United States Department of Agriculture (USDA)


**Agriculture Acquisition Regulation (AGAR)**

**Effective Date: 9/8/2025**

**Issued by: Office of Contracting and Procurement (OCP)**

# Table of Contents

# 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) provides uniform policies and procedures for acquisitions by contracting activities within USDA. The purpose of the AGAR is to supplement the FAR when coverage is needed to address statutory direction unique to the USDA. The FAR and AGAR apply to all USDA acquisitions of supplies and services (including construction) which obligate appropriated funds, unless otherwise specified or excepted by law. The following order of precedence applies to resolve any acquisition regulation or procedural inconsistency found within AGAR or the Agriculture Acquisition Manual (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.

### *401.201-72 Solicitation/Contract Clearance*

(a) Solicitation clearance is required to issue a competitive solicitation or begin negotiations for noncompetitive actions. Contract clearance is required to award a contract.

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

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

   i. Fair and Reasonable Prices have been established in the base contract.

   ii. All other terms and conditions have been established in the base contract.

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

   iv. There are no negotiations (i.e., no proposal, formal or informal, is necessary for the order to be issued) involved in the award of the proposed order.

2. Competitive solicitations, orders, or modification under FAR 8.4, using simplified procedures in Revolutionary FAR Overhaul (RFO) Part 12, or FAR 16.5 that do not require one or both of the following:

   i. Establishment of specific criteria for the evaluation of proposals and selection of the awardee for the order; or

   ii. Addition of any terms or conditions that are not included in the base IDV contract, and/or changes to the existing terms or conditions of the base IDV contract.

3. Contract actions, including modifications, that solely provide funding, adjust wage rates/fringe benefits, or make other administrative changes. See the matrix in AGAR 443.203-71 for other modification review thresholds.

4. Options established in the basic contract/order, exercised at the established prices and terms.

(c) The following matrix details required review and approval requirements for solicitations and awards requiring higher level clearance. The HCA, without redelegation, may expand the list, as appropriate.

| Contract Type & Competition | Dollar Threshold | CO | Level Above CO | Branch Chief (must be 1102) | COCO | HCA | Legal Review |
|---|---|---|---|---|---|---|---|
| Any | Less than $1M | If prepared by CS, then Contracting Officer can approve. If prepared by Contracting Officer, then by another Contracting Officer with an equal or higher-level warrant | | | | | As Needed |
| Any | $1M to $7.5M | Review | Approval | | | | As Needed |
| Any | $7.5M to $25M | Review | Review | Approval | | | As Needed |
| Any | Greater than $25M | Review | Review | Review | Approval | | As Needed |
| BOAs | Any | Review | Review | Review | Approval | | |
| Bridge contract of any time length | Any | Review | Review | Review | Review | Approval | As Needed |
| Interagency Agreements (New or Modification) for assisted acquisitions | Any | Review | Review | Review | Approval | | As Needed |
| Any action designated as a Major Program/Project | Any | Review | Review | Review | Review | Approval | As Needed |
| Ratifications | Any | Review | Review | Review | Approval | | Required |

(d) Prior to submitting requests for solicitation and contract clearance, all approved documentation related to the procurement should be uploaded to the USDA approved procurement system or an approved repository to enable the reviewer to make a sound decision. This documentation should include, but is not limited to, Acquisition Plans, Market Research, Justification and Approvals, Solicitations, Source Selection Plans, Negotiation Memorandums, Evaluation Reports, Award documentation, and any other applicable documents.

## Subpart 401.3 Deviations from the FAR and AGAR

### 401.302 Policy

(a) Requests for authority to deviate from the provisions of the FAR or the AGAR shall be submitted by the COCO to the SPE in writing as far in advance of the situation as time permits. Each request for deviation shall contain the following:

1. A statement of the deviation desired, including identification of the specific paragraph number(s) of the FAR and AGAR;
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 the how long the deviation is needed; and
7. Any pertinent background information which will contribute to a full understanding of the desired deviation.

### 401.303 Individual Deviations

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

### 401.304 Class Deviations

(a) Where deviations from the FAR or AGAR are considered necessary for classes of contracts, requests for authority to deviate shall be submitted in writing to the SPE by the COCO for approval.

## 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 in order to implement the policies and procedures of the FAR. Such delegations shall be in writing but need not be published. Such delegations may be made by the HCA if authority has been delegated by the SPE. 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, shall designate COCOs. COCOs only have authority over the designated Contracting Activity unless other Contracting Activities are identified in writing by the HCA.

### *401.401-71 Waiver of GS-1102 Qualification Standards*

(a)The Office of Personnel Management (OPM) outlines the *Qualification Standards,* which includes educational requirements for GS-1102 Personnel, at http://www.opm.gov/policy-data-oversight/classification- qualifications/general-schedule-qualification-standards/1100/contracting-series-1102/. The SPE may consider waiving requirements from the OPM *Qualification Standards* for GS-1102s in exceptional and compelling situations when a GS-1102 candidate fails to meet OPM's standards for GS-13 or above. The COCO must submit a formal waiver request to the SPE and Acquisition Career Manager (ACM) for their consideration. The COCO's waiver request must include, at a minimum, the following information:

1. A copy of the position description, vacancy announcement, location, grade, anticipated procurement workload, and anticipated warrant level;
2. Adherence to the Agency's Human Capital Plan and the recruiting strategy used;
3. Description of the recruiting efforts undertaken by the organization and the results of those efforts, including the sources used for recruiting for the position;
4. A plan for the candidate's efforts to meet the standard and the estimated timeframe for completion agreed to by the tentatively selected candidate and the supervisor. The plan should be finalized and signed by both parties after the waiver is granted, and selection has taken place and must identify actions taken if the conditions of the waiver are not met. A copy of the final plan must be provided to the ACM within five (5) days of entry on duty;
5. Narrative describing the candidate's potential for advancement to levels of greater responsibility and authority based on demonstrated analytical and decision-making capabilities, job performance, qualifying experience, etc.;
6. The impact on the agency should the SPE not issue a waiver for the candidate; and
7. A request that the SPE certify the candidate's potential for advancement to levels of greater responsibility and authority based on demonstrated analytical and decision-making capabilities, job performance, and qualifying experience.

(b)Waiver authority cannot be delegated and will only be granted for exceptional and comp elling circumstances of a specific hiring action. The SPE must approve waiver requests prior to making offers. There are no "blanket" waivers for an individual or an organization. The SPE will determine if the waiver request should be approved following receipt of a waiver request which discusses the seven areas mentioned above, and any other requested information. Hire or promotion of a GS-1102 is only permissible if the

candidate meets the requirements outlined in the Qualification Standards for GS-1102s, or if the COCO receives a waiver signed by the SPE prior to hire, reassignment, or promotion. Waiver requests shall be submitted to the Office of Contracting and Procurement (OCP)'s Procurement Policy Division (PPD) using the "Warrant Waiver Request Template" found under "Warrants" on the USDA Acquisition Workforce SharePoint site.

### *401.401-72 Required Certifications and Training*

(a) USDA Acquisition Professionals are required to complete the following certifications and training:

1. Contracting professionals assigned to acquisitions consisting primarily of digital services over FAR 12.201-1 (a) thresholds are required to earn/maintain the CFCN 001 Digital Services Information Technology Acquisition Program (DITAP) credential prior to being assigned. FAC-COR Level II or III certification holders assigned to acquisitions consisting primarily of digital services over FAR 12.201-1 (a) thresholds are encouraged to earn/maintain the CFCN 001.

2. Contracting Officers shall complete CON 2440V/CON 244, Construction Contracting prior to awarding construction contracts.

3. Contracting Officers shall complete CON 2430V/CON 243, Architect and Engineering (A&E) Contracting prior to awarding construction contracts.

(b) Stewardship Specific Requirement. Contracting Officers responsible for Stewardship End Result Services (See 36 CFR 223.300(b)(1)) shall complete 24 hours of stewardship training to meet specialty requirements and receive a delegation for the sale and disposal of timber and forest products in accordance with Forest Service Manual (FSM) 2404 Timber Management available at https://www.fs.usda.gov/about-agency/regulations-policies/national-directives.

## 401.402 Contracting Officers

### *401.402-1 Authority*

(a) Contracting Officers shall not authorize an individual transaction that exceeds their delegated warrant authority. Additionally, Contracting Officers are strictly 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 considered to be $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*

(c) Contracting authority is generally reserved for employees working within a USDA contracting activity. Factors such as volume of actions, complexity of work, and organizational structure must be major considerations when determining whether to grant a warrant appointment request. Appointing officials must only issue warrants when there is an organizational need for a Contracting Officer. Warrant authority for federal employees outside of a contracting activity (e.g., Program Office) or not within the COCO supervisory chain will generally not be considered unless there is a compelling and demonstrated organizational need. For such cases, COCO must submit a waiver request detailing the need for warrant authority. The SPE will review and, if approved, provide written approval. Waiver authority is neither delegable nor transferable.

### *401.403-2 Appointment*

(a)(1) The HCA is the appointing official for COCO warrants. COCOs, through the HCA delegation, are the agency's appointing officials for Contracting Officers, unless otherwise authorized by the SPE in writing.

### *401.403-3 Termination*

(b) The SPE, HCA, COCO, ACM, or ACMD may terminate or suspend a Contracting Officer warrant at any time. Termination/suspension is appropriate for the following situations:

1. Failure to comply with applicable laws and regulations;
2. Violation of the Standards of Conduct for Employees of the Executive Branch. (See 5 CFR Part 2635);
3. Failure to maintain a satisfactory performance rating;
4. Reassignment to a non GS-1102/1105 or position not requiring a warrant; however, warrants do not automatically terminate when an individual is detailed or temporarily reassigned to another Agency/Location.
5. The organization's need for the appointment ends;
6. Separation from the organization (Automatic Termination); or
7. If a Contracting Officer fails to obtain the required learning points during the Continuous Learning Period (CLP), the SPE, HCA, COCO, ACM, or ACMD must revoke or suspend the appointment immediately. If the Contracting Officer continues to perform contract functions after the non-compliance of the continuous education requirement, it will result in unauthorized commitments as the employee will be acting without authority.

### *401.403-70 Termination Reporting*

(a) Contracting Officer terminations shall be reported to both the ACM and ACMD no later than fifteen (15) days after termination.

### *401.403-71 Warrant Level Thresholds*

(a) The following table delineates the warrant requirements for COCOs, and GS-1102/1105 personnel:

| Authority Level | Required Years of Experience | Appointing Official | Maximum Warrant |
|---|---|---|---|
| Level B | 1 | COCO | All contract types, including construction and A& E, limited to the threshold in FAR Subpart 13.5 for Commercial Products & Commercial Services |
| Level C | 2 | COCO | $50M |
| Level D | 4 | COCO | Unlimited |
| COCO | 8 | HCA | Unlimited |

Beginning October 1, 2023, previously issued Level A warrants are grandfathered in; no new Level A warrants will be issued going forward.

1. The above year(s) of experience requirement is the minimum that is required across USDA to be eligible to receive a warrant. Additionally, COCOs have flexibility to:
2. Require more years of experience, in addition to the minimum requirement, based on the types of supplies and services that are procured.
3. Make an individual's maximum warrant authority lower than that listed, as the candidate's experience, training, education, business acumen, judgment, character, and reputation is considered.
4. Limit an individual's warrant to certain types of acquisitions.
5. Consider the complexity and dollar value of the acquisitions to be assigned to each Contracting Officer.
6. Add additional levels of approval and/or supervisory controls for Contracting Officers.

### *401.403-72 Contracting Officer Warrant Board (COWB)*

(a) The purpose of the COWB is to assess the candidate's experience and qualifications for the warrant, communication skills, and overall demeanor to provide objective information upon which the COWB members may make reasonable judgment as to their readiness to serve as a warranted Contracting Officer. The COWB members must ensure the applicant can successfully apply applicable procurement laws, regulations, policies, and sound business judgment. All new prospective Contracting Officers and Contracting Officers who have previously had their warrant terminated for unsatisfactory performance will be

required to sit for a COWB. The HCA, without redelegation, may waive a COWB for Contracting Officers that have previously held warrants.

1. The COWB ensures that all applicable criteria are met prior to granting any new USDA Contracting Officer warrant.

2. The prospective Contracting Officer's Chain of Command shall submit a warrant request package to request the establishment of a COWB to the ACMD. Incomplete warrant submission packages will be returned without processing. The package shall contain the following documents.

3. USDA Warrant Appointment Request Form, which can be found on the USDA Acquisition Workforce SharePoint site under "Warrants".

4. An updated resume showing the candidate has the experience required in 401.103-70.

5. If the employee is not a GS-1102, they will need to provide college transcripts. Redacted unofficial college transcripts are acceptable.

6. Upon receipt of the warrant request package, the COCO appoints the Board members and the Chair. The COWB shall include, at a minimum, the following three voting members: COWB Chair, and two Senior Procurement Professionals (defined below). Unanimous approval from the Board members is required for the candidate to obtain a warrant.

7. The COWB Chair (GS-14 or above) evaluates the business need for the candidate to hold a warrant (e.g., workload), the appropriate level (e.g., dollar threshold, scope of goods/services), and participates as part of the COWB to further evaluate the candidate's competency to hold the requested warrant.

8. Two Senior Procurement Professionals (GS-13 or above) who are senior Contracting Officers, procurement policy analysts or subject matter experts with knowledge and experience to evaluate the candidate's competence to hold the requested warrant.

9. The COCO may designate additional acquisition personnel or non-acquisition personnel as appropriate.

10. The same individual cannot serve in multiple roles (e.g., serve as COWB Chair and a Senior Procurement Professional).

(b) The COWB must conduct a rigorous review process which may consist of any combination of quality reviews of past contracts actions, interviews, written and/or oral testing to assess and document the level of expertise for all candidates to verify the nominee's contracting experience, certifications, and education. This review shall be conducted at all warrant levels, for all warrant types. The HCA will establish the COWB, if needed, and evaluate warrants for COCOs.

(c) The warrant candidate shall answer and/or discuss in depth at least six scenario-type questions on acquisition topics posed by the board, situations that Contracting Officers may face in the environment where they will be using their warrant. At least one scenario question must encompass pricing and fiscal law issues. The board will assess the ability of the prospective Contracting Officer to analyze a situation and offer problem resolution and sound business advice, as well as the candidate's overall composure during the board process. At the conclusion of the board, the members will deliberate and provide a recommendation to the COCO on the requested appointment.

(d) All USDA warrants are valid across the agency and may be transferred pursuant to the organization's delegated procurement authority. The supervisor may, but is not required to, conduct a new COWB.

### *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 shall comply with IOO Standard Operation Procedures No. IPOSOP-002. The use of the Nomination and Appointment Templates is required. IOOs shall:

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

### *401.403-74 Review of Contracting Officer's Warrants*

(a) The COCO shall conduct an annual review of all issued warrants to validate the continued necessity of each warrant and to assess whether Contracting Officers have maintained the professional proficiency required to retain their warrants. A report detailing the findings, including the status of Continuous Learning Points (CLPs) achievement for each warranted Contracting Officer, shall be submitted to the Contracting Activity Acquisition Career Manager Designee (ACMD) by June 15th of each year.

## 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 shall be adjudicated within 180 days of initial notification. If the 180-day timeline is not met, the COCO shall provide a corrective action

plan to the HCA.  The plan is required to provide an explanation of the delay and detail steps that are being taken to prevent future delays.

# PART 405 PUBLICIZING CONTRACT ACTIONS

## Subpart 405.1 Presolicitation

### 405.101 Presolicitation Notice

(b) The Contracting Officer must document the file with the reason(s) why a presolicitation notice was not issued using the Exception to Issue a Presolicitation Notice form. 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 contract, a task order contract, or a 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 Senior Procurement Executive 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 shall be in writing.

## Subpart 405.3 Award

### 405.302-70 USDA Procedures for Public Announcement

(a) The "Contract Award Announcement" template found on the Acquisition Workforce SharePoint is required for awards (contracts, delivery/task orders, and Blanket Purchase Agreement (BPA) calls) over $4.5 million (base and all options total value) unless an exception exists. The announcement is intended for members of Congress in the state/district the contractor is located in, and where the work is to be performed. The form must 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 must 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 the Procurement Policy Division. Place a completed copy of the Contract Award Announcement in the contract file.

(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 $4.5M or more as per instructions. 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 Chief, Procurement Policy Division, Office of Contracting and Procurement, has bee n 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) The SPE is authorized to make determinations pursuant to FAR 6.102-1(a) and sign the determination and findings required by FAR 6.102-1(b).

### 406.103 Other than Full and Open Competition

#### *406.103–70 Otherwise Authorized by Law*

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

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

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

2. When full and open competition is not deemed appropriate, the contracting officer shall make a written justification on a case-by-case basis in accordance with procedures in FAR 6.104.

### 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 the Office of General Council (OGC) prior to approval by the Senior Procurement Executive (SPE). Depending on the circumstances, the Head of Contracting Activity (HCA) may require that OGC review and approve specific J&As between $15M and $75M prior to HCA approval. Emailed concurrence from OGC to the COCO is acceptable but must be included with the request for review by OCP. The Contracting Officer must amend a

justification and obtain required approvals when any of the following occur prior to award of a contract action:

1. The dollar value of the prospective contract 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 contract 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 contract).

# PART 410 MARKET RESEARCH

## 4010.001 Market Research Requirements

(b) In order to ensure compliance with other FAR Parts, any acquisition regardless of dollar value, that does not utilize the Government Purchase Card, requires Market Research. This excludes task/delivery orders, Blanket Ordering Agreement orders, or Blanket Purchase Agreement orders under the Simplified Acquisition Threshold that are placed against USDA established contracts.

(e) All Contracting Activities are required to use standardized USDA Market Research Templates found on the Acquisition Workforce SharePoint website to document their market research. No other templates are authorized. Periodic changes or updates to the template may occur, therefore it is essential to ensure that the most current version is being used. Requests for changes to the template can be submitted to the Office of Contracting and Procurement (OCP) through the Procurement Policy Division (PPD).

## 4010.001-70 Market Research Considerations

(a) While Category Management must be considered, the achievement of Made in America requirements and socioeconomic/other small business goals must 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 in order 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 must 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*

Contracting Officers shall 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. The Contracting Officer shall 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. Therefore, 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 contract 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 contract settlement and will adjust the completion date as necessary. The contracting officer shall 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) The following clauses shall be added to all domestic commodity procurements:

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

7. Liquidated damages clause in accordance with 411.403(a)

(b) The following clauses shall be added to all international commodity procurements:

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

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)<br>(Fine Ground/Coarse Ground Beef/Beef Patties/Pork Products)<br>Canned Dried Beans / Canned Fruit / Canned Juice / Canned Vegetables Canning, Specialty (Canned Beef Chili without the beans/Beef Stew) Chicken Products / Chicken Bulk / Turkey Products<br>Corn Syrup<br>Dehydrated Products, Dried Fruit Dry Beans / Legumes<br>Eggs Products<br>Frozen Fruit/ Frozen Juice/ Frozen Vegetables Nuts, Roasted Peanuts, Raw Shelled<br>Perishable Prepared Food Manufacturing<br>(Fresh Fruits and Vegetables, Fresh Sliced Apples, Baby Carrots, etc.)<br>Seafood Products Preparation and Packaging (Fresh and Frozen Seafood) | $0.0025 | Lb/day |
| Bakery Flour Products Bakery Flour Mix Corn Products<br>Wheat Flour<br>Whole Wheat Pancakes Whole Wheat Tortillas | $ 0.15 | Cwt/day |
| Rice Products<br>Wild Rice | $ 0.20 | Cwt/day |
| Crackers (Saltine) Instant Rice Baby Cereal Pasta Product<br>Macaroni and Cheese | $ 0.30 | Cwt/day |
| Processed Cereal Products Vegetable Oil Products | $ 0.35 | Cwt/day |
| Milk, Fresh Fluid | $ 0.30 | Cwt/day |
| Butter<br>Cheese (Bulk) Cheese (Processed) Evaporated Milk<br>Fortified R-T-E Cereals Infant Formula<br>Instant Nonfat Dry Milk Mozzarella Cheese<br>Non-fortified Nonfat Dry Milk<br>Non-fortified Nonfat Dry Milk-Export Peanut Products<br>Sunflower Seed Butter<br>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:

| Commodity Liquidated Damages | USDA Commodity Requirement | Rate | Per Net Weight |
|---|---|---|---|
| All Purpose Wheat Flour/Bread Flour<br>Bagged Grain<br>Bulgur Wheat/Soy - Fortified Bulgur<br>Canned Salmon<br>Corn Oil Cornmeal<br>Corn-Soy Blend Plus<br>Dehydrated Potato Products Dried Dairy<br>Ingredients<br>Dry Edible Beans<br>Fortified Poultry-Based Spread High<br>Energy Biscuits<br>Milled Rice/Fortified Milled Rice (bagged)<br>Peas & Lentils<br>Ready-To-Use Supplementary Food<br>Ready-To-Use Therapeutic Food<br>Soy-Fortified Cornmeal<br>Sunflower Seed Oil Super Cereal Plus<br>Value Added Soy Products Vegetable Oil<br>Wheat Soy Blend | (WFBF)<br>(KCBG)<br>(BWSF)<br>(CPS)<br>(CO)<br>(CM)<br>(CSBP)<br>(DPP)<br>(DDI)<br>(DEB)<br>(FPBS)<br>(HEB)<br>(MR)<br>(PL)<br>(RUSF)<br>(RUTF)<br>(SFCM)<br>(SFSO)<br>(SCP)<br>(VASP)<br>(VO)<br>(WSB) | $ 0.11 | Cwt/day |
| Nonfortified Nonfat Dry Milk-Export | (DME) | $0.45 | Cwt/day |
| Bags | (KCP BAGS) | $25.00 | 1,000 bags/day |

## 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
4. DX-P2 Agriculture and Food Critical Infrastructure Protection and Restoration

(b) For a USDA priority rating request for emergency preparedness or national defense, the COCO must submit a determination and findings (D&F) for HCA approval. The D&F and AD-2102 must address the scope and definitions in 7 CFR 789 and are available on the Acquisition SharePoint site. 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 shall 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 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 shall submit a request, through their COCO 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 418.011-70 (a), Contracting Officers may approve solicitations and awards up to their warrant threshold without additional reviews required in 401.201-72 or 443.203-71.

2. For USDA specific emergencies listed in 418.011-70 (b), Contracting Officers may approve solicitations and awards up to their warrant threshold without additional reviews required in 401.201-72 or 443.203-71 with COCO approval.

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

1. For declared emergencies listed in 418.011-70 (a), Contracting Officers may award without submitting a MIA waiver in advance. Approved waivers must be submitted to the MIA Office within 30 days of award.

2. For USDA specific emergencies listed in 418.011-70 (b), Contracting Officers may award without submitting a MIA waiver in advance with COCO approval. Approved waivers must be submitted to the MIA Office within 30 days of award.

## 418.001-72 Commodity Planning in Advance of Emergency Declaration

(a) In March of each year, Commodity Procurement Program (CPP) contracting staff (contracting officers, specialists, leadership) responsible for buying items purchased in an emergency (e.g., infant formula and rice cereal for babies) 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) Emergency Requests. When a Presidential declaration of an emergency is made, affected Contracting 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 shall 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 contract(s) awarded shall be limited to address only immediate needs. Consider the inclusion of options to allow continuous contract 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 must 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 shall 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 must 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 must be uploaded to the electronic procurement system no later than 30 days after contract 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 must 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 shall conduct a comprehensive audit of all emergency procurements executed during the previous fiscal year. This audit shall 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 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) The Contracting Officer may recommend waiver of the determination to suspend payments, to terminate a contract, or to debar or to suspend a contractor. The recommendation must be submitted through the COCO to the HCA and SPE and must include a full description of the disruption of USDA operations should the determination not be waived. The SPE will submit the request for a waiver to the agency head with a recommendation for action per FAR 26.505-1.

# PART 429 TAXES

## Subpart 429.3 State and Local Taxes

### 429.301 Application of State and Local Taxes to the Government

In the event that a vendor requires proof of USDA's tax-exempt status, the "Blanket Tax Exempt Certificate" found on the Acquisition SharePoint site may be provided.

# 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. Requests for individual deviations shall be submitted through the COCO to the HCA for final 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). Requests for class deviations shall be submitted through the COCO to the HCA for final SPE 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 of Circular A–11 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 objectives of Circular A–11 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 Chief of the Contracting Office (COCO) must:

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 Contracting Activity Program Managers (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 shall 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

#### *436.105-1 Limitations*

(a) When it appears that funds may be insufficient for all the desired features of construction, the contracting officer may provide in the solicitation for a base bid item covering the work as specified and for one or more additive or deductive bid items which progressively add or omit specified features of the work in a stated order of priority. In the alternative, the contracting officer may use the policies and procedures found in FAR 17, Options.

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

#### *436.101-4 Advance Notices and Solicitations*

(b) Solicitation notices posted for construction contracts must 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 FAR 36.211 | USDA. USDA's procedures that apply to the definitization of equitable adjustments for change orders under construction contracts may be found in 443.304 -70.

#### *436.101-7 Clauses*

(a) Emergency response, fire suppression and liability. The contracting officer shall 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 copy of this determination must be maintained in the contract file.

(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 Architect and Engineering Services

#### *436.202-1 Evaluation*

(a)(1) The COCO shall 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 must sign non-disclosure agreements, and any organizational conflicts of interest must be addressed in accordance with FAR Part 9.

(b)(3) The selection report required in FAR 36-202.1(b)(3) must be prepared for the approval of the COCO.

#### *436.202-2 Selection Authority*

(a) The final selection decision is designated to the
COCO. A copy of the final selection, inclusive of the supporting documents, must be provi ded to the Contracting Officer and maintained in the solicitation 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.

# 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,**" includes the transmission, emission, or reception of signa ls, 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**" includes 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 Departme ntal Directives/Regulations 5000 series.

5. USDA Acquisition Teams must ensure integration of cybersecurity into the acquisition lifecycle through acquisition planning, source selection, responsibility determination, security compliance evaluation, contract administration, and performance evaluation. USDA Program offices must ensure required

cybersecurity related information, in accordance with OCIO policies, is incorporated into all acquisition documentation (i.e., Performance Work Statement (PWS), Statement of Work (SOW), Statement of Objectives (SOO), 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 must 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) Program offices must 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 must ensure their employees, including subcontractor personnel, complete the training course(s) listed below in the frequency identified. The contractor must maintain records of course completion and provide them to the Contracting Officer or Contracting Officer Representative 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 | 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 | | | | |

### *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 must 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, with the exception of 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 Acquisition SharePoint page.

## 439.103-73 Cybersecurity Requirements for Civil Space Systems

All cybersecurity requirements language and contract language must use a risk-based, tiered approach for all new civil space systems. Such requirements must 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 must 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 must 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) Domain Name System (DNS) Resolver. Requirements language and contract language must implement a requirement that any product that acts as a DNS resolver (whether client or server) must support encrypted DNS.

(b) Solicitations for products that support Post-Quantum Cryptography (PQC). For any product on the CISA-list of product categories for products that support PQC, the solicitation must require that related products support PQC.

(c) Consumer Internet-of-Things products. Requirements language and contract language must 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 Acquisition SharePoint page. Deviations from the recommended language must 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 beginning on Page 18.

(b) Contracting Officers shall ensure each required AI artifact is retained and available for collection and reporting purposes. They must 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 must limit procurement of AI Large Language Models to those developed in accordance with Unbiased AI Principles that promote truth-seeking and ideological neutrality.

(c) Contracting Officers shall review AGAM Part 39 for all performance work statement, statement of work, evaluation factors, and solicitation/contract requirements required 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 must 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 that 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.

## 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 Contracting Officer Representatives are required to review DR 4030-001 “Section 508 Program” and the associated Section 508 information.

# 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 must 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 must be processed as a new acquisition. Contract scope means, in simple terms, that the contemplated change must be generally 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 must be followed. It cannot be awarded to a contractor simply because that contractor has a current contract.

### 443.203-71 Modification Review Thresholds

(a) Out of scope modifications, non-administrative modifications to Major Programs/Projects, and modifications that result in greater than 20% cumulative change of the total contract value should be reviewed/approved as follows:

| Type of Modification | Dollar Threshold | CO | Level Above CO | Branch Chief (must be 1102) | COCO | HCA | Legal Review |
|---|---|---|---|---|---|---|---|
| Out of Scope Modifications | Up to $10M | Review | Review | Review | Approve | | As Required |
| | Greater than $10M | Review | Review | Review | Review | Approve | As Required |
| Any non-admin Mods to Major Programs/Projects | Any | Review | Review | Review | Review | Approve | As Required |
| Modifications that result in >20% cumulative change of the Total Contract Value | Up to $1M | If prepared by CS, then CO can approve. If prepared by CO, then by another CO with an equal or higher-level warrant | | | | | As Required |
| | $1M to $7.5M | Review | Approve | | | | As Required |
| | $7.5M to $25M | Review | Review | Approval | | | As Required |
| | Greater than $25M | Review | Review | Review | Approval | | As Required |

## Subpart 443.3 Change Orders

### 443.301 General

(c) When a change order is issued electronically without an SF 30, the Contracting Officer must 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) Undefinitized contract action (UCA) means any contract action for which the contract 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 and AGAR Part 16).

(b) Undefinitized Contract Actions (UCAs) shall be as complete and definite as possible under the circumstances in which they are issued. UCAs shall 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 contract performance can begin immediately (e.g., emergency situations).

(c) The Contracting Officer shall obtain prior written approval for use of a UCA as follows:

1. From the HCA, if the estimated cost of the definitive contract action is expected to exceed $1 million.

2. From the COCO, without redelegation, if the estimated cost of the definitive contract action is not expected to exceed $1 million.

3. Any modifications to the scope of the UCA must be approved at the level appropriate to the value of the total contract, including the modification.

4. Waivers. 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 shall include a not-to-exceed price.

(e) UCAs shall contain definitization schedules to include a target date of definitization. Definitization shall 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 450 EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

## Subpart 450.1 Extraordinary Contractual Actions

### 450.100 Definitions

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

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

### 450.102 Delegation of and Limitations on Exercise of Authority

#### *450.102-1 Delegation of Authority*

The Assistant Secretary for Administration is authorized to approve all actions under FAR Part 50 except indemnification actions listed in FAR 50.102–1(d), which must be approved by the Secretary, without power of redelegation.

# PART 452 SOLICITATION PROVISIONS AND CONTRACT CLAUSES

## Subpart 452.1 Texts of Provisions and Clauses

### 452.211-70 Brand Name or Equal

As prescribed in 411.204-70, insert the following provision:

Brand Name or Equal (Sep 2025)

(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 shall 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:

Variation in Quantity (Sep 2025)

(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 shall be limited to:

___ Percent increase [*Contracting Officer insert percentage*]

___ Percent decrease [*Contracting Officer insert percentage*]

This increase or decrease shall apply to _____. *

(End of clause)

* Contracting Officer shall 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:

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, title, 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:

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:

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:

Advance Shipment Notice (ASN) and Unloading Appointment (Sep 2025)

(a) The Contractor shall 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 shall 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 shall be scheduled as far in advance of expected delivery as possible, but not less than **72 hours** prior to delivery by contacting a responsible representative 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:

Regulatory Requirements for Commodities and Packaging - Domestic Purchases (Sep 2025)

(a) The commodity shall 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 shall 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 shall 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:

Commodity/Packaging Labeling Requirements (Sep 2025)

(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 shall provide a visual representation of the food.

3. Traceable Product Codes. Labeling and packaging shall 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 shall 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 shall 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:

Compensation for Delays in Delivery (Sep 2025)

(a) If the Contractor cannot meet the Not-Later-Than (NLT) delivery date, they shall 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 shall 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 (Sep 2025)

(a) Unless otherwise specified by the Government, all shipments of packaged products shall be unitized (palletized and stretch wrapped).

1. Pallets shall 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 shall 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 shall be held firmly in place by the stretch wrap.

3. Pallet loads shall 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 shall 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:

Regulatory Requirements for Commodities and Packaging - International (Sep 2025)

(a) The commodity shall 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 shall 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:

Carrying Charges - International (Sep 2025)

(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 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 shall be calculated on the weighted average of the contract prices.

(End of clause)

## 452.236–70 Emergency Response, Fire Suppression, and Liability

As prescribed in AGAR 436.101-7, the following clause shall be used in Forest Service Integrated Resource Service Contracts (IRSCs), and is optional for non-IRSCs:

Emergency Response, Fire Suppression and Liability (Sep 2025)

(a) Contractor's Responsibility for Responding to Emergencies. When directed by the contracting officer, the Contractor shall allow the Government to temporarily use employees and equipment from the work site for emergency work (anticipated to be restricted to 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, shall immediately extinguish all fires on the work site other than those fires in use as a part of the work. The Contractor may be held liable for all damages and for all costs incurred by the Government for labor, subsistence, equipment, supplies, and transportation deemed necessary to control or suppress a fire set or caused by the Contractor or the Contractor's agents, 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, shall be credited toward such maximum. If the Contractor's actual cost exceeds the contractor's maximum obligation stated above, the Forest Service shall reimburse the contractor for the excess.

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

3. Other Fires on Contract Area. The Forest Service shall pay the Contractor, at firefighting rates common in the area or at prior agreed rates, for equipment or personnel furnished by the Contractor at the request of 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 shall 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 shall be the same as if performance was by the Contractor.

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

(End of Clause)

## 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:

Notice of Potential Use of Artificial Intelligence (Sept. 2025)

(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 shall 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 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:

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, tincluding: 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:

Artificial Intelligence Property and Data Rights (Sept. 2025)

(a) **Data Used to Train Artificial Intelligence (AI) Systems**. The Government shall retain **Unlimited Rights** (as defined in FAR 52.227-14) in all data (which includes recorded information in any form such as raw or processeddatasets 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 shall 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 shall 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:

Privacy and Data Ownership (Sept. 2025)

(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:

High-Impact Artificial Intelligence (Sept. 2025)

(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; 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 shall 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 shall 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:

Testing and Monitoring of Artificial Intelligence (Sept. 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:

(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 architectures 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 shall 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:

Prohibited Artificial Intelligence Systems (Sept. 2025)

(a) The Contractor shall 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 shall immediately notify the Contracting Officer and remove the Prohibited AI System from use.

(End of Clause)