 for HCA approval. Each rated order must include:

1. The appropriate priority rating;
2. A required delivery date. Terms like "immediately" or "as soon as possible" are not acceptable. A priority-rated base contract may lack specific dates if it calls for deliveries over time, but each order or call must specify delivery dates. These are considered rated from the supplier's receipt date, not the original procurement date.
3. The written signature on a manually placed order, or the digital signature on an electronically placed order, of an individual authorized to sign rated orders. The signature certifies that the rated order is authorized under this part and that the requirements of this part are being followed; and
4. Each rated order must contain the following:

   i. A statement as follows - "This is a rated order certified for national defense use, and you are required to follow all the provisions of the Agriculture Priorities and Allocations System regulation in 7 CFR part 789."

   ii. If the rated order is placed in support of emergency preparedness requirements and expedited action is necessary and appropriate to meet these requirements, the following should be added to the statement - "This rated order is placed for the purpose of emergency preparedness. It must be accepted or rejected within six (6) hours after receipt of the order if the order is issued in response to a hazard that has occurred; or within the greater of twelve (12) hours or the time specified in the order, if the order is issued to prepare for an imminent hazard, in accordance with 7 CFR 789.13(e)."

PART 412 ACQUISITION OF COMMERICAL PRODUCTS AND COMMERCIAL SERVICES

412.000 Scope.

In accordance with the definitions found in FAR Part 2, services, including construction, of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed or specific outcomes to be achieved and under standard commercial terms and conditions are considered commercial services. Therefore, all Contracting Activities should utilize this Part to the maximum extent practicable for construction acquisitions.

412.001-70 USDA definitions.

Emergency Equipment Rental Agreement (EERA). An "incident-only" EERA (synonymous with an "at-incident" EERA) is a simplified acquisition written at an incident and is for the length of the incident only.

Incident Blanket Purchase Agreement (I-BPA). A preseason agreement for equipment, supplies, or services to be used on fire and all-hazard incidents. I-BPAs are normally awarded on a competitive basis using commercial procedures and resources are listed on a Dispatch Priority List (DPL) for ordering by authorized dispatch personnel.

Virtual Incident Procurement (VIPR). A web-based Forest Service acquisition application designed to solicit, award, and administer I-BPAs and interface with other incident applications. VIPR website is found under "systems overview" here

Incident Acquisition Management Board (IAMB) is established to help manage, prioritize, and track potential policy and scope changes to I-BPAs and the VIPR system. The IAMB reviews business change requests and advises on technical changes to VIPR functionality.

National Wildfire Coordinating Group (NWCG) provides national leadership to enable interoperable wildland fire operations among federal, state, Tribal, territorial, and local partners. Additional details are available on the National Wildfire Coordinating Group (NWCG) Standards for Interagency Incident Business Management website.

Subpart 412.1 Presolicitation

412.101 Preference.

412.101-70 Commercial item determination.

(a) Contracting officers are required to make a commercial item determination for every acquisition. If a particular acquisition is determined to be non-commercial, contracting officers are required to submit the Determination and Findings (D&F) to Award a Non-Commercial Contract, IAW AGAR 404.000-71 for SPE approval. Requests are required to be submitted after Market Research has been completed and prior to the issuance of any pre-solicitation, solicitation, sole source notice, or award notice. SPE approval is required before any non-commercial contract action can be awarded.

(b) The following procurement actions are excluded from the requirement to complete the D&F:

1. Architect-Engineer (A&E) contracts, which are by definition non-commercial, and a commercial alternative is not possible;
2. Leasing acquisitions, which are neither a product nor service;
3. Small Business Innovation Research (SBIR) procurements, which support commercialization of innovations derived from small business research and development;
4. Procurements made by USDA on behalf of other agencies where the requesting agency provides approval for the purchase of a non-commercial item or service.
5. Orders or calls placed against contracts/agreements that were properly awarded as a non-commercial procurement action prior to November 3, 2025.

(c) Mission Areas may submit a class request for non-commercial products and services that are similar in nature, including those associated with a specific Product or Service Code, unique applications, or other defined requirement sets. Each class request must be supported by comprehensive market research, provide justification for the class of procurements covered, and specify a validity period with an expiration date.

412.102 Restricting competition.

412.102-70 Revised and postaward justifications.

(a) Contracting officers will revise sole source justifications and obtain required approvals before award if:

1. There are changes to the requirement that result in a substantive change to the description of the supplies or services being purchased even if there is no change to the final award amount;
2. The final award amount is greater than twenty percent of the estimated value in the original sole source justification; or
3. The increase in the total dollar value of the action now requires higher approvals (e.g., approval by the advocate for competition).

(b) Revisions to sole source justifications may be made with change pages or by a complete revision of the sole source justification. The revisions will be either highlighted or identified by using change bars alongside the revised text to facilitate identification of the changes.

(c) Revised Justifications will be reviewed and approved by:

1. The original approving authority when there is no impact to the dollar value of the action or the change to the dollar value does not change the approval requirement; or

2. By a higher approving authority when there is an increase to the dollar value of the action that changes the approval requirement (e.g., the contracting officer approved the original sole source justification, but the final award amount requires approval by the Competition Advocate).

Subpart 412.2 Solicitation, Evaluation, and Award

412.200 Applicability.

(a) If the procedures from Part 15 are to be used for contracts under the specified threshold, a waiver signed by the HCA is required. Waivers should be submitted IAW AGAR 404.000-71.

412.201 Solicitation procedures.

412.201-1 Simplified procedures.

(c)(1) A combined presolicitation and solicitation notice should be used to the maximum extent practicable.

(e)(1) Standing price quotations must be no older than one year. Contracting officers will maintain documentation in the file that the standing price quotation was validated before award and that the pricing is current and reasonable.

(e)(3)(ii) If there are less than three Blanket Purchase Agreements (BPAs) established for a requirement, the contracting officer is required to follow the requirements in FAR 12.201-1 (e)(3)(ii)(A) and (e)(3)(ii)(B). In addition, all calls over $25K are required to be posted to the Government Point of Entry, even if a posting was done at the BPA level.

412.201-70 Establishment of BPAs within USDA.

(a) The procedures in FAR 12.201-1 shall not be used to award BPAs when the aggregate amount of the requirement exceeds the thresholds in FAR 12.001(c), regardless of the expected value of calls that will be placed against it. The aggregate amount includes all anticipated purchases (the total requirement), not just individual agreement ceilings.

(b) BPAs will be established with a total estimated dollar value. See AGAR 443.203-71 (b) for review and approval requirements when increasing the estimated dollar value.

(c) If the total dollar value of a BPA exceeds twenty percent of the estimated total value, the increase will be justified and reviewed one level above the contracting officer, prior to the increase.

(d) Rationale to support the call limit will be justified and documented in the BPA file. Call limits for each acquisition should be established based on actual need and not arbitrarily set at the maximum allowable threshold.

(e) If BPA holders are added after initial award, the contracting officer will document the rationale for the number and selection of additional awardees.

(f) BPAs are established using Simplified Acquisition Procedures, under the thresholds specified in FAR 12.001(c), therefore the procedures in FAR Part 14 or 15 will not be utilized.

412.202 Publicizing.

(b) A combined presolicitation and solicitation notice should be used to the maximum extent practicable.

412.203 Evaluation.

(a) (2) Past Performance should be evaluated for every award.

(c)(2) When using the simplified acquisition procedures in FAR 12.201-1, contracting officers will not use formal techniques found in FAR Part 15 to include use of formal source selection/evaluation plans, pre/price-negotiation memorandums, etc. When performing a comparative evaluation of quotations, contracting officers will evaluate asserted facts, identify differences, determine their significance, and document all conclusions. Use the Comparative Evaluation of Quotations Training Guide for guidance on how to properly conduct a comparative evaluation.

412.204 Award.

(c)(1) and (2) USDA contracting activities will use the SF-1449 for all commercial service and supply orders and contracts utilizing the procedures in this part. The SF-1442 may be used for construction awards. Use of the Uniform Contract Format only applies to part 14 and part 15 and will not be used for actions under FAR part 12.

412.205 Solicitation provisions and contract clauses.

(a)(2) When using the simplified procedures at FAR 12.201-1, only use the provision at FAR 52.212-2 when using tradeoffs as the basis for award.

(b)(iii) See AGAR 4025.1001 (a)(iii) for the approving authority to waive the examination of records clause.

(d)(iii)(A) Submit individual waiver requests IAW AGAR 404.000-71 for HCA approval.

(d)(iii)(B) Submit class waiver requests IAW AGAR 404.000-71 for SPE approval.

412.205-70 USDA provisions and causes.

(a) Insert the clause at AGAR 452.204–70, Modification for Contract Closeout, in all solicitations and contracts that use simplified acquisition procedures.

(b) In accordance with FAR 12.200 (b) and FAR12.205 (d)(2)(ii), include the following FAR provisions and clauses in commercial construction solicitations and contracts. While it is considered best practice to include the applicable Part 28 clauses for bonds in most construction contracts, contracting officers retain the discretion to determine the specific bonding requirements based on the FAR prescriptions and the unique circumstances of each acquisition.

1. FAR 52.212-4 paragraphs (b), (d), and (e) must be amended as follows:

   This is a commercial construction acquisition. FAR 52.212-4 is amended as follows:

(b) *Inspection/Acceptance*. Inspection and Acceptance will be conducted in accordance with FAR 52.246-12, Inspection of Construction.

(d) *Changes*. Changes will be handled in accordance with the following FAR clause(s):

☐ FAR 52.243-4, Changes

☐ FAR 52.243-5, Changes and Changed Conditions

(o) *Warranty*. FAR 52.246-21, Warranty of Construction is applicable to this contract.

2. Provision at 52.222-5, Construction Wage Requirements, Secondary Site of the Work;
3. Provision at 52.225-10, Notice of Buy American Requirement- Construction Materials with Alternate I as applicable;
4. Provision at 52.225-12, Notice of Buy American Requirement-Construction Materials under Trade with Alternate I or II as applicable;
5. Provision at 52.228-1, Bid Guarantee;
6. Clause at 52.222-6, Construction Wage Rate Requirements;
7. Clause at 52.222-7, Withholding of Funds;
8. Clause at 52.222-8, Payrolls and Basic Records;
9. Clause at 52.222-9, Apprentices and Trainees;
10. Clause at 52.222-10, Compliance with Copeland Act Requirements;
11. Clause at 52.222-11, Subcontracts (Labor Standards);
12. Clause at 52.222-12, Contract Termination-Debarment;
13. Clause at 52.222-13, Compliance with Construction Wage Rate Requirements and Related Regulations;
14. Clause at 52.222-14, Disputes Concerning Labor Standards;
15. Clause at 52.222-15, Certificate of Eligibility;
16. Clause at 52.222-30, Construction Wage Rate Requirements-Price Adjustment (None or Separately Specified Pricing Method;
17. Clause at 52.222-31, Construction Wage Rate Requirements-Price Adjustment (Percentage Method);
18. Clause at 52.222-32, Construction Wage Rate Requirements-Price Adjustment (Actual Method)

19. Clause at 52.222-55, Minimum Wages for Contractor Workers under Executive Order 14026;
20. Clause at 52.222-3, Reporting of Biobased Products under Service and Construction Contracts;
21. Clause at 52.225-9, Buy American-Construction Materials with Alternate I, as applicable;
22. Clause at 52.225-11, Notice of Buy American Requirement-Construction Materials under Trade Agreements with Alternate I or II, as applicable;
23. Clause at 52.228-2, Additional Bond Security;
24. Clause at 52.228-5, Insurance-Work on Government Installation;
25. Clause at 52.228-11, Individual Surety-Pledge of Assets;
26. Clause at 52.228-13, Alternative Payment Protections;
27. Clause at 52.228-14, Irrevocable Letter of Credit;
28. Clause at 52.228-15, Performance and Payment Bonds-Construction;
29. Clause at 52.228-17, Individual Surety-Pledge of Assets (Bid Guarantee);
30. Clause at 52.236-2, Differing Site Conditions;
31. Clause at 52.236-3, Site Investigation and Conditions Affecting the Work;
32. Clause at 52.236-5, Material and Workmanship;
33. Clause at 52.236-6, Superintendent by the Contractor;
34. Clause at 52.236-7, Permits and Responsibilities;
35. Clause at 52.236-8, Other Contracts;
36. Clause at 52.236-9, Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements;
37. Clause at 52.336-10, Operations and Storage Areas;
38. Clause at 52.236-11, Use and Possession Prior to Completion;
39. Clause at 52.236-12, Cleaning Up;
40. Clause at 52.236-13, Accident Prevention with Alternate I, as applicable;
41. Clause at 52.236-14, Availability and Use of Utility Services;

42. Clause at 52.236-15, Schedules for Construction Contracts;

43. Clause at 52.236-16, Quantity Surveys with Alternate I, as applicable;

44. Clause at 52.236-17, Layout of Work;

45. Clause at 52.236-21, Specifications and Drawings for Construction with Alternate I or II, as applicable;

46. Clause at 52.242-14, Suspension of Work; and

47. Clause at 52.248-3, Value Engineering with Alternate I, as applicable.

(c) Include the clause at AGAR 452.232-71, Progress Payments for Commercial Construction Contracts in all solicitations and contracts for commercial construction.

(d) Include the clause at AGAR 452.236–70, Emergency Response, Fire Suppression and Liability, in all Integrated Resource Service Contracts (IRSCs) contracts. The clause is optional for non-IRSCs.

Subpart 412.3 Postaward

412.304 Terminations.

412.304-70 USDA terminations.

(a) Per Section 790 of the FY26 Agriculture Appropriations Act, any termination totaling $1M or more requires written notice to Congress before termination.

(b) Contracting officers will email the Termination Announcement to OCR@usda.gov, cc the contracting activity OCR representative and OCP/PPD, at least 5 days before the award date. OCR staff list is available online.

(c) OCR will respond within 5 days with questions or approval. The contracting activity will contact the congressional office by 5 PM (ET) on the termination date. If OCR does not respond, contact OCP/PPD.

Subpart 412.4 Micro-Purchases

412.403 Methods

(a) (1) The USDA Purchase Card Program Guide from the Charge Card Service Center establishes USDA policy and procedures on use of the Governmentwide commercial purchase card. For information on the Governmentwide commercial purchase card in the Integrated Acquisition System (IAS), see https://ias.usda.gov/iasnug/.

(b) (1) The Standard Form 44 (and the previously prescribed USDA Form AD-744) is not authorized for use within USDA.

PART 413 SIMPLIFIED PROCEDURES FOR NONCOMMERCIAL ACQUISITIONS

413.000 Scope of part.

The definitions in AGAR 412.001-70 apply to this part.

413.001 Applicability.

(a)(1) The commercial item determination required in AGAR 412.101-70 is required to be completed prior to use of this part.

PART 414 SEALED BIDDING

Subpart 414.2 Presolicitation

414.206 Descriptive literature.

(b) The required justification must be prepared and signed by the respective requiring activity; however, each justification will receive written concurrence from the contracting officer.

414.207 Solicitation provisions.

(b) Insert AGAR provision 452.214-70, Contract Award - Application of Lowest Landed Cost - International in all international commodity solicitations.

(b)(3) Insert AGAR provision 452.214-71, Electronic Submission of Bids in all domestic and international commodity solicitations.

(e) Insert AGAR provision 452.214-72, Place of Performance - Domestic, in all domestic commodity solicitations.

(f) Insert AGAR provision 452.214-73, Place of Performance - International in international commodity solicitations.

414.208 Contract clauses.

(b)(2) and (c)(2) Submit waivers IAW AGAR 404.000-71 for HCA approval.

Subpart 414.3 Evaluation and Award

414.304 Mistakes in bids.

414.304–3 Other mistakes disclosed before award.

(a)(2) The authority to make the determinations is delegated, without power of redelegation, to the COCO.

(b) The authority to make the determination is delegated to the contracting officer.

(c) The authority to make the determination is delegated, without power of redelegation, to the COCO.

(d) The authority to make the determination is delegated, without power of redelegation, to the COCO.

414.305 Cancellation of invitations after opening.

(b) The authority to make the determination is delegated, without power of redelegation, to the COCO. The determination must include a decision on whether continuing the acquisition using negotiations is in the best interest of the Government or if the cancellation will require the contracting officer to proceed with a new acquisition. Review by OGC is required prior to the cancellation of invitations after opening.

414.309   Information to bidders.

414.309-2   Award of classified contracts.

Disposition of classified information will be in accordance with Departmental Regulation and Manual (3400–001 Series) and in accordance with direction issued by the USDA Office of Homeland Security (OHS), Personnel and Document Security Division.

Subpart 414.4   Post Award

414.401   Mistakes after award.

(b), (c), and (d) If a mistake in bid is disclosed after award, the contracting officer will make a final determination and coordinate each proposed determination with OGC.

PART 415 CONTRACTING BY NEGOTIATION

AGAR Part 415 has not yet been overhauled. The current version remains in effect.

PART 416 Types of Contracts

416.001 Definitions.

Fee Determining Official. Unless otherwise designated by the HCA, the COCO is the designated Fee Determining Official.

Term Determining Official. Unless otherwise designated by the HCA, the COCO is the designated Term Determining Official.

Subpart 416.1 Selecting Contract Types

416.101 Policies.

(a) Use of contract types not described in FAR Part 16 will be approved by the COCO.

Subpart 416.2 Fixed-Price Contracts

416.203 Fixed-price contracts with economic price adjustment.

416.203-3 Limitations.

A fixed-price contract with economic price adjustment will not be solicited, awarded, or modified to add an economic price adjustment clause until the required determination and findings (D&F) is approved by the HCA. Submit the D&F IAW AGAR 404.000-71 for HCA approval.

416.203-4 Contract clauses.

(d)(2) When a determination is made to provide adjustments based on cost indexes of labor or material, the contracting officer will prepare a clause and submit it IAW AGAR 404.000-71 for approval by the HCA and OGC before issuance of a solicitation. The clause will include:

1. The type of labor and/or material subject to adjustment;
2. The labor rates, including any fringe benefits and/or unit prices of materials that may be increased or decreased;
3. The index(es) that will be used to measure changes in price levels and the base period or reference point from which changes will be measured; and
4. The period during which the price(s) will be subject to adjustment.

416.205 Fixed-ceiling-price contracts with retroactive price redetermination.

416.205-3 Limitations.

(d) Submit the Fixed-Ceiling-Price Contracts with Retroactive Price Redetermination D&F IAW AGAR 404.001-70 to the HCA for approval before issuing a solicitation or making an award.

Subpart 416.3 - Cost-Reimbursement Contracts

416.370 Use of Cost Contracts

Submit the Cost Contract D&F IAW AGAR 404.001-70 to the HCA for approval before issuing a solicitation or making an award of any contract type listed in FAR 16.3.

Subpart 416.4 Incentive Contracts

416.401-2 Limitations.

Submit the Incentive Fee D&F IAW AGAR 404.001-70 to the HCA for approval before issuing a solicitation or making an award. Incentive fees will not be paid for contractor performance, which has been judged to be below satisfactory performance or performance that does not meet the basic requirements of a contract.

416.401-3 Incentive and award-fee data collection and analysis.

COCOs will submit incentive and award-fee data, including fee determinations, performance metrics, and effectiveness assessments, to OCP/PPD no later than November 15 and May 15 of each year.

416.401-4 Incentive and award-fee best practices.

COCOs are required to provide best practices during the Annual COCO Review, which is part of the USDA Procurement Internal Review. A repository can be found on the USDA Contracting Best Practices SharePoint site.

416.401-70 Award term contracting.

(a) Award term contracting is a performance-based incentive structure that uses a pre-determined plan to extend the contract term for superior performance or reduce the term for substandard performance. It is most effective for acquisitions where a long-term relationship, generally more than five years, provides significant benefit to both the Government and the contractor. Potential benefits include stronger performance motivation, increased contractor investment, and greater competition due to the enhanced value of the contract.

(b) Submit the required determination and findings (D&F) IAW AGAR 404.000-71 for HCA approval before issuing a solicitation or making an award.

(c) Award terms may be used alongside contract options under FAR 17.2 and, like options, depend on the Government's continued need and the availability of funds. While FAR 17.204-1 (3)(iv) requires only acceptable contractor performance to exercise an option, award term eligibility requires performance above acceptable levels as defined in the Award Term Plan (see AGAR 416.401-70 (f)). Award term periods may be earned solely through evaluated performance quality; merely meeting contract requirements is insufficient. Use of an award term plan does not remove the requirement to conduct due diligence under FAR 17.204-1 before extending the contract term. When both options and award terms are included, any award term period will begin only after completion of all option periods.

(d) As award term(s) are awarded, each additional period of performance will immediately follow the period of performance for which the award term was granted. The contract may end at the base period of performance if the Federal Government determines that the contractor's performance does not reflect a level of performance as described in the award term plan.

(e) Consistent with the Competition in Contracting Act and general procurement principles, all potential award term periods will be priced, evaluated, and considered during the initial contract selection process.

(f) All contracts that include award terms will contain an award term plan that defines the criteria for earning an award term and the methods and schedule for evaluating contractor performance. The plan will be included in the contract. Award term plans will:

1. Identify the officials, including the Term-Determining Official, involved in the evaluation process and describe their roles.

2. Identify and describe each evaluation factor, any subfactors, related performance standards, adjectival ratings, or the numerical ranges or weights to be used to form the basis for scoring contractor performance and determining the award fee or eligibility for an award term;

3. Specify the overall rating required for a contractor to earn an award term reflecting performance above acceptable and state how many award terms may be earned based on the rating score;

4. Identify the evaluation periods and schedule for performance reviews during the contract (e.g., at six-month, nine-month, or twelve-month intervals, or at specific milestones) so the contractor is regularly informed of performance quality, expected improvements, and the decision points for award-term eligibility; and

5. Identify the contract's base period of performance or ordering period, any option period(s), and total award term periods(s). Award term periods will not exceed twelve months.

6. State that the Government may decide not to grant or may cancel award term periods and the award term plan if any of the following occur:

i. The contractor fails to meet required performance measures for the evaluation period.

ii. After earning an award term, the contractor fails to earn an award term in a subsequent year. In this case, the contracting officer may cancel any earned but not yet commenced award term.

iii. The Government no longer needs the award term period prior to its start.

iv. The contractor was awarded the contract as a small business under a set-aside but rerepresents under FAR 52.219-28 that it is no longer a small business.

v. Funds are not available for the award term.

(g) When an award term is not granted or cancelled, any—

1. Prior earned award term periods for which the contractor remains eligible are unaffected.
2. All subsequent award term periods are cancelled.

(h) The Government unilaterally makes all decisions regarding award term evaluations, points, methodology used to calculate points, and the degree of the contractor's success.

(i) Implementation of Extensions or Reduced Contract Terms

1. Award terms depend on a continuing need for the supplies or services and on the availability of funds. Award terms may be cancelled at no cost to the Government before the start of a performance period if either condition is not met.
2. Extensions, reductions, or changes to the contract award term plan of the contract term require a bilateral modification.
3. Award term periods occur after the period for which the award term was granted. Award term periods effectively move option periods to later contract performance periods.
4. Contractors may decline an earned award term. A contractor that declines an earned award term period loses the ability to earn additional award terms.

(j) Cancellation of an award term period that has not begun, for any reason listed in paragraph (j), is not a termination for convenience or default and does not entitle the contractor to a settlement or any other compensation. A unilateral modification will cite the applicable clause as the authority.

(k) Insert AGAR Clause 452.216-70, Award Term in all solicitations and resulting contracts where an award term incentive contract is anticipated.

416.402 Award-Fee

416.402-1 Application.

(b) Submit the Award Fee D&F IAW AGAR 404.001-70 to the HCA for approval before issuing a solicitation or making an award.

416.406 Contract clauses.

(d)(1) Insert AGAR Clause 452.216-71, Determination of Award Fee and AGAR Clause 452.216-72, Distribution of Award Fee in all Award-Fee contracts.

Subpart 416.470 Bridge Actions

416.470-1 Scope.

(a) This subpart applies to all bridge actions, including those executed under FAR 16.5012(c)(2)(iii) and any other FAR authority used to award the initial procurement action. Any interim, noncompetitive procurement action intended to prevent a lapse in performance between an expiring procurement action and a planned competitive follow-on is considered a bridge action for purposes of this subpart, regardless of action type, funding vehicle, or FAR part used for award.

(b) An extension of services executed in accordance with FAR 52.217-8, Option to Extend Services, is not considered a bridge action for purposes of this subpart, regardless of whether the clause was negotiated and included in the original contract, unless and until the total six month extension period authorized by the clause has been exhausted.

416.470-2 Definitions.

Bridge action means a short-term, noncompetitive procurement action used to ensure continuity of services or supplies when a competitive follow-on award cannot be made before the current procurement action expires. They are intended to span the period between the expiration of the current action and the start of the follow-on action. To accomplish this, bridge actions must be awarded before the current action expires so they can take effect immediately and prevent any lapse in performance.

Follow-on action means a new contractual action that succeeds a current contract or bridge action for the same or similar supplies or services and is intended to provide sustained, longer-term performance. A follow-on action is a fully planned acquisition that stands on its own as a new contract or order and may be awarded competitively or noncompetitively in accordance with applicable FAR authorities. A follow-on action is not a bridge action and is not used to provide temporary interim coverage between contract periods.

Repeat bridge action means any subsequent bridge action for the same requirement following an initial bridge action, regardless of value, period of performance, or contract type.

416.470-3 Application.

(a) Contracting Activities may use bridge actions only when one or more of the following conditions are met:

1. A competitive solicitation or award is under protest.
2. A change to an approved acquisition strategy is required and approved by the HCA.
3. A statutory or regulatory change requires a revision to the acquisition prior to award.
4. Other circumstances outside the Government's control, and not attributable to inadequate planning, prevent timely award of a competitive follow-on action.

(b) The period of performance for a bridge action will be limited to the minimum duration necessary to complete the competitive acquisition and will not exceed six (6) months unless otherwise approved in accordance with AGAR 416.470-4 (a)(2).

(c) All contract clauses, terms, and conditions will reflect current regulatory requirements and will be incorporated into the bridge action.

(d) A non-competitive justification is required for all bridge actions. The justification will comply with the applicable authorities in FAR Part 6, FAR 8.4, FAR 12.102, FAR 13.101(b), or FAR 16.507-6. The justification will include:

1. Identification of the action as a bridge action;
2. A detailed rationale for the need, demonstrating that delay was not caused by inadequate planning or inadequate procurement execution.
3. Justification for the duration of the bridge period; and
4. Corrective actions to prevent recurrence.

416.470-4 Limitations.

(a) Submit the Bridge Action D&F IAW AGAR 404.001-70 before issuing a solicitation or making an award. Approval requirements:

1. Initial bridge actions require approval by the HCA.
2. Repeat bridge actions require approval by the SPE.

(b) A written acquisition plan is not required; however, bridge actions may not be used as a substitute for adequate acquisition planning. The bridge action D&F will include sufficient details to clearly demonstrate why the bridge is the best acquisition strategy.

(c) A bridge action may only be executed while the current contract, order, call, or agreement is still active. Bridge actions cannot be initiated or awarded after the underlying procurement action has expired. Once a contract or order has expired, agencies must use appropriate new-work procedures and compete the requirement unless an applicable exception to full and open competition is justified and approved.

(d) Bridge actions will be issued as stand-alone contracts rather than through modifications to existing contracts, and they may not rely on reused, outdated, or incomplete documentation from prior actions.

Subpart 416.5 Indefinite-Delivery Contracts

416.501 General.

416.501-2 Policies.

(a) The requiring activity will prepare a written statement outlining the basis and methodology for determining the estimated quantity under an indefinite-quantity contract and a requirements contract.

(c)(2)(ii)(B) Contract, advisory and assistance services are determined to be incidental and not significant when they comprise less than 5% of the total contract value, represent less than 10% of total labor hours, and are included solely to support the primary acquisition of supplies/services. The contract’s main objectives, deliverables, and outcomes are not dependent on the advisory and assistance services (A&AS) component, and its removal would not materially affect contract performance.

(c)(2)(iii) See required procedures in AGAR 416.470.

416.503 Requirements contracts.

(a) Submit the D&F for a Single Award over $150M IAW AGAR 404.001-70 to the HCA for approval before issuing a solicitation or making an award.

(b)(1) Complete the Advisory and Assistance Services D&F before issuing a solicitation or making an award. .

(b)(2) See the definition for incidental and not significant in AGAR 416.501-2. When the A&AS portion of a requirements contract is determined to be incidental, submit the Incidental A&AS D&F IAW AGAR 404.001-70 to the HCA for approval before issuing a solicitation or making an award.

416.504-3 Multiple award preference.

(a)(4)(i) See AGAR 416.503 (a).

(b)(1)(i) See AGAR 416.503 (b)(1).

(b)(2) See AGAR 416.503 (b)(2).

416.504-5 Required content.

(e) Contracting officers should develop simplified methods to place orders, provide fair opportunity, make awards, and process payments. Ordering procedures will be fully developed, written, and published at the time the IDIQ solicitation is issued. The use of the Government purchase card for award and payment of orders is encouraged.

416.507 Additional ordering procedures for multiple-award contracts.

416.507-2 Fair opportunity procedures.

(b) The OCP/PPD Chief is the designated Departmental Task Order Ombudsman. Any contractor who is not satisfied with the resolution of a complaint by a Mission Area Task Order Ombudsman may request the Departmental Task Order Ombudsman to review the complaint. The COCO is designated authority to designate a Mission Area Task Order Ombudsman. A copy of the designation memo will be provided to the Departmental Task Order Ombudsman.

416.507-70 Justification requirements.

(a) The contracting officer will revise the justification for an exception to fair opportunity and obtain all required approvals before award when:

1. There is a substantive change to the supplies or services being purchased, even if the estimated value does not change;

2. The final award amount exceeds the original estimated value by more than 20 percent; or

3. The increase in total value triggers a higher approval level (e.g., Competition Advocate).

(b) Revised justifications will be reviewed and approved:

1. By the original approving official when the dollar value or approval level does not change; or

2. By the next higher approving authority when the dollar value increase changes the approval threshold.

(c) Revisions may be made by change pages or by issuing a complete updated justification; changes will be clearly highlighted or marked with change bars.

(d) The contracting officer will prepare a postaward justification for an exception to fair opportunity when a modification materially changes the order, including modifications to sole source or competitively awarded actions. For modifications that increase the order value by more than 20 percent, the contracting officer will consult legal counsel to determine whether the modification constitutes a material change.

416.507-71 USDA-wide contracts.

Once initial award is made for a multiple Mission Area or Department-wide vehicle, the COCO, or designee, will submit the required Contract Notification Template, to include ordering instructions, to OCP/PPD within 30 days of availability of the contract award.

Subpart 416.6 Time-and Materials, Labor-Hour, and Letter Contracts

416.600 Scope.

Hybrid contracts using a combination of pricing types are not fixed-price contracts. When the non-fixed-price portion is equal to or greater than the Simplified Acquisition Threshold (SAT), a D&F will clearly justify the use of that pricing arrangement. If the period of performance is three years or more submit the required D&F IAW AGAR 404.001-70 to the HCA for approval before issuing a solicitation or making an award.

416.601-4 Solicitation provisions.

(a) Contracting officers are authorized to amend FAR provision 52.216-29 to make one of the three approaches in paragraph (c) mandatory.

416.603 Letter Contracts

416.603-2 Application.

(c) The COCO, without redelegation, shall approve the contracting officer's determination of a reasonable price or fee for a letter contract and any extension of the definitization schedule of less than 90 days. Extensions of 90 days or more require HCA approval. When bilateral definitization cannot be achieved, the contracting officer shall submit the Unilateral

Determination of Reasonable Price or Fee D&F to the HCA for approval in accordance with AGAR 404.001-70.

416.603-3 Limitations.

The use of Letter Contracts will be authorized in accordance with AGAR 443.304-70. Profit or fee under letter contracts will not be paid until after definitization of the letter contract. The contracting officer will submit the required Letter Contract D&F IAW AGAR 404.001-70 to the HCA for approval before issuing a solicitation or making an award.

416.603-70 USDA clauses.

Insert AGAR clause 452.216-73, Settlement of Letter Contract in the definitive contract.

Subpart 416.7 Agreements

416.703 Basic ordering agreements.

416.703-2 Application.

A Basic Ordering Agreement will be used in place of a Blanket Purchase Agreement (BPA) when the aggregate amount of the requirement exceeds the thresholds in FAR 12.001(c). Fragmenting or splitting requirements to remain below these thresholds is prohibited. The aggregate amount includes all anticipated purchases (the total requirement), not just individual agreement ceilings.

Subpart 416.80 Increases to ceilings, maximums, or total estimated values.

See AGAR 443.203-71 (b) for review and approval requirements when increasing ceilings, maximums, or total estimated values.

Subpart 416.81 USDA Specific Clauses

416.810 Clauses.

(a) Include AGAR clause 452.216-74, Ceiling Price in all solicitations and contracts that will contain a ceiling.

(b) Insert AGAR clause 452.204–70, Modification for Contract Closeout, in all solicitations and contracts that use other than cost reimbursement contract types.

PARTS 417 SPECIAL CONTRACTING METHODS

Subpart 417.1 Multiyear Contracting

417.103 Presolicitation.

417.103-1 Policy.

(a) The contracting officer will submit a multiyear contract determination IAW AGAR 404.000-71 for HCA approval.

Subpart 417.2 Options

417.200 Scope of subpart.

b) Options may be used for the contracts listed in FAR 17.200 (a). All options, regardless of contract type, will be priced at the time of the original award, unless approved by the HCA. When including option clauses in a solicitation, ensure evaluation factors include a statement describing how options will be evaluated.

417.201 Presolicitation.

417.201-2 Contracts.

(b)(2) Except for contracts for Information Technology (IT), a D&F is required when a procurement action for supplies or services will exceed five years. A D&F is required for IT contracts that will exceed ten years. The contracting officer will submit the D&F IAW AGAR 404.000-71 for HCA approval. Contract period means the performance period or for indefinite delivery contracts, the ordering period. When determining the total contract period, contracting officers will apply the following rules:

(i) Include all option periods available under FAR clause 52.217-9, Option to Extend the Term of the Contract, even if there is a possibility that they may not be used.

(ii) Do not include any potential extension under FAR 52.217-8, Option to Extend Services, when calculating or stating the total contract period. Also do not include the optional six-month extension available under FAR 52.217-8 when specifying the total contract duration in paragraph (c) of FAR 52.217-9.

417.202 Evaluation and Award

(b) Use the D&F Not to Evaluate Options when evaluation of options would not benefit the Government.

417.203 Solicitation provisions and contract clauses.

(f) When using FAR 52.217-8, Option to Extend Services, the procurement action will not include a priced CLIN or a predefined performance period for the potential six-month extension. Because 52.217-8 may be exercised at any time, in increments not to exceed six months, pre-pricing or prescheduling the extension at award would restrict the Government's ability to use the option as intended. If the option is exercised, the contracting officer will add a new CLIN and establish the appropriate performance period at that time.

Subpart 17.5 Interagency Acquisitions

417.502 Procedures

417.502-70 USDA interagency acquisition procedures.

(a) All USDA Interagency Acquisitions will follow the procedures outlined in the Interagency Acquisitions Procedure Guide.

(b) All Interagency Acquisition Agreements (IAAs), including all modifications and regardless of dollar value, require HCA review and approval. The contracting officer will submit the IAA D&F IAW AGAR 404.000-71 for HCA approval.

(c) For modifications to IAAs, the contracting officer will submit the IAA Modification HCA Memo IAW AGAR 404.000-71 for HCA approval.

417.502-2 The Economy Act

(b) The contracting officer will submit the IAA D&F IAW AGAR 404.000-71 for HCA approval.

PART 418 EMERGENCY ACQUSITIONS

418.001 Emergency acquisitions.

(b) The Head of the Agency will determine if the micro-purchase and simplified thresholds should be raised to support a declared emergency or disaster. Any purchases using the authority must have a clear and direct relationship to support the emergency or disaster, and the contracting officer must maintain the Head of the Agency's determination in all contract files. The increased thresholds are only allowed for up to sixty days after the last date of the specified incident period, unless otherwise stated by the Head of the Agency. If additional time is required past the sixty days, Contracting Activities will submit a request IAW AGAR 404.000-71 for SPE approval.

418.001-70 Emergency situations.

(a) Emergency situations apply to any of the following situations:

1. Instances where the President of the United States, United States Congress, or similar authorities declare an incident of:

   i. National emergency (terrorist attacks as in 9/11/01, nuclear, biological, chemical, or radiological attacks);

   ii. Contingency operation (military operations);

   iii. National Disasters (hurricane, snowstorm, earthquake, flood, tornado, or major fire).

2. USDA specific emergencies may occur where a serious, unexpected, and often dangerous situation would require immediate action. These situations must be well documented and require COCO approval to utilize FAR Part 18 and AGAR Part 418 flexibilities. In the USDA, these emergencies may include, but are not limited to:

   i. Natural disasters

   ii. Fire

   iii. Building structural issues

   iv. Plumbing issues

   v. Water leaks

(b) Contracting officers are required to utilize, to the fullest extent practicable, all contracting flexibilities outlined in FAR Part 18 during emergent situations. These flexibilities can be used without a formal emergency declaration or contingency operation designation.

418.001-71 USDA flexibilities for emergency acquisitions.

(a) Acquisition Plans. While acquisition planning is still required, written acquisition plans required in FAR Part 7 or AGAR Part 407 are not required for an emergency acquisition when the need for the supplies/services is of such unusual and compelling urgency that the Government would be seriously injured if the supplies/services were not immediately acquired. In lieu of a written acquisition plan, an Emergency Market Research/Acquisition Plan should be completed.

(b) Agriculture Priorities and Allocations System (APAS). Contracting officers should utilize APAS ratings as needed in accordance with AGAR 411.5.

(c) The requirements for Procurement Forecasts are waived when utilizing the flexibilities in FAR Part 18 and AGAR Part 18.

(d) Flexibilities from higher level reviews of solicitations, awards, and modifications are as follows:

1. For declared emergencies listed in 418.001-70 (a), contracting officers may approve solicitations and awards up to their warrant threshold without additional reviews required in 404.000-72 or 443.203-71.

2. For USDA specific emergencies listed in 418.001-70 (b), contracting officers may approve solicitations and awards up to their warrant threshold without additional reviews required in 404.000-72 or 443.203-71 with COCO approval.

(e) Flexibilities for Made in America (MIA) Waivers are as follows:

1. For emergencies identified under 418.001-70(a) or (b), contracting officers may award without submitting a MIA waiver in advance, provided they obtain the required approval. For actions valued at $25,000 or more, approval from the Head of Contracting Activity (HCA) is required; for actions under $25,000, approval from the Chief of the Contracting Office (COCO) is required. To obtain approval, the contracting officer will submit an email detailing the emergency and include the COCO concurrence that the acquisition meets the emergent conditions defined in 418.001-70 (b). No award may be made until the appropriate official, HCA or COCO, based on dollar value has provided concurrence. The approval email must be retained in the contract file.

2. Within 30 days of award, the contracting officer will submit an Urgent Requirement Report Waiver to the MIA Office. Waivers for acquisitions over the micropurchase threshold up to $25K will be approved by the COCO. Submit waivers for acquisitions $25K and over IAW AGAR 404.000-71 for HCA approval.

418.001-72 Commodity planning in advance of emergency declaration.

(a) In March of each year, Commodity Procurement Program (CPP) contracting staff responsible for buying items purchased in an emergency will meet with Food and Nutrition Service (FNS) to discuss anticipated commodity needs to support emergency declarations that may arise.

(b) Once commodities are identified, the contracting staff will conduct market research to ensure availability of those commodities identified in collaboration with FNS. If no specific commodities are identified, contracting staff will conduct research for infant formula and rice cereal for babies which have historically been ordered in response to a domestic disaster.

418.001-73 Procedures for emergency acquisitions.

(a) When a Presidential declaration of an emergency is made, affected requiring activities will submit a requisition to the contracting office responsible for the products (or similar products). This may be verbally or in writing, via email, or input into the respective procurement system. Verbal requests will be followed by e-mail with exact needs identified to include product, quantity, delivery dates, shipping locations, etc.

(b) To minimize risk, the value and length of any procurement action awarded will be limited to address only immediate needs. Consider the inclusion of options to allow continuous performance which can be exercised at the Government's sole discretion.

(c) Add new materials, recipients, or delivery locations to the respective procurement system, if needed.

(d) Solicit only after receiving a certified funding document, unless time is of the essence or the procurement is contingent upon the availability of funds. In these cases, the contracting officer will ensure that written documentation (an email is acceptable) from the responsible fiscal authority confirming that funds are available and will be provided as soon as possible, is maintained in the contract file.

(e) Commodity Procurement. Verify with the respective CPP funding authority that funding authorization is received (possibly a blanket funding document). Note: 42 USC 5180(b) [Stafford Act] states that, "The Secretary of Agriculture must utilize funds appropriated under section 612c of title 7 [i.e., Section 32], to purchase food commodities necessary to provide adequate supplies for use in any area of the United States in the event of a major disaster or emergency in such area."

(f) Although purchases may be conducted orally or in writing outside the electronic procurement system, the contract file will still be stored within the electronic procurement system. While every effort should be made to create the file concurrently with the purchase to ensure accurate and timely documentation, it will be uploaded to the electronic procurement system no later than 30 days after award.

(g) If a vendor is not registered in SAM, they should be informed that they are required to start the process as soon as possible. If awarding using unusual and compelling urgency authority in FAR 6.302-2, SAM registration is required within 30 days of contract award or at least 3 days prior to submission of the first invoice, whichever is first.

(h) The "Emergency Acquisition" field in the Federal Procurement Data System-Next Generation (FPDS-NG) is required on all awards and modifications. When using FAR Part 18 flexibilities, select the correct Emergency Acquisition and ensure the "Description of Requirement" field contains a plain language description of what is being purchased and identify the specific event related to the emergency acquisition. A list of declarations is available at https://www.fema.gov/disaster/declarations.

(i) Complete an Emergency Acquisition Assessment, which will be reviewed and approved by the same authority level that would typically review and approve acquisitions at the respective dollar threshold, within 60 days following contract completion.

(j) COCOs will conduct a comprehensive audit of all emergency procurements executed during the previous fiscal year. This audit will ensure that all required procurement policies were followed, and contracting flexibilities were utilized to the maximum extent. Any lessons learned should be documented and disseminated to staff as necessary.

PART 419 SMALL BUSINESS PROGRAMS

AGAR Part 419 has not yet been overhauled. The current version remains in effect.

Part 420 Reserved

This Part is reserved.

Part 421 Reserved

This Part is reserved.

PART 422 APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 422.1 Basic Labor Policies

422.101-1 Labor relations.

(b) The Agency Labor Advisor for USDA is the OCP/PPD Chief. The Agency Labor Advisor, in consultation with OGC and/or Department of Labor as necessary, will provide advice and support to contracting activities on procurement labor issues.

422.104 Post Award

422.104-1 General

(c) Contracting officers will promptly report any potential or actual labor disputes (e.g., strikes, lockouts, significant work stoppages, or other organized labor actions) through the COCO to the agency's labor advisor and provide the following information:

1. Contract Details

   i. Contract number(s);

   ii. Affected program(s);

   iii. Urgency or criticality of performance; and

   iv. Impacts on deliverables, timelines, costs, or overall completion.

2. Contractor Information

   i. Contractor name and address;

   ii. Primary contact (name, title, phone, email);

   iii. Subcontractor contact(s) (if applicable); and

   iv. Labor union representative contact(s) (name, title, phone, email).

3. Dispute Summary

   i. Type of dispute (e.g., wage, working conditions, union-related);

   ii. Start date and estimated duration;

   iii. Current status (potential, ongoing, resolved);

   iv. Actions taken to resolve;

   v. Affected location(s) or worksite(s); and

   vi. Number of employees affected.

4. Additional Details

i. Planned mitigation actions;

ii. Availability of alternative sources for performance;

iii. Methods for addressing the dispute; and

iv. Federal or state mediation agency involvement (if any).

422.104-2 Overtime approvals.

(a) The designated approving official for all requirements in this section will be a level above the contracting officer.

Subpart 422.3 Contract Work Hours and Safety Standards Act

422.302 Postaward.

(d) The COCO is authorized to review liquidated damages determinations and recommend remedial action to the HCA. Contractors or subcontractors may request a review by submitting written notice to the contracting officer, who will promptly forward all appeals to the COCO.

Subpart 422.4 Labor Standards for Contracts Involving Construction

422.402 Presolicitation.

422.402-70 Support contracts.

(a) Apply both the Service Contract Labor Standards (SCLS) statute and the Construction Wage Rate Requirements (CWRR) statute to support contracts if—

1. The procurement action is principally for services but also requires a substantial and segregable amount of construction, alteration, renovation, painting, or repair work; and
2. The aggregate dollar value of such construction work exceeds or is expected to exceed $2,000.

(b) Contracts subject to the SCLS, including support services such as plant operations and installation services, will include all applicable SCLS clauses. Minimum wage and fringe benefit requirements will apply to all service calls or orders for maintenance and support work.

(c) Construction, alteration, renovation, painting, and repair requirements (i.e., roof shingling, building structural repair, paving repairs, etc.) procurement actions are subject to the CWRR statute. All applicable clauses and minimum wage provisions will be included in every procurement action or service call.

(d) Certain work may fall under either the CWRR or the SCLS. Examples include replacing broken windows, spot painting, or minor wall patching. When a service call or order requires construction trade skills (e.g., carpenter, plumber, painter) and it is unclear whether the work is SCLS maintenance or CWRR repairs, apply the following rules:

1. Individual service calls or orders which will require a total of 32 or more work hours to perform will be considered repair work subject to the CWRR.
2. Individual service calls or orders which require less than 32 work hours to perform will be considered maintenance subject to the SCLS.
3. Painting work of 200 square feet or more to be performed under an individual service call or order will be considered subject to the CWRR statute regardless of the total work hours required.

(e) The determination of labor standards application will be made at the time the solicitation is prepared in those cases where requirements can be identified. Otherwise, the determination will be made at the time the service call or order is placed against the contract. The service call or order will identify the labor standards law and contract wage determination which will apply to the work required.

(f) Contracting officers may not avoid application of the CWRR by splitting individual tasks between orders or contracts.

422.403 Evaluation and award.

(b)(6) The COCO is authorized to process the request for extension of the 90-day period for award after bid opening.

422.404 Postaward.

(g) The contracting officer will prepare the determination for COCO review and approval prior to submitting it to the Department of Labor.

422.404-2 Enforcement.

(c)(1)(vii)(A) Submit report of violations IAW AGAR 404.000-71 for HCA for approval.

(d) Each COCO will submit the semiannual report, using the form provided by OCP, by April 15 and October 15 of each calendar year to OCP/PPD. Negative reports are required to be submitted.

(g)(3) The contracting officer will work with the cognizant finance office on the disposition of withheld or collected funds.

Subpart 422.5 Project Labor Agreements for Federal Construction Projects

422.502 Presolicitation.

422.502-2 General requirements.

(d)(1)(ii) Review OMB Memorandum M-24-06 for additional information on adequate competition and fair and reasonable pricing.

Subpart 422.6 Contracts for Materials, Supplies, Articles, and Equipment

422.601 Presolicitation.

422.601-3 Exemptions.

(c)(1) The HCA is authorized to request the Secretary of Labor to exempt a specific procurement action.

422.602 Postaward.

See AGAR 422.404 (g).

Subpart 422.13 Equal Opportunity for Veterans

422.1302 Presolicitation.

422.1302-3 Waivers.

(b) The HCA, without redelegation, may waive any requirements when the contract is essential to national security.

(c) Submit waiver requests IAW AGAR 404.000-71 for HCA approval.

Subpart 422.14 Employment of Workers with Disabilities

422.1401 Presolicitation.

422.1401-2 Contract clause.

(a)(1)(ii) Submit waiver requests IAW AGAR 404.000-71 for HCA approval.

422.1401-3 Waivers.

(b) The HCA, without redelegation, may waive this requirement.

(c) Submit waiver requests IAW AGAR 404.000-71 for HCA approval.

422.1402 Postaward.

(c)(1) The contracting officer will forward complaints directly to OFPP, with a copy provided to OCP/PPD.

Subpart 422.15 Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor

422.1503 Evaluation and award.

(c) The HCA has the authority to impose remedies.

422.1504 Postaward

(a) If the contracting officer suspects indenture child labor was used in performance of a contract, a written determination and supporting documentation will be submitted through the COCO to the OIG, with a copy provided to the HCA. Based on the OIG's findings, the HCA may impose remedies as set forth in FAR 22.1504 (c). This requirement does not remove any employees' right to report waste, fraud, or abuse in accordance with the Whistleblower Protection Enhancement Act of 2012 at any time

Subpart 422.17 Combating Trafficking in Persons

422.1704 Postaward.

(c)(2)(i)(B) The responsibility is delegated to the SPE.

(d)(1) Contractor performance information will be reported in the Federal Awardee Performance and Integrity Information System (FAPIIS) within 3 business days.

Subpart 422.19 Increasing the Minimum Wage for Contractors

422.1905 Enforcement of Executive Order Minimum Wage Requirements.

(d)(3)(ii) See AGAR 409.406

Subpart 422.21 Establishing Paid Sick Leave for Federal Contractors

422.2103 Postaward.

(d)(4)(ii) See AGAR 409.406

PART 423 SUSTAINABLE ACQUISITION, MATERIAL SAFETY, AND POLLUTION PREVENTION

Subpart 423.1 Sustainable Products

423.102 Policy.

(a) If the Requiring Activity submits a written justification addressing the reasons described in FAR 23.103(a) and (b), the contracting officer may consider it not practicable to procure sustainable products or services.

423.102-70 Prohibition on the purchase of paper straws.

(a) In accordance with Executive Order 14208, "Ending Procurement and Forced Use of Paper Straws", the procurement of paper straws is not authorized, and paper straws will not be provided within agency buildings.

423.105 Exceptions.

(a) Submit determinations IAW AGAR 404.000-71 for HCA approval.

Subpart 423.3 Material Safety

423.303 Notice of radioactive materials.

(d) The requiring activity must provide the name of the installation/facility Radiation Protection Officer to the contracting officer upon request.

423.304-70 USDA clauses.

(a) Insert the clause at AGAR 452.223-70, Use and Care of Laboratory Animals, in all solicitations and contracts involving the use of animals in testing, research or training.

(b) Insert the clause at AGAR 452.223-71, Protection of Human Subjects in all solicitations and contracts involving human test subjects.

PART 424 PROTECTION of PRIVACY and FREEDOM of INFORMATION

Subpart 424.1 Protection of Individual Privacy

424.103 Procedures.

(b) (2) USDA regulations implementing the Privacy Act are found in 7 CFR, Subtitle A, Part 1, Subpart G.

Subpart 424.2 Freedom of Information Act

424.203 Policy.

(a) USDA regulations implementing the Freedom of Information Act (FOIA) are found in 7 CFR, Subtitle A, Part 1, Subpart A.

PART 425 FOREIGN ACQUISITION

Subpart 425.1 Buy American - Supplies

425.101 General.

(a)(2) The domestic content test is waived for COTS items, but COTS items must still be manufactured in the United States per FAR 25.101(a). COTS products not manufactured in the United States require an exception or waiver according to FAR 25.103 and AGAR 425.103-70.

425.103 Exceptions.

(a) The Secretary, without power of redelegation, has the authority to make Public Interest determinations. Submit the written determination IAW AGAR 404.000-71 for Secretary approval.

(b) (1)(iii)(C) Submit supporting documentation IAW AGAR 404.000-71 to the HCA. If the HCA concurs, the HCA will escalate to the FAR Council.

(b)(2)(ii) Submit supporting documentation IAW AGAR 404.000-71 to the HCA. If the HCA concurs, the HCA will escalate to the FAR Council.

(c) The unreasonable cost determination will be approved by the COCO for acquisitions over the micropurchase threshold up to $25K and the HCA for acquisitions $25K and over.

425.103-70 USDA Buy American waiver process.

(a) For acquisitions over the micropurchase threshold up to $25K, submit a completed Made in America Nonavailability waiver to the COCO for review and approval. The COCO will ensure copies of all approved Made in America Waivers are uploaded to the OCP repository.

(b) For acquisitions $25K and over, submit the waiver IAW AGAR 404.001-70 for HCA approval.

(c) After obtaining the required approvals, submit waiver requests to the Made in America Office. Award cannot be made until waiver approval is received from the Made in America Office. See AGAR 418.001-71 (e) for emergency procurements.

425.106 Determining Reasonableness of Cost

(a)(1) Submit supporting documentation IAW AGAR 404.000-71 for HCA approval.

Subpart 425.2 Buy American - Construction Materials

425.202 Exceptions.

(a)(1) The Secretary, without power of redelegation, has the authority to make Public Interest determinations. Submit the written determination IAW AGAR 404.000-71 for Secretary approval.

(a)(2) See AGAR 425.103-70.

(a)(3) See AGAR 425.103 (c).

425.204   Evaluating offers of foreign construction material.

(a)(1)(i) The HCA is delegated the authority to specify a higher percentage.   When specified, the contracting officer will note the use of the higher factor in the solicitation and contract by altering the appropriate paragraphs of the clause at FAR 52.225-9, Buy American—Construction Materials, or the clause at FAR 52.225-11, Buy American—Construction Materials under Trade Agreements, to identify the factor that will be used.

Subpart 425.6   Solicitation Provisions and Contract Clauses

425.601   Acquisition of supplies.

(c)(1) Consistent with the General Services Board of Contract Appeals (GSBCA) decision No. 10532-P, May 18, 1990, for acquisitions covered by the World Trade Organization (WTO) Agreement on Government Procurement (GPA), the restrictions of the Buy American statute are not applicable to U.S.-made end products.

425.601-70   USDA solicitation provisions and contract clauses.

(a) Insert AGAR 452.225-70, U.S. Origin Products – Domestic and International in all solicitations and contracts for agricultural commodities.

(b) Insert AGAR 452.225-71, U.S. Origin Verification and Tracebacks in all solicitations and contracts for agricultural commodities.

425.602   Acquisition of construction

(a)(2) and (c)(2) The HCA, without redelegation, is authorized to make this determination.

Subpart 425.10   Additional Foreign Acquisition Regulations

425.1001   Waiver of right to examination of records.

(a)(2)(iii) The HCA, without redelegation, is authorized to make this determination.

PART 426 OTHER SOCIOECONOMIC PROGRAMS

Subpart 426.5 Drug-Free Workplace

426.505 Postaward.

426.505-1 Suspension of payments, contract termination, and debarment and suspension actions.

(e) Submit waiver requests IAW AGAR 404.000-71 for agency head approval. The request must include a full description of the disruption of USDA operations should the determination not be waived.

PART 427 PATENTS, DATA, AND COPYRIGHTS

AGAR Part 427 has not yet been overhauled. The current version remains in effect.

PART 428 BONDS AND INSURANCE

Subpart 428.1 Bonds and Other Financial Protections

428.101 Bid guarantees.

428.101-1 Policy on use.

(b) The contracting officer will make the determination whether a separate bid bond is acceptable based on each particular acquisition.

(c) A class waiver approval for construction contracts to be performed overseas is hereby provided; COCOs are delegated authority for waivers of bid guarantee requirements for construction contracts to be performed overseas. Each waiver authorization will be made in writing and will include a determination that bid guarantee requirements are not in the best interest of the Government.

428.101-70 Bid guarantees under the simplified acquisition threshold.

Sealed bids for construction will contain a statement that a bid guarantee is not required for acquisitions under the Simplified Acquisition Threshold.

428.105 Other types of bonds.

This authority is delegated to the contracting officer.

428.106 Administration.

428.106-2 Substitution of surety bonds.

(a) This authority is delegated to the contracting officer.

428.106-6 Furnishing information.

(c) The contracting officer, after consulting with the COCO, is delegated this authority. The contracting officer will provide the requestor with a certified copy of the payment bond and contract and determine the reasonable costs for preparing copies using the Departmental Fee Schedule (7 CFR part 1, subpart A, appendix A).

Subpart 428.2 Sureties and Other Security for Bonds

428.203 Individual sureties.

(g) Contracting officer will follow the procedures in AGAR 409.406-3 when there is evidence of possible criminal or fraudulent activities by an individual surety.

428.203-5 Exclusion of individual sureties.

(a) This authority is delegated to the HCA.

(d) Submit justifications IAW AGAR 404.000-71 for HCA approval.

Subpart 428.3 Individual Sureties

(g) Utilize the procedures in AGAR 409.406-3 when there is evidence of criminal or fraudulent activities.

428.204 Alternatives in lieu of corporate of individual sureties.

(a) Retain securities furnished in lieu of surety or sureties on bonds in a secured environment until it is appropriate to return them to the contractor.

428.204-70 Specific requirements for Natural Resource and Environment procurements.

(a) Contracting officers conducting Natural Resource and Environment (NRE) procurements will refer to Forest Service Manual 6560 for supplemental general bond administration procedures and Forest Service Handbook 6509.11k for security accepted IAW FAR 28.204-1 through FAR 28.204-2

Subpart 428.3 Insurance

428.305 Overseas worker's compensation and war-hazard insurance.

(d) The HCA will make recommendations to the Secretary of Labor.

428.306 Insurance under fixed-price contracts.

(a) Insert the following language in solicitations and contracts which include the clause at FAR 52.228-5, Insurance - Work on a Government Installation.

1. Workers' Compensation and Employer's Liability. The contractor must comply with applicable Federal and State workman's compensation and occupational disease statutes. If these diseases are not covered, they must be included under the employer's liability section of the policy, unless contract operations are commingled with the contractor's commercial operations. Employer's liability coverage of at least $100,000 is required, except in States with exclusive or monopolistic funds that prohibit private carriers from providing workers' compensation.

2. General Liability. The contractor must have bodily injury liability insurance coverage written on a comprehensive form of policy of at least $500,000 per occurrence.

3. Property Liability (Remove if not required): The contractor must have property damage liability insurance required in the amount of $X per occurrence. contracting officer must insert amount required.

4. Automobile Liability. The contractor must have comprehensive automobile liability insurance covering bodily injury and property damage for all vehicles used in the contract. For U.S. operations, the coverage must be at least $200,000 per person, $500,000 per occurrence for bodily injury, and $20,000 per occurrence for property damage or loss.

5. Aircraft Public and Passenger Liability. When using aircraft for the contract, the contractor must have aircraft public and passenger liability insurance. Coverage must be at least $200,000 per person, $500,000 per occurrence for bodily injury, excluding passengers. For passenger injury, coverage must be at least $200,000 multiplied by the number of seats or passengers, whichever is greater.

428.307 Insurance under cost-reimbursement contracts.

428.307-1 Group insurance plans.

(a) For cost-reimbursement contracts, the contractor must submit group insurance plans to the contracting officer for review. The contracting officer will use available information, such as audits and industry practices, to determine if accepting the plan is in the Government's best interest.

428.307-2 Liability.

(b)(2) The contracting officer, in consultation with the requiring activity, will make this determination.

(e) The contracting officer, in consultation with the Requiring Activity, will make this determination.

428.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

428.311-1 Contract clause.

FAR 52.228-7, Insurance, Liability to Third Persons will be used in accordance with FAR 52.228-1.

428.311-2 Agency solicitation provisions and contract clauses.

Insert the clause at AGAR 452.228-70, Alternative Forms of Security in all solicitations and awards that require a performance bond.

428.370 Government-owned vehicles operated in foreign countries.

USDA is authorized to obtain liability insurance for employees operating Government-owned vehicles in a foreign country while acting within the scope of their employment (7 U.S.C. 2262).

PART 429 TAXES

Subpart 429.3 State and Local Taxes

429.301 Application of state and local taxes to the government

If a vendor requires proof of USDA's tax- exempt status, the "Blanket Tax Exempt Certificate" found on the Policy Finder site may be provided.

PART 430 COST ACCOUNTING STANDARDS ADMINISTRATION

Subpart 430.2 Presolicitation.

430.202 Waiver.

(a) (2) The SPE, without the authority to further redelegate, is authorized to waive the application of the Cost Accounting Standards (CAS).

(c) Submit waiver requests IAW AGAR 404.000-71 for SPE approval.

Subpart 430.3 Evaluation and Award

430.301 Contractor disclosure statements.

(b)(1) Submit requests for a determination that securing the contractor's disclosure statement before the award is impractical IAW AGAR 404.000-71 for approval by the Secretary. The request must describe the circumstances necessitating the award, show agreement by the Cognizant Federal Agency Official (CFAO), include the proposed Cost Accounting Standards Board (CASB) report, and provide a date for expected adequacy determination.

PART 431 CONTRACT COST PRINCIPLES AND PROCEDURES

431.004 Deviations.

(a) The SPE is designated as the official authorized to give advance approval of an individual deviation concerning cost principles. Submit requests for individual deviations IAW AGAR 404.000-71 for SPE approval.

(b) The SPE is designated as the official authorized to give advance approval of a class deviation concerning cost principles after coordination with the Civilian Agency Acquisition Council (CAAC). Submit requests for class deviations IAW AGAR 404.000-71 for SPE approval.

PART 432 CONTRACT FINANCING

AGAR Part 432 has not yet been overhauled. The current version remains in effect.

PART 433 PROTESTS, DISPUTES AND APPEALS

Subpart 433.1 Protests

433.103 General.

(a) Contracting Officers must seek legal advice with USDA/OGC, whether protests are submitted before or after award and whether filed directly with the agency, GAO, or the Court of Federal Claims.

(b) The SPE, or the HCA, is designated authority to act on agency protests.

433.103-70 USDA protest policy.

(a) For agency or non-agency protest, the contracting officer will:

(1) Provide notification to the contractor of receipt within five business days of protest filing using the approved email template.

(1) Submit the HCA Notification of Protest through the COCO for transmission to the HCA via email. The notification must reach the HCA within five days of the contracting officer's receipt of the protest. Use the approved email template when submitting.

(2) Enter and update protest information in IAS for all solicitations and contracts processed in IAS. Refer to the IAS User Guide for instructions on entering protest data.

433.104-2 Preaward.

(b)(1) Submit the required justification IAW AGAR 404.000-71 for HCA approval.

433.104-3 Postaward.

(b) Submit the required justification IAW AGAR 404.000-71 for HCA approval.

433.104-4 Other procedures.

(a)(5)(ii) The Notice for Filing Agency Protests contained in Appendix B must be included with each solicitation.

433.170 USDA procedures for protests to the agency.

433.170-1 Definitions.

Agency Protest means written objection meeting FAR 33.104, submitted to the contracting officer or Independent Review Authority (IRA). The protest must state whether the protester elects review by the contracting officer or by the IRA. If the protest does not specify, the contracting officer will decide the protest. The decision by the IRA is an alternative to a decision by the contracting officer on a protest. The IRA will not consider an appeal of the contracting officer's decision on an agency protest.

Concern means a question or issue raised by a contractor regarding a solicitation, evaluation, or award.

Independent Review Authority (IRA) means the official responsible for Tier 2 review, when the protestor requests an alternative to consideration by the contracting officer.

433.170-2 Policy.

(a) The USDA will resolve procurement concerns at the lowest appropriate level while maintaining transparency, fairness, and consistency in the acquisition process.

(b) The HCA is designated as the IRA for all protests. In the event the HCA is not at least one level above the contracting officer, or if the HCA has been substantially involved in the procurement, the SPE will conduct an independent review.

(c) USDA employs a Two-Tier Protest Resolution Process:

i. Tier 1 – Contracting officer concern resolution; and
ii. Tier 2 – Agency protest

433.170-3 Tier 1 contracting officer concern resolution process.

(a) The purpose of the Tier 1 process is to enable the contracting officer to resolve concerns quickly and informally without triggering statutory protest timelines or performance stays. When a contractor raises a concern, the contracting officer will discuss the issue and attempt resolution within ten business days.

(b) Concerns that can be resolved at this level do not need to be elevated. The contracting officer will notify the COCO when a contractor states an intent to protest or when a concern cannot be resolved and may escalate.

(c) Tier 1 engagement is not considered an official notification of filing an agency protest and does not suspend awards or performance and does not affect statutory protest timelines.

433.170-4 Tier 2 agency protest resolution process.

(a) The Tier 2 process begins when a written protest is filed with the contracting officer or the IRA.

(1) Protests are considered filed when received during USDA business hours (8:00 a.m. – 4:30 p.m. Eastern Time).

(2) Items received after 4:30 p.m. are considered filed the next business day.

(b) Agency Level Protests to the contracting officer. The contracting officer will:

(1) Submit the Contracting Officer Protest Determination and Protest Decision Letter IAW AGAR 404.001-71 (c) no later than 20 days from the filing date.

(2) Refrain from awarding or continuing performance unless authorized by an HCA determination under AGAR 433.104-2 or 433.104-3.

(3) Refrain from implementing any corrective action until the contracting officer Protest Review Memorandum is approved by the HCA.

(4) Issue the Protest Decision Letter upon approval from the HCA, using a method that provides evidence of receipt.

(5) When a protest is sustained in whole or in part, fully implement all corrective actions within 30 days, unless otherwise directed by the HCA.

(c) Agency Level Protests to the IRA.

(1) The IRA will:

i. Conduct an independent, impartial review of the protest.

ii. Coordinate with the contracting officer and OGC as needed to obtain clarifications or additional records.

iii. Provide the protester with an opportunity to submit a supplemental statement based on documents provided, subject to FAR timeliness rules.

iv. Issue a Protest Decision Letter explaining the basis for sustaining or denying the protest.

v. Transmit the decision using a method that provides evidence of receipt.

(2) The contracting officer will:

i. Provide the Contracting Officer Protest Determination and complete protest file IAW 404.001-71 (c) within 20 days of protest filing.

ii. Coordinate with legal counsel and the COCO to ensure accuracy and completeness of all materials submitted to the IRA.

iii. Refrain from awarding or continuing performance unless authorized by an HCA determination under AGAR 433.104-2 or AGAR 433.104-3.

iv. Implement corrective action directed by the IRA within 30 calendar days unless otherwise instructed.

v. Notify the protester and the IRA when corrective action is completed.

(d) Discovery is not permitted. Information may be exchanged only to the extent permitted by law and regulation.

(e) USDA aims to issue a protest decision within 35 days. If the agency determines that the protest decision cannot be completed within 35 days, the contracting officer will notify the protester in writing, explain the basis for the delay, provide a revised estimated decision date, and document the justification in the contract file.

(f) Effect on Award or Performance:

(1) Before award: Award may not proceed unless authorized under AGAR 433.104-2.

(2) After award: Performance is suspended for timely protests unless authorized under AGAR 433.104-3.

(g) Remedies: The reviewing authority may direct corrective action, including:

(1) Solicitation amendment;
(2) Reevaluation;
(3) Re-competition;
(4) Termination;
(5) Other legally permissible remedies.

433.170-5 Forum election.

By filing a protest with USDA, the protesters agree not to file a protest on the same matter with the GAO or any other external forum while the agency protest is pending. If such a protest is filed externally, the USDA agency protest will be dismissed.

433.105 Protests to GAO.

433.105-2 Preaward.

(b) Submit the required justification IAW AGAR 404.000-71 for HCA approval.

433.105-3 Postaward.

(b)(2) Submit the required justification IAW AGAR 404.000-71 for HCA approval.

Subpart 433.2 Disputes and Appeals

433.202 Applicability.

(b) (2) The SPE is authorized to make this determination.

433.205 Suspected fraudulent claims.

The Contracting Officer will refer all matters related to suspected fraudulent claims by a contractor under the conditions to the OIG for additional action or investigation.

433.205-6 Contracting officer's decision.

(h) When a protest is sustained or a claim is approved, and it is recommended the agency pays the protester's costs, the contracting officer will:

1. Consult with OGC who reviews the protester's documents to ensure the costs accurately reflect reasonable allowable costs (*e.g.,* filing and pursuing the protest, including reasonable attorney, consultant, expert witness fees, and bid and proposal preparation costs, etc.). OGC may attempt to reach an agreement with the protester on the amount of costs to be paid and will provide the contracting officer with the final amount that the agency must pay the protester.

2. Enter protest information into IAS no later than 15 calendar days after the outcome of the protest.

3. The requiring activity agency whose appropriation is used to procure the goods or services is responsible for the payment of costs associated with a sustained protest of the procurement.

4. The contracting officer will provide copies of the relevant documents (legal/GAO/COFC's email to pay/Bid Decision, Protester's documents/invoice, etc.) to the Requiring Activity.

5. The requiring activity is responsible for requesting their financial staff process a direct entry payment in the financial system to reimburse the Protester's costs. Do not issue a contract vehicle, including a purchase order or purchase card action to pay the Protestor's costs.

6. The requiring activity must notify the Contracting Officer when payment is made by the Department of Treasury, confirming the matter is closed.

7. Payments for Government's costs associated with protests should be directed to the Mission Area's Finance Office. The requiring activity may contact the Mission Area's Finance Office directly (i.e., contact is not required to be made from the Contracting Office).

433.205-7 Obligation to continue performance.

(b) After receipt of COCO approval required in 433.205-9, the contracting officer will only approve payments in arrears for performance that has been successfully completed and accepted by the Government, pending resolution of any disputes.

433.205-8 Alternative dispute resolution (ADR).

(h) In accordance with 5 U.S.C. § 575 (c), the Head of the Agency is required to approve the use of binding arbitration.

433.205-9 Contract clauses.

(a) Submit a written justification to authorize continued performance to the COCO for review and approval.

PART 434 MAJOR SYSTEM ACQUISITION

Subpart 434.1 Postaward

434.100 Testing, qualification and use of industrial resources developed under Title III of the Defense Production Act.

434.100-70 Responsibilities.

(a) The key executives of USDA (Secretary, Deputy Secretary, Under Secretaries and Assistant Secretaries) individually or as a group will participate in making four key decisions in each major system acquisition process:

1. Identification and definition of a specific mission need to be fulfilled, the relative priority assigned within the agency, and the general magnitude of resources that may be invested.
2. Selection of competitive system design concepts to be advanced to a test/demonstration phase or authorization to proceed with the development of a noncompetitive (single concept) system.
3. Commitment of a system to full-scale development and limited production.
4. Commitment of a system to full production.

(b) The Chief Information Officer (CIO) is the Major Information Technology Systems Executive. For acquisitions of information technology, the CIO will ensure that Circular A–11 is implemented in USDA and that the management objectives 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 acquisitions other than acquisitions of information technology. The ASA will ensure that Circular A–11 is implemented in USDA and that the management objective are realized. The SPE is delegated the responsibility for designating the program manager for each major system non-IT acquisition, designating an acquisition to be a major system non-IT acquisition, and approving the written charter and project control system for each major system non-IT acquisition.

(d) The COCO will:

1. Ensure compliance with the requirements of Circular A–11, 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. Coordinate with MASPMs to recommend qualified candidates for designation as program managers for each major system acquisition within their jurisdiction.

4. Coordinate with MASPMs to verify 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 Circular A–11.

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

(f) The Secretary or the Secretary's designee for the specific program is the agency head when required.

434.102 Definition.

(a) Pursuant to OMB Circular No. A–11 (Circular A–11) and the definition at FAR 2.101, within USDA, a system must be considered a *major system* if:

1. The system has been identified as a Major IT Investment pursuant to USDA Departmental Regulation 3030–008, Definition of Major Information Technology Investments;
2. The total non-IT acquisition costs are estimated to be $50 million or more, and it has been designated a non-IT major system by the SPE; or
3. 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.

434.103 Policy

(a) In addition to the policy guidance at FAR 34.103 and other parts of the FAR, the policies outlined in part 7 of Circular A–11 should serve as guidelines for all contracting activities in planning and developing systems, major or otherwise.

PART 435 RESERVED

This part is reserved.

PART 436 CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 436.1 Pre-Solicitation

436.101 Construction.

436.101-4 Advance notices and solicitations.

(b) Solicitation notices posted for construction contracts will include a statement that, "Pursuant to FAR 36.101-4(b), information regarding USDA's definitization of equitable adjustments for change orders under construction contracts may be found at Contracting with USDA under "Federal Acquisition Regulation 36.101-4". USDA's procedures that apply to the definitization of equitable adjustments for change orders under construction contracts may be found in AGAR 443.304 -70.

436.101-7 Clauses.

(a) Insert the clause at AGAR 452.236–70, Emergency Response, Fire Suppression and Liability, in all Integrated Resource Service Contracts (IRSCs) contracts. The clause is optional for non-IRSCs.

436.102 Architect-Engineer Services

436.102-4 Clauses.

(a) The contracting officer, with the advice of appropriate technical representatives, may make the determination in FAR 36.102-4 (a)(2) or (3).

(a)(1) Should the HCA appoint a designee to make the determination in FAR 36.102-4(a)(1), the appointment may be to one no lower than the official authorized to commit program funds for the work being acquired.

Subpart 436.2 Evaluation and Award

436.202 Construction.

436.201-1 Limitations.

(b) The HCA is authorized to approve the award of a contract to the firm that designed the project (including its subsidiaries or affiliates).

436.202 Architect and engineering services.

436.202-1 Evaluation.

(a)(1) The COCO will establish written procedures for providing permanent or ad hoc architect-engineer evaluation boards.

(a)(1)(i) Preselection boards are authorized, when deemed necessary.

(a)(1)(ii)(C) Private practitioners of architecture, engineering, or related professions may be used on evaluation boards, when deemed when determined by the COCO to be essential to meet the Government's minimum needs. All non-government members will sign non-disclosure agreements, and any organizational conflicts of interest will be addressed in accordance with FAR Part 9.

(b)(3) The selection report required in FAR 36-202.1(b)(3) will be prepared for the approval of the COCO. For task orders against USDA contracts, the COCO may delegate this authority to an individual at least one level above the contracting officer.

436.202-2 Selection authority.

(a) The final selection decision is designated to the COCO. For task orders against USDA contracts, the COCO may delegate this authority to an individual at least one level above the contracting officer. A copy of the final selection decision, with supporting documentation, will be provided to the Contracting Officer and retained in the contract file.

436.202-4 Short selection process for contracts not to exceed the simplified acquisition threshold.

The COCO may use either or both procedures specified in FAR 36.202-4 (a) and (b) in the selection procedures for evaluation boards.

(b)(2) The COCO is designated as the selection authority. For task orders against USDA contracts, the COCO may delegate this authority to an individual at least one level above the contracting officer.

PART 437 SERVICE CONTRACTING

AGAR Part 437 has not yet been overhauled. The current version remains in effect.

Part 438 Reserved

This Part is reserved.

PART 439 ACQUISITION OF INFORMATION AND COMMUNICATION TECHNOLOGY

SUBPART 439.1 Presolicitation

439.103 Information technology services.

439.103-70 USDA policy.

(a) Definitions:

1. *Telecommunications* means the transmission, emission, or reception of signals, writing, images, sounds, or intelligence of any nature, by wire, cable, satellite, fiber optics, laser, radio, or any other electronic, electric, electromagnetic, or acoustically coupled means. The term includes the telecommunications facilities and equipment necessary to provide telecommunications services. Telecommunications is a component of the Information Resource Management (IRM) delivery system.

2. Telecommunication services means any access services which provide, for a recurring fee, electronic connectivity to the public switched network and those support services which provide for the acquisition, operation, and management of attached systems. Access services include voice and data communications, video conferencing, cellular and paging services, and those services necessary for efficient operation and management of a telecommunications system. Agency private networks which use or aggregate access to a publicly switched network are likewise included.

(b) In addition to policy and regulatory guidance contained in the FAR:

1. The USDA Information Technology Capital Planning and Investment Control Guide (CPIC) establishes requirements for the acquisition of information technology.

2. Annual appropriations acts require advance written approval from the Office of the Chief Information Officer prior to procuring IT valued at $25,000 or more.

3. The CPIC Guide and USDA CIO policy and procedural guidance are established in Departmental Directives/Regulations 3000 series.

4. The procurement authority delegated to USDA Agencies is established in Departmental Directives/Regulations 5000 series.

5. USDA Acquisition Teams will ensure integration of cybersecurity into the acquisition lifecycle through acquisition planning, source selection, responsibility determination, security compliance evaluation, contract administration, and performance evaluation. USDA Requiring Activities must ensure required cybersecurity related information, in accordance with OCIO policies, is incorporated into all requirements documents and contract awards. When required, include the OCIO IT Security and Privacy Manual and Cybersecurity Supply Chain Risk Management (C-SCRM) Manual as attachments to the acquisition documents, or specify the relevant contract language from these manuals in the acquisition documentation.

6. Any purchase of telecommunications will be properly documented according to the USDA budget object classification (BOC) code to ensure proper property, inventory, and financial tracking of purchased items. The BOC Guide may be accessed from the USDA National Finance Center Website. Note that BOC 3140 has been blocked and BOC 3145 should be used in its place.

439.103-71 Training requirements.

(a) Acquisition of on-line courseware libraries and learning management system services requires specific approval of the Assistant Secretary for Administration and CIO.

(b) Requiring Activities must include the mandatory language and training courses found at AGAR 404.309-70 (f) in their requirements documents in all service contracts:

439.103-72 Use of Government Purchase Cards to Acquire Telecommunications

Subject to the exceptions listed in this section, USDA purchase cardholders and warranted contracting officers are authorized to utilize the Government Purchase Card (GPC) for the procurement of telecommunications services, supplies, or equipment. The GPC will be used in accordance with all USDA departmental regulations and other relevant Federal regulations pertaining to the acquisition of telecommunications, consistent with the AAR limit for agency/staff offices. The GPC may not be used in the following situations:

1. When directly billed and recurring telecommunication services are obligated and committed through a USDA network and/or feeder system designed to manage and track telecommunication expenditures. Examples of these systems include, but are not limited to, MetTel, IPAC (Networx or General Services Administration), and Treasury Offset Program (TOPS). The GPC, however, may be used as the payment tool when appropriate deobligation of funds commitment has been recorded.

2. Purchase of telecommunications supplies or services above the single purchase limit of the cardholder or above the warrant level of contracting officer.

3. Purchase of telecommunications supplies or services above the AAR limit of $25,000 without the approval of the Office of the Chief Information Officer.

4. Purchase of any data visualization tool, except for Tableau. Tableau is the USDA standard data visualization tool. The CIO Memo Guidance on Tableau Standard Data Visualization Tool provides additional information and is available on the Policy Finder page.

439.103-73 Cybersecurity requirements for civil space systems.

All cybersecurity requirements and contract language will use a risk-based, tiered approach for all new civil space systems. Such requirements will be designed to apply at minimum to the civil space systems' on-orbit segments and link segments.

439.103-74 Contracted providers of internet services.

Requirements language and contract language will implement a requirement to adopt and deploy internet routing security technologies, including publishing Route Origin Authorizations and performing Route Origin Validation filtering. The recommended language will include requirements or exceptions, as appropriate, for agency contracts regarding overseas operations and overseas local service providers.

439.103-75 Requirements for specific products

(a) Requirements language and contract language will implement a requirement that any product that acts as a Domain Name System (DNS) resolver, whether client or server, must support encrypted DNS.

(b) For any product on the CISA-list of product categories for products that support Post-Quantum Cryptography (PQC), the solicitation will require that related products support PQC.

(c) Requirements language and contract language will require consumer Internet-of-things products, as defined by 47 CFR 8.203(b), to carry United States Cyber Trust Mark labeling for those products.

439.103-76 USDA software license agreements.

Recommended language to be included for all software license agreements can be found on the Policy Finder page. Deviations from the recommended language will be approved by the COCO.

439.103-77 USDA procurement of artificial intelligence (AI).

(a) The USDA will support procurement of effective and trustworthy AI capabilities in a timely and cost-effective manner and support accelerated use of AI through innovation, governance, and public trust. This requires an integrated, collaborative planning and management approach beginning early in the acquisition planning process and lasting through the entire life cycle of each AI procurement. For AI-related definitions see OMB memo M-25-21.

(b) Contracting officers will ensure each required AI artifact is retained and available for collection and reporting purposes. They will employ efforts to decrease international dependence on AI technologies developed by our adversaries by supporting the global deployment of United States-origin AI technologies. For further details see Executive Order 14320 which provides information on the American AI Exports program. In addition, in accordance with Executive Order 14319, contracting officers will limit procurement of AI Large Language Models (LLMs) to those developed in accordance with Unbiased AI Principles that promote truth-seeking and ideological neutrality.

(c) Contracting officers will review all performance work statements, statement of work, evaluation factors, and solicitation/contract requirements for required language for all AI related contracts.

(d) Include the provision at AGAR 452.239-70, Notice of Potential Use of Artificial Intelligence in Contract Performance in all solicitations when AI is expressly authorized or contemplated in the solicitation or contract terms.

(e) Include the provision at AGAR 452.239-71, Certification of Compliance with Privacy Laws in all solicitations where Offerors propose, or are expected to propose, to develop, deploy, operate, or integrate Artificial Intelligence (AI) technologies that collect, process, analyze, or use data involving individuals or their characteristics.

(f) Contracting officer will review FAR Subpart 27.4 and include applicable FAR contract clauses pertaining to data and copyrights. Additionally, include the clause at AGAR 452.239-72, Artificial Intelligence Property and Data Rights in all contracts when AI is expressly authorized or contemplated in the solicitation or contract terms.

(g) Include the clause at AGAR 452.239-73, Privacy and Data Ownership Clause in all acquisitions in which AI is expressly authorized or contemplated in the solicitation or contract terms.

(h) Include the clause at AGAR 452.239-74, High-Impact Artificial Intelligence in all contracts where high-impact AI will be used in the performance of the contract.

(i) Include the clause at AGAR 452.239-75, Testing and Monitoring of Artificial Intelligence Systems in contracts where AI is expressly authorized or contemplated in the solicitation or contract terms.

(j) Include the clause at AGAR 452.239-76, Transparency and Vendor Lock-In in contracts where AI will be developed as a deliverable and is expressly authorized or contemplated in the solicitation or contract terms.

(k) Include the clause at AGAR 452.239-77, Prohibited AI Systems in contracts where AI will be developed as a deliverable and is expressly authorized or contemplated in the solicitation or contract terms. Prohibited AI systems include any systems that compromise privacy, safety, security, civil liberties, historical accuracy, scientific inquiry, objectivity, and nonpartisanship.

(l) Include the clause at AGAR 452.239-78, Use of Unbiased AI Principles in all solicitations and contracts when the contractor provides, licenses, integrates, modifies, or enables access to an LLM or if specified in the contract will provide other generative AI capabilities.

439.104 ICT accessibility standards.

439.104-70 Section 508 within USDA.

The Departmental Section 508 Program Office is the authority on the implementation of Section 508 and ensures systematic accountability for the accomplishment of the Section 508 requirements within USDA. Contracting officers and CORs are required to review DR 4030-001 "Section 508 Program" and the associated Section 508 information.

PART 440 INFORMATION SECURITY AND SUPPLY CHAIN SECURITY

440.001 Definitions.

Covered Unmanned Aircraft System (UAS) means:

1. A small unmanned aircraft, an unmanned aircraft, and unmanned aircraft system, or the associated elements of such aircraft and aircraft systems related to the collection and transmission of sensitive information (consisting of communication links and the components that control the unmanned aircraft) that enable the operator to operate the aircraft in the National Airspace System which is manufactured or assembled by a covered foreign entity; and

2. An unmanned aircraft detection system or counter-UAS system that is manufactured or assembled by a covered foreign entity.

Subpart 440.1 Processing Supply Chain Risk Information

440.102 Sharing supply chain risk information.

The contracting officer, in consultation with the requiring activity, will determine if there is a reasonable substantial supply chain risk associated with a source or covered article. If there is, the COCO will then notify OCP/PPD, who will escalate to the HCA for possible escalation to the USDA Cyber-Supply Chain Risk Management (C-SCRM) office.

Subpart 440.2 Security Prohibitions

440.202 Prohibitions

(c) *Drones.* Utilize the "UAS Procurement Flowchart" to determine whether the procurement is authorized. Unmanned aircraft systems manufactured or assembled by a covered foreign entity are not authorized to be purchased or operated. USDA employees, as well as contractors and grantees acting on behalf of USDA, will review and adhere to the requirements outlined in Departmental Regulation 3465-002. Requirements documents will discuss contractors' responsibility to comply with DR 3465-002.

(i) *3D Printers.* Pursuant to SM 1078-014, all USDA employees are strictly prohibited from using the Government Purchase Card (GPC), contracts awarded using the Integrated Acquisition System (IAS) or other procurement system, Interagency Agreements, or any Federal Financial Assistance as defined at 45 CFR 78.1, Grant/Agreement as defined at 2 CFR 200.1, interagency agreements, or any other non-assistance instrument (e.g., mutual interest agreements, material transfer agreements, etc.) to acquire 3D printers manufactured by Chinese companies.

440.202-70 USDA America first policy.

(a) USDA Secretary's Memo SM 1078-014 prohibits contracting with, entering into arrangement with, or otherwise providing material or non-material benefit through the provision of funded or unfunded work to any foreign person or entity or any U.S. citizen or entity subject to foreign ownership, control, or influence by a country of concern or other foreign adversary unless appealed to and approved by the Secretary of Agriculture.

(c) USDA employees seeking to contract for or otherwise acquire services, goods, or equipment, are encouraged to think critically about their compliance with the letter and intent of SM 1078-014. If you are making a decision that may expose the USDA and the American taxpayer to prohibited activity, seek clarification and guidance from your immediate supervisor who can escalate the concern accordingly.

440.203 General procedures.

440.203-2 Disclosures.

Upon receipt of disclosure, the contracting officer will consult the requiring activity regarding whether to pursue a waiver. The contracting officer may determine that the offeror is not eligible for award and make award to another offeror.

440.203-3 Waivers.

(b) Submit waiver requests to IAW AGAR 404.004-70 for approval by the Secretary of Homeland Security. The contracting officer cannot make an award without written approval of the waiver.

440.203-4 Reporting requirements.

Upon receipt of the report, the contracting officer shall consult with the requiring activity to determine whether a waiver should be pursued. If a waiver is warranted, submit it to the HCA for approval in accordance with AGAR 404.004-70. In lieu of a waiver, the contracting officer may determine that the offeror is ineligible for award and proceed to the next eligible offeror.

440.204 Specific procedures.

440.204-1 Procedures on FASCSA orders.

(a) FASCSA orders for USDA are issued by the Secretary of Homeland Security. Contracting officers cannot award or renew contracts for articles or sources identified in a FASCSA order. These orders can be found in SAM by searching for "FASCSA order." Contracting officers will work with the requiring activity to identify if a FASCSA order listed in SAM applies to the acquisition.

(a)(1) This subpart applies to all awards, above and below the micro purchase threshold, including awards using the Government Purchase Card (GPC).

(b)(1) Contracting officers will apply existing FASCSA orders to the basic contract award. Orders issued against the basic contract award would subsequently apply to the FASCSA orders. GSA contracts will have the applicable FASCSA clauses included. Orders or calls against contracts (GSA, USDA, or others) that have the applicable FASCSA clauses included do not need to add the clauses at the order/call level. Orders or calls against GSA contracts that do not have the applicable FASCSA clauses included need to add the clauses at the order/call level.

(d) If a FASCSA order is not identified in SAM, the contracting officer will identify the FASCSA order in the solicitation to be effective for that acquisition. The requiring activity will identify these FASCSA orders to the contracting officer. If an offeror provides a disclosure, the contracting officer will work with the COR/requiring activity to review the disclosure information and determine whether the inability to demonstrate compliance is worth the risk of pursuing a waiver to use the applicable covered article, product, or service. If a contractor provides a report in response to paragraph (g) of FAR 52.240-90, the contracting officer will engage with the agency supply chain risk management program by submitting a copy of the report via the COCO to OCP/PPD.

440.204-70 USDA procedures on contracting for certain telecommunications and video surveillance services or equipment.

(a) Contracting officers can utilize the "Section 889 Service Diagram" or the "Section 889 Equipment Diagram" to determine if the acquisition meets Section 889 requirements. If the contracting officer is unable to make the determination, contact the OCP/PPD for assistance. Review Section 889 Policies for additional information.

(b) FAR provisions 52.240-90 and 52.240-91 are included in the representation and certification section within the SAM for registered vendors. In addition, the GSA tool can assist in checking for Section 889 representations in an entity's SAM.gov record. If an entity is registered and SAM and FAR provisions 52.240-90 and 52.240-91 indicates "DOES NOT" in both fill ins, no further action is needed.

(c) If an entity isn't registered in SAM and Section 889 Part B applies, FAR provisions 52.240-90 and 52.241-91 will be completed and included in the award file. If the contracting officer has reason to question the representation by the offeror, the contracting officer should consult with their COCO and legal counsel on how to proceed to ensure the procurement does not violate the prohibitions.

(d) If the contractor indicates that they plan to provide or use covered telecommunications, the contracting officer will:

1. Confirm with the offeror/contractor that it accurately completed the representations;
2. Determine if there is an existing approved waiver. If assistance is needed, contact the OCP/PPD.
3. After consulting with the Director OCIO/DISC Enterprise Network Services, legal counsel, and COCO, contracting officers will determine whether awarding to the apparent successful offeror, or continued performance or extension of the contract (or order), will result in a violation of the prohibition(s). If it is determined that violation will occur, and award is still contemplated, the contracting officer will follow the waiver process in (e).

(e) The contracting officer will submit waiver requests to the COCO for review and concurrence. The COCO is responsible for obtaining agreement with the waiver request from USDA's Office of the Chief Information Officer (OCIO) and USDA's Office of Homeland

Security (OHS) prior to forwarding the request to the HCA IAW AGAR 404.000-71. If the HCA concurs, the HCA will escalate to the Office of the Director of National Intelligence (ODNI) for final approval. Be advised that the waiver approval process is very stringent, and approvals are rare. The contracting officer cannot make an award without written approval of the waiver.

440.204-3 Procedures on Sudan prohibition.

(a)(2) Submit waiver requests IAW AGAR 404.000-71 for approval by the Office of Federal Procurement Policy. The contracting officer cannot make an award without written approval of the waiver.

440.204-4 Procedures on Iran prohibitions.

(a)(1) See AGAR 440.204-3 (a)(2).

PARTS 441   RESERVED

This Part is reserved.

PARTS 442 CONTRACT ADMINISTRATION AND AUDIT SERVICES

442.001 Interagency agreements.

(a) All audit services required by contracting officers, except those which can be accomplished in-house, must be coordinated through the OIG. The OIG will coordinate with the Defense Contract Audit Agency (DCAA), when needed. Requirements of OIG audits are in Departmental Regulation (DR) 1700-002.

Subpart 442.2 Contract Administration Services

442.202 Assignment of contract administration.

(c)(2) The authority to approve the delegation to the Contract Administration Office (CAO) is delegated to one level above the contracting officer. This authority may not be delegated below that level.

Subpart 442.4 Corporate Administrative Contracting Officer

442.402 Assignment and location.

(a)(2) The HCA is delegated authority to assign a CACO.

Subpart 442.5 Indirect Cost Rates

442.503 General.

442.503-2 Certificate of indirect costs.

(b)(1) This authority is delegated to one level above the contracting officer. This authority may not be delegated below that level. A copy of the approved waiver must be submitted to OCP/PPD within five days of approval.

442.503-3 Educational institutions.

(b)(1) If USDA is the Cognizant Federal Agency for an educational institution for the purpose of negotiating indirect cost rates, the COCO will approve the use of predetermined final indirect cost rates. In no case will the authority be delegated below the COCO.

Subpart 442.11 Contractor Performance Information

442.1103 Procedures.

(a)(1) See the CPAR Procedure Guide for Agency Procedures.

442.1103-70 Contractor generated past performance surveys or evaluations.

(a) USDA personnel shall not participate in contractor-sponsored past performance or customer-satisfaction surveys. Only the Contracting Officer may provide official past performance information, and such information shall be submitted exclusively through CPARS. Contractor-generated surveys or evaluations may offer useful feedback; however, because these unofficial instruments may be used for purposes such as marketing, negotiation leverage, or other actions adverse to the Government's interests, they shall not be used or treated as official past performance.

PART 443 CONTRACT MODIFICATIONS

Subpart 443.2 General

443.203 Types of contract modifications.

443.203-70 Out of scope modifications.

(a) Before initiating a modification, the contracting officer will determine if the proposed effort is within the scope of the existing contract or is a "new acquisition" outside of the scope. A new requirement outside of the scope of the existing contract will be processed as a new acquisition. Contract scope means, in simple terms, that the contemplated change will be related to the work originally contracted for. If a contract was awarded for the design (and only the design) of an automated information system, it could not be later modified to have the contractor provide and install hardware.

(b) Whether or not a contemplated change is within or beyond the scope of a contract is often not clear, so the contracting officer should discuss any proposed out of scope modifications with legal counsel, if necessary, to obtain a determination.

(c) If the modification is determined to be outside of the scope, it is subject to competition, and all competition requirements will be followed. It cannot be awarded to a contractor simply because that contractor has a current contract.

443.203-71 Modification Review Thresholds

(a) All reviews by contracting officer, level above the contracting officer, branch chief/procurement analyst, COCO, and HCA must be completed by warranted 1102s. All comments provided during the review process must be fully adjudicated prior to final document approval and before any associated action can proceed. The HCA, without redelegation, may expand the list, as appropriate.

(b) Contracting officers will obtain required approvals before increasing the ceiling, maximum, or total estimated value of a contract or agreement as follows:

1. If the revised value crosses an approval threshold that would have required a higher-level approving official at the time of original award (for example, increasing from $49M to $50M, which would have required HCA approval), then the modification must be approved by that higher-level official.

2. If the total cumulative increase equals or exceeds 10% of the current ceiling/maximum amount/total estimated dollar value, the modification must be approved by the HCA, regardless of whether an approval-threshold level is crossed.

(c) The following matrix details required review (R) and approval (A) requirements for out-of-scope modification and non-administrative modifications to CAPs/MSAs.

Type of Modification	Dollar Threshold	CO	Level Above CO	Branch Chief or Procurement Analyst	COCO	HCA	Legal Review
Out of Scope Modifications	Up to $10M	R	R	R	A		As Required
	$10M and greater	R	R	R	R	A	As Required
Any non-admin Mods to CAPs/MSAs	Any	R	R	R	R	A	As Required

* If prepared by CS, then the contracting officer can approve. If prepared by contracting officer, then approval by another contracting officer with a warrant authority equal to or higher than the procurement action is required.

Subpart 443.3 Change Orders

443.301 General.

(c) When a change order is issued electronically without an SF 30, the contracting officer will ensure that an SF 30 is issued within five business days following the resolution of the unusual or urgent circumstance.

443.304 Administration.

443.304 -70 Undefinitized contract actions (UCAs).

(a) UCA means any procurement action for which the terms, specifications, or price are not established before performance is begun under the action, and includes, but is not limited to:

1. Change Orders. All modifications/supplemental agreements issued under the "Changes" clause when the price for the change has not been negotiated; and
2. Letter Contracts (FAR part 16 and AGAR part 416).

(b) UCAs will be as complete and definite as possible under the circumstances in which they are issued. UCAs must only be used when:

1. Negotiation of a definitive contract action is not possible in sufficient time to meet the Government's requirements; and
2. The Government's interest requires that the contractor be given a binding commitment so that performance can begin immediately (e.g., emergency situations).

(c) The contracting officer will obtain prior written approval for use of a UCA as follows:

1. From the HCA, when the estimated cost of the definitive contract action is expected to be $1 million or greater.

2. From the COCO, without redelegation, if the estimated cost of the definitive contract action is expected to be less than $1 million.

3. Any modifications to the scope of the UCA will be approved at the level appropriate to the value of the total contract, including the modification.

4. The approval thresholds in 443.304.70 (c)(1) (2) and (3) are waived when there is a documented emergency in accordance with 418.001-70.

(d) All UCAs will include a not-to-exceed price.

(e) UCAs will contain definitization schedules to include a target date of definitization. Definitization will occur by the earlier of:

1. No later than 180 days after the contractor submits a qualifying proposal. This date may not be extended beyond an additional 90 days without a written determination by the HCA; or

2. The date on which the amount of funds obligated under the contract action is equal to 50 percent of the not-to-exceed price.

(f) Submission of a qualifying proposal in accordance with the definitization schedule is a material element of the contract. If the contractor does not submit a timely qualifying proposal, the contracting officer may suspend or reduce progress payments under FAR Part 32 or take other appropriate action.

Part 444 Reserved

This part is reserved.

PART 445 GOVERNMENT PROPERTY

Subpart 445.1 General

445.102 Policy.

(b) When providing Government property to contractors, document the file that the requirements of FAR 45.102(b) have been met.

445.103 General.

(a)(5) The COCO is authorized to make determinations for charging rent on the basis of use under the Use and Charges clause in FAR 52.245–9.

445.105 Contractor's property management system compliance.

(a) For USDA-administered procurement actions where the contractor possesses over $10 million in Government property, the property management system will be analyzed at time of award and yearly to ensure compliance. The contract file will contain written evidence that the contractor's property management system was analyzed for compliance with requirements, identifying the official/agency that performed the analysis.

Subpart 445.3 Authorizing the Use and Rental of Government Property

445.301 Use and rental.

(f) Forward requests IAW AGAR 404.000-71 for HCA approval.

445.302 Contracts with foreign governments or international organizations.

Requests by, or for the benefit of, foreign governments or international organizations to use USDA property will be approved by the HCA. To determine the cost to be recovered or rental charged, the contracting officers will compute rental costs for the use of Government production and research property in accordance with FAR 52.245-9, Use and Charges. OMB Circular A-25, User Charges provides guidance on the establishment of fees to recover costs. This computation should be included in the request and submitted IAW AGAR 404.000-71 for HCA approval.

PART 446 QUALITY ASSURANCE

Subpart 446.2 Contract Quality Requirements

446.202-4 Higher-level contract quality requirements.

(a) The requiring activity determines when higher-level contract quality requirements are required based on a review of the technical data package, engineering requirements, criticality and complexity of the item, and history of quality deficiencies.

(b) Requiring Activities may use any of the example standards, or other higher-level quality standards, as necessary. Contracting officers will use the selected standard to complete FAR 52.246-11.

Subpart 446.3 Contract Clauses

446.316 Responsibility for supplies.

FAR 52.246-16, Responsibility for Supplies is authorized for use.

446.370 Commodity procurement clauses.

(a) Insert the provision at 452.246-70, Food Defense Requirements in all solicitations for domestic commodity procurements.

(b) Insert the clause at 452.24-71, Manufacturing Practices in all solicitations and awards for domestic purchases of processed fruit, vegetable, and poultry products.

(c) Insert the clause at 452.246-73, FDA Food Facility Registration Number in all solicitations and awards for domestic commodity procurements.

Subpart 446.4 Government Contract Quality Assurance

446.401 General.

(f) See AGAR 446.601.

446.407 Nonconforming supplies or services.

(h) The contracting officer may direct the contractor to retain nonconforming items for investigative or evidentiary purposes if requested by the requiring activity.

Subpart 446.6 Material Inspection and Receiving Reports

446.601 General.

Material Inspection and Receiving Report (MIRR), DD Form 250 (Series), or an equivalent form, is authorized to document quality assurance, acceptance of supplies and services, and shipments. MIRRs will not be used for:

1. Shipments by subcontractors where direct shipment is not made to the Government; or
2. Shipment of contractor inventory.

Subpart 446.7 Warranties

446.703 Criteria for use of warranties.

Warranties should be obtained only when cost beneficial. Perform an analysis comparing the benefits of the warranty with its acquisition and administration costs, including the procurement's life cycle costs, both with and without a warranty. Compare the costs of warranties for similar supplies or services where possible. If a warranty is deemed appropriate, document the contract file with the reason for its inclusion, identify the specific parts or contract items it applies to, and explain why it meets the criteria in FAR 46.703.

446.705 Limitations.

(a) Contracting officers, in consultation with the requiring activity, are authorized to approve the use of warranties.

448.708 Warranties of data.

After consultation with the requiring activity responsible for developing warranties of data, the contracting officer may use warranties of data only when both of the following conditions are applicable:

1. Use of a warranty is in the Government's interest and is documented; and
2. The COCO concurs with the decision.

446.710 Contract clauses.

Contracting officers are authorized to use any of the warranty clauses identified in FAR 46.710.

PART 447 TRANSPORTATION

Subpart 447.1 General

447.101 Policies.

447.101-70 Commodity procurement clauses.

(a) Insert the following clauses in all solicitations and contracts for commodities:

1. AGAR 452.247-70, Loading, Blocking, and Bracing for Multiple Delivery Points on One Conveyance – Domestic;
2. AGAR 452.247-81, Special Instructions for Shipments to Puerto Rico – Domestic;
3. AGAR 452.247-72, Bill of Lading Notations – Domestic;
4. AGAR 452.247-73, Seals on Transportation Conveyances; and
5. AGAR 452.247-74, Additional Shipping Requirements – Domestic.

(b) Insert the following clauses in all solicitations and contracts for foreign commodities:

1. AGAR 452.247-73, Seals on Transportation Conveyances; and
2. AGAR 452.247-75, Miscellaneous Contract Requirements for F.o.b. Vessel Delivery – International

Subpart 447.5 Ocean Transportation by U.S.-Flag Vessels

447.502 Policy.

(a) USDA will provide bills of lading (BOL) for all sea cargoes so that the Maritime Administration (MARAD) can ensure compliance. BOL's are required for all cargoes shipped, whether the cargo is moved on a U.S. vessel or a foreign vessel. Therefore, CORs, as applicable, must send BOL's to MARAD at Cargo.MARAD@dot.gov within 20 business days of an ocean shipment. This allows MARAD to monitor and ensure compliance with cargo preference requirements while also maintaining transparency regarding the shipment of all USDA-impelled cargoes and accountability for compliance with cargo preference requirements. Finally, COCOs as part of their inspection programs will ensure annual compliance with cargo preference requirements and FAR 52.247-64.

PART 448 VALUE ENGINEERING

Subpart 448.1 Policies and Procedures

448.102 Policies.

(a) Requiring activities are responsible for reviewing Value Engineering Change Proposals (VECPs) for technical feasibility, usefulness, and adequacy of the contractor's estimate of cost savings; submitting written reports; and recommending acceptance or rejection to the contracting officer. The HCA is authorized to grant exemptions for specific cases or contract classes. Route exemption requests IAW AGAR 404.000-71 for HCA approval.

Subpart 448.2 Contract Clauses

448.201 Clauses for supply or service contracts

(e) The COCO, without redelegation, is authorized to determine which clause should be used based on the collateral cost savings/benefits calculation.

PART 449 TERMINATION OF CONTRACTS

Subpart 449.1 General Principles

449.101 Authorities and responsibilities.

449.101-70 USDA terminations.

(a) Per Section 790 of the FY26 Agriculture Appropriations Act, any termination totaling $1M or more requires written notice to Congress before termination.

(b) Email the Termination Announcement to OCR@usda.gov, cc the Contracting Activity OCR representative and OCP/PPD, at least 5 days before the award date. OCR staff list is available online.

(c) OCR will respond within 5 days with questions or approval. The Contracting Activity must contact the congressional office by 5 PM (ET) on the award date. If OCR does not respond, contact OCP/PPD. File a completed copy of the announcement in the contract file.

449.106 Fraud or Other criminal conduct.

If the contracting officer suspects fraud or criminal conduct, a written determination and supporting documentation will be submitted through the COCO to the OIG, with a copy provided to the HCA. Based on the OIG's findings, the HCA may initiate suspension or debarment proceedings in accordance with FAR 9.4 and AGAR 409.4. This requirement does not remove any employees' right to report waste, fraud, or abuse in accordance with the Whistleblower Protection Enhancement Act of 2012 at any time

449.111 Review of Proposed Settlements

Proposed settlement agreements will be reviewed and approved by the COCO.

Subpart 449.4 Termination for Default

449.402-3 Procedure for default.

(j) The notice of termination will include instructions on disposing of any Government property held by the contractor (see FAR Part 45), and for construction contracts, it will address materials, appliances, and structures on the construction site. Additionally, it will state the contractor's or surety's liability for any liquidated damages (see FAR 49.402-7).

449.402-6 Repurchase against contractor's account.

(a) The contracting officer will:

1. Place a brief explanation for the repurchase in the contract file.
2. If practical, use the original contract terms, conditions, and specifications for the repurchase. Whether or not the original terms are used, obtain the advice of assigned legal counsel before issuing a solicitation for similar supplies, services, or construction.

3. If the reprocurement is delayed, protect the Government's rights to recover reprocurement costs by documenting the file to explain the circumstances of the delay.

449.402-8 Reporting information.

In addition to the reporting requirements in FAR Part 42, contracting officers will provide information on all terminations for default/cause, any withdrawal of the termination, and any conversion to a termination for convenience to the COCO no later than five business days after the termination, withdrawal, or conversion. COCOs will provide the information to OCP/PPD.

Subpart 449.5 Contract Termination Clauses

449.501 General.

Special purpose termination clauses under FAR 49.501 require prior approval from the HCA. Requests for special purpose termination clauses will be submitted IAW AGAR 404.000-71 and contain the following:

1. Copy of the Clause:
2. Justification for the necessity of its use; and
3. OGC concurrence regarding the legality of the proposed clause(s) and the inappropriateness of the standard FAR clauses.

449.505 Other termination clauses.

(c) Insert the clause at 452.249-70, Cancellation or Termination of Orders - Common Carriers in all solicitations, contracts, and basic agreements for telecommunications services. Modify the clause only if necessary to meet the requirements of a governmental regulatory agency.

PART 450 EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

Subpart 450.1 Extraordinary Contractual Actions

450.100 Definitions.

Approving authority means the Assistant Secretary for Administration (ASA).

Secretarial level means the ASA.

450.102 Delegation of and limitations on exercise of authority.

450.102-1 Delegation of authority.

The ASA is authorized to approve all actions under FAR Part 50 except indemnification actions listed in FAR 50.102–1(d), which will be approved by the Secretary, without power of redelegation.

Part 451 Reserved

This part is reserved.

PART 452 SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 452.1 Texts of Provisions and Clauses

452.203-70 Anti-Discrimination and Diversity, Equity, and Inclusion (DEI) Certification

As prescribed in AGAR 403.570 (a)(1), insert the following provision:

452.203-70 Anti-Discrimination and Diversity, Equity, and Inclusion (DEI) Certification (Dec 2025)

(a) By submission of its offer, the offeror certifies that:

1. It is compliant with all applicable Federal anti-discrimination laws and the Equal Protection principles of the U.S. Constitution.

2. Neither it nor any proposed subcontractor or teaming partner operates or funds any program, policy, or initiative that promotes DEI in a manner that violates any applicable Federal anti-discrimination laws, including but not limited to Title VI and VII of the Civil Rights Act of 1964, or the Equal Protection principles of the U.S. Constitution.

(b) If the offeror participates in, facilitates, or funds programs that implicate Title VI of the Civil Rights Act of 1964 or Title IX of the Education Amendments of 1972, as amended, including but not limited to grants to or for schools, colleges, universities, 4-H programs, non-governmental organization (NGO) programs, sports programs, and education-related grants to prisons or other detention facilities, by submission of its offer, the offeror certifies that it is compliant with those laws, including the requirements set forth in Executive Order 14168, Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government, and Executive Order 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity.

(c) The offeror affirms that the above requirements are conditions of payment that go to the essence of the contract and are therefore material terms of the contract. Payments under the contract are predicated on compliance with the above requirements, and therefore the offeror will not be eligible for funding under the contract or to retain any funding under the contract absent compliance with the above requirements.

(d) This certification reflects a change in the Government's position regarding the materiality of the foregoing requirements and therefore any prior payment of similar claims does not reflect the materiality of the foregoing requirements to this contract.

(e) Submission of a knowing false statement relating to offeror's compliance with the above requirements and/or eligibility for the contract may subject the offeror to liability under the False Claims Act, 31 U.S.C. § 3729, and/or criminal liability, including under 18 U.S.C. §§ 287 and 1001.

(f) Failure on the part of the offeror or its subcontractors to comply with the terms of this clause may be grounds for the Contracting Officer to terminate the contract for default.

(End of Provision)

452.203-71 Anti-Discrimination and Diversity, Equity, and Inclusion (DEI) Compliance

As prescribed in AGAR 403.570 (a)(2), insert the following clause:

452.203-71 Anti-Discrimination and Diversity, Equity, and Inclusion (DEI) Compliance (May 2026)

(a) By entering into this contract, the contractor certifies that:

1. It is compliant with all applicable Federal anti-discrimination laws and the Equal Protection principles of the U.S. Constitution, and it will remain compliant for the duration of the contract.

2. Neither it nor any subcontractor or teaming partner operates or funds any program, policy, or initiative that promotes DEI in a manner that violates any applicable Federal anti-discrimination laws, including but not limited to Title VI and VII of the Civil Rights Act of 1964, or the Equal Protection principles of the U.S. Constitution, and the contractor and any subcontractor or teaming partner will not do so for the duration of the contract.

(b) If the contractor participates in, facilitates, or funds programs that implicate Title VI of the Civil Rights Act of 1964 or Title IX of the Education Amendments of 1972, as amended, including but not limited to grants to or for schools, colleges, universities, 4-H programs, non-governmental organization (NGO) programs, sports programs, and education-related grants to prisons or other

detention facilities, the contractor certifies that it will remain compliant with those laws, including the requirements set forth in Executive Order 14168, Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government, and Executive Order 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity.

(c) The contractor affirms that the above requirements are conditions of payment that go to the essence of the contract and are therefore material terms of the contract. Payments under the contract are predicated on compliance with the above requirements, and therefore the contractor is not eligible for funding under the contract or to retain any funding under the contract absent compliance with the above requirements.

(d) This certification reflects a change in the Government's position regarding the materiality of the foregoing requirements and therefore any prior payment of similar claims does not reflect the materiality of the foregoing requirements to this contract.

(e) Submission of a knowing false statement relating to contractor's compliance with the above requirements and/or eligibility for the contract may subject the contractor to liability under the False Claims Act, 31 U.S.C. § 3729, and/or criminal liability, including under 18 U.S.C. §§ 287 and 1001.

(f) The contractor must include the provisions of this clause in all subcontract solicitations.

(g) Failure on the part of the contractor or its subcontractors to comply with the terms of this clause may be grounds for the Contracting Officer to terminate this contract for default.

(End of Clause)

AGAR 452.203-72 Unenforceable Supplier Terms

As prescribed in AGAR 403.571 (c), insert the following clause:

AGAR 452.203-72 Unenforceable Supplier Terms (MAY 2026)

(a) Definitions.

Supplier terms mean provisions customarily drafted by vendors of supplies or services and intended to create a binding legal obligation on the end user. The term applies:

1. Regardless of the format or style of the document. For example, supplier terms may appear in standard terms of sale or lease, Terms of Service (TOS), End User License Agreement (EULA), or another similar legal instrument or agreement, and may be presented as part of a proposal or quotation responding to a solicitation for a contract or order or otherwise become effective after the contract date.

2. Regardless of the media or delivery mechanism used. For example, supplier terms may be presented as one or more paper documents or may appear on a computer or other electronic device screen during a purchase, software installation, other product delivery, registration for a service, or another transaction.

(b) Applicability. When any supply or service acquired under this contract is subject to supplier terms, the supplier terms are deemed part of the contract only to the extent they are consistent with this clause. Supplier terms that conflict with any part of this clause, the contract, or Federal law are void and will not be considered incorporated into a contract, even if they are physically present in a contract documentation or systems. In the event of any inconsistency between supplier terms and this contract, this clause and the terms of the Government contract must govern and supersede any supplier terms in all cases.

(c) Authorization Required. Notwithstanding any other provision, no supplier terms must be binding on the Government unless the term is expressly authorized on the USDA Supplier Terms Authorization Form signed by the Contracting Officer, and the completed Authorization Form has been incorporated into the contract.

(d) Unenforceable Terms. Any supplier terms that impose obligations or restrictions inconsistent with applicable Federal law are unenforceable against the Government and deemed stricken from the agreement. This includes, but is not limited to, any clause that:

1. Requires the Government to pay future fees, penalties, interest, legal costs, early-termination fees, cancellation fees, minimum purchase commitments, true-up payments, seat-count minimums, usage minimums, continued-use charges, or any other financial obligation not expressly authorized by the contract.

2. Requires the Government to indemnify the contractor or any other entity.
3. Restricts the Government’s ability to obtain similar supplies or services from another source.
4. Imposes any penalty, financial or otherwise, based on the Government’s decision not to exercise an option.
5. Subjects the United States Government to the laws of any U.S. state, territory, district, municipality, or foreign nation, except where Federal law expressly permits such application.
6. Requires dispute resolution in a forum or venue other than one prescribed by applicable Federal law.
7. Establishes a period of limitations for bringing an action that differs from that provided by applicable Federal law.
8. Grants the contractor rights to use, mine, access, aggregate, analyze, or otherwise exploit Government data, usage data, or metadata.
9. Deems the Government to have accepted initial or revised terms based on silence, continued performance, or failure to object.
10. Grants the supplier the right to audit Government facilities, systems, records, or use of the product or service, except as expressly authorized by the contract and applicable Federal law.
11. Requires the Government to accept supplier security requirements, network access requirements, monitoring, penetration testing, or other technical or security measures.
12. Permits the supplier to suspend, degrade, or terminate access to products or services based on alleged non-payment, alleged breach, automated security triggers.
13. Limits the Government’s right to use, install, access, test, evaluate, or transfer the licensed product or service in any manner consistent with the contract and Federal law.
14. Requires the Government to store, process, maintain, or transmit data in a particular geographic location, or permits the supplier to transfer Government data outside the United States, except as expressly authorized by applicable Federal law.
15. Authorizes the supplier to use the Government’s name, seal, trademark, logo, or any reference to the Government as an end user or customer for marketing, publicity, promotional activities, press releases, or similar purposes.
16. Incorporates by reference, or requires the Government to accept, terms or conditions imposed by any third party, subcontractor, or upstream service provider, unless such terms are expressly incorporated into the contract by bilateral modification.

17. Limits, conditions, or negates the contractor's performance obligations, service levels, or remedies through a supplier-provided service level agreement (SLA).

18. Uses Government data, usage data, metadata, prompts, content, or interactions to train, fine-tune, improve, or derive any artificial intelligence, machine learning, or automated decision-making model.

19. Subjects the Government to automated decision-making, automated risk scoring, automated content moderation, or any algorithmic process that may affect access, performance, or rights under the contract.

20. Utilizes artificial intelligence or algorithmic tools that produce decisions, recommendations, or outputs affecting contract performance without providing transparency, explainability, auditability, and bias-mitigation consistent with applicable Federal law and policy.

21. Profiles, tracks, or analyzes Government user behavior, preferences, communications, or interactions for personalization, marketing, or algorithmic optimization purposes.

(e) Non-binding Actions. Neither the Government nor any Government authorized end user is deemed to have consented to any term, condition, or clause by virtue of its inclusion in the supplier agreement or through the use of clickwrap, browsewrap, "I agree" mechanisms, or similar means. Execution of such mechanisms does not bind the Government or its authorized end users to any unenforceable terms.

(f) End user. The supplier agreement must bind the ordering activity as the end user to the extent it does not conflict with the terms of this clause, but it must not bind or impose personal liability on any Government employee or any person acting on behalf of the Government in their personal capacity.

(g) Law and disputes. The supplier agreement is governed by Federal law.

(h) Statutory exception. This clause does not apply to indemnification or any other payment by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(i) Continued performance. The supplier or licensor must not unilaterally revoke, terminate, or suspend any rights granted to the Government except as allowed by the contract. If the supplier or licensor believes the ordering activity to be in breach of the supplier agreement, it must pursue its rights under the Contract Disputes Act or other applicable Federal statute while proceeding diligently with performance, pending final resolution of any dispute in accordance with the Disputes Clause at FAR 52.212-4(d) or FAR 52.233-1, as applicable.

(j) Arbitration. Binding arbitration must not be used unless specifically authorized by agency guidance.

(k) Equitable or injunctive relief. Equitable or injunctive relief, including the award of attorney fees, costs, or interest, may be awarded against the United States Government only when explicitly provided by statute (e.g., the Prompt Payment Act or the Equal Access to Justice Act).

(l) Revisions to supplier agreements. Any revisions to the supplier agreement must be incorporated into the contract using a bilateral modification. Unilateral revisions are not binding on the Government.

(m) No automatic renewals. If any license or service tied to periodic payment is provided under the supplier agreement (e.g., annual software maintenance or annual lease term), such license or service must not renew automatically upon expiration of its current term without prior express written consent from an authorized Government representative.

(n) Indemnification. Any clause of the supplier agreement requiring the supplier or licensor to defend or indemnify the end user is amended to provide that the U.S. Department of Justice has the sole right to represent the United States in any such action, in accordance with 28 U.S.C. 516.

(o) Taxes or surcharges. Any taxes or surcharges which the supplier or licensor seeks to pass along to the Government as end user will be governed by the terms of the associated Government contract or order and must be submitted to the Contracting Officer for a determination of applicability prior to invoicing unless specifically agreed otherwise.

(p) Non-assignment. The supplier agreement may not be assigned, nor may any rights or obligations thereunder be delegated, without the Government's prior approval, except as expressly permitted by FAR 52.212-4(b) or FAR 52.232-23, as applicable.

(q) Confidential information. If the supplier agreement includes a confidentiality clause, such clause is amended to state that neither the agreement nor the contract price list, as applicable, must be deemed "confidential information." Issues regarding release of "unit pricing" will be resolved consistent with the Freedom of Information Act. Notwithstanding anything in the supplier agreement to the contrary, the Government may retain any confidential information as required by law, regulation, or its internal document retention procedures for legal, regulatory, or compliance purposes; provided, however, that all such retained confidential information will continue to be subject to the confidentiality obligations of the supplier agreement.

(r) Conflict with Federal law. If any other language, provision, or clause of the supplier agreement conflicts or is inconsistent with Federal law or the terms and conditions of this contract, such language, provisions, or clauses will be considered null and void and will not be binding on the United States Government.

(End of Clause)

452.204–70   Modification for Contract Closeout

As prescribed in AGAR 404.208-70, insert the following clause:

AGAR 452.204–70   Modification for Contract Closeout (Apr 2026)

(a) If unliquidated funds in the amount of $1000 or less remain on the contract, the Contracting Officer (Contracting Officer) may issue a unilateral modification for deobligation. The contractor will receive a copy of the modification but is not required to provide a signature. The

Contracting Officer will immediately proceed with contract closeout upon completion of the period of performance, receipt and acceptance of supplies or services, and final payment.

(b) For commercial contracts not exceeding the simplified acquisition procedure threshold under FAR 12.001(c), if more than $1,000 in unliquidated funds remain at closeout, the Contracting Officer will issue a bilateral deobligation modification. Only the modification requires the contractor's signature, though a Release of Claims may be requested. If the required documents are not returned within 60 days, the Contracting Officer will issue a unilateral modification and proceed with closeout once performance is complete, acceptance is confirmed, and final payment is made.

(c) For all other non-commercial or non–cost-reimbursement contracts, if more than $1,000 in unliquidated funds remain at closeout, the Contracting Officer will issue a bilateral deobligation modification and a Release of Claims, both requiring contractor signature. If these documents are not returned within 120 days, the Contracting Officer will issue a unilateral modification u and proceed with closeout upon completion of performance, acceptance, and final payment.

(End of Clause)

452.204–71 Personal Identity Verification and Workforce Integrity of Contractor Employees.

As prescribed in AGAR 404.208, insert the following clause:

AGAR 452.204-71 Personal Identity Verification and Workforce Integrity of Contractor Employees (Apr 2026)

(a) Compliance with PIV Requirements. The contractor must comply with the personal identity verification (PIV) policies and procedures established by the United States Department of Agriculture (USDA) Directives 4620-002 series, Homeland Security Presidential Directive 12, and any implementing guidance issued by the Contracting Officer. The contractor must appoint a representative responsible for PIV compliance and must maintain a current list of employees eligible for a USDA LincPass or otherwise authorized to perform work under this contract.

(b) PIV Sponsor Availability. The PIV Sponsor for this contract is the designated Government point of contact identified in the contract, typically the COR unless otherwise specified. The Government will notify the contractor of any changes. The contractor remains responsible for meeting all PIV obligations regardless of changes in sponsor availability.

(c) Contractor Workforce Integrity and Accountability. The contractor is fully responsible for ensuring that all individuals performing under this contract are properly vetted, eligible for access, authorized to perform the work, and accurately represented. At a minimum, the contractor must implement lawful and effective internal controls to:

1. Verify the identity, work authorization, and qualifications of all personnel assigned;
2. Ensure only the individuals presented to USDA for PIV enrollment or identity verification perform work;

3. Detect and address indicators of identity fraud, unauthorized substitution, or other workforce integrity risks; and

4. Ensure continuous oversight of personnel, including remote workers, in accordance with any reporting requirements specified in the Contract.

(d) Mandatory Removal and Replacement. If the Government determines that a contractor employee fails to meet eligibility, security, integrity, or performance requirements, the Contracting Officer may direct the contractor to remove the individual from performance. The contractor must:

1. Remove the employee immediately upon notice;

2. Provide a qualified replacement at no additional cost to the Government; and

3. Ensure continuity of operations so as not to impact mission requirements.

4. Failure to promptly remove or replace employees when directed may result in remedies including withholding payment, termination, or other actions authorized under this contract.

(e) Impact on contractor Performance. Contractor compliance with this clause, including timely removal and replacement of personnel, adherence to PIV requirements, and maintenance of workforce integrity, is a material requirement of this contract. Incidents of identity discrepancies, failure to maintain an eligible workforce, submission of personnel who do not match verified identities, unauthorized substitutions, or failure to comply with Government direction may result in termination and will be documented in the contractor's performance assessment and reflected in the Contractor Performance Assessment Reporting System (CPARS).

(f) Subcontractor Applicability. The contractor must include this clause in all subcontracts requiring routine unaccompanied physical access to a Federally controlled facility and/or routine unaccompanied access to a Federally controlled information system. The contractor is accountable for ensuring subcontractor compliance.

(g) No Government Direction of Hiring Practices. Nothing in this clause authorizes the Government to direct the contractor's internal hiring processes or require the disclosure of personal information beyond what is authorized by law, regulation, or contract terms. The contractor remains solely responsible for determining lawful methods to meet the requirements of this clause.

(End of Clause)

452.204-72 Use of Electronic Data Interchange (EDI) or Other Automation Technologies

As prescribed in AGAR 404.208-70 (b), insert the following clause:

AGAR 452.204-72 Use of Electronic Data Interchange (EDI) or Other Automation Technologies (Apr 2026)

(a) In the event that Electronic Data Interchange (EDI) functionality or other automation technologies such as Robotics Process Automation is utilized to facilitate electronic transactions between USDA and its contractors, it is the sole responsibility of the contractor to ensure accuracy of the electronically transferred data. The Government's electronic system must serve as the system of record for all data exchanged or retrieved.

(b) The Government must not be liable to the contractor for any delay or failure associated with EDI or other automation technologies. The contractor's use of this service is at the contractor's sole risk. For electronic or automated services provided by USDA to the contractor, the services are provided on an "as is" and "as available" basis. For electronic or automated services provided by the contractor that interact with the USDA electronic systems, the USDA is not responsible for any costs incurred by the contractor related to the development, test, or support of the services. The contractor must be responsible for all fees associated with EDI. The contractor is responsible for the confidentiality and security of its systems, interfaces, interconnections, and any documents that the customer receives from The Government pursuant to the contract.

(c) The Government reserves the right to restrict, refuse, or cancel any participation in EDI services.

(End of clause)

452.207-70 Teleworking Requirements

As prescribed in AGAR 407.107-70, insert the following clause:

AGAR 452.207-70 Teleworking Requirements (MAY 2026)

(a) Authorized Work Location. Contractor personnel performing under this contract may work only from the remote or telework location approved by the contractor and provided to the Government. Work performed from any other location requires prior written approval from the Contracting Officer.

(b) Prohibition on Work Outside the United States. All performance under this contract must occur within the United States and its territories. Contractor personnel may not perform any duties, including accessing Government systems, handling Government information, or using Government Furnished Equipment (GFE), from outside the United States. Unauthorized foreign-based work constitutes a security incident and may result in immediate removal from the contract.

(c) Change of Remote or Telework Location. The contractor must notify the Contracting Officer in writing at least five business days prior to any change in a worker's remote or telework address. No work may be performed from the new location until written Government approval is issued.

(d) Monitoring, Accountability, and Workforce Integrity. The contractor is responsible for ensuring that remote workers:

(1) Perform work only from the approved location;

(2) Use GFE consistent with Government security requirements; and

(3) Are monitored through the contractor’s internal supervisory controls to confirm that the individual performing work is the same individual authorized to do so.

(e) Nothing in this clause authorizes the Government to require personally intrusive monitoring; however, the contractor must maintain sufficient oversight to detect unauthorized substitution, unapproved locations, or other workforce integrity risks.

(e) Government Furnished Equipment (GFE). The contractor is accountable for the physical security, proper use, and location of all GFE issued to contractor personnel. If the contractor becomes aware of a loss, suspected compromise, or unauthorized use or location of GFE, the contractor must report the incident to the Contracting Officer within 24 hours.

(f) Mandatory Removal and Replacement. The Government may direct the immediate removal of any contractor employee who:

(1) Performs work from an unauthorized or foreign location;

(2) Violates GFE requirements;

(3) Presents a security, integrity, or eligibility concern; or

(4) Fails to comply with this clause.

(5) The contractor must remove the individual upon notice and provide a qualified replacement at no additional cost, ensuring continuity of operations.

(g) Impact on Contractor Performance. Compliance with this clause is a material requirement. Recurring issues involving unauthorized locations, misuse of GFE, failure to supervise remote personnel, or other lapses in workforce integrity may result in documentation in the Contractor Performance Assessment Reporting System (CPARS) and may constitute grounds for termination.

(h) Subcontractors. The contractor must flow down this clause to all subcontractors whose personnel engage in telework or remote work under this contract.

(End of Clause)

452.209-70 Past Performance with Regard to Offeror’s Present Responsibility - Commodities

As prescribed in 409.104-1, insert the following provision:

452.209-70 Past Performance with Regard to Offeror’s Present Responsibility - Commodities (May 2026) (a)Bidders are cautioned NOT to bid or provide offers for quantities in excess of what they can reasonably expect to deliver timely in accordance with the contract.

1. The offeror must certify to timely performance on current contracts and subcontracts in the attribute questions of the IFB/solicitation. The offeror must notify the Contracting Officer of late deliveries prior to submission of bids. The Contracting Officer will determine if late performance is beyond the control or negligence of the offeror prior to the bid/solicitation closing date. A false certification may result in rejection of the offer, suspension and debarment by USDA, termination of the contract, liability for damages under the provisions of this Master Solicitation, other administrative actions, or criminal prosecution.

2. The Contracting Officer may deem the offeror non-responsible and ineligible to participate in an IFB/solicitation if the offeror or any of their affiliates or subcontractors is delivering late and the late deliveries are not due to causes beyond the offeror's control or negligence.

3. Offerors with deficient past performance may be put on a probationary period**,** limiting the quantity awarded on a solicitation.

4. Past performance will be considered during the Contracting Officer's responsibility determination using the contractor's performance for the last three (3) years prior to bid opening of the IFB/solicitation close.

(End of provision)

452.211-70 Brand Name or Equal

As prescribed in 411.204-70, insert the following provision:

452.211-70 Brand Name or Equal (May 2026)

(a) If an item in this solicitation is identified as "brand name or equal," the purchase description reflects the characteristics and level of quality that will satisfy the Government's needs. The salient physical, functional, or performance characteristics that "equal" products must meet are specified in the solicitation.

(b) To be considered for award, offers of "equal" products, including "equal" products of the brand name manufacturer, must-

1. Meet the salient physical, functional, or performance characteristics specified in this solicitation;

2. Clearly identify the item by-

    i. Brand name, if any; and

    ii. Make or model number;

3. Include descriptive literature such as illustrations, drawings, or a clear reference to previously furnished descriptive data or information available to the Contracting Officer; and
4. Clearly describe any modifications the offeror plans to make to a product to make it conform to the solicitation requirements. Mark any descriptive material to clearly show the modifications.

(c) The Contracting Officer will evaluate "equal" products on the basis of information furnished by the offeror or identified in the offer and reasonably available to the Contracting Officer. The Contracting Officer is not responsible for locating or obtaining any information not identified in the offer.

(d) Unless the offeror clearly indicates in its offer that the product being offered is an "equal" product, the offeror must provide the brand name product referenced in the solicitation.

(End of provision)

452.211-71 Variation in Quantity

As prescribed in AGAR 411.301-70 (a), insert the following clause:

452.211-71 Variation in Quantity (May 2026)

(a)A variation in the quantity of any item called for by this contract will not be accepted unless the variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified in paragraph (b) of this clause.

(b)The permissible variation must be limited to:

___ Percent increase [*Contracting Officer insert percentage*]

___ Percent decrease [*Contracting Officer insert percentage*]

This increase or decrease must apply to ____________. *

(End of clause)

* Contracting Officer must insert in the blank the designation(s) to which the percentages apply, such as-

1. The total contract quantity;
2. Item1 only;
3. Each quantity specified in the delivery schedule;
4. The total item quantity for each destination; or
5. The total quantity of each item without regard to destination.

452.211-72 Delivery of Excess Quantities

As prescribed in 411.301-70 (c), insert the following clause:

452.211-72 Delivery of Excess Quantities (Sep 2025)

The contractor must deliver item quantities within allowable variations. Excess quantities received by the Government are considered delivered for the contractor's convenience. The Government may keep excess quantities up to $250 in value without compensating the contractor therefor, and the contractor waives all rights, titles, or interests therein. For excess quantities over $250, the Government may return the items at the contractor's expense or retain and pay at the contract unit price.

(End of clause)

452.211-73 Variation in Estimated Quantity

As prescribed in 411.301-70 (d), insert the following clause:

452.211-73 Variation in Estimated Quantity (Sep 2025)

If the actual quantity of a unit-priced item varies by more than 15% from the estimated quantity, either party may request an equitable adjustment in the contract price. The adjustment will be based on cost changes due to variations above 115% or below 85% of the estimated quantity. If this variation delays completion, the contractor may request a time extension in writing. The request must be received by the Contracting Officer within 10 days of the delay's start or within such further period granted by the Contracting Officer before the final contract settlement. The Contracting Officer will review the request and, if justified, extend the completion date.

(End of clause)

452.211-74 Delivery Instructions - Commodity Procurement

As prescribed in 411.301-71 (a)(1) and (b)(1), insert the following clause:

452.211-74 Delivery Instructions - Commodity Procurement (Sep 2025)

The Government will issue electronic purchase orders in WBSCM and notify the contractor via email. The contractor must ensure it can receive emails during the contract and maintain an accurate email address on file. The Government is not responsible for email receipt failures due to contractor equipment or software issues. The Government reserves the right to also issue Purchase Orders by alternative methods, including fax or regular mail.

(End of clause)

452.211-75 Advance Shipment Notice (ASN) and Unloading Appointment

As prescribed in 411.301-71 (a)(2), insert the following clause:

452.211-75 Advance Shipment Notice (ASN) and Unloading Appointment (May 2026)

(a) The contractor must enter a WBSCM advanced shipment notice (ASN) on or before the shipment date. Contractors are encouraged to create the ASN as soon as a delivery appointment is scheduled, but no less than 24 hours beforehand. Accurate information must be provided in the ASN, which alerts the recipient agency of the shipment. Advanced shipment notices must include:

1. Shipper's name
2. Commodity
3. Sales Order or Requisition Number (SO or RN)
4. Units per (SO or RN)
5. Destination
6. Purchase Order Number
7. Ship date
8. Mode of transportation. If truck, anticipated date of arrival.

Note: USDA has provided an excel template in a comma delimited (csv) format that allows the contractor to upload purchase order line items that will create multiple ASNs.

(b) Creating the ASN does not exempt the contractor or subcontractor from securing an unloading appointment, which is mandatory for all deliveries.

(c) Delivery appointments must be scheduled as far in advance of expected delivery as possible, but not less than 72 hours prior to delivery by contacting the representative responsible at the applicable Purchase Order Item's Ship-to-Address for an unload appointment. Reference the Purchase Order (PO) Number, PO Item Number, and when provided, the Sales Order (SO) Number and SO Item Number for which the appointment is being scheduled. The contractor is fully responsible for any issues caused by failing to schedule or being late for appointments.

(d) The contractor may deliver early if the recipient agency agrees to accept early delivery, there is no additional cost to the Government, and upon AMS personnel being available to perform any necessary check loading and acceptance requirements, if applicable.

(End of clause)

452.211-76 Regulatory Requirements for Commodities and Packaging - Domestic

As prescribed in 411.301-71 (a)(3), insert the following clause:

452.211-76 Regulatory Requirements for Commodities and Packaging - Domestic Purchases (May 2026)

(a) The commodity must conform to the applicable provisions of the "Federal Food, Drug, and Cosmetic Act" (21 U.S.C. 301 et. seq.), as amended, and the relevant regulations, including applicable Food Safety Modernization Act regulations (FSMA), and sections in the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act). The contractor must comply with all applicable Federal, State, and local laws, executive orders, rules, and regulations related to its performance under this contract.

(b) All containers and packaging materials must meet FDA requirements for safe contact with food. The contractor must maintain documentation from the manufacturer to verify compliance with these requirements. Packaging and container materials from foreign countries must not display country of origin labeling, such as "Made in [Foreign Country]" or "Product of [Foreign Country]."

(c) All containers and packaging materials must comply with Coalition of Northeast Governors (CONEG) model legislation. The combined concentration of lead, cadmium, mercury, and/or hexavalent chromium must not exceed 100 parts per million. Concentration levels should be determined using American Standard of Testing Materials test methods, as revised or Environmental Protection Agency test methods for evaluating solid waste, S-W 846, as revised.

(End of clause)

452.211-77 Commodity/Packaging Labeling Requirements

As prescribed in 411.301-71 (a)(4), insert the following clause:

452.211-77 Commodity/Packaging Labeling Requirements (May 2026)

(a) USDA Foods products must comply with all applicable FDA labeling requirements: https://www.fda.gov/media/81606/download and any additional features outlined in USDA Product Specifications & Requirements: https://www.ams.usda.gov/selling-food/product-specs.

1. Any deviations from the labeling requirements in this section must be approved by the Contracting Officer, in writing, prior to start of production.
2. Primary packaging labels or shipping containers with missing or incorrect information must be corrected before the product can be shipped.

(b) PRIMARY PACKAGING (Immediate Container):

1. FDA/USDA defines minimum label information on primary packaging:

    i. Company name

    ii. Company/Plant location or FSIS establishment number.

    iii. Food item

    iv. Ingredient list

    v. Allergen statement, as applicable

    vi. Nutrition Facts Panel (except for foodservice pack products)

vii. Traceability code (see below)

viii. Cooking/heating/handling instructions, as applicable

2. Commercial labels must be the processor's own retail label (e.g., commercially available off-the-shelf). Distributors' labels are not allowed. If the vendor lacks a retail/consumer sales label, refer to the minimum color requirements, exclusive of the package color, in the commodity specifications. For products where the primary container hides the product, the label must provide a visual representation of the food.

3. Traceable Product Codes. Labeling and packaging must meet all FDA and USDA requirements and include a traceable product code for recalls. The identification system must distinguish products made for USDA contracts from non-USDA products if the same commercial label is used for both.

4. Nutrition Facts, Ingredients and Allergen statements. Consumer and individual sized containers must include a Nutrition Facts Panel, ingredients, and allergen statement. The ingredient statement must be listed separately from the name of the product, even for single-ingredient foods (e.g., Ingredients: ___). The allergen statement must comply with the Food Allergen Labeling and Consumer Protection Act (FALCPA) and the Food Allergy Safety, Treatment, Education, and Research Act (FASTER Act) which define milk, eggs, fish, Crustacean shellfish, tree nuts, wheat, peanuts, soybeans, and sesame as well as any food ingredient that contains protein derived from one of these foods, with the exception of highly refined oils, as "major food allergens."; e.g. Contains:_____ .

5. Reporting Product Information to GS1 Global Data Synchronization Network (GDSN). Contractors are required to report product information to GS1's GDSN for a select number of items purchased for the National School Lunch Program. The items that must be reported to GS1 GDSN are in the *List of Required Products for GS1 GDSN Reporting*, found at https://www.ams.usda.gov/selling-food/gs1-gdsn-overview. Contractors must report product information to GS1 GDSN within 20 days of receiving a contract award, if the contract includes items on the *List of Required Products for GS1 GDSN Reporting*.

Note: USDA may request nutrition information, ingredient and allergen statements, and Child Nutrition Program crediting information for USDA Foods products that are not on the *List of Required Products for GS1 GDSN Reporting*. Contractors must provide this information through branded product information sheets, product brochures, or label images upon request.

(d) SHIPPING CONTAINERS:

1. Shipping containers/carton labels must include:

   i. USDA Material code

   ii. Purchase order number

   iii. Company name

iv. Company/Plant location or FSIS establishment number

v. Food item

vi. Ingredient list

vii. Allergen statement, as applicable

viii. Nutrition Facts Panel (foodservice pack products only)

ix. Traceability code

x. UPC symbol/code (see below)

xi. USDA Shield, when applicable

2. Labeling and marking information must be water-fast, non-smearing, of a contrasting color, clear and readable.

3. Information must be preprinted, stamped, stenciled, or applied with a self-adhesive label on each shipping container. Refer to specification documents for sample layouts.

4. Nutrition Facts, Ingredients and Allergen statements must be included on shipping containers when not required on the primary package. The ingredient statement must be listed separately from the name of the product, even for single-ingredient foods (e.g., Ingredients: ___). The allergen statement must comply with the Food Allergen Labeling and Consumer Protection Act (FALCPA) and the Food Allergy Safety, Treatment, Education, and Research Act (FASTER Act) which define milk, eggs, fish, Crustacean shellfish, tree nuts, wheat, peanuts, soybeans, and sesame as well as any food ingredient that contains protein derived from one of these foods, with the exception of highly refined oils, as "major food allergens."; e.g. Contains:

5. UPC symbols/codes:

   i. The UPC, symbol and code, called Interleaved 2 of 5 (I 2/5), must appear on each shipping container. The complete code, including the check digit, must be printed in machine and human-readable form. The start and stop indicators will be included in the bar codes. Printing, readability, and scanability of the bar code must be in accordance with UPC guidelines published by:

   GS1 US Corporate Headquarters

   Princeton Pike Corporate Center

   1009 Lenox Drive, Suite 202

   Lawrenceville, NJ 08648

   Phone: 609.620.0200

https://www.gs1us.org/what-we-do/about-gs1-us

ii. USDA will provide unique processor identification codes for commodity contracts. This applies only to non-manufacturers of fruit and vegetable products without a corresponding commercial retail product.

(f) Obliteration of Markings. The contractor must prevent the appearance of these containers in commercial channels. Containers bearing Government contract markings, filled or unfilled, may cause the Government to incur expense in determining whether commodities have been diverted from authorized use and in answering inquiries. In cases of rejected products, overruns, or misprints, the contractor must obliterate official USDA markings that identify the container as part of a government contract.

(g) Inventory Control Information. The processor may add inventory control information (including barcodes) on the shipping container, provided it does not cover or conflict with labeling requirements.

(End of clause)

452.211-78 Compensation for Delays in Delivery

As prescribed in 411.301-71 (a)(5) and (b)(2), insert the following clause:

452.211-78 Compensation for Delays in Delivery (Sep 2025)

(a) If the contractor cannot meet the Not-Later-Than (NLT) delivery date, they must notify the Contracting Officer immediately. If the delay is beyond the contractor's control, they must request an extension at least three business days before the NLT date. Failure to submit the request or denial of the extension request will result in liquidated damages per FAR clause 52.211-11. Extension requests submitted after the NLT date or delay requests due to weekends/Federal holidays will not be accepted. The request must include the following information:

1. Applicable, identifiable contract and contract line-item information;
2. Documentation evidencing the event and how that event is beyond the control or negligence of the contractor;
3. Estimated delivery dates that the product will be delivered; and
4. Any additional information requested by the contracting officer.

(b) If a contractor's product is rejected, they must deliver an acceptable replacement by the NLT delivery date to avoid liquidated damages. If the replacement arrives after the NLT delivery date, liquidated damages will be assessed.

(c) When deliveries are made by contract carrier or vendor's own vehicle, the date shown on the signed commercial bill of lading will be considered the date of delivery.

(End of clause)

452.211-79 Unitization Requirements

As prescribed in 411.301-71 (a)(6), insert the following clause:

452.211-79 Unitization Requirements (May 2026)

(a) Unless otherwise specified by the Government, all shipments of packaged products must be unitized (palletized and stretch wrapped).

1. Pallets must be:

   i. Constructed to facilitate the safe handling and transportation of the packaged product, as a unit, without loss or damage.

   ii. A Number 2, four-way, reversible flush stringer with no broken runners or slats.

   iii. Suitable for use in the shipment of food products.

2. Plastic stretch wrap must be:

   i. Constructed of a plastic film which is to be stretched a minimum of 50 percent beyond its original length when stretched around the pallet load.

   ii. Applied as tightly as possible around all tiers of the palletized shipping containers. The shipping containers must be held firmly in place by the stretch wrap.

3. Pallet loads must be:

   i. Stacked in such a way as to minimize the amount that shipping containers overhang the edges of pallets.

   ii. Blocked and braced or otherwise loaded into the conveyance in a manner that prevents shifting during transit.

4. If pallet exchange is desired, the contractor must arrange for pallet exchange with consignees. USDA is in no way responsible for arrangement of pallet exchange.

(End of clause)

452.211-80 Regulatory Requirements for Commodities and Packaging - International

As prescribed in 411.301-71 (b)(3), insert the following clause:

452.211-80 Regulatory Requirements for Commodities and Packaging - International (May 2026)

(a) The commodity must conform to the applicable provisions of the "Federal Food, Drug, and Cosmetic Act" (21 U.S.C. 301 et. seq.), as amended, and the relevant regulations, including applicable Food Safety Modernization Act regulations (FSMA), and sections in the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism

Act). The contractor must comply with all applicable Federal, State, and local laws, executive orders, rules, and regulations related to its performance under this contract.

(b) All containers and packaging materials must comply with Coalition of Northeast Governors (CONEG) model legislation. The combined concentration of lead, cadmium, mercury, and/or hexavalent chromium must not exceed 100 parts per million. Concentration levels should be determined using American Standard of Testing Materials test methods, as revised or Environmental Protection Agency test methods for evaluating solid waste, S-W 846, as revised.

(End of clause)

452.211-81 Carrying Charges - International

As prescribed in 411.301-71 (b)(4), insert the following clause:

452.211-81 Carrying Charges - International (May 2026)

(a) For f.o.b. vessel contracts (excluding bulk oils and tallow), if the Government fails to take delivery by the end of the delivery period for reasons beyond the contractor's control, the Government will pay carrying charges of 18 cents per metric ton per day. This starts the day after the delivery period ends and continues until the vessel presents a valid Notice of Readiness (NOR). The vessel must have passed all inspections and be ready to load grain. The NOR must be presented during business hours (0900-1600 local time, Monday to Friday, and 0900-1200 on Saturday, excluding federal holidays or a holiday listed on the elevator tariff). NORs filed after hours will be considered presented on the next business day.

(b) For f.o.b. vessel contracts for bulk oil and tallow, if the Government fails to take delivery by the end of the delivery period for reasons beyond the contractor's control, the Government will pay a premium based on the actual (noncumulative) number of days the delivery period is exceeded until the vessel presents the NOR as follows:

1. If exceeded by 1, 2, 3, or 4 days, ½ of 1 percent of the f.o.b. price;
2. If exceeded by 5 or 6 days, 1 percent of the f.o.b. price;
3. If exceeded by 7 or 8 days, 1 ½ percent of the f.o.b. price;
4. If exceeded by more than 8 days, an additional premium of ¼ of 1 percent of the f.o.b. price for each day beyond 8 days.

(c) If the f.o.b. vessel contract contains multiple prices, the premium must be calculated on the weighted average of the contract prices.

(End of clause)

452.214-70 Contract Award - Application of Lowest Landed Cost - International

As prescribed by AGAR 414.207 (b), insert the following provision:

452.214-72 Contract Award – Application of Lowest Landed Cost - International (May 2026)

(a) In accordance with FAR 52.214-10(a), the Government will use the following price-related factors to evaluate bids:

1. For commodities purchased for immediate delivery under international food assistance programs, the lowest-landed cost to the Government to deliver the products to the overseas destination(s), or;

2. For commodities purchased for in-store delivery, the total cost to the Government including location and storage rates.

(b) With respect to (1) above, as provided in AGAR 470.201 and 470.202, and pursuant to FAR 47.304-3, *Shipments from CONUS for overseas delivery*, the contracting officer reserves the right to reject an offer if the acceptance of another offer for the commodity or related freight when combined with offers for commodities or related freight, result in a lower landed cost to the Government.

(c) Bids for which the Government has not received matching ocean freight offers must not be considered.

(End of provision)

452.214-71 Electronic Submission of Bids

As prescribed by AGAR 414.207(b)(3), insert the following provision:

452.214-71 Electronic Submission of Bids (May 2026)

(a) Offers, modifications, and withdrawals must be submitted electronically via the Web Based Supply Chain Management Computer System (WBSCM). Submission of the aforementioned by any means other than WBSCM will be deemed nonresponsive.

1. WBSCM is available online at: https://portal.wbscm.usda.gov/.

2. Links to registration forms, help desk contacts, training courses, system updates, minimum system requirements, etc. is available at: https://www.ams.usda.gov/selling-food/wbscm

(b) Prerequisites for creating and submitting a domestic bid response:

1. WBSCM Vendor Registration – If you are unsure whether your company is properly registered, contact the WBSCM help desk, as provided in Section C below. If your company is not registered in WBSCM, fill out and submit the vendor registration form at the following URL: https://www.ams.usda.gov/selling-food/wbscm. Vendors will be notified via email when vendor registration is complete.

2. WBSCM Corporate Administrator Registration - Vendors must authorize a corporate administrator by submitting a signed copy of the SCM2 form. A person with proper legal authority for the company must authorize individuals who will serve as:

   i. Primary Corporate Administrator, responsible for:

A. Registering plants

B. Creating users - with appropriate roles e.g. Commodity Offer;

C. Assigning users to a plant; and

D. Updating user roles, assignments, and plant registration as appropriate, e.g. deleting user as they leave the company.

ii. Secondary Corporate Administrator

(c) WBSCM Offer Information

1. Work Instruction for Domestic Commodity Bidding offer submission may be found at: https://www.ams.usda.gov/selling-food/wbscm under "WI and Follow On Activities."

2. Prospective contractors are responsible for starting the applicable processes early in the offering period and completing the applicable processes soon enough to ensure that their offer, modification, or withdrawal is received by the exact time specified herein for receipt of offers. Offer submission may include processes, such as registering vendor, authorizing user access, and roles, creating eAuthentication account, accepting WBSCM rules of behavior, registering plants, assigning users to plants, saving plant responses, and submitting vendor response (offer).

3. Quantities will be awarded in increments of USDA standard truckload quantities, subject also to the offer's quantity constraints. Quantity constraints must be entered in pounds.

4. Constraints - AMS does not allow offerors to enter minimum constraints but allows entering maximum constraints. AMS may award any volume up to the maximum constraints submitted by the offeror. Any minimums submitted will not be accepted.

5. Award documents will be available on the Vendor's Supplier Self-Service Page in WBSCM by the date specified in the Solicitation.

6. An offer requires timely submission of all plant responses AND a vendor response.

i. Plant response consists of:

A. PRICE for applicable items shown herein on the schedule of supplies in the Bid Invitation Item Details Section (see below); and

B. CERTIFICATION ANSWERS in the Questions section of the RFx Information tab.

C. Important: Submission of the plant response just saves the data entered – the vendor response must also be submitted.

ii. Vendor response consists of:

A. Marking that NO CONSTRAINTS apply if vendor can supply the cumulative item quantity offered OR entering quantity CONSTRAINTS to limit the offer to a quantity to less than the cumulative item quantity offered, and

B. Plant responses – submission of vendor response before the Offer Due Date and Time also physically submits all previously submitted/saved plant responses. Failure to submit the vendor response timely will result in no offer for the applicable solicitation.

7. The offeror must verify the accuracy of their offer/quote. The offer/quote may be printed from the WBSCM portal path Supplier>Bid Management>Vendor Response Log.

8. Bid invitation Item details section:

i. Hierarchy of Item Numbers (Item) is indicated by progressive indentation:

A. Level 1 Material Group,

B. Level 2 Material type and pack size,

C. Level 3 Destination single or multiple stops,

D. Level 4 Details; Material type and pack size, date range product required by postal zip code, quantity, and unit of measure. Railroad information is not available unless shown. Item Offered price is entered at level 4 only. Items will be awarded in increments of truckload sizes.

9. Multiple stop Items:

i. Are identified by LOT: number, city state/city state in the Tendering text at level 3 of an applicable Item;

ii. Have up to three stop-offs and a final destination.

10. Offshore Items: Items for delivery to offshore locations require the contractor to arrange and pay for ocean transportation in addition to the land transportation. Offshore examples are Hawaii, Puerto Rico, and the Virgin Islands. Offshore locations are identified by the cities and postal abbreviations shown at the level 3 Item data.

11. AMS will not be responsible for any failure attributed to the transmission of the bid data prior to being accepted and stored in WBSCM including, but not limited to the following:

i. Any failure of the bidder’s computer hardware or software.

ii. Availability of the bidder’s Internet service provider.

iii. Delay in transmission due to the speed of the bidder’s modem.

iv. Delay in transmission due to excessive volume of Internet traffic.

v. Offerors are advised to allow sufficient time to input offers on the date of bid opening due to high volume of internet traffic.

12. WBSCM Offer Form. Offers submitted in WBSCM must consist of the following areas:

i. Response to attribute questions associated with the specific solicitation;

ii. Offer price(s) on the item number(s) the firm want(s) to be considered for award; and

iii. Total quantity the company wants to be awarded (constraints in truck-lot or cases).

iv. All sections of the offer form must be completed, including prices and constraints, prior to final submission in WBSCM.

13. Complete the certifications (attributes questions) using the following as a guide.

i. Offer is made subject to the Master Solicitation; the applicable Supplement and/or Specification(s), the Solicitation, and FAR/AGAR.

ii. Timely Performance Certification. All products required under any existing USDA contract(s)/purchase order(s) or subcontract(s) with a not-later-than delivery date prior to this bid opening __________________. Choose one:

A. Have been delivered.

B. Have not been delivered.

C. Have not been delivered, but the Offeror has notified the Contracting Officer.

D. There are no existing contracts.

iii. Offeror requests HUBZone small business price evaluation preference (YES) (NO). Applies only to firms certified in the Small Business Administration's Historically Underutilized Business Zone program (FAR subpart 19.13).

iv. Furnish name, title, phone number, and e-mail address of person submitting this bid (must be an officer of the company or a person authorized to execute contracts on behalf of the bidder).

Note: There may be additional certification (attribute) questions depending on the material that is being offered on each individual Solicitation/IFB.

(End of provision)

452.214-72 Place of Performance - Domestic

As prescribed by AGAR 414.207 (e), insert the following provision:

452.214-72 Place of Performance - Domestic (May 2026)

(a) Offers must accurately represent the plant location(s). Plant location is defined as the place where an end product is assembled from components, packaged, or otherwise made or processed from raw materials into the finished product that is to be provided to the Government. Upon acceptance of an offer, the combination of plant location and item becomes a contract term.

(b) Offerors are directed to submit offers from only plant locations. Offers for locations representing non-plant locations, such as company headquarters or Shippers Option may be deemed non-responsive.

(c) Prospective contractors need to verify early in the offering period that the appropriate plant locations are entered and approved in WBSCM. Plant locations that are not approved cannot have an offer submitted in association with that plant. Therefore, any plant locations not approved, from which offeror intends to use in performance of the contract, should be added by vendor's corporate administrator.

(End of provision)

452.214-73 Place of Performance - International

As prescribed by AGAR 414.207 (e), insert the following provision:

452.214-73 Place of Performance - International (May 2026)

(a) For f.o.b. vessel bulk grain shipments place of performance must:

1. Be a federally or state licensed warehouse and be on the Commodity Credit Corporations (CCC)'s List of Authorized Warehouses or have a put through agreement or other means to assure timely delivery through an export elevator on CCC's List of Approved Warehouses, with the ability to load ocean-going vessels and barges from a spout that is physically attached to the storage location.

2. Be a federally or state licensed warehouse and be on CCC's List of Authorized Warehouses or have a put through agreement or other means to ensure timely delivery through a dockside facility or a floating Mid-stream facility for exporting milled rice or soybean meal.

3. Have the ability to issue or cause to be issued export weight and grade certificates covering the exportation of the product at the location of the elevator. The certificates must be acceptable to the Federal Grain Inspection Service.

4. Have approved loadout rates for tankers and tween-deckers.

5. If loading is out of the Great Lakes, trans-shipment will be allowed providing the origin of the loading is out of the Great Lakes. The original Laker vessel must be loaded at the federally or state licensed warehouse and trans-shipped to a larger ocean-going vessel most commonly in the St. Lawrence Seaway.

(b) For Instore bids, be on CCC's List of Approved Warehouse or be recognized members of the grain industry and be otherwise able to furnish negotiable warehouse receipts or certified KC-228's issued from the approved warehouse named in the bid.

(End of provision)

452.216-70 Award Term

As prescribed in AGAR 416.401-70 (k), insert the following clause:

AGAR 452.216-70 Award Term (Apr 2026)

(a) Based on overall contractor performance as evaluated in accordance with the Award Term Plan, the Contracting Officer may extend the contract for the number and duration of award terms as set forth in the Award Term Plan.

(b) The Contracting Officer will execute any earned award term period(s) through a bilateral contract modification. All contract provisions continue to apply throughout the contract period of performance or ordering period, including any award term period(s).

(c) The Government will evaluate offerors for award purposes by adding the total price for all options and award terms to the price for the basic requirement. This evaluation will not obligate the Government to exercise any options or award term periods.

(d) The Award Term Plan provides the methodology and schedule for evaluating contractor performance, determining eligibility for an award term, and, together with Agency need for the contract and availability of funding, serves as the basis for award term decisions. Any changes to the Award Term Plan will be in writing and incorporated into the contract through a bilateral modification citing this clause prior to the commencement of any evaluation period.

(e) The award term evaluation(s) will be completed in accordance with the schedule in the Award Term Plan. The contractor will be notified of the results and its eligibility to be considered for the respective award term no later than 120 days after the evaluation period set forth in the Award Term Plan. The contractor may request a review of an award term evaluation which has resulted in the contractor not earning the award term. The request must be submitted in writing to the Contracting Officer within 15 days after notification of the results of the evaluation.

(f) The Government has the unilateral right not to grant or to cancel award term periods and the associated Award Term Plan if—

1. The contractor has failed to achieve the required performance measures for the evaluation period;
2. After earning an award term, the contractor fails to earn an award term in a subsequent year. In this case, the Contracting Officer may cancel any earned but not yet commenced award term;

3. The Contracting Officer has notified the contractor that the Government no longer has a need for the award term period before the time an award term period is to begin;
4. The contractor was awarded the contract as a small business under a set-aside but rerepresents under FAR 52.219-28 that it is no longer a small business; or
5. The Contracting Officer has notified the contractor that funds are not available for the award term.

(g) When an award term period is not granted or cancelled, any—

1. Prior award term periods for which the contractor remains otherwise eligible are unaffected, except as provided in paragraph (h) of this clause; or
2. Subsequent award term periods are also cancelled.

(h) Cancellation of an award term period that has not yet commenced for any of the reasons set forth in paragraphs (f) of this clause must not be considered either a termination for convenience or termination for default and must not entitle the contractor to any termination settlement or any other compensation. If the award term is cancelled, a unilateral modification will cite this clause as the authority.

(i) Funds are not presently available for any award term. The Government's obligation under any award term is contingent upon the availability of appropriated funds from which payment can be made. No legal liability on the part of the Government for any award term payment may arise until funds are made available to the Contracting Officer for an award term and until the contractor receives notice of such availability, to be confirmed in writing by the Contracting Officer.

(End of clause)

452.216-71 Determination of Award Fee

As prescribed in AGAR 416.406 (d)(1), insert the following clause:

AGAAR 452.216-71 Determination of Award Fee (Apr 2026)

(a) Based upon the quality of its performance and the results of the Government's performance evaluation, the contractor may earn an award fee. The total amount of award fee available under this contract is assigned according to the following:

[Insert appropriate information]

(b) The Government will unilaterally establish a Performance Evaluation Plan as part of the contract to be used for the determination of award fees. This plan must include the criteria that will be used to evaluate the contractor's performance and to determine the percentage of award fee (if any) available for each performance period.

(c) The criteria contained within the Performance Evaluation Plan may relate to:

1. Quality of performance of the contract requirements;
2. Effective management of the contract; and
3. Cost controls.

(d) The Government may unilaterally revise the Performance Evaluation Plan at any time during the period of performance, however unless mutually agreed to a revision must not affect the current evaluation period. Notification of such changes must be provided to the contractor [insert number] calendar days prior to the start of the evaluation period to which the change will apply.

(e) At the conclusion of each evaluation period, and in accordance with the performance evaluation plan, a determination of the amount of the award fee earned must be made in writing to the contractor by the Government Fee Determination Official (FDO). The FDO's unilateral determination of the amount of award fee earned in any evaluation period or a determination that no fee was earned must be conclusive.

(f) The contractor may submit a self-evaluation of its performance in an evaluation period. The FDO must consider the self-evaluation, as the FDO deems appropriate.

(g) The contractor must submit a voucher for payment of any award fee earned.

(End of clause)

452.216-72 Distribution of Award Fee

As prescribed in AGAR 416.406 (d)(1), insert the following clause:

AGAR 452.216-72 Distribution of Award Fee (Apr 2026)

(a) The total amount of award fee available under this contract is assigned according to the following:

[Insert appropriate information]

(b) Payment of the base fee and award fee must be made, provided that after payment of 85 percent of the base fee and potential award fee, the Government may withhold further payment of the base fee and award fee until a reserve is set aside in an amount that the Government considers necessary to protect its interest. This reserve must not exceed 15 percent of the total base fee and potential award fee.

(c) In the event of contract termination for convenience, either in whole or in part, the amount of award fee available must represent a prorated distribution associated with evaluation period activities or events as determined by the Government.

(d) The Government will promptly make payment of any award fee upon submission by the contractor to the Contracting Officer's authorized representative of a public voucher or invoice in the amount of the total fee earned for the period evaluated. Payment may be made without executing a contract modification.

(End of clause)

452.216-73 Settlement of Letter Contract

As prescribed in AGAR 416.603-70, insert the following clause:

AGAR 452.216-73 Settlement of Letter Contract (Apr 2026)

(a) This contract constitutes the definitive contract contemplated by letter contract ___ (*insert number*) issued on ___ (*insert effective date*). It supersedes the letter contract and its modification numbered ___ (*insert number(s)*). To the extent there are inconsistencies between the definitive contract and the letter contract, the former governs.

(End of Clause)

452.216-74 Ceiling Price

As prescribed in AGAR 416.810 (a), insert the following clause:

AGAR 452.216-74 Ceiling Price (Apr 2026)

The ceiling price of this contract is $________. The contractor must not make expenditures nor incur obligations in the performance of this contract, which exceeds the ceiling price specified herein, except at the contractor's own risk.

(End of Clause)

452.223-70 Use and Care of Laboratory Animals

As prescribed in AGAR 423.304-70 (a), insert the following clause:

452.223-70 Use and Care of Laboratory Animals (May 2026)

(a) Before undertaking performance of any contract involving the use of laboratory animals, the contractor must register with the Secretary of Agriculture of the United States in accordance with the Animal Welfare Act of 1966, as amended (AWA), codified at 7 U.S.C. 2131 et seq. and promulgated at 9 CFR parts 1-4. The contractor must provide evidence of such registration to the Contracting Officer.

(b) The contractor must acquire animals used in research and development programs from a dealer licensed by the Secretary of Agriculture, or from exempted sources in accordance with 9 CFR 2.25-2.28. Animals must not be acquired from any random source Class B dealer.

(c) The contractor may request registration of their facility and a current listing of licensed dealers from the Regional Office of the Animal and Plant Health Inspection Service (APHIS), USDA, for the region in which their research facility is located. The location of the appropriate APHIS Regional Office as well as information concerning this program may be obtained at https://www.aphis.usda.gov/animal-care/awa-services.

(d) In the care of any live animals used or intended for use in the performance of this contract, the contractor must adhere to:

1. The standards and practices incorporated in the Guide for Care and Use of Laboratory Animals, prepared by the Institute of Laboratory Animal Research of the National Research Council of the National Academies (ILAR/NRC);
2. The Animal Welfare Regulations found in 9 CFR parts 1-4; and
3. The National Institutes of Health (NIH) Public Health Service (PHS) Policy on the Humane Care and Use of Laboratory Animals.
4. In case of conflict between standards, the higher standard must be used.

(e) The contractor's reports on portions of the contract in which animals were used must contain a certificate stating that the animals were cared for in accordance with the principles enunciated in the Guide for Care and Use of Laboratory Animals, prepared by the ILAR/NRC, and/or in the Animal Welfare Regulations found in 9 CFR parts 1-4.

(End of clause)

452.223-71 Protection of Human Subjects

As prescribed in AGAR 423.304-70 (b), insert the following clause:

452.223-71 Protection of Human Subjects (May 2026)

(a) The contractor must meet all USDA requirements for studies using human subjects prior to undertaking any work with human subjects in accordance with 7 CFR Part 1c. Studies involving intentional exposure of human subjects who are children or pregnant or nursing women are prohibited.

(b) The contractor's Institutional Review Board (IRB) approval must state that the contractor's study meets the USDA's regulations at 7 CFR Part 1c. No work involving human subjects, including recruiting, may be initiated before the USDA receives a copy of the contractor's IRB approval of the project and the USDA has also issued approval. Where human subjects are involved in the research, the contractor must provide evidence of subsequent IRB reviews, including amendments or minor protocol changes, as part of annual reports.

(c) The contractor must bear full responsibility for the proper and safe performance of all work and services involving the use of human subjects under this contract and must ensure that work is conducted in a proper manner and as safely as is feasible. The contractor agrees that it has entered into this contract and will discharge its obligations, duties, and undertakings and the work pursuant thereto, whether requiring professional judgment or otherwise, as an independent contractor without imputing liability on the part of the government for the acts of the contractor, its employees, sub-contractors, consultants, heirs, assignees, etc.

(d) If at any time during the performance of this contract, the Contracting Officer determines that the contractor is not in compliance with any of the requirements and/or standards stated in above, the Contracting Officer may immediately suspend, in whole or in part, work and further payments under this contract until the contractor corrects the noncompliance. The Contracting Officer may communicate the notice of suspension by telephone with confirmation in writing.

If the contractor fails to complete corrective action within the period of time designated in the Contracting Officer's written notice of suspension, the Contracting Officer may terminate this contract in whole or in part.

(End of clause)

452.225-70 U.S. Origin Products – Domestic and International

As prescribed in AGAR 425.601-70 (a), insert the following clause:

452.225-70 U.S. Origin Products – Domestic and International (May 2026)

(a) The products of agricultural commodities acquired under this contract must be a product of the United States and must be considered to be such a product if it is grown, processed, and otherwise prepared for sale or distribution exclusively in the United States (See AGAR 470.103). Ingredients from nondomestic sources will be allowed to be utilized as a United States product if such ingredients are not otherwise:

1. Produced in the United States; and
2. Commercially available in the United States at fair and reasonable prices from domestic sources.

(b) All meat must originate from livestock that are born, raised, and harvested in the United States.

(c) If the contractor processes or handles products originating from sources other than the United States, the contractor must have an acceptable identification and segregation plan for those products to ensure they are not used in commodities purchased under this contract—except for commingled products (see paragraph (d)). This plan must be made available to an AMS representative and the Contracting Officer or agent thereof upon request. The contractor must ensure that the contractor and any subcontractor(s) maintain records such as invoices, or production and inventory records evidencing product origin, and make such records available for review by the Government in accordance with FAR 52.214-26.

(d) For commodities that the Department has determined to be generally commingled, a commingled product must be considered to be a product of the United States if the offeror can establish that the offeror has in inventory at the time the contract for the commodity or product is awarded to the offeror, or obtains during the contract performance period specified in the solicitation, or a combination thereof, a sufficient quantity of the commodity or product that was produced in the United States to fulfill the contract being awarded, and all unfulfilled contracts that the offeror entered into to provide such commingled product to the United States. However, if the commodity can be readily stored on an identity preserved basis with respect to its country of origin, the Government may require that the commodity acquired under this contract be of 100 percent U.S. origin.

(e) The contractor agrees to include this domestic origin certification clause in all subcontracts for products used in fulfilling contracts awarded under this Master Solicitation. The burden of proof of compliance is on the contractor.

(f) FAR clause 52.225-5, Trade Agreements incorporated by reference in FAR clause 52.252-2 applies only to packaging and container components. Agricultural commodities and their products are exempt from 52.225-5.

(g)The Government has determined that the following commodities must be 100 percent U.S. origin and provided on an identity preserved basis:

1. Dry beans, peas, and lentils.

(End of Clause)

452.225-71   U.S. Origin Verification and Tracebacks

As prescribed in AGAR 425.601-70 (b), insert the following clause:

AGAR 452.225-71   U.S. Origin Verification and Tracebacks (May 2026)

(a) When requested, contractors will make all paperwork available to USDA that confirms 100% domestic origin traceback from the destination to the origin orchard/field/vineyard/farm/etc., including all steps in the process.

b) If the Government determines that the contractor has failed to provide complete traceback documentation, the Government may, in lieu of actual damages, assess liquidated damages of 3% of the contract price of all orders associated with the failed traceback.

c) Incomplete U.S. Origin Verification is deficient past performance and may, at the Government's discretion, subject the contractor to the probationary period described in 4A52.209-70, Past Performance with Regard to Offeror's Present Responsibility. 4A52.209-70 (d) describes the timeframe for which this past performance may be considered.

d) The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

(End of clause)

452.228-70   Alternative Forms of Security

As prescribed in 428.311-2, insert the following clause:

452.228-70 Alternative Forms of Security (May 2026)

If furnished as security, money orders, drafts, cashier's checks, or certified checks must be drawn payable to: USDA/XXX (Update with the correct payable to information prior to posting)

(End of clause)

452.232-71   Progress Payments for Commercial Construction Contracts

As prescribed in AGAR 412.205-70 (c), insert the following clause:

AGAR 452.232-71   Progress Payments for Commercial Construction Contracts (May 2026)

(a) *Contractor entitlement to progress payments*. The contractor may request progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates of work accomplished that meets the standards of quality established under the contract, as approved by the Contracting Officer.

(b) *Computation of amounts*. Progress payments will be authorized when the payment requested is properly due in accordance with this contract; the work will be performed in accordance with the contract; and there has been no impairment or diminution of the Government's security under this contract. The Contracting Officer may authorize consideration of:

1. Materials delivered on site and preparatory work;
2. Materials delivered to the contractor at locations other than the site, if:

   i. Specifically authorized by the contract; and

   ii. The contractor provides satisfactory evidence of title and intended use in the contract.

(c) *Contractor request for progress payments*. The contractor's request for progress payments must include the following:

1. An itemization of the amounts requested, related to the various elements of work required by the contract;
2. A listing of the amount included for work performed by each subcontractor;
3. A listing of the total amount of each subcontract;
4. A listing of the amounts previously paid to each subcontractor; and
5. Additional supporting data in a form and detail required by the Contracting Officer.

(d) *Contractor Certification.* Each request for progress payment must be accompanied by the following certification:

I hereby certify, to the best of my knowledge and belief, that—

1. The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;
2. All payments due to subcontractors and suppliers from previous payments received under the contract have been made, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of Chapter 39 of Title 31, United States Code;
3. This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract; and
4. This certification is not to be construed as final acceptance of a subcontractor's performance.

____(name)

____(title)

____(date)

(e) *Access for verification of payment entitlement.* To verify the contractor's entitlement to progress payments under this contract, the contractor must provide the Government, upon request and during normal business hours, access to the following:

1. Records and Documentation:

   i. Certified progress payment requests and supporting documentation;

   ii. Subcontractor and supplier invoices, payment records, and lien waivers;

   iii. Updated schedule of values and progress schedules;

   iv. Quality assurance and inspection reports;

   v. Payroll records, if applicable under labor provisions.

2. Facilities and Worksite Access:

   i. Physical access to the construction site for inspection of work progress;

   ii. Access to off-site storage locations for materials billed but not yet incorporated into the work; or

   iii. Access to any fabrication facilities where contract-related work is being performed.

3. Access to electronic invoicing or project management systems used to track progress and payments, if such systems are used in contract performance.

(f) *Dates for payment*. A progress payment under this clause is a contract progress payment under the Prompt Payment clause of this contract, and except as provided in paragraph (g) of this clause, approved requests must be paid within 30 days of submitting a proper request for payment.

(g) *Liquidation of progress payments*. Progress payments must be liquidated by deducting from the payment of each item the total unliquidated amount of progress payments made for that separately priced unit of that line item. The liquidation amounts for each line item must be clearly delineated in each request for progress payment submitted by the contractor.

(h) *Security for progress payments.* In the event that the contractor fails to provide adequate security as required in this contract, no progress payment must be made under this contract. Upon receipt of adequate security, progress payments must be made, including all previous payments to which the contractor is entitled, in accordance with the terms of the contract. If at any time the Contracting Officer determines that the security provided by the contractor is insufficient, the contractor must promptly provide such additional security as the Contracting Officer determines necessary. In the event the contractor fails to provide such additional security, the Contracting Officer may collect or liquidate such security that has been provided, and suspend further payments to the contractor; the contractor must repay to the Government the amount of unliquidated progress payments as the Contracting Officer at his sole discretion deems repayable.

(i) *Special terms regarding termination for cause*. If this contract is terminated for cause, the contractor must, on demand, repay the Government the amount of unliquidated progress payments. The Government must be liable for no payment except as provided by the Termination for Cause paragraph of the clause at Federal Acquisition Regulation 52.212-4, Contract Terms and Conditions—Commercial Products and Commercial Services.

(j) *Reservation of rights.*

1. No payment, vesting of title under this clause, or other action taken by the Government under this clause must-

i. Excuse the contractor from performance of obligations under this contract; or

ii. Constitute a waiver of any of the rights or remedies of the parties under the contract.

2. The Government's rights and remedies under this clause-

i. Shall not be exclusive, but rather must be in addition to any other rights and remedies provided by law or this contract; and

ii. Shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor must such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(k) *Refund of unearned amounts*. If the contractor, after making a certified request for progress payments, discovers that a portion or all of such request constitutes a payment for performance by the contractor that fails to conform to the specifications, terms, and conditions of this contract (hereinafter referred to as the "unearned amount"), the contractor must-

1. Notify the Contracting Officer of such performance deficiency; and
2. Be obligated to pay the Government an amount (computed by the Contracting Officer in the manner provided in paragraph (j) of this clause) equal to interest on the unearned amount from the 8th day after the date of receipt of the unearned amount until-

i. The date the contractor notifies the Contracting Officer that the performance deficiency has been corrected; or

ii. The date the contractor reduces the amount of any subsequent certified request for progress payments by an amount equal to the unearned amount.

(l) *Retainage*. If the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer must authorize payment to be made in full. However, if satisfactory progress has not been made, the Contracting Officer may retain a maximum of 10 percent of the amount of the payment until satisfactory progress is achieved. When the work is substantially complete, the Contracting Officer may retain from previously withheld funds and future progress payments that amount the Contracting Officer considers adequate for protection of the Government and must release to the contractor all the remaining withheld funds. Also, on completion and acceptance of each separate building, public work, or other division of the contract, for which the price is stated separately in the contract, payment must be made for the completed work without retention of a percentage.

(m) *Title, liability, and reservation of rights*. All material and work covered by progress payments made must, at the time of payment, become the sole property of the Government, but this must not be construed as-

1. Relieving the contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or
2. Waiving the right of the Government to require the fulfillment of all the terms of the contract.
3. The Government's rights and remedies under this clause-

i. Shall not be exclusive, but rather must be in addition to any other rights and remedies provided by law or this contract; and

ii. Shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor must such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(n) *Reimbursement for bond premiums*. In making these progress payments, the Government must, upon request, reimburse the contractor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the contractor has furnished evidence of full payment to the surety. The retainage provisions in paragraph (l) of this clause must not apply to that portion of progress payments attributable to bond premiums.

(o) *Final payment*. The Government must pay the amount due to the contractor under this contract after-

1. Completion and acceptance of all work;
2. Presentation of a properly executed voucher; and
3. Presentation of release of all claims against the Government arising by virtue of this contract, other than claims, in stated amounts, that the contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the contractor's claim to amounts payable under this contract has been assigned under the Assignment of Claims Act of1940 (31 U.S.C.3727 and 41 U.S.C. 6305).

(p) *Limitation because of undefinitized work*. Notwithstanding any provision of this contract, progress payments must not exceed 80 percent on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in FAR subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(End of clause)

452.236–70 Emergency Response, Fire Suppression, and Liability

As prescribed in AGAR 436.101-7, insert the following clause:

452.236–70 Emergency Response, Fire Suppression and Liability (May 2026)

(a) Contractor's Responsibility for Responding to Emergencies. When directed by the contracting officer, the contractor must allow the Government to temporarily use 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. A supplemental agreement between both parties, including an exchange of consideration for additional in-scope work, for the temporary use of employees and equipment will be made under the CHANGES clause, FAR 52.243–4.

(b) Contractor's Responsibility for Fire Fighting. The contractor, under the provisions of FAR 52.236–9, Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements, must 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, subcontractors, or employees subject to the fire classifications listed in subsection (c).

(c) 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 the 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 expended or used on suppressing any such fire, or otherwise provided at the request of Forest Service, must be credited toward such maximum. If the contractor's actual cost exceeds the contractor's maximum obligation stated above, the Forest Service must 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 must be borne by the contractor.

3. Other Fires on Contract Area. The Forest Service must 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 the Forest Service, on any fire on the contract area other than an operations fire or a negligent fire.

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

(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 must be the same as if performance was by the contractor.

(f) State Law. The contractor must 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 must not be withheld pending settlement of any such claim or action based on State law.

(End of Clause)

452.239-70 Notice of Potential Use of Artificial Intelligence in Contract Performance

As prescribed in AGAR 439.103-77 (d), insert the following provision:

452.239-70 Notice of Potential Use of Artificial Intelligence (May 2026)

(a) The USDA hereby provides notice regarding the potential development and/or use of Artificial Intelligence (AI) technologies in connection with the performance of the contract. As part of this solicitation, the Agency is required to disclose whether the AI systems to be developed and/or used under this contract are expected to have high-impact AI implications.

(b) High-Impact AI: AI is considered high-impact when its output serves as a principal basis for decisions or actions with legal, material, binding, or significant effect on:

1. An individual's or entity's civil rights, civil liberties, or privacy;
2. An individual or entity's access to housing, insurance, credit, employment, and other programs;
3. An individual or entity's access to critical government resources or services;
4. Human health and safety;
5. Critical infrastructure or public safety; or
6. Strategic assets or resources, including high-value property and information marked as sensitive or classified by the Federal Government.

(c) The Agency has determined that the following is true of AI under this contract (the Contracting Officer must select one of the following):

☐ High-impact AI will be developed as a deliverable of this contract.
☐ High-impact AI will be used in the performance of this contract.

☐ AI will be developed in this contract but it will not involve high-impact AI.

☐ AI will be used in this contract but it will not involve high-impact AI.

☐ The Agency does not anticipate AI development or use in this contract. However, the contractor must certify this in their submission.

(d) The Offeror must clearly disclose in a statement no longer than one page any planned or potential use of AI technologies in the performance of this contract. This includes, but is not limited to, the use of AI for data analysis, decision support, automation, predictive modeling, or natural language processing. The disclosure must identify the specific AI tools, models, platforms, or methodologies proposed, explain the purpose and function of the AI components, and describe how the use aligns with federal principles of transparency, accountability, and equity.

(e) Additionally, whether high-impact or not, the Offeror must disclose through a Statement of Attestation whether the proposed AI system is expected to impact or could potentially impact: privacy rights, including the collection, storage, or processing of personal data; civil liberties, such as freedom of expression, association, or assembly; discrimination or bias against individuals or groups, particularly regarding race, gender, ethnicity, or other protected categories.

(f) The Statement of Attestation must be certified by an authorized agent able to bind the contractor. At a minimum, it must include the following:

1. The disclosures listed in the paragraph (e).
2. An assertion identifying if the AI qualifies as being high impact.
3. If it is high-impact, any supporting rationale that the contractor relied on to determine that the AI qualifies as being high-impact.
4. A detailed description/account of those safeties or rights that can be impacted by the AI, if the AI qualifies as high impact.
5. A description of all controls, processes, technologies, and/or mechanisms used to satisfy the Office of Management and Budget Memorandum (M-25-21) requirements.
6. A description of the provenance of data used to train, fine-tune, or operate the AI.
7. An assertion that the contractor owns or possesses all legally required rights, copyright, and licenses to use the AI, and that the Government's use of the AI in performance of the contract does not and will not infringe upon or violate any intellectual property rights or any other third-party rights of any kind. All licenses must include licenses to the Government and, in accordance with FAR 52.227-14(c)(2)(i) and (ii), the contractor

asserts it will acquire on behalf of the Government a license of the same scope as that held by the contractor.

8. An assertion that the contractor will report any claims of copyright infringement based upon performance of the contract in accordance with FAR 52.227-2.

9. An assertion that the contractor will indemnify the Government against any liability incurred as the result of the violation of trade secrets, copyrights, or right of privacy or publicity under the contract, in accordance with FAR 52.227-18(b).

10. An assertion that there have been no persisting or existing material errors, defects, failures, or interruptions in the AI or in the performance of its intended purpose, and that the AI has materially performed in accordance with its specifications and intended purpose.

11. Description of the AI system or application; the purpose and function of the AI system; any potential or known impact the AI system may have on individual rights, including but not limited to privacy, non-discrimination, due process, and freedom of expression; measures taken to mitigate or address any potential risks to individual rights; whether the AI system proposed is anticipated to have any human health or safety-related impacts, including: potential safety risks to human operators, end-users, or other individuals affected by the AI system; environmental or infrastructure risks, including unintended outcomes that could affect public or private property; and the possibility of system malfunctions or failure modes that could lead to safety hazards; and the extent to which data subjects can opt-out, correct, or request the deletion of their personal data processed by AI.

(g) If high-impact AI technologies are proposed, the Offeror must comply with all applicable laws, regulations, and Agency policies designed to mitigate associated risks. This includes, but is not limited to, conducting proper risk assessments, ensuring transparency in decision-making, and implementing appropriate safeguards for privacy, fairness, and accountability.

(End of Provision)

452.239-71 Certification of Compliance with Privacy Laws

As prescribed in AGAR 439.103-77 (e), insert the following provision:

452.239-71 Certification of Compliance with Privacy Laws (Sept. 2025)

(a) All Offerors proposing to develop, deploy, operate, or integrate Artificial Intelligence (AI) technologies that collect, process, analyze, or use data involving individuals or their characteristics must ensure that any AI solution complies with the following, as applicable:

1. The Privacy Act of 1974 (5 U.S.C. § 552a);

2. E-Government Act of 2002 (44 U.S.C. § 3501 note), including Section 208 (Privacy Impact Assessments);

3. Federal Information Security Modernization Act (FISMA);
4. OMB Circular A-130 (Managing Information as a Strategic Resource);
5. Office of Management and Budget (OMB) M-25-22 to support procurement of "*effective and trustworthy AI capabilities in a timely and cost-effective manner";*
6. OMB Memorandum M-17-12 (Preparing for and Responding to a Breach of PII);
7. NIST Privacy Framework and NIST SP 800-53 (Rev. 5), including privacy control families.
8. SHARE IT Act

(b) Offerors must include the following with their quotation/proposal:

1. A Privacy Risk Assessment (PRA) tailored to the proposed AI system. The PRA must outline: the extent to which the Offeror identifies and assesses potential privacy risks to individuals arising from the collection, use, retention, or sharing of personally identifiable information (PII); demonstrated understanding of the system's data flows, including data minimization, retention, and disclosure practices; strategies to mitigate privacy risks, including technical and administrative safeguards.
2. A preliminary Privacy Impact Assessment (PIA) or a plan and timeline for completing a PIA. The PIA must include appropriate administrative, technical, and physical safeguards to protect personally identifiable information (PII) and sensitive data, including: encryption at rest and in transit; role-based access controls; data minimization and retention limits; audit logging and incident detection; transparency measures, user notice, consent where applicable, and redress mechanisms.
3. Description of data minimization, de-identification, and access control measures.
4. Description of how the AI system will support privacy auditing and redress capabilities, where applicable.

(c) Flowdown Requirement. If subcontractors develop or process data for AI components, these privacy compliance requirements must be flowed down in all subcontracts.

(End of Provision)

452.239-72 Artificial Intelligence Property and Data Rights

As prescribed in AGAR 439.103-77 (f), insert the following clause:

452.239-72 Artificial Intelligence Property and Data Rights (May 2026)

(a) Data Used to Train Artificial Intelligence (AI) Systems. The Government must retain Unlimited Rights (as defined in FAR 52.227-14) in all data (which includes recorded information in any form such as raw or processed datasets or annotated training and testing sets) used to train, test, or validate AI systems developed or modified under this contract unless otherwise specified. The contractor must provide metadata and data documentation sufficient to support future audits or retraining by the Government or third parties. The metadata provided must include descriptive information about data, including provenance, structure, content, schema, quality indicators, and processing history sufficient to enable independent understanding, audit, validation, and reuse.

NOTE- If the contractor used proprietary databases and proprietary computer software to develop and train its AI system, unlimited rights may be unavailable. This scenario requires the contractor to acquire, on behalf of the Government, a license encompassing use by third parties in accordance with FAR 52.227-14(c)(2).

(b) AI Models and Algorithms. Unless otherwise negotiated, the Government must have Unlimited Rights in models, algorithms, and derivative works produced under this contract, including pretrained model weight; model tuning artifacts; decision logic used in inference or scoring.

(c) Source Code and Technical Documentation. The contractor must deliver all technical documentation, including source code, architecture specifications, and performance reports. The Government must have Unlimited Rights in Source Code developed exclusively with Government funding.

(d) Third-Party Components. If the AI system includes third-party tools or open-source software, the contractor must: disclose all third-party licenses prior to delivery; acquire on behalf of the Government licenses of the same scope as that held by the contractor in subject matter not first produced in the performance of the contract; certify that usage complies with federal security and data governance requirements; and provide documentation on integration with proprietary or black-box components.

(e) Restrictions on Use and Reuse by Contractor. The contractor must not use, reproduce, or share Government-furnished data or models for any commercial or non-Government purposes without prior written approval from the Contracting Officer.

(f) Transparency and Reusability. To ensure responsible and ethical AI practices, the contractor must: provide documentation that enables USDA or authorized third parties to evaluate, replicate, and explain AI behavior; maintain traceability of training data sources and preprocessing steps; deliver systems in formats that allow future retraining or transfer learning.

(End of Clause)

452.239-73 Privacy and Data Ownership

As prescribed in AGAR 439.103-77 (g), insert the following clause:

452.239-73 Privacy and Data Ownership (Sep2025)

(a) The contractor must comply with all applicable federal privacy laws, regulations, and guidance, including but not limited to:

1. OMB Memorandum M-25-21, Accelerating Federal Use of AI through Innovation, Governance, and Public Trust.

2. OMB Memorandum M-25-22, Driving Efficient Acquisition of Artificial Intelligence in Government.

3. OMB Circular A-130, Managing Information as a Strategic Resource.

4. The Privacy Act of 1974 as amended.

5. FAR 52.224-1 (Privacy Act Notification) and FAR 52.224-2 (Privacy Act).

(b) The contractor must: ensure that Personally Identifiable Information (PII) and other sensitive data are handled in accordance with USDA's privacy risk management framework; support transparency requirements by documenting the data elements collected, their intended use, and any automated decision-making associated with them, consistent with the Fair Information Practice Principles (FIPPs); coordinate with the USDA Privacy Officer and Contracting Officer's Representative (COR) to determine whether a Privacy Impact Assessment (PIA) is required.

1. A PIA is required when AI systematically and extensively evaluates personal aspects based on automated processing, including profiling; involves large-scale processing of special categories of data, such as health, biometric, racial, or political data; uses new or innovative technology (like AI/ML) in ways that could impact privacy; involves monitoring of publicly accessible areas on a large scale; presents high risks to individuals' rights and freedoms.

2. If a PIA is required, the contractor must provide timely inputs to the Government for completion of the PIA prior to deployment or significant updates to any system; implement appropriate administrative, technical, and physical safeguards to protect PII and sensitive data, including: encryption at rest and in transit; role-based access controls; data minimization and retention limits; audit logging and incident detection; transparency measures, user notice, consent where applicable, and redress mechanisms.

3. The PIA must include appropriate administrative, technical, and physical safeguards to protect PII and sensitive data, to include encryption at rest and in transit; role-based access controls; data minimization and retention limits; audit logging and incident detection; transparency measures, user notice, consent where applicable, and redress mechanisms. This includes:

   i. Description of data minimization, de-identification, and access control measures.

   ii. Description of how the AI system will support privacy auditing and redress capabilities, where applicable.

(c) Privacy Risk Assessments. The contractor must conduct Privacy Risk Assessments for systems or components that involve AI, data analytics, or automated decisions affecting individuals or communities. The Privacy Risk Assessment must outline: the extent to which the

Offeror identifies and assesses potential privacy risks to individuals arising from the collection, use, retention, or sharing of personally identifiable information (PII); demonstrated understanding of the system's data flows, including data minimization, retention, and disclosure practices; strategies to mitigate privacy risks, including technical and administrative safeguards

Any AI system used in the performance of this contract must be evaluated by the contractor for its potential to re-identify anonymized data; perpetuate bias or discrimination through data use; or infringe upon individual rights under the Privacy Act.

(d) Incident Notification. The contractor must notify the Contracting Officer and USDA Security Operations Center within 24 hours of discovering any actual or suspected breach involving PII or AI hazards. A formal written report must be submitted to the COR within three business days with findings and proposed corrective actions.

(e) Data Ownership and Return

All Government-furnished or Government-collected PII remains the property of the U.S. Government. Upon completion or termination of this contract, the contractor must return or securely destroy all such data unless otherwise directed by the Contracting Officer.

(End of Clause)

452.239-74   High-Impact Artificial Intelligence

As prescribed in AGAR 439.103-77 (h), insert the following clause:

452.239-74 High-Impact Artificial Intelligence (May 2026)

(a) Disclosure Obligations. The contractor must notify the Contracting Officer of any known use or planned use of high-impact Artificial Intelligence (AI) systems during the performance of this contract. This disclosure must include: a detailed description of the AI system or application; the purpose and function of the AI system; any potential or known impact the AI system may have on individual rights, including but not limited to privacy, non-discrimination, due process, and freedom of expression; measures taken to mitigate or address any potential risks to individual rights; and the extent to which data subjects can opt-out, correct, or request the deletion of their personal data processed by AI.

The contractor must also continuously monitor and disclose the performance of all high-impact AI systems to identify and address any emergent safety risks. The contractor must provide the Government with quarterly safety impact reports detailing: system performance metrics; incident reports and safety-related deviations; and any adjustments made to improve safety.

(b) Timing of Disclosures. The contractor must provide the disclosure within fifteen days from the date the AI system is known to be used in the contract's performance. Any changes in the scope, functionality, or nature of the AI system during the contract's performance that could impact individual rights must be reported to the Contracting Officer within fifteen days of such change.

(c) Approval and Review Process. Upon receiving a disclosure of high-impact AI, the Contracting Officer may require further information or impose additional conditions to ensure compliance with applicable laws, regulations, and policies, including privacy protections and civil liberties safeguards. The contractor may not proceed with using high-impact AI systems unless explicitly approved by the Contracting Officer.

(d) Incident Response and Corrective Action. In the event of any incident that may impact the safety of personnel, equipment, or the environment, the contractor must: immediately notify the Government of the incident, providing a full report on the cause, impact, and corrective actions; take corrective action to mitigate any further risk, including system shutdown or reprogramming if necessary; cooperate with any investigation conducted by the Government or relevant authorities.

(e) Liability for Safety-Related Failures. The contractor must be held liable for any damages, losses, or harm resulting from the failure of high-impact AI systems to meet safety requirements as stipulated in this contract The contractor agrees to indemnify and hold harmless the Government for any claims, fines, or penalties arising from safety violations or incidents caused by the AI system.

(f) Audits and Inspections. The Government reserves the right to conduct audits and inspections of the contractor's high-impact AI systems at any time during the performance of this contract. The contractor must provide full cooperation during such audits, including access to documentation, system logs, and personnel involved in the design, development, and deployment of AI systems.

(g) Termination of Contract for Safety Violations. If at any point the contractor fails to comply with the requirements outlined in this clause, or if a high-impact AI system poses an unacceptable risk to safety that cannot be mitigated, the Government may terminate the contract for default under FAR 49.402-3, or if a commercial contract to terminate for cause under FAR 52.212-4(m), in whole or in part, at its sole discretion.

(h) Contractor Compliance with Applicable Laws and Standards**.** The contractor must ensure that the design, development, deployment, and use of high-impact AI in the performance of this contract comply with all applicable laws, regulations, and ethical standards, including but not limited to:

1. National Institute of Standards and Technology (NIST) AI Risk Management Framework (AI Risk Management Framework | NIST) and Gen AI RMF.
2. The Blueprint for an AI Bill of Rights.
3. Executive Order 13960, Promoting the Use of Trustworthy Artificial Intelligence, December 3, 2020.
4. Executive Order 14179, Removing Barriers to American Leadership in Artificial Intelligence, January 31, 2025.

5. OMB Memo M-25-21, Accelerating Federal Use of AI through Innovation, Governance, and Public Trust. April 3, 2025.

6. OMB Memo M-25-22, Driving Efficient Acquisition of Artificial Intelligence in Government. April 3, 2025.

7. Department of Homeland Security (DHS) AI policy including Policy Statement 139-06 and 139-08.

8. The contractor's use of AI product or solution will not make or support decisions, based on illegal consideration of race, ethnicity, gender, national origin, religion, sexual orientation, gender identity, age, nationality, medical condition, or disability in violation of Title VII of the Civil Rights Act of 1964 (Title VII), the Americans with Disabilities Act of 1990 (ADA), and the Age Discrimination in Employment Act of 1967 (ADEA), as amended.

(i) Subcontractor Obligations. The contractor must ensure that all subcontractors providing services under this contract that involve the use of high-impact AI comply with the provisions of this contract. The contractor must be responsible for obtaining similar disclosures from subcontractors and forwarding them to the Contracting Officer within fifteen days of receipt.

(End of Clause)

452.239-75 Testing and Monitoring of Artificial Intelligence

As prescribed in AGAR 439.103-77 (i), insert the following clause:

452.239-75 Testing and Monitoring of Artificial Intelligence (Sep 2025)

(a) Testing Requirements. The contractor must conduct comprehensive testing of Artificial Intelligence (AI) components prior to deployment, to include functional testing against the stated objectives and intended uses; evaluation of performance consistency across diverse data inputs; bias detection and mitigation testing as outlined in NIST Special Publication 1270 and the AI RMF; and documentation of testing methodologies, metrics, results, and conclusions. The contractor must provide a comprehensive description of its own testing, validation, and evaluation procedures for the AI system or service, including metrics used, as well as tools and methodologies employed. All pre-deployment testing must be completed and submitted to the Government COR prior to operational use.

(b) Ongoing Monitoring. The contractor must implement ongoing monitoring procedures to ensure continued performance and responsible use of AI, including: periodic assessments of model accuracy, fairness, and explainability; model retraining triggers where applicable; logging and alerting mechanisms for anomalous outputs or decision processes; and quarterly submission of AI performance monitoring reports, including any updates made to the model, data, or algorithm.

(c) Government Access. The Government must have access to all relevant testing protocols, data sets (excluding proprietary training sets if explicitly exempted), results, and logs associated with the AI system's performance.

(d) Agency Independent Evaluation Rights. The Government will regularly monitor performance, risks, and effectiveness of AI systems and services. Additionally, the Government will perform quarterly independent evaluations of the AI system using agency-defined validation and testing datasets. The datasets used must closely reflect the operational data environment and system context. The contractor must provide sufficient system access, interface support, and documentation to allow the Government to conduct its own evaluations. The contractor must allocate time and system availability for quarterly evaluations, performed by the Government.

(e) Compliance. All testing and monitoring practices must comply with: OMB M-25-21; OMB M-25-22; and NIST AI Risk Management Framework (AI RMF).

(End of Clause)

452.239-76 Transparency and Vendor Lock-In

As prescribed in AGAR 439.103-77 (j), insert the following clause:

452.239-76 Transparency and Vendor Lock-In (Sep 2025)

(a) Transparency Requirements. The contractor must provide: a plain-language description of the AI system's function, logic, training data (or data sources), and intended use; documentation of the algorithmic decision-making process to a degree that allows Government personnel to understand, audit, and explain the AI's behavior; and disclosure of any use of proprietary models or third-party tools, and any embedded black-box components. All transparency documentation must be included in the deliverables and updated with each system iteration or major change.

(b) Vendor Lock-In Protections. To prevent dependency on proprietary platforms or formats, the contractor must deliver AI components and outputs in non-proprietary, widely supported formats if available. System architecture must be modular, allowing components to be modified, replaced, or integrated with future government-owned or third-party systems. When non-proprietary components and outputs are unavailable and proprietary components are necessary, the contractor must justify the requirement and obtain Contracting Officer approval, provide detailed documentation of proprietary interface, ensure availability of equivalent open-source alternatives, and implement isolation techniques to minimize proprietary dependencies.

(c) Transition Support. At contract completion or termination, the contractor must provide all documentation, source files, configuration settings, and deployment instructions necessary to transfer, maintain, or rebuild the AI capability without contractor support; and the contractor must assist in knowledge transfer to designated Government personnel or successor contractors.

(End of Clause)

452.239-77 Prohibited Artificial Intelligence Systems

As prescribed in AGAR 439.103-77 (k), insert the following clause:

452.239-77 Prohibited Artificial Intelligence Systems (May 2026)

(a) The contractor must ensure that a Prohibited Artificial Intelligence (AI) System is not used in the provision of supplies or services, including ensuring it is not:

1. Used in any part of the supply chain used to provide supplies or services;
2. Installed on a Government system; or
3. Used in any web services or applications to be provided under this contract.

(b) If the contractor discovers that a Prohibited AI System has been used, the contractor must immediately notify the Contracting Officer and remove the Prohibited AI System from use.

(End of Clause)

452.239-78 Use of Unbiased Artificial Intelligence Principles

As prescribed in AGAR 439.103-77 (l), insert the following clause:

452.239-78 Use of Unbiased Artificial Intelligence Principles (May 2026)

(a) Scope. This clause applies whenever the contractor provides licenses, integrates, modifies, or enables access to a Large Language Model (LLM), or if specified in the contract, the contractor will provide other generative Artificial Intelligence (AI) capabilities.

(b) Definitions.

1. Large Language Model (LLM) means any generative AI system trained on large, diverse datasets that produces natural-language outputs.
2. Unbiased AI Principles means the following required performance characteristics:

   (i) Truth-seeking – The LLM must provide factual, accurate, objective responses and acknowledge uncertainty where information is incomplete or contradictory.

   (ii) Ideological Neutrality – The LLM must not manipulate or alter outputs to favor or suppress any ideology unless explicitly prompted by the user.
3. Transparency Materials means the documentation and resources the contractor must provide, including acceptable use policies, model/system/data cards, end-user resources, and feedback mechanisms.

(c) Contractor Obligations.

1. The contractor must ensure the LLM provided under this contract fully aligns with the Unbiased AI Principles.
2. The contractor must configure, operate, and maintain the LLM so outputs remain factual, objective, and free from ideological manipulation, unless specified in the

contract for an explicit requirement (e.g., training, simulations, etc.) and clearly labeled with intended bias.

3. The contractor must prepare, update, and deliver Transparency Materials as required.

(d) Transparency Requirements.

1. Minimum Transparency Requirements. The contractor must provide acceptable use policies, model/system/data cards, end-user resources, mechanisms for end-user feedback, and any other requirements specified in the contract.

2. Enhanced Transparency Requirements. When required by the contract the contractor must provide pre-training and post-training summaries, system prompts, restricted output categories, red-team testing summaries, foreign development information, compliance modifications, bias evaluations, enterprise controls, third-party modifications, and any other requirements specified in the contract.

3. Sensitive technical data disclosures such as model weights are not required, unless in pursuit of legal, security, or audit compliance.

(e) Monitoring and Reporting. The contractor must support Government procedures for reporting outputs that violate Unbiased AI Principles, investigate each instance, and implement corrective actions within Government-defined timeframes.

(f) Remedies. If the contractor is found to be noncompliant and noncompliance continues after notice and cure, the Government may terminate the contract and assess decommissioning costs.

(g) Integration. If the LLM is embedded in other systems, the contractor must provide transparency sufficient for the Government to assess compliance.

(h) Enterprise Controls. The contractor must provide available governance tools enabling system-level configuration, filtering, audit capabilities, and provenance identification.

(i) Flowdown. The contractor must include this clause in all subcontracts involving LLM development, modification, hosting, distribution, or integration.

(j) Exceptions. This clause does not apply to national security systems, incidental contractor administrative AI use, or open-source LLMs acquired under a free license, except that due-diligence documentation must still be provided when required.

(End of clause)

452.246-70 Food Defense Requirements

As prescribed in 446.370(a), insert the following provision:

452.246-70 Food Defense Requirements (Oct 2025)

(a) Contractors and subcontractors must have an approved food defense plan by the bid opening/solicitation close date. This plan ensures the security of production processes, including the storage and transportation of raw materials and finished products. It must address the following areas, as applicable:

1. Food security plan management;
2. Outside and inside security of the production and storage facilities;
3. Slaughter and processing, including all raw material sources;
4. Shipping and receiving;
5. Storage;
6. Water and ice supply
7. Mail handling;
8. Personnel security; and
9. Transportation, shipping, and receiving (including the sealing of any transport conveyance for truck lot and less-than-truck lot quantities of finished products).

(b) The food defense plan must be audited and approved by USDA, AMS before the bid opening/solicitation close date and maintained throughout the contract. The respective AMS program areas (Livestock and Poultry, Dairy, Specialty Crops Inspection, and Federal Grain Inspection) will conduct these audits for their area. Nonconformities for poultry and livestock must be addressed within 14 days with the Quality Assessment Division, while those for fruits and vegetables must be addressed with the Specialty Crops Inspection Division, both before the bid opening/solicitation close. Cross-utilization among AMS program areas for audits may be permitted if requested by the vendor and approved by the Contracting Officer and the responsible program area. Contractors will have an opportunity to correct identified nonconformities and update their plans. The Contracting Officer will determine follow-up audit frequency. An approved food defense audit is valid for 12 months.

(c) Contractors who receive contracts must have their documented food defense plan and supporting documentation readily available for review by the Contracting Officer or AMS agents. Records may be maintained on hard copy or electronic media. However, records maintained as electronic media will be made available in printed form immediately upon request by AMS or its agents.

(d) All inquiries concerning audit requirements and scheduling should be forwarded to your local Grading Division office for clarification. Furthermore, USDA will not grant/accept any waiver requests for the food defense audits. It is the responsibility of the contractor and/or subcontractor to schedule the audit in a timely manner to ensure it has been completed and approved prior to the bid opening/solicitation close date. Offerors who submit a bid/offers with a processing plant and/or shipping point that are not in compliance with this requirement will be deemed non-responsive for that processing plant and/or shipping point.

(End of Provision)

452.246-71 Manufacturing Practices

As prescribed in 446.370(b), insert the following clause:

Manufacturing Practices (Oct 2025)

(a) Current Good Manufacturing Practices. All processed fruit and vegetables must be produced in accordance with the Food and Drug Administration's Current Good Manufacturing Practices (21 C.F.R., Part 110 and/or Part 117), whichever is applicable at the time of manufacture.

(b) Plant Survey or Plant Systems Audit (PSA)

1. Successful bidders/offerors are required to undergo and pass an annual plant survey or PSA. The primary purpose of a plant survey or PSA is to ensure that products are produced in a clean, sanitary environment and verify that Federal requirements are met. Contractors are required to maintain process operations records that are sufficiently detailed as to allow AMS, Specialty Crop Program, and Specialty Crop Inspection Division (SCID), to determine past and current sanitation practices.

2. The AMS, Specialty Crop Program, SCID, will conduct the plant surveys/PSA. SCID personnel will follow the procedures found in the most current version of SCID AIM, Sanitation and Safety Manual, or the most current version of SCID AIM, Plant Systems Audit Manual.

3. Contractors must provide the Contracting Officer with a copy of an acceptable completed plant survey/PSA. An acceptable plant survey/PSA will be valid for one year.

4. Contractors who have a SCID in-plant contract service agreement will be considered as having met the plant survey/PSA requirement, since a plant survey/PSA is a prerequisite to a contract service agreement. Similarly, Contractors who have completed a SCID plant survey/PSA for any other purpose within one year of award will also be deemed to have satisfied this requirement.

5. The plant survey/PSA must be completed and approved prior to the bid opening/solicitation close date and maintained throughout the length of the contract. It is the responsibility of the contractor and/or subcontractor to schedule the audit in a timely manner to ensure it has been completed and approved prior to the bid opening/solicitation close date. Offerors who submit a bid/offer with a processing plant and/or shipping point that are not in compliance with this requirement will be deemed non-responsive for that processing plant and/or shipping point.

(End of Clause)

452.246-73 FDA Food Facility Registration Number

As prescribed in 446.370(c), insert the following clause:

452.246-73 FDA Food Facility Registration Number (Oct 2025)

In accordance with the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, domestic facilities that manufacture, process, pack, or hold food for human or animal consumption in the United States are required to register with the FDA, and the Food Safety Modernization Act of 2011 (FSMA) requires additional information for facilities to renew such registrations. If applicable, provide your FDA food facility registration number. FDA guidance is available at:
https://www.fda.gov/Food/GuidanceRegulation/FoodFacilityRegistration/ucm2006831.htm

(End of clause)

452.247-70 Loading, Blocking, and Bracing for Multiple Delivery Points on One Conveyance – Domestic

As prescribed in 447.101-70 (a)(1), insert the following clause:

452.247-70 Loading, Blocking, and Bracing for Multiple Delivery Points (drops) on One Conveyance – Domestic (Oct 2025)

When a shipment has multiple delivery points (drops), contractor must load and brace the conveyance for accurate and economical unloading, e.g. load and brace truck trailers in reverse order of delivery.

(End of clause)

452.247-71 Special Instructions for Shipments to Puerto Rico – Domestic

As prescribed in 447.101-70 (a)(2), insert the following clause:

452.247-71 Special Instructions for Shipments to Puerto Rico (Oct 2025) – Domestic

All deliveries to Puerto Rico must cite on the Bill of Lading and Ocean Transportation manifest the applicable Recipient Agency Tax Identification Number (TIN) and Merchant Registration Number. Successful awardee will be responsible for contacting the Contracting Officer's Representative to obtain the appropriate tax identification number.

(End of clause)

452.247-72 Bill of Lading Notations – Domestic

As prescribed in 447.101-70 (a)(3), insert the following clause:

452.247-72 Bill of Lading Notations – Domestic (May 2026)

Contractor must ensure before shipment is made that the commercial shipping documents are annotated with the following notations, as appropriate:

1. Shipper Name and Shipment Origin Address
2. USDA Contractor Name, if different than shipper

3. Purchase Order Number and Item Number

4. When provided, Sales Order Number and Item Number or Purchase Requisition and Item Number

5. Consignee: Purchase Order Item's Goods Recipient Name c/o Purchase Order Item's Ship-to Name and Address

6. Number and Type of Units, Net Weight, and Material Description

7. Statement: "For USDA FOOD DISTRIBUTION PROGRAMS

8. Manufacturer's Lot Code/Lot Identification Number

9. Serial Number(s) of Tamper Evident Seals Applied

Note: When multiple Purchase Order Items are shipped in one conveyance, show the applicable information for each Purchase Order Item.

(End of clause)

452.247-73 Seals on Transportation Conveyances

As prescribed in 447.101-70 (a)(4) and (b)(1), insert the following clause:

452.247-73 Seals on Transportation Conveyances (May 2026)

(a)Contractors, under the supervision of a USDA Agricultural Marketing Services (AMS) certification agent, when applicable, must be responsible for placing a seal(s) on all cargo doors of each transportation conveyance upon completion of loading, partial unloading, inspection, or servicing.

(b) Seals must meet the American Society for Testing and Materials (ASTM) Standard, (F-1157-04, and/or the International Organization for Standards (ISO) 17712-2013. Contractors must use traceable, tamper-evident commercial seals (ex. flat metal, wire, plastic, etc.) or high security seals (high security bolt, barrier-type, or equivalent device which can only be removed by bolt cutter type tools). Seals must be sequentially numbered. The contractor or its agent must provide a sufficient number of traceable tamper-evident seals to ensure security of the load while in-route through final destination.

(c) The seal numbers must be documented on the Bill of Lading, and shipment manifest, certificate, or other delivery documents, as applicable, which must be signed or acknowledged by the carrier or its agent.

(d) It will be the responsibility of the contractor to provide sufficient number of seals to the carrier service and to ensure that the trailer is sealed after each delivery location (when destined for multiple recipients). The seal number must be recorded on the appropriate delivery document and correspond with the applied seal at the time of arrival at the next destination.

(e) When making deliveries to more than one destination from the same railcar, the quantities required at each stop off must be placed in separate compartments under seal.

(f) Deliveries will be rejected, in which seals have not been used to secure all cargo doors, if:

1. The seal listed on the Bill of Lading does not match the seal number recorded on the Bill of Lading;
2. The seal is broken;
3. The seal is missing, or
4. The seal has been removed prior to the transportation conveyance reaching its unloading point.

(g) A rejected conveyance will only be accepted after a Condition of Container Inspection has been performed by AMS. AMS must subsequently issue a Condition of Container examination worksheet that documents that the food containers meet the applicable U.S. Standards for Condition of Food Containers. If this inspection is performed at a location other than the contracted delivery point it is the vendor's responsibility to ensure that all cargo doors are sealed, and the seal numbers documented on the vendor's shipping documents.

(h) For frozen products, if the receiver rejects the load, the contractor must return the load to its plant or with Contracting Officer approval, arrange for another complete inspection which will include:

1. Inspecting and certifying the product for quality assurance; and
2. COC, checkloading, sealing, and issuing a Certificate of Loading. The new seal number must be recorded, and a new certificate for condition of container must be issued and presented to the receiver. The contractor is responsible for all costs (freight, re-inspection fees, etc.) associated with the rejected loads.

(i) Conditions of Container Inspections

1. Conditions of Container Inspections arrangements are available by accessing the AMS website at: https://www.ams.usda.gov/services/sci-contacts. Please select AMS Federal Inspection Offices at: https://www.ams.usda.gov/services/sci-contacts/field-inspection-offices
2. The contractor is responsible for payment of all fees incurred as a result of a Condition of Container Inspection.

(End of clause)

452.247-74 Additional Shipping Requirements – Domestic

As prescribed in 447.101-70 (a)(5), insert the following clause:

452.247-74 Additional Shipping Requirements – Domestic (May 2026)

Items purchased as a result of this solicitation must not be transported near non-human consumption products, malodorous products, or other types of harmful items that could contaminate commodities.

(End of clause)

452.247-75 Miscellaneous Contract Requirements for F.o.b. Vessel Delivery – International

As prescribed in 447.101-70 (b)(2), insert the following clause:

452.247-75 Miscellaneous Contract Requirements for F.o.b. Vessel Delivery – International (May 2026)

(a) The Government will furnish the contractor at least ten (10) days advance notice of vessel readiness, unless stated otherwise in the IFB/Solicitation.

(b) Contractor must forward original Mate's Receipt to the Government's representative within 48 hours after completion of vessel loading.

(c) If multiple contracts are awarded on an IFB/Solicitation to the same contractor who has designated the same loading berth, the contractor must complete loading in one continuous berthing. If the contractor elects not to complete loading in one continuous berthing, the contractor will be liable for any charges associated with shifting and reberthing as provided in the Charter Party.

(d) Contractor agrees to load the Government's nominated vessels in rotation with all vessels for loading at the elevator based on when vessels file and are accepted as ready-to-load in all respects. In the event that the contractor, for its own convenience, elects to bypass the Government's nominated vessels to load a vessel which filed and was accepted later than the Government's nominated vessel, such action will be construed as failure or refusal of the contractor to perform.

(e) Contractor will be liable to the Government for any actual damage suffered by the Government resulting from failure or refusal of the contractor to perform, which is not excusable under the default clause of this contract. Such actual damage may include, but are not limited to, the cost of demurrage, inter-port vessel relocation, vessel discharge costs, reprocurement costs, and claims by carriers for damages resulting from delays in loading resulting from the commodity not being available for loading, or for delays or slowness of the vessel loading.

(f) The contractor must submit Advance Shipping Notifications (ASNs) in WBSCM within 24 hours of completion of vessel loading.

(End of clause)

PART 453 FORMS

Subpart 453.1 General.

453.101 Policy.

(d) Requests for exceptions to forms prescribed throughout the FAR must be submitted through the COCO to the HCA for referral to the FAR Council. Requests for exceptions to AD forms prescribed in agency policy must be submitted through the COCO to the HCA for approval.

453.108 Recommendations concerning forms.

(a) COCOs must submit recommendations for new forms or to review, eliminate, or consolidate forms prescribed by the FAR or agency policy through the OCP/PPD to the HCA for review and approval.

Appendix B - NOTICE FOR FILING AGENCY PROTESTS

As prescribed in AGAR 433.104-4 (a)(5)(ii), the following Notice for Filing Agency Protests must be included in every solicitation.

NOTICE FOR FILING AGENCY PROTESTS
United States Department of Agriculture (USDA) Protest Procedures

The United States Department of Agriculture (USDA) is committed to fair, transparent, and efficient acquisitions. Interested parties with concerns about this solicitation are encouraged to seek resolution through the following USDA procedures.

Tier 1: Contracting Officer Concern Resolution

Submission: Interested parties with concerns about either the solicitation or subsequent award should first submit their concern directly to the Contracting Officer, providing sufficient detail to allow the Contracting Officer to understand and assess the issue.

Process: The Contracting Officer will review the concern, seek clarification as needed, and engage with the interested party to attempt prompt resolution.

Review Timeline: The Contracting Officer will make every effort to provide a response or resolution within 10 business days of receiving the concern.

Effect on Award or Performance: Tier 1 engagement is not considered an official notification of filing an agency protest and does not pause solicitation deadlines, delay award decisions, or suspend contract performance.

Next Steps: If the matter cannot be resolved at Tier 1, the interested party may file a written agency protest under Tier 2.

USDA encourages all parties to seek resolution with the Contracting Officer before filing an agency protest.

Tier 2: Agency Protest

If concerns cannot be resolved at Tier 1, an interested party may file a written agency protest with either the Contracting Officer or the USDA Independent Review Authority. The decision by the USDA Independent Review Authority is an alternative to a decision by the Contracting Officer. The USDA Independent Review Authority will not consider an appeal of the Contracting Officer's decision on an agency protest.

The protest must state whether the protester elects review by the Contracting Officer, by the UDSA Independent Review Authority. If no election is stated, the Contracting Officer will decide the protest.

Required Information: Protests shall include the information set forth in FAR 33.104-4 (a)(3). Failure to submit the required information may result in a delay or dismissal of the protest.

Submission: Agency protests should be submitted electronically to SPE.inquiry@usda.gov and the Contracting Officer.

Timeliness: Protests must be filed within the timeframes specified in FAR 33.104.

Effect on Award or Performance: Contract awards or performance will be suspended during the protest period unless justified in writing for urgent and compelling reasons or determined to be in the best interest of the Government.

Review Timeline: USDA strives to resolve agency-level protests within 35 business days of receipt.

Election of Forum: By filing a protest with USDA, the protesters agree not to file a protest on the same matter with the Government Accountability Office (GAO) or any other external forum while the agency protest is pending. If such a protest is filed externally, the USDA agency protest will be dismissed.

Questions: Questions regarding this notice or protest procedures should be directed to the Contracting Officer identified in this solicitation.