

US DEPARTMENT OF AGRICULTURE (USDA)

# USDA



CONTRACTING DESK BOOK v3.5

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

## FOREWORD

### What is this document?

This is the USDA Contracting Desk Book, it provides USDA-wide and subagency/Mission Area acquisition regulations, policies, procedures, guidance, and information. This Desk Book is for internal use by USDA personnel. Contact the USDA Procurement Policy Division for questions or concerns.

This Desk Book (also referred to as Procedures, Guidance, and Instructions (PGI)) is organized in the same manner as the Federal Acquisition Regulation (FAR) and USDA's Agriculture Acquisition Regulation (AGAR). For example, Chapter 404 of this PGI corresponds to AGAR 404 and Part 4 of the FAR. The PGI is a companion resource to the AGAR. The PGI is a web-based tool to simply and rapidly access guidance and information relevant to the FAR and AGAR topics. The PGI contains both mandatory and non-mandatory internal USDA procedures, guidance, and supplemental information. ***The reader should always use the PGI in conjunction with the FAR and AGAR to ensure all guidance is considered for any part of the acquisition process.***

### What is included in this document?

- 1) Summary of previous changes to the Desk Book.
- 2) Table of Contents that allows the reader to click on specific parts and subparts for direct relocation to the corresponding page.
- 3) Procedures, Guidance, and Information to accompany the FAR and AGAR.
- 4) Mission Area specific procedures are included as Attachments A thru J to implement the [FAR](#), [FAR Deviations](#), [AGAR](#), PGI and other [Departmental Regulations \(DRs\)](#).
- 5) Special authorities and/or acquisition flexibilities are available via [Sharepoint | Hot Topics](#).
- 6) Links to various [templates](#), as referenced throughout.

### What is excluded from this document?

This PGI does not include information relevant to the policies, advisories, and regulations for leasing of real property which is managed by Departmental Administration's Office of Property and Environmental Management (OPEM). The Director of OPEM has delegated authority from the Chief Acquisition Officer through the Senior Procurement Executive and Head of the Contracting Activity to serve as the Appointing Official for Contracting Officers leasing real property. OPEM also manages USDA's adherence to the General Services Administration Acquisition Manual, General Services Administration Acquisition Regulation, Federal Management Regulation, Agriculture Property Management Regulation, Federal Acquisition Regulation, related Executive Orders, etc.

## CONTENTS

Procedures, Guidance, and Information

Attachment A, Marketing and Regulatory Programs (MRP)

Attachment B, Research, Education and Economics (REE)

Attachment C, Food, Nutrition and Consumer Service (FNCS)

Attachment D, Natural Resources and Environment (NRE)

Attachment E, Farm Production and Conservation (FPAC)

Attachment F, Food Safety (FS)

Attachment G, RESERVED

Attachment H, Departmental Administration and Staff Offices (DASO)

Attachment J, Rural Development (RD)

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Version	Date	What are the Changes?	Rationale
1.01-2.10	10/30/2018-03/01/2021	Details of changes can be found at <a href="#">Expired Desk Book Versions</a> .	
3.0	11/01/2021	Details of changes, including rationale, can be found at <a href="#">Expired Desk Book Versions</a> , titled "USDA Contracting Desk Book 3.0 Summary of Changes 11012021".	
3.1-3.4	01/03/2022-01/27/2023	Details of changes, including rationale, can be found at <a href="#">Expired Desk Book Versions</a> .	
3.5	4/23	This version of the Desk Book supersedes all previous versions. Prior versions are expired and no longer applicable. Major changes shown below:	
		Pages 51-147, Updated to "Plain Language" writing concepts as described at <a href="#">Principles of Clear Writing   National Archives</a> .	OCP
		401.601-72, Updated FAC-C-DS to include FAC-C (Professional) certification with 2 or more years of experience as a path to FAC-C-DS certification.	OCP
		401.601-75, Adds Internal Review Program.	OCP
		401.602-3, Clarifies instructions and updates CO's responsibilities.	OCP/CCSC
		407.104, Updates language, including: adds AAP as a review document for bridge contracts with no prior approval in a previous AS/AP, changes contracting office approver for AS/APs from warranted to FAC-C certified.	OCP
		408.802, Adds requirement to use the Office of Operations (OO) for duplicating services.	OCP
		418, Adds language for National Interest Action code creation.	OCP
		419.2, Changed to match DR 5090-001.	OSDBU
		433.103, Adds language for payments of protestor's costs.	OCP
		439.101, Adds information regarding the ban on TikTok.	OCP
		Websites, template names, and formatting updated throughout as needed and to enhance consistency.	Outdated

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## Part 401 – Procedures, Guidance, and Information (PGI)

### 401.001 Acronyms.

Performance Work Statement (PWS)

Source Selection Authority (SSA)

Source Selection Evaluation Board (SSEB)

### Subpart 401.1--Purpose, Authority, Issuance

#### 401.102 What are the Guiding Principles for the Procedures, Guidance, and Information (PGI)?

USDA continues to develop a world class acquisition system that delivers best value products or services to the Customer. This is supported by the Program Management Improvement Accountability Act (PMIAA) and the Office of Management and Budget (OMB) M-18-19 “Improving the Management of Federal Programs and Projects through Implementing the PMIAA.”

#### 401.104 How is the PGI applied?

The PGI applies to all USDA acquisitions except where expressly excluded. The PGI is designed to establish internal operating procedures for acquisition personnel and clarify policies of the Federal Acquisition Regulation (FAR) or the Agriculture Acquisition Regulation (AGAR).

#### 401.105 How is the PGI arranged?

The PGI adheres to AGAR numbering and drafting conventions. Citations to this document should be referenced as “PGI, Part, Subpart, Section, Subsection”, (e.g., PGI 401.106-2). This document provides standard procedures for all Mission Areas for most purposes. Procedures for requirements unique to specific Mission Areas are available in Attachments A thru J when Mission Areas provide them.

### Subpart 401.2--Administration

#### 401.201 How is the PGI maintained and updated?

Policy changes to the PGI, DRs and the AGAR are managed by the Contracting Policy Advisory Board (CPAB).

- 1) The board uses regulatory and policy updates from all Federal agencies such as the Office of Management and Budget (OMB) and the FAR Council to make change decisions. The board will consider updates from USDA-wide agencies.
- 2) The USDA Procurement Policy Division (PPD) chairs the CPAB, and the board is comprised of the Senior Procurement Executive (SPE), Procurement Systems Division (PSD), as necessary, Head of the Contracting Activity (HCA), each Mission Area Senior Contracting Official (MASCO), and Mission Area Policy Leads.
- 3) The primary role of the CPAB is to screen, manage, prioritize, and implement changes to national procurement policy directives, procedures, and guidance, as necessary.
- 4) All changes and/or updates will originate with a change request (CR) and will be processed through the CPAB. PPD will prepare and issue CRs to initiate updates when the change is a result of specific guidance from OMB or other regulatory authority.

- 5) Operational contracting units throughout the agency are encouraged to submit CRs anytime a revision or update is needed to the AGAR, PGI or its appendices. E-mail CRs to PPD at [procurement.policy@usda.gov](mailto:procurement.policy@usda.gov) with "PGI Change Request" in the subject line. The e-mail must contain the following information:
- Summary of the issue / topic being addressed.
  - Discussion/rationale for the CR.
  - Cite specific reference (FAR, AGAR or PGI Chapter, paragraph, etc.).
  - Attach supporting documentation, if necessary.
  - Confirmation that the MASCO or Policy Lead supports the CR.

## Subpart 401.6 Career Development, Contracting Authority, and Responsibilities

### 401.601 What transactions are exempt from the warranted Contracting Officer requirement?

In general, warranted Contracting Officers are not required to authorize obligations to issue the transactions listed below. Mission Areas should authorize and instruct employees on their responsibilities and limitations when obligating the Government. Although the FAR warranting requirements exempts the following transactions and documents, a Mission Area Senior Contracting Official (MASCO) may require a warranted Contracting Officer to sign any or all of the listed procedures:

- 1) Request, Authorization, Agreement, and Certification of Training, SF-182 in accordance with Office of Human Resources Management (OHRM) and Office of the Chief Financial Officer (OCFO) policies (if paid with a Purchase Card and below the [micro-purchase threshold](#) (MPT) or paid with funds on an SF-182 through the Federal Management Modernization Initiative (FMMI));
- 2) Government Bills of Lading;
- 3) USDA Purchase Card Use below the MPT (for guidance on Purchase Card use see <https://ias.usda.gov/ccsc/>); or
- 4) Cooperative agreements and grants.

Unwarranted micro-purchase cardholders are not Acquisition Workforce members. USDA issues purchase cards to employees to reduce administratively costly purchase orders for inexpensive goods and services up to the micro-purchase threshold. Agency Program Coordinators (APCs) are responsible for providing cardholders training prior to issuance of the purchase card. See <https://ias.usda.gov/ccsc/> for more information.

### *401.601-70 Delegations.*

#### **What is the Mission Area Senior Contracting Official's role in delegations?**

The SPE determined that all contracting is overseen by an HCA and supported by a MASCO. The HCA typically designates a MASCO for each Mission Area. MASCOs only have authority of the designated Mission Area contracting unless other Mission Areas are identified in writing. The list of delegations is available in Appendix C and at [Sharepoint | OCP Templates](#), titled "Delegation Matrix".

#### **What is the Chief of the Contracting Office's role?**

The Chief of the Contracting Office (COCO) is the MASCO unless the HCA delegated authority to the MASCO to designate a COCO. If the MASCO wishes to request COCO designation authority, the MASCO must submit a business case to the HCA which details the need, planned responsibilities and oversight plan. The HCA must approve all COCO designations.



*401.601-71 Career Development.*

**What are the GS-1102 qualification standards?**

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/>.

**Can the GS-1102 qualification standards be waived?**

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. The MASCO must submit a formal Waiver Request to the SPE and Acquisition Career Manager (ACM) for their consideration. The MASCO's waiver request must include, at a minimum, the following information:

- A copy of the position description, vacancy announcement, location, grade, anticipated procurement workload, and anticipated warrant level;
- Adherence to the Agency's Human Capital Plan and the recruiting strategy used;
- Description of the recruiting efforts undertaken by the organization and the results of those efforts including the sources used for recruiting for the position;
- A plan of 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 5 days of entry on duty;
- 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.;
- The impact on the agency should the SPE not issue a waiver for the candidate; and
- 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.

Waiver authority cannot be delegated and will only be granted for exceptional and compelling circumstances of a specific hiring action. 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 MASCO receives a waiver signed by the SPE prior to hire, reassignment, or promotion. **The SPE must approve waiver requests prior to making offers.**

[Click for Warrant Waiver Request Template.](#)

[Contracting Officer's Representative \(COR\) Overview](#)

Contracting Officer's Representatives (CORs) ensure that contractors meet the commitments of their contracts. CORs are often the first to recognize when a program or contract is under-performing and are increasingly being asked to manage high-value, complex contracts that involve varying degrees of risk.

### **How can Mission Areas support CORs?**

It is important that Mission Areas: (1) select the appropriate individual to be a COR; (2) ensure that CORs have technical knowledge of the requirement(s); (3) ensure CORs understand the importance of their role; (4) provide CORs adequate time and resources to perform the COR function; (5) build a culture of effective collaboration and communication between the Contracting Officer and COR; and (6) ensure CORs complete the Contractor Performance Assessment Reporting System (CPARS) Overview, and FAC 089, Writing Quality Past Performance Evaluations. CPARS overview and FAC 089 are available in Federal Acquisition Institute Cornerstone OnDemand ([FAI CSOD](#)). To find either course, use the Learning Search tool once logged in.

Finally, CORs are often called upon to perform significant program management activities and they should be trained accordingly.

### [Program Manager Overview](#)

Program/Project Managers (P/PMs) who are skilled, competent, and professional are essential to the success of critical agency missions. P/PMs ensure that requirements are appropriately written, performance standards are established, and contractors deliver what they promise. P/PMs develop requirements, lead integrated project teams (IPTs), and oversee their project(s) budgeting and governance processes, all of which are critical to ensuring that agency mission needs are filled and expected outcomes achieved. This includes adherence to the OMB Circular A-11 supplemental Capital Programming Guide and its required climate risk management as a routine part of agency capital planning and program management.

Program managers assigned to programs considered major acquisitions, as defined by OMB Circular A-11 or named by the SPE, must be senior-level FAC-P/PM certified. Project managers assigned to lead projects within programs identified as major acquisitions must, at a minimum, possess a mid-level FAC-P/PM certification. Reference OMB memorandum dated December 16, 2013 [https://www.whitehouse.gov/wp-content/uploads/legacy\\_drupal\\_files/omb/procurement/memo/fac-ppm-revised-dec-2013.pdf](https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/procurement/memo/fac-ppm-revised-dec-2013.pdf) and USDA Departmental Regulation [3130-011](#) dated February 4, 2016 for additional details.

### [401.601-72 Federal Acquisition Certification Overview.](#)

Mission Areas must provide Acquisition Workforce (AW) employees opportunities to complete government-wide training for creating and maintaining the skills necessary to deliver best value supplies and services, to find the best business solutions, and to provide strategic business advice to accomplish agency missions. On behalf of the SPE, each MASCO is responsible for developing and maintaining an acquisition career management program that complies with mandatory acquisition training and experience standards as outlined in this PGI.

### **How are Federal Acquisition Certifications (FAC) processed?**

All certifications are processed and managed through FAI CSOD. Find certification and training information at the Federal Acquisition Institute (FAI), <https://www.fai.gov/>. The Mission Area ACMDs and FAI (for equivalency/fulfillment requests) reviews FAC applications and then the USDA ACM reviews and makes the final approval determination. Review of FAC applications generally occurs within 30 business days (20 for FAC-P/PM) of receipt of an application. Missing, incomplete, or insufficient portions of applications will cause packages to be returned, and restart the 30 or 20 day period once the corrected package is resubmitted.

### [Federal Acquisition Certification in Contracting \(FAC-C\) Overview](#)

The FAC-C (Professional) program is founded upon foundational acquisition-related training, professional certification exam, and experience to develop and demonstrate core contracting competencies.

#### **What are the FAC-C (Professional) certification requirements?**

The general requirements for FAC-C (Professional) certification are outlined in [OMB's FAC-C Modernization memorandum](#) dated January 19, 2023. This includes applicants providing the following information: (1) A completed FAC-C Experience On the Job Training (OJT) Toolkit, [here](#), to document experience for FAC-C certification requests. (2) A resume to document the experience requirement for this certification. (3) CSOD evidence of experience requirements for a certification request. Employees should refer to the FAI CSOD employee task aid to complete the certification details. The experience requirement is generally based on the OPM GS-1102 qualification standard. Experience may be time spent on the job in a contracting-related job assignment, either in the private or public sector, that reflects a full comprehension of the required contracting knowledge, skills and abilities. (4) A copy of an official diploma (for FAC-C legacy NOT for FAC-C (Professional)) from a four-year accredited college or university transcript from an accredited college or university, highlighted to identify completion of the 24 semester hours of business credits.

#### **Are DAWIA certifications accepted?**

An individual who has obtained DAWIA certification in contracting at any time during their career is eligible to obtain an FAI issued FAC-C (Professional) certification, if continuous learning requirements were maintained and can be documented. The employee must email their [Mission Area ACMD](#) the necessary documentation including: (1) DAWIA Professional certification, and (2) the appropriate continuous learning history to ensure certification is valid and current.

#### **Is equivalency or fulfillment accepted?**

FAC-C (Professional) candidates may submit equivalency requests as evidence of completion to satisfy mandatory courses toward certification. Equivalent training classes completed for certification purposes must be from a commercial vendor, a college or university, or another organization whose class is deemed currently equivalent by the Defense Acquisition University (DAU). Only course equivalency requests completed within five years of the course completion date will be reviewed for approval consideration. DAU's iCatalog [Equivalent Providers](#) shows available and active DAU equivalent vendors and classes. Review of FAC-C equivalency requests generally occurs within 30 business days of receipt of the request and must occur prior to submission of FAC-C certification applications. Equivalency is limited to the FAC-C (Professional) core certification classroom courses.

USDA does not allow fulfillment requests (experience in lieu of training).

### [Federal Acquisition Certification in Contracting \(FAC-C\) Core-Plus Specialization Overview](#)

The purpose of the FAC-C Core-Plus specialization is to establish additional training and continuous learning requirements for contracting professionals who are FAC-C certified and manage specific investments requiring specialized knowledge, skills, and abilities. Refer to the OMB Memorandum dated May 18, 2018, located [here](#), to learn more about the general requirements for FAC-C Core-Plus specialization. Additionally, USDA follows the guidance from FAI on how the FAC-C Core-Plus specialization can be earned. See the FAI at <https://fai.gov/certification/fac-c/contracting-fac/fac-c-certification-requirements> for application and training requirements.

### **FAC-C Core-Plus Specialization in Digital Service (DS) Overview**

Contracting personnel must obtain a FAC-C-DS prior to buying digital services acquisitions over \$7.5 million (or \$15 million for acquisitions described in FAR Part 13.500(c)). The FAC-C-DS is only granted to those holding Level II or Level III FAC-C certification, or those holding FAC-C (Professional) certification with 2 or more years of experience. Contracting professionals holding the FAC-C-DS specialization must achieve 20 continuous learning points (CLPs) of their overall FAC-C 80 CLPs (required every two years) within the area of digital services to maintain their certification. Employees should refer to the FAI CSOD employee task aid to complete the certification details to document meeting the training requirement for a FAC-C-DS certification request.

### **Federal Acquisition Certification for Contracting Officer's Representatives (FAC-COR) Overview**

The general requirements for FAC-COR certification are available in the OMB Memorandum regarding the FAC-COR, dated September 6, 2011, [https://www.fai.gov/sites/default/files/pdfss/FAC-COR\\_20Sep2011.pdf](https://www.fai.gov/sites/default/files/pdfss/FAC-COR_20Sep2011.pdf). At USDA, employees designated/appointed to serve as CORs must first have a current FAC-COR certification.

### **What are the experience requirements to become a COR?**

To satisfy FAC-COR experience requirements, an individual must have served as the primary COR on one or more contracting actions for a period that totals at least one year (for Level II certification) or at least two years (for Level III certification). The length of time an Alternate COR provides oversight in the absence of the primary COR is deemed as experience towards the COR certification requirement. No prior experience is required for a FAC-COR Level I certification. Examples of adequate experience documentation include: (1) Appointment/Designation memorandums signed by the Contracting Officer; or (2) a letter from, and signed by, a Contracting Officer. Either form of documentation must include at a minimum: contract number, the COR's name, the contract period of performance, COR designation period, and COR duties performed. Employees should refer to the FAI CSOD employee task aid to complete the certification details to document meeting the training and experience requirement for a FAC-COR certification request.

### **What if I was a certified COR at DoD?**

If an individual from DoD has obtained a valid, current COR certification under DoDI 5000.72, an equivalent FAC-COR may be granted at the same certification level, provided the individual meets the FAC-COR experience and continuous learning requirements and the agency ACM approves the certification. When applying for a FAC-COR, the individual is responsible for providing their Mission Area Acquisition Career Manager Designee (ACMD) with the documentation supporting their DoD COR certification, experience, and continuous learning history.

### **What are the training requirements to become a COR?**

Follow the training guidance available on the FAI website at <https://fai.gov/certification/fac-cor/contracting-fac/fac-cor-certification-requirements> for each COR level. Although there is no mandatory training curriculum, initial COR certification training must be with a formal learning program from FAI, DAU or DAU equivalent training provider, college / university, or commercial training provider. Commercial training is only acceptable if it offers programs of instruction, or assessment processes, that are similar to the learning outcomes described in FAI's current certification competency requirements. USDA does not evaluate training course material for credit; therefore, direct concerns of course acceptance to the employee's Mission Area ACMD before enrolling in a course.

Training must cover COR roles and responsibilities as well as fundamental contract rules and regulations. For FAC-COR certification, COR training is accepted for two years from date of course completion. Within reason, the USDA ACM may use discretion in determining suitable timeframes for accepting training. Assignment specific training may be completed to supplement the core business and technical competencies. Based on competency assessments and skills gap analysis, the MASCO may establish additional agency specific requirements for the FAC-COR program. The MASCO issued requirements may not change, lessen, or eliminate any of the core requirements prescribed by the OMB memorandum, FAI, or this PGI. Any additional requirements for a Mission Area should be included in the PGI. Requests to use experience in lieu of training (fulfillment) will not be considered.

#### [Federal Acquisition Certification for Program and Project Managers \(FAC-P/PM\) Overview](#)

The FAC-P/PM is critical in fostering enhanced program outcomes through, among other things, improved: (1) development of Government requirements; (2) definition/measurement of performance standards; (3) management of life-cycle activities; and (4) management of budgeting and governance processes. The general requirements for FAC-P/PM are outlined in the OMB memorandum dated December 16, 2013, located [here](#). USDA follows the FAC-P/PM program guidance available on the FAI website at <https://fai.gov/certification/fac-ppm/contracting-fac/fac-ppm-certification-requirements> for each P/PM level. FAC-P/PM certification is based on gaining required competencies, training, and experience. First time applicants, as well as incumbent FAC-P/PMs seeking higher levels of certification, should contact their Mission Area ACMD or designated point of contact to initiate the certification process.

#### **What are some tips for FAC-P/PM experience and training?**

USDA employees must provide documentation to support the FAC-P/PM experience and training requirements with the submission of their application. Completion of the FAI training curriculum is required, and employees may not substitute academic degrees, experience, or training toward fulfillment of the training requirements. Therefore, requests for fulfillment will not be considered. To satisfy the FAC-P/PM experience requirements, the certification request must include the USDA Federal Acquisition Certification for Program and Project Manager Employee Self-Assessment, titled, "FAC-PPM All Levels Self-Assessment Application" available at [Sharepoint | Templates](#). This assessment is used to document training or demonstrated knowledge, skills, and abilities (i.e., certificates, transcripts, comparable education or certification programs, and/or essays) at the appropriate level. Employees should refer to the FAI CSOD employee task aid to complete the certification details to document meeting the training and experience requirement for a FAC-P/PM certification request.

#### **What if I was a DoD certified P/PM?**

USDA will recognize the DAWIA certifications when employees apply for the equivalent FAC-P/PM certification. Individuals requesting this equivalency must provide to their Mission Area ACMD documentation of the DAWIA certificate and the appropriate continuous learning history to ensure validity and currency of the certification.

#### [Federal Acquisition Certification for FAC-P/PM Core-Plus Specialization Overview](#)

The purpose of the FAC-P/PM Core-Plus specialization is to establish the additional training, experience and continuous learning requirements for FAC-P/PM certified personnel who manage specific investments requiring specialized knowledge, skills and abilities. The initial core-plus area is for Information Technology (FAC-P/PM-IT) project and program managers. New core-plus areas will be approved by OFPP and maintained by FAI. Employees should routinely check the FAI website for updates.

### **How do I obtain the FAC-P/PM IT specialization?**

(1) Obtain Mid or Senior level FAC-P/PM certification. (2) Master the minimum competencies required for the core-plus specialization in information technology. The detailed FAC-P/PM-IT Competency Model is available on FAI's website at: <https://fai.gov/certification/fac-ppm/contracting-fac/fac-ppm-competencies>. (3) Provide documentation to support the FAC-P/PM experience and training requirements with submission of the application. (4) Provide documentation specific to the IT specialization experience using the "FAC-P/PM IT Self-Assessment Application, available at [Sharepoint | Templates](#). (5) Submit the completed FAC-P/PM IT specialization self-assessment application with the specialization certification request in FAI CSOD.

### **How do I maintain the FAC-P/PM IT specialization?**

Program and project manager professionals holding the FAC-P/M IT core-plus specialization must achieve 20 CLPs of their overall FAC-P/PM 80 CLPs (required every two years) within professional activities of information technology as identified by the Department's Chief Information Officer. Special emphasis must be directed toward key issues affecting information technology Program and Enterprise Architectural success, to maintain the certification.

#### *401.601-73 Continuous Learning Overview.*

Professional improvement is continuous, and employees are expected to participate in a variety of acquisition-related activities designed to give a well-rounded perspective of the acquisition management function. To maintain a FAC-C or FAC-P/PM certification, AWF employees must earn eighty (80) CLPs every two years. To maintain a FAC-COR certification, AWF employees must earn forty (40) CLPs every two years (except for Level I CORs, who only require 8 CLPs every two years). Continuous learning points (CLPs) must meet the competencies of the respective certification program.

Acquisition related training required on an annual basis to support the employee's certification, such as Procurement Ethics training, is acceptable for CLPs. However, employees cannot earn CLPs for normal contracting duties, tasks, and responsibilities expected of employees serving in positions as Contracting Officers, CORs and program/project managers. The FAI website contains information on point allocations for acceptable continuous learning (CL) events for each certification program listed at <https://www.fai.gov/training/continuous-learning-opportunities>. To meet the CLP requirement, all certifications have been standardized to a common CL period which will be from May 1, 2022, through April 30, 2024. These common CL periods will continue every two years with the same expiration date moving forward.

### **How do I document continuous learning?**

You may complete training internally within CSOD through DAU or FAI offerings, both online and instructor led. CLPS for training completed internally will automatically appear in an employee's Continuous Learning Individual Progress (CLIP) Dashboard in CSOD. You may also complete acquisition related training externally outside of CSOD. Submit an External Continuous Learning Activity Request in CSOD for all training activities eligible for CLPs that were completed outside of CSOD. If the training certificate does not indicate the number of CLPs or Continuing Education Units (CEUs) earned, the attendee is responsible to provide supporting documentation indicating the number of CLPs earned for the event to their Mission Area ACMD or designated reviewer. The approval decision for these requests is conducted by Mission Area reviewers before being added to your CLIP dashboard.

Courses like the annual USDA IT Security Awareness training are NOT acceptable for credit toward continuous learning.

Examples of acceptable documentation to support CL point requests include:

- HR document, e-mail, letter, or internal agency training certificate describing and confirming rotational, developmental, and/or mentoring assignments. Each document should show title, completion date, and signature of Supervisor or Mission Area ACMD;
- Course completion certificates;
- Transcripts;
- E-mail/letter from a professional organization verifying the requesting employee attended or presented at meetings/seminars/conferences;
- Copy of published article; and
- Event objective or contents, etc.

USDA requires any GS-1102 or GS-1105 who holds an FAI issued FAC-C and those who are SF-1402 warranted Contracting Officers to complete 80 CLPs every two years and adhere to their Mission Area ACMD's guidance on tracking CL. Although not certified, non-FAC-C warranted Contracting Officers must ensure their CLPs meet the FAC-C contracting competencies. Employees must provide evidence of meeting the CL requirements for their warrant or certification(s) to their Mission Area ACMD per Mission Area guidance.

*401.601-74 Responsibility for the Acquisition Workforce Career Management Program.*

OCP/PPD will develop and issue policies, procedures, training plans, and other guidance for implementation of acquisition workforce mandates. As the oversight authority for USDA's AW programs,

OCP/PPD will:

Make final determinations on applicability of mandates;

HCA will:

- Manage Contracting Officer appointments;
- Ensure Contracting activities require their AW to use FAI CSOD;

MASCO will establish and prescribe an AW accountability system that:

- Sets a performance standard;
- Includes an adequate set of checks and balances;
- Includes external and internal review coverage;
- Involves annual appraisals;
- Identifies effective and ineffective performance;
- Ensures supervisors and Mission Area ACMDs are fully knowledgeable of the program requirements and comply with the provisions;
- Ensures supervisors or ACMDs schedule and evaluate training;
- Manages continuous learning completion;
- Reviews Contracting Officer requests;
- Approves Contracting Officer Certificates of Appointment, as appropriate;

Supervisors or Mission Area ACMDs will:

- Assess needs and, as appropriate, recommend employees for Contracting Officer appointments;
- Assist AW in planning and scheduling appropriate training;
- Assist MASCO in preparation and submission of warrant and waiver requests;
- Review/approve certification and CLP requests;
- Monitor and evaluate employees' progress in completion/maintenance of training standards;
- Ensure Contracting Officers properly display the Certificates;
- Mission Area ACMDs must track continuous learning progress and for FAC-C certified employees and non-certified warranted employees provide CLP progress reporting, at least quarterly, to their impacted employees and MASCO. Reporting should include the number of CLPs each employee has earned during the current continuous learning cycle.

Employees will:

- Make a personal effort to take maximum advantage of developmental experiences, and training opportunities, as required and as authorized by supervisors;
- Actively participate with supervisors and Mission Area ACMDs in discussing, developing, and preparing training plans;
- Maintain an updated transcript in FAI CSOD containing certifications, CO warrants, training certificates and other relevant information;
- Consistently monitor acquisition workforce related competencies and actively work to achieve and maintain proficiency; and
- Know when the common two-year CL period ends, as well as understand that all CL requirements must be completed and approved by the Mission Area ACMD prior to the end of the two-year CL period. Ensure all training is completed and approved prior to the end of the common two-year CL period.

#### *401.601-75 USDA Procurement Internal Review Program*

##### **What is the USDA Procurement Internal Review Program?**

- The USDA Procurement Internal Review Program provides the mechanism for HCA oversight through the annual presentation by MASCOs of the results of their Self-Inspection Programs for the previous fiscal year. Results of the presentations will be used by the HCA to assist MASCOs in making continuous improvements in their acquisition processes and to identify “best practices” that can be shared across USDA.
- The HCA is responsible for providing the annual template for MASCO presentations by November 30<sup>th</sup> of each year. This template will be based on GAO’s “Framework for Assessing the Acquisition Function at Federal Agencies” to align with the MASCO Self-Inspection Program and will include HCA Special Interest Items based on USDA-wide procurement concerns.
- The HCA is responsible for maintaining oversight of the contracting function, which includes ensuring adequate oversight of all acquisitions conducted by the contracting activity and the fundamental integrity of its contracting system to mitigate the risk of fraud, waste, or abuse in USDA procurements.

##### **What is the MASCO Self-Inspection Program?**

- MASCOs are accountable for procurement quality and are responsible for managing a self-inspection program, which includes both a quarterly (at a minimum) assessment of individual contract files and the annual assessment of contracting management programs through the following:



- Contract File Reviews (CFRs) are quarterly (at a minimum), formal, data-driven evaluation of performance to predetermined standards and the presentation of that evaluation in a manner that induces change towards improved contract quality. CFRs are a continuous review cycle, using a standardized checklist, collecting and maintaining data to enable decision making, and corrective action planning. Sampling methodology should include both randomized sampling and judgmental sampling (which is based on management’s assessment of higher-risk procurements) from across the entire population of actions executed during the review period.
- Acquisition MASCO Reviews (AMRs) are an annual, formal evaluation process to ensure an efficient, effective, and accountable acquisition process. Mission Areas should ensure that their AMRs meet the minimum requirements detailed in the Government Accountability Office's (GAO) “Framework for Assessing the Acquisition Function at Federal Agencies” available at <https://www.gao.gov/assets/gao-05-218g.pdf> and also include an assessment of all business systems used as a mean of procurement by that organization.
- Based on feedback from AMRs and CFRs, each MASCO is responsible for creating, documenting, and continuously improving their own program for self-inspection, to include a process for closing resolved findings in a timely manner, ensuring an effective level of review necessary to close a finding, integrating findings and resolutions into Mission Area training, and reporting results during the MASCO’s annual Internal Review presentation. MASCOs will ensure that their Self-Inspection Program provides appropriate oversight and review for any subordinate contracting organizations.
- Reporting requirements: MASCOs shall provide a presentation, in the HCA-provided format, for their annual Internal Review presentation to the SPE and HCA by February 15<sup>th</sup> of each year.
- Based on their annual presentations and discussions with the SPE and HCA, MASCOs will submit an Action Item Plan containing areas for improvement and best practices that will enhance the procurement quality of their organizations. MASCOs are requested to submit updates to the HCA as feasible. High-risk items may be flagged by the HCA for required quarterly (at a minimum) updates.
- Upon request from the HCA, MASCOs should consider providing volunteers at a grade of GS-14 or higher, to serve on an HCA Review Team.

**What does the HCA Review Team do?**

- An HCA Review Team may be organized to conduct Internal Reviews of Mission Areas for the following:
  - At the request of the MASCO in response to staffing shortage that prevents implementation of self-inspection program, or other Mission Area need; or
  - If the HCA determines that risk areas identified by Mission Area self-reporting or other means are not improving.
- Reviews initiated by the HCA will follow these general guidelines:
  - Issuance of the HCA Review Team Announcement Letter to the MASCO, detailing the scope of the review;
  - Request to the MASCO to provide any pre-review documentation;
  - An Entrance Briefing for the MASCO and Mission Area senior leadership by the HCA Review Team (as requested);
  - Conducting interviews and examinations of files by HCA Review Team members;
  - Compiling and documenting the review outcomes by HCA Review Team members;
  - Providing an Exit Briefing to the MASCO and Mission Area senior leadership (as requested); and
  - Preparing and issuing the final report.

## 401.602 Contracting Officers.

### *401.602-1 Limitations on Authority.*

Contracting Officers may not sign actions with obligation values or estimated values, whichever is greater, exceeding their delegated warrant authority. 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 the receipt of goods and services. Cardholders must confirm the receipt of goods and services and comply with PGI 432.11 requirements.

Contracting Officers are legally responsible for their signed procurement documents. Contracting Officers cannot sign “for” or over the name of another Contracting Officer. For actions using Robotic Process Automation (RPA), refer to mission area guidelines.

### *401.602-2 Responsibilities.*

#### **How is Legal Advice obtained?**

Contracting Officers are encouraged, on a case-by-case basis, to request legal advice at any phase of the acquisition process. Contracting Officers must submit enough information to facilitate legal review to the Office of the General Counsel (OGC) via the MASCO, unless otherwise directed. OGC will review the package and determine if it is legally sufficient. If OGC is unable to provide a determination within ten working days from receipt of request, the Contracting Officer may annotate the file and continue the procurement process without OGC review or advice. Urgent requests should be escalated through the MASCO to the HCA.

#### **How is Legal Advice documented?**

Recommendations received from OGC are advisory. Final disposition rests with the Contracting Officer. Contracting Officers must document the file if there are major differences between OGC’s recommendations and their final decisions or actions. As appropriate, Contracting Officers should include a brief statement in the contract file describing the reason for their decision not to obtain legal review. However, for documents submitted to the HCA/SPE, OGC review is required (except for Abbreviated Acquisition Plans and Acquisition Strategy/Acquisition Plans). Recommendations (or decision for lack of OGC review) should be submitted with the package. Also, see PGI 404.803 for additional instructions regarding contract file documentation.

### *Contracting Officer’s Representative Designation Overview*

All service and construction contracts must have either:

- A COR; or
- A designated (in IAS) invoice approver if a COR is not required per FAR 1.602-2(d). The designee does not have to be COR certified to approve an invoice.

The CO will consider the risk factors (e.g., complexity, contract type) to help determine the appropriate COR level for a specific contract during the acquisition planning. The CO may find the COR Designation Criteria Matrix helpful to determine if a COR is needed and at what level.

**COR DESIGNATION CRITERIA MATRIX:**

<b>Risk Factor Sensitivity or Complexity of What is Being Procured</b>	Little or no risk associated with project Oversight confined to basic inspection and acceptance (e.g., COTS or standard supplies)	Significant or high risk associated with project Highly complex requirements; professional and technical services closely associated with inherently governmental functions; critical function; continuous oversight or technical direction required (e.g., developmental; new or emerging technologies; poor or no performance history)
<b>Number and Location of Performance Sites</b>	Noncomplex shipping/delivery at a single domestic delivery site	Highly complex shipping/packaging/delivery (e.g., requiring export; staging of shipments; multiple customers with competing requirements; multiple deliverables or sites; foreign performance site(s)) (span of control)
<b>Impact of Delay</b>	If project is delayed, no serious impact to mission that cannot be easily alleviated	Serious impact on mission; high degree of impact on follow-on or interdependent projects; time is critical due to urgency, weather, or long lead time items in critical path (e.g., contingency contract)
<b>Visibility</b>	Little or no internal or external interest anticipated	High degree of internal or external interest anticipated (e.g., GAO oversight; congressional engagement; other special interests)
<b>Contract Type/Structure</b>	Firm fixed price contracts with basic provisions	Contracts other than firm fixed price (e.g., letter contract; cost-type contract; contract financing provisions required; hybrid contract; incentives; time and materials contract)
<b>Special Considerations</b>	No rights in data or government property required; No Personally Identifiable Information (PII) or security concerns	High level of oversight required to assure government/contractor rights in data or government property; Significant security concerns relating to contract classification or PII data

<b>Certification</b>	<b>Contract Risk</b>
Level I	Low-risk contracts, e.g., supply contracts and orders
Level II	Perform general project management activities/ moderate to high complexity contracts for supply and service contracts
Level III	Perform significant program management activities/ moderate to high complexity with significant/major acquisition investment as defined by OMB Circular A-11/agency-mission critical contracts

**How are CORs nominated?**

To nominate CORs, program offices use the “COR Nomination” template located at the following link: [Sharepoint | Templates](#). The template may be used for other COR nominations at the discretion of the responsible MASCO. A “COR Nomination” and “COR Designation” should both be used. CORs must be

nominated as early as possible in the procurement process, no later than two weeks after period of performance start. The CO will not accept nominations without the supervisor or GS-15 or higher signature; the contracting office does not approve the nomination.

For Blanket Purchase Agreements (BPAs) or Indefinite Delivery Indefinite Quantity (IDIQ) awards where one COR is assigned to multiple BPA call orders or Delivery/Task Orders, only one nomination form at the award level is required. When a different COR is assigned to a BPA call order or Delivery/Task Order than the COR that is assigned to the award level, a “COR Nomination” and “COR Designation” must be completed.

Alternate CORs may be assigned, at the discretion of the Mission Area and the Contracting Officer. Alternate CORs must meet the COR qualifications and the COR Nomination template must be completed, as described above. A “COR Designation – Alternate” must also be completed. The appointment of an Alternate COR ensures that oversight of the contractor continues in the event the primary COR is unavailable. The length of time an Alternate COR provides oversight in the absence of the primary COR is deemed as experience towards the COR certification requirement.

COs must send the “COR Designation” to the contractor, per FAR 1.602-2(d)(7). Forms and instructions are located at [Sharepoint | Templates](#). If a COR needs to be replaced, new nomination and designation forms must be completed and signed by the appropriate supervisor or GS-15 or higher. At a minimum, those CORs for major investments, as defined by OMB Circular A11, must generally be designated as FAC Level III CORs.

#### **Who approves COR nominations?**

The supervisor of the nominated COR for:

- Commercial off the Shelf (COTS) IT supply not exceeding the amount listed in FAR 13.500(a);
- Services & construction not exceeding the simplified acquisition threshold (SAT).

A GS-15 or higher within the nominated COR’s supervisory chain for:

- COTS IT supply over the amount listed in FAR 13.500(a);
- Non-COTS IT of any value;
- Services & construction over SAT.

#### **How is COR eligibility managed?**

CORs that do not meet CL requirements may have their appointment suspended or rescinded to all assigned contracts until their CL requirements are met. Eligibility for reappointment/redesignation as a COR to the contract will not occur until CL requirements are met and confirmed by the COR's Mission Area ACMD.

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

Unauthorized commitments (UAC) occur when an employee makes an agreement on behalf of the Government that is not binding because they lack authority to enter into an agreement. For instance, when there is insufficient funding, use of funds is not approved, the warrant authority does not allow for the award made, period of performance has expired, etc.

Ratifications to approve unauthorized commitments should be conducted in accordance with FAR 1.602-3, approved at a level no lower than the MASCO unless otherwise authorized by the HCA or SPE. When it becomes

known that an unauthorized commitment occurred, the Government must follow the processes in FAR 1.602-3 and below.

**What are the procedures to ratify unauthorized commitments?**

There are two procedures by which an unauthorized commitment may be ratified. The first procedure involves stand-alone unauthorized procurement actions committed where no contractual arrangement already exists. The second procedure involves claims that are subject to resolution under the Contract Disputes Act of 1978. These types of claims must be processed in accordance with FAR Subpart 33.2, Disputes and Appeals. An example of such an action is the request for payment from a contractor/vendor for additional work, within the general scope of an existing contract, directed by the Contracting Officer's Technical Representative. Reference FAR 1.602-3(c) for when ratification authority may be exercised.

Some types of unauthorized procedures are not prescribed by or interpreted for either ratification procedure. In these cases, Contracting Officers must contact their Policy and/or the Office of General Counsel for assistance. Per FAR 1.602-3(d), legal advice should be obtained in cases of non-ratifiable commitments. If it is determined that the non-ratifiable commitment should not be paid (i.e., the Government did not receive and accept services, vendor received payment, and funds need returned to USDA), the CO should consult with the Office of the Chief Financial Officer (OCFO), <https://www.ocfo.usda.gov/>.

**What are examples of unauthorized commitments?**

Examples of unauthorized commitments include: (a) Government purchase cardholder makes a purchase over their single purchase limit. (b) Commitment for continuation of services or delivery of supplies under an expired contract, purchase order, or delivery order. (c) Commitment for performance of work or delivery of supplies prior to issuance of a contract, purchase order, or delivery order. (d) Commitment which exceeds the call order limit on a blanket purchase agreement. (e) Commitment under an award by a person who is not delegated authority (i.e., COR, program office). (f) Commitment which continues contract services over and above the original scope and dollar amount; or a commitment made by an otherwise authorized Contracting Officer. (g) Government purchase cardholder makes multiple purchases from the same vendor on the same day, the total of which exceeds the single purchase limit, and the total requirement was known at the time of the first purchase.

Note: procedures include Government Purchase Card (GPC) and fleet cardholders who exceed their micro-purchase authority while using purchase cards or checks.

**1) What is the Responsibility of the Employee who made the Unauthorized Commitment?**

1. Complete the "UAC Request to Ratify an Unauthorized Commitment" (*Attachment 1*) and include all the facts and pertinent documentation to support the ratification request. Attachment 1 is located [here](#).
2. Consult with the Contracting Officer (CO) if there are any questions concerning the information required to complete the request to ensure the accuracy of the information being submitted. Provide an editable copy of the request to the CO so comments/changes can be recommended.
3. Ensure the budget official and all managers in the employee's supervisory chain sign the request to ratify.
4. Send the completed "UAC Request to Ratify an Unauthorized Commitment" to the CO.
5. If the request is approved by the Ratifying Official, the total amount of purchases creating the Unauthorized Commitment does not exceed the micro purchase threshold, and payment has not been

made, then either; (a) pay using normal GPC procedures, (b) submit a “no-commit” requisition in IAS and specify that payment will be made by the GPC or; (c) submit a funded requisition in IAS.

6. If the request is approved by the Ratifying Official, the total amount of purchases creating the Unauthorized Commitment does exceed the micro purchase threshold, and payment has not been made, then either; (a) submit a “no-commit” requisition in IAS and specify that payment will be made by the GPC by a warranted Contracting Officer or; (b) submit a funded requisition in IAS.
7. The employee has no further action if the request is approved by the Ratifying Official and payment has been made.
8. If the Ratifying Official does not approve the request, the employee making the unauthorized commitment may be personally liable for payments of the supplies/services. Employee should consult with their supervisor and the CO to determine the next steps.

## **2) What is the Responsibility of the Employee’s Supervisor and Senior Executive Service (SES) member?**

1. Unauthorized commitments violate federal laws and regulations and may result in personal liability or adverse personnel action for the responsible employee(s). The supervisor must take positive action to prevent unauthorized commitments and ensure this policy is communicated to employees within their organization.
2. Ensure the employee who made the unauthorized commitment provides information that is accurate and complete, and includes facts and pertinent records or documentation, if applicable, to support the ratification request.
3. Ensure the budget official and all appropriate managers in the employee’s supervisory chain, including the SES signs the ratification request.
4. Disciplinary actions are at the discretion of the individuals’ supervisor and SES. The supervisor should consider factors such as the dollar value of the unauthorized commitment, whether the individual has repeatedly committed unauthorized actions, and the specifics of the action (i.e., lack of knowledge or training, pressure by someone else, etc.).

## **3) What is the CO’s Responsibility?**

When contracting personnel learn that an unauthorized commitment occurred or the vendor is performing services due to the actions of a government official that lacked the authority to bind the government, the CO is required to:

1. Immediately notify the vendor to immediately discontinue performance, notify the employee who made the unauthorized commitment and the employee’s supervisor that an unauthorized commitment occurred. Verbal notifications must be followed-up in writing (*email or letter*) and include at a minimum, a:
  - i. Summary of the verbal discussion instructing the vendor to immediately discontinue performance, including the date and time of the discussion.
  - ii. Description of the services being performed subjected to the unauthorized commitment.
  - iii. Statement - “A claim for payment for any future unauthorized commitment action is subject to resolution of the Federal Acquisition Regulation (FAR) 1.602-3(b)(5) under the Contract Disputes Act of 1978 and should be processed in accordance with FAR Subpart 33.2, Disputes and Appeals. This regulation is found at <https://www.acquisition.gov/browsefar>.”
  - iv. Vendor’s invoice. An invoice submitted prior to ratification is not considered proper because no contract was in place at the time of the unauthorized commitment.

- a. If an invoice is received prior to ratification, the invoice must be rejected. Inform the vendor that the invoice will be readdressed once the unauthorized commitment procedures are complete.
  - b. If an invoice is received prior to ratification, and was erroneously approved, contact the Mission Area finance office immediately.
2. Contact the MASCO to obtain an assigned control # and provide pertinent tracking information (see MASCO Responsibilities below).
3. Provide the “UAC Request to Ratify an Unauthorized Commitment” (*Attachment 1*) to the employee who made the unauthorized commitment. Assist the employee with addressing the data and information needed in the request for ratification, as appropriate. Attachment 1 is located [Sharepoint | Templates](#).
4. Ensure the accuracy and completeness of the information received from the employee who made the unauthorized commitment and ensure the appropriate supervisor and SES have signed the ratification request.
5. Complete the “UAC Contracting Officer’s Determination and Findings for Ratification” (*Attachment 2*) to support the CO’s decision to recommend approval or disapproval of the request to ratify the unauthorized commitment. If the UAC cannot be ratified but the government has received and accepted goods or services, the CO should determine fair and reasonable payment due, and resolve the UAC by contacting the Mission Area finance office for payment processes. Attachment 2 is located [Sharepoint | Templates](#).
6. Submit the request for review and approval through the supervisory chain.
7. Immediately advise the employee who made the unauthorized commitment of the decision of the Ratifying Official to ratify or not to ratify.
8. Maintain a copy of all documentation.
9. Ensure the vendor is registered in the System for Award Management (SAM).
10. If the request is approved by the Ratifying Official, the total amount of purchases creating the Unauthorized Commitment does not exceed the micro purchase threshold, and payment has not been made, either; (a) pay using normal GPC procedures, (b) create a modification in IAS, if award was previously made via IAS, or (c) create a new Purchase Order (PO) in IAS.
11. If the request is approved by the Ratifying Official, the total amount of purchases creating the Unauthorized Commitment does exceed the micro purchase threshold, and payment has not been made, then either; (a) create a modification in IAS, if award was previously made via IAS, with an associated the Federal Procurement Data System (FPDS) record, (b) create a new award in IAS with an associated FPDS record, or (c) create a manual FPDS record, if Forest Service emergency incident paid via GPC.
12. For actions in IAS, include a statement in the *description field*: “This action is a Ratification of an Unauthorized Commitment”. If using the GPC, identify the purchase as GPC purchase (see the [IAS User Guide](#) for entering awards as GPC).
13. For actions in FPDS, include a statement in the *description field*: “This action is a Ratification of an Unauthorized Commitment”. If using the GPC, select “Yes” for “Purchase Card Used as Payment Method”.
14. There is no further action if the request is approved by the Ratifying Official and payment has been made.
15. Vendor’s invoice. *An invoice submitted prior to the ratified approval of an unauthorized commitment is not considered proper because there was no contract issued prior to the unauthorized action. The*

*Prompt Payment Act authorizes interest after a properly completed invoice is submitted and a specified time has elapsed without payment. Interest cannot accrue until the ratified action is authorized and a proper invoice is submitted.*

- i. If the ratification is approved, and award is made through IAS, issue the contract and instruct the vendor to submit a proper invoice with the appropriate contract number and any other revised invoice information through the Invoice Processing Platform (IPP).
- ii. If the ratification is approved, and award is made with the GPC, a requisition will be received in IAS for award if the amount is over the micro purchase threshold. See paragraphs 1)6 and 1)7 above under employee's responsibilities.
- iii. If the unauthorized commitment cannot be ratified but the CO determines payment is due, request a revised invoice.
- iv. If the unauthorized commitment cannot be ratified and/or the CO determines payment is not due, coordinate with the vendor.

#### **4) What is the Responsibility of Contracting Supervisors?**

1. If a Contracting Officer made the unauthorized commitment, assign a different CO to process the unauthorized commitment.
2. Ensure the information in the ratification request is accurate and complete, and includes facts and pertinent records or documentation, if applicable, to include:
  - a. Supplies or services were provided to and accepted by the Government, or the Government otherwise obtained or will obtain a benefit resulting from the performance of the unauthorized commitment.
  - b. The action would have been proper if made by an appropriate Contracting Officer.
  - c. The Contracting Officer reviewing the unauthorized commitment determines the price is fair and reasonable.
3. Ensure the budget official and all appropriate managers in the employee's supervisory chain, to include the SES, sign the request.
4. Recommend to approve or disapprove the "UAC Contracting Officer's Determination and Findings for Ratification" (*Attachment 2*), depending on the circumstances and the supporting data.

#### **5) What is the Responsibility of the Ratifying Official?**

1. Review the documentation and if changes are required or additional documentation needed, notify the CO.
2. Approve or disapprove the "UAC Contracting Officer's Determination and Findings for Ratification" (*Attachment 2*), depending on the circumstances and the supporting data.
3. Approval of Attachment 2 is the "Ratification"; the Ratifying Official doesn't sign or approve the contract action to obligate funds, if necessary.
4. Provide a copy of the approved/disapproved Attachment 2 to the appropriate Contracting Officer.

#### **6) What is the MASCO's Responsibility?**

1. Take positive actions such as training, robust pre-award review procedures, etc. to stop the occurrence of unauthorized commitments.
2. MASCOs are required to maintain a log and files of unauthorized commitments and provide annual updates to OCP. *By October 30<sup>th</sup> of each year provide a listing of previous fiscal year unauthorized*



*commitments to [procurement.policy@usda.gov](mailto:procurement.policy@usda.gov). At a minimum, the listing should include description, date, amount, and whether each unauthorized commitment was ratifiable.*

#### 401.603 Selection, Appointment, and Termination of Appointment for Contracting Officers.

##### **Warrant Overview**

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 a federal employee outside of a contracting activity (i.e., Program Office) or not otherwise within the supervisory chain of command of the MASCO will generally not be considered unless there is a very compelling and demonstrated organizational need and with approval via a waiver in writing from the SPE. The MASCO must address waiver requests to the SPE. The waiver authority is not delegable or transferable.

As part of the responsibility of oversight of the AW, the MASCO must perform an annual review of all warrants issued to validate the continued need for each warrant and determine if Contracting Officers maintained professional proficiency to keep their warrant.

##### *401.603-2 Selection.*

##### **What should Appointing Officials consider when selecting Contracting Officers?**

The appointing official must ensure the applicant can successfully apply applicable procurement laws, regulations, policies, and sound business judgment. Appointing officials set limitations of warrant authority for each Contracting Officer based on factors such as experience in acquisition, education, knowledge of acquisition methods, satisfactory completion of required acquisition training courses and continuous learning, understanding of acquisition laws and regulations, and personal integrity and professional conduct in exercising acquisition responsibilities. Warrants are not issued solely based on certification achievement. Warrant appointment requests must be completed on the [Warrant Appointment Request](#) template. See PGI 401.601-71 for more information concerning waivers.

##### *401.603-3 Appointment Overview.*

Authority to enter contractual relationships and commit the Government to the expenditure of public (taxpayer) funds is a delegated authority, which must be issued in writing to the individual. The MASCOs, through the HCA delegation, are the agency's appointing officials for Contracting Officers, unless otherwise authorized by the SPE in writing. The HCA and MASCO must determine if the appointment is consistent with applicable requirements of the AGAR, the FAR and other delegations of authority. The HCA must approve and is the appointing official for MASCO Contracting Officer warrants.

Appointing officials must review Warrant Appointment Requests, and issue and manage Contracting Officer warrants. The Certificate of Appointment is generated on a Standard Form (SF) 1402 (warrant) and states the employee's name (not a position); limitations on the scope of appointment authority; and must be displayed openly to the general public and agency personnel. The authority authorizes the employee to commit the Government to buy goods and services and obligate funds subject to any limitations as stated in the warrant.

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Contracting Officers have authority to sign contract actions or estimated values up to their delegated warrant authority as specified on the SF-1402. When assigning work, supervisors are advised to use this authority for the most efficient and effective use of resources. The maximum warrant authority must remain within the limitations in the following table which contains information on the minimum requirements for issuing Contracting Officer warrants. Appointing Officials may further limit authority as necessary.

Contracting Officer Warrant Authority for GS-1102/1105 Personnel and Mission Area Senior Contracting Official (MASCO):

	Years of Experience Required	Approval Level	Maximum Warrant Authority
Level A <sup>1</sup>	N/A but must complete 100 hours of procurement related courses from FAI, DAU or FAI qualified training vendor to include CON 2370 or equivalent course; or be FAC-C certified	MASCO	All contract types limited to the amount listed in FAR Part 2 for simplified acquisition threshold
Level B <sup>2</sup>	1	MASCO	All contract types, including construction and A&E, limited to the threshold in FAR Subpart 13.5 for Commercial Products & Commercial Services
Level C <sup>2</sup>	2	MASCO	\$50M
Level D <sup>2</sup>	4	MASCO	Unlimited
MASCO <sup>2</sup>	8	HCA	Unlimited

<sup>1</sup>September 30, 2023, is the last day to issue a Level A warrant. Beginning Oct. 1, 2023, previously issued Level A warrants are grandfathered in and we will issue no new Level A warrants going forward.

<sup>2</sup>Beginning Feb. 1, 2023, Level B, C, D, and MASCO all require FAC-C Professional Certification or have already received FAC-C Level I, II, or III. They must also meet the minimum years of experience required.

The above year(s) of experience requirement is the minimum that is required across USDA to be eligible to receive warrant. MASCOs in USDA mission areas can require more years of experience, in addition to the minimum requirement, based on the types of supplies and services that are procured and associated complexity.

There is not currently a department wide requirement to obtain credential(s). As we learn more about the credentials program from OFPP, OCP may add this as a requirement in the future. Nevertheless, obtaining credentials is important to the department, and Contracting Officers and Supervisors should encourage their staff to obtain them based on the supplies and services that are procured in their mission area.

To maintain an appointment, all warranted Contracting Officers are required to complete at least 80 hours of continuous education or training every two years (current training period begins May 1, 2022, and ends April 30, 2024). If this condition is not met, the SPE, HCA, MASCO, ACM or ACMD must revoke or suspend the appointment. If the Contracting Officer continues to perform contract functions after the non-compliance of the

continuous education requirement, it may result in unauthorized commitments as the employee will be acting without authority.

*401.603-4 Suspension/Termination.*

The SPE, HCA, MASCO, 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 CFR Part 2635);
- 3) Failure to maintain training standards after appointment;
- 4) Failure to maintain a satisfactory performance rating;
- 5) Reassignment to a non-1102 or non-1105 position;
- 6) Reassignment to a position not requiring a warrant;
- 7) The organization’s need for the appointment ends; or
- 8) Separation from the organization (Automatic Termination).

Warrants do not automatically terminate when an individual is detailed or temporarily reassigned to another Agency/Location.

*401.670 What are the Roles and Responsibilities of the Acquisition Team?*

The MASCO and the Mission Area Senior Program Manager (MASPM) oversee the acquisition system within each Mission Area. The acquisition team at USDA has many responsibilities. These responsibilities are performed by different roles depending on the value, complexity and content of the requirement. These roles can be filled by a variety of staff within the Mission Areas based on the same types of characteristics. For example:

- 1) Traditional agency operating requirements (e.g., office furniture and supplies, janitorial services, lab equipment, vehicles, and equipment) can typically be performed by staff who have received general training in the procurement process.
- 2) More complicated requirements (professional services, basic construction, specialized training, maintenance, and repair services) require more training to adequately protect the government’s interests.
- 3) The most complex requirements (e.g., major construction, aviation, information technology development, research) require highly certified program managers, specialized Contracting Officers and experienced Contracting Officer Representatives. Below are the roles and examples of positions who may fill that role.

<b>Acquisition Role</b>	<b>Examples of Mission Area Staff/Series/Title</b>
<b>PROGRAM/PROJECT MANAGER (P/PM)</b>	Any Mission Area personnel who have technical knowledge of the requirement and have the authority to make decisions on what can be purchased. May need to be certified as a FAC-P/PM
<b>CONTRACTING OFFICER’S REPRESENTATIVE (COR)</b>	Any Mission Area personnel who have technical knowledge of the requirement and have been certified as a FAC-COR
<b>CONTRACT SPECIALIST (CS)</b>	Contract Coordinator, Procurement Technician, Purchasing Agent, Contract Specialist
<b>CONTRACTING OFFICER (CO)</b>	Warranted Purchasing Agent, Contract Specialist who holds a FAC-C

Program and certain staff offices decide what to buy and when to buy. The Contracting Officer determines how to buy, the conduct of the buying process, and executes the contract.

Program personnel, using the contracting process to accomplish their programs, must ensure that: (1) Advanced Acquisition/Forecasts and Acquisition Plans are completed, as required; (2) A Procurement Forecast notice per DR 5090-003 is submitted to the Mission Area Small Business Coordinator once any acquisition plan is finalized; (3) Requirements are clearly defined and specified; (4) Quality standards are prescribed and met; (5) Performance or delivery is timely; and (6) Files are documented to substantiate the judgments, decisions, and actions taken.

The processes are generally defined for USDA; however, the Mission Area may have additional requirements for some roles and document routing and approvals based on the complexity of the requirement. The roles and responsibilities listed in the “Acquisition Process Roles and Responsibilities” listed [Sharepoint | Templates](#) are provided as a guideline for the typical acquisition. This is not an exhaustive list of responsibilities. The specific role named is not necessarily responsible for an action, however; the office listed is responsible. See the Federal Acquisition Institute (FAI) site for competencies (and actions) required for each role. <https://www.fai.gov/certification/certification-and-career-development-programs>

#### 401.671 Performance Plan Standards Overview.

Supervisors of the acquisition workforce should include performance standards in annual performance plans to promote integrity and accountability in the acquisition system. The MASCO and MASPM should provide feedback on performance as appropriate.

#### *401.671-1 What are suggested performance standards for a Program Manager or Contracting Officer Representative?*

The following shows suggested performance standards for a Program Manager or Contracting Officer Representative who spends a significant amount of time on procurement responsibilities:

Consistently prepares requirements documents by or under any prescribed time limits. Prepared documents reflect a thorough understanding of the requirements, are complete, and are prepared in accordance with established agency formats and policies. Requirements are documented and described from an outcomes perspective and identify distinctive definable/measurable outcomes as triggers for when, and to what extent, payment should occur. Proposal evaluations are completed in a timely manner and are substantive, well-documented, and consistent with agency policies and established procedures. Participates in negotiations as part of technical team. Communicates regularly with the Contracting Officer and others in a positive, cooperative, and professional manner.

Understands the contract’s technical requirements as well as the terms and conditions. Tracks and inspects contract deliverables/services to ensure timeliness and conformance with contract requirements. Performs acceptance in a timely manner. Resolves technical issues in a timely manner using professional judgment and analytical ability. Documents actions in accordance with agency policies. Evaluates contractor’s performance in a timely manner and in accordance with established agency format and procedures. Required submissions to the Contracting Officer are accurate and complete. Regularly communicates with the Contracting Officer, contractor, and others in a positive, cooperative, and professional manner.

*401.671-2 What are suggested performance standards for a Contract Specialist or Contracting Officer?*

Consistently performs according to law, regulations, procedures and guidance in meeting customer's requirements. Conducts and documents market research and evidence of competition. Completes all pre-award clearance forms, determinations, and memorandums. Reviews and submits Small Business Subcontracting Plans as applicable. Includes Acquisition Approval Requests (AARs) for applicable IT purchases. Documents Selection and Price reasonableness. Assigns CORs to applicable contracts. Completes the performance evaluation in the Contractor Performance Assessment Reporting System (CPARS) on all applicable procurements. Conducts contracts closeout including deobligation of funds within required timeframes.

Demonstrates ability to successfully manage complicated, high dollar, or high-volume procurements. Achieves overall stakeholder (internal and external) satisfaction with:

- 1) the pre-contract formation process by managing expectations, proactive communication, and innovative solutions to needs.
- 2) the administration process including funding issues and exercising options by effectively communicating with stakeholders in writing, providing timely response to inquiries, keeping customers informed on status of contract actions; coordinating key milestone dates; working with customers to resolve issues encountered during contract life cycle; and maintaining good working relationship with the program and COR.

*401.672 Selection, Appointment and Termination of Non-Warranted Ordering Officials Overview.*

This policy applies only to non-warranted, non-GS-1102/1105 ordering officials placing orders more than 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.

**What are the requirements to be a non-warranted ordering official?**

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 indefinite delivery contracts and blanket purchase agreements (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) The indefinite delivery contract or BPA must be awarded by a USDA Contracting Officer.
- 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 MASCO 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 officer authority at any time.

## PART 402--DEFINITIONS OF WORDS AND TERMS

### 402.101 Definitions.

“Advisory and Assistance Services” means services which fall into the Product Service Codes (PSCs) listed at <https://www.acq.osd.mil/asda/dpc/ce/p2p/transparency-of-procurement-spending.html>, and <https://psctool.us/references>.

“Chief of the Contracting Office” (COCO) has overall responsibility for contracting services in their designated office and for the quality, accuracy, and completeness of documents submitted by their offices to higher levels. The degree of COCO authority varies, depending on organizational workload, breadth of responsibility, warrant authority, and individual experience.

- 1) The COCO must be approved by the HCA and appointed in writing by the MASCO.
- 2) The COCO must maintain Level III FAC-C certification.

“Digital Services” means the electronic delivery of information (including facts, data, opinions, and content) across multiple platforms, devices, and delivery mechanisms like web or mobile applications. More information is available at the [Digital Services Playbook](#), and the TechFAR [Handbook](#).

“Head of Contracting Activity” (HCA), as referenced in the AGAR, is currently filled by one position within USDA.

“Information Technology (IT)” USDA uses the OMB definition as it is expressed in the [M-15-14 Memo](#). USDA uses this definition for planning, implementation, development and execution.

“Level above the Contracting Officer” means a supervisory Contracting Officer unless otherwise stated in the PGI. If the Contracting Officer is the highest-level Contract Specialist or purchasing agent on the unit, this term means the warranted acquisition employee in charge of the procurement function at the next higher organizational level within the acquisition organizational levels of authority.

“Level higher than the Contracting Officer” is the same as “level above the Contracting Officer”.

Mission Area Senior Contracting Official, as referenced in the AGAR, is defined as the “MASCO”.

“Mission Area Senior Program Manager” (“MASPM”) means the designated senior Mission Area expert in program management. Supports the Mission Area Chief Operating Officer (COO) and Mission Area senior leadership in implementing program management within the Mission Area. MASPMs are initially focused primarily on acquisition program management, specifically on Major Acquisition Programs.

“Programs” are directed, funded acquisitions that provide new, improved, or continuing systems or services in response to an approved need. Programs are divided into levels established to facilitate decision-making, execution, and compliance with statutory and regulatory requirements and may be composed of multiple projects, services contracts, interagency agreements, and other types of acquisitions. With a systems or services capability focus, programs usually tie together an agency’s higher-level programming and budgeting process with the agency’s strategic plan. (FAI)

“Program Manager” means the acquisition workforce member with the responsibility and relevant discretionary authority who is uniquely empowered to make final scope-of-work, capital investment, and performance acceptability decisions on assigned acquisition programs. The program manager is also responsible for meeting program objectives or production requirements through the acquisition of any mix of in-house, contract, or reimbursable support resources. Program managers are responsible to stakeholders for management and oversight of subordinate projects within the scope of the overall program. The program manager is ultimately responsible for effectively managing all business and technical risks of the program to ensure effective systems and services are delivered to the end user on schedule, within budget, and at the required levels of performance. (FAI)

A “Project” is a planned acquisition undertaking with a definite beginning and clear termination point that produces a defined capability. A project is an individually planned, approved, and managed basic building block related to a program. A project is not constrained to any specific element of the budget structure; however, basic research, maintenance of equipment and facilities, and operations are not considered projects. (FAI)

“Project Manager” (“PM”) is the acquisition workforce member assigned responsibility for accomplishing a specifically designated work effort or group of closely related efforts. The efforts are established to achieve stated or designated objectives, defined tasks, or other units of related acquisition effort on a schedule, within cost constraints, and in support of the program mission or objective. The project manager is responsible for the planning, controlling, and reporting of the project and for the management of required functions, including acquisition planning, definitization of requirements, business case development, performance of the schedule, and formulation, justification, and execution of the budget. The project manager is responsible for effectively managing project risks to ensure effective systems and services are delivered through a total life-cycle approach to the end user on schedule, within budget and at the required levels of performance. A program manager may also serve as project manager for projects within the scope of the program. (FAI)

A “System” is defined as a combination of elements that will function together to produce the capabilities required to fulfill a mission need. The elements may include hardware, equipment, software, or any combination thereof, but exclude construction or other improvements to real property. See part 434 for information on Major Systems.

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

### SUBPART 403.1--SAFEGUARDS

#### 403.101 Standards of Conduct Overview.

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

#### 403.103 Independent Pricing.

If a Contracting Officer rejects an offer in accordance with FAR 3.103-2(b), the Contracting Officer must first notify the MASCO prior to reporting the suspected violation to the Attorney General in accordance with FAR 3.303. The contracting officer must then give the MASCO a copy of the report filed with the Attorney General's Office.

#### 403.104 Procurement Integrity.

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

The Contracting Officer must determine persons authorized to review contractor bid or proposal information or source selection information in accordance with FAR 3.104-4 and other directives issued by the MASCO.

##### *403.104-5 Disqualification.*

(c)(2) The MASCO has been delegated approval authority under this section.

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

Requests for advice regarding accepting compensation from a particular contractor should be referred to the Ethics Office following the procedures as described at FAR 3.104-6. The requesting individual will notify the MASCO prior to contacting the [Ethics Office](#).

##### *403.104-7 What if there are violations or possible violations?*

The Contracting Officer should forward violations, or possible violations, of the Procurement Integrity Act ([41 U.S.C. 423](#)) to the MASCO using the guidelines described at FAR 3.104-7. The MASCO will then seek direction from the HCA.

## SUBPART 403.2--CONTRACTOR GRATUITIES TO GOVERNMENT PERSONNEL

#### 403.203 How are Suspected Violations of the Gratuities Clause reported?

Suspected violations of the contract clause, FAR 52.203-3, Gratuities, must be reported immediately to the cognizant Contracting Officer in writing, stating the circumstances surrounding the incident(s), the date(s), and names of all parties involved. The Contracting Officer must review the report for completeness, add any additional information deemed necessary, include a recommendation for action, and submit the report through the MASCO to the HCA.

#### 403.204 Treatment of Violations.

The HCA must review the report and consult with the Office of General Counsel and Inspector General to determine whether further action should be pursued. If the facts and circumstances warrant further action, the HCA must give the contractor a formal written notice which summarizes the reported violation and affords the contractor the opportunity to make a written or oral response within a reasonable, specified period after receipt of the notice. The notice must be sent by certified mail with return receipt requested. Oral presentations must follow the procedures outlined in FAR 3.204(b). The HCA will furnish copies of any adverse determination to the



MASCO, the Contracting Officer, and the Department Debarring Officer for their subsequent considerations under FAR 3.204(c)(1) and (2).

## SUBPART 403.3--REPORTS OF SUSPECTED ANTITRUST VIOLATIONS

### 403.303 How are Suspected Antitrust Violations reported?

Contracting Officers must report the circumstances of suspected violations of antitrust laws to the Office of Inspector General (OIG) in accordance with procedures in Departmental Regulations (1700 series).

## SUBPART 403.4--CONTINGENT FEES

### 403.405 Misrepresentations or Violations of the Covenant Against Contingent Fees.

- 1) A suspected misrepresentation or violation of the Covenant against Contingent Fees must be documented in writing by the Contracting Officer and reported immediately to the MASCO. The MASCO will determine if a violation occurred and report any violation to the Office of Inspector General. The MASCO must take action in accordance with FAR 3.405(b).
- 2) If the MASCO decides to refer the case to the Department of Justice, it should be referred through the OIG with a copy of the report and referral submitted through the HCA to the Senior Procurement Executive.

## SUBPART 403.5--OTHER IMPROPER BUSINESS PRACTICES

### 403.502 Subcontractor Kickbacks.

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

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

### 403.603 Responsibilities of the Contracting Officer.

The Contracting Officer, when requesting authorization under FAR 3.602, must prepare a written determination and findings for the signature of the HCA. The determination must document compliance with FAR 3.603, specifying the compelling reason(s) for award, and be placed in the contract file.

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

### 403.806 Processing Suspected Violations.

Suspected violations of the requirements of 31 U.S.C. 1352 must be referred to the OIG in accordance with procedures in Departmental Regulation [1700-002](#).

## PART 404--ADMINISTRATIVE AND INFORMATION MATTERS

### SUBPART 404.2--CONTRACT DISTRIBUTION

#### 404.203 Taxpayer Identification Information.

- 1) Vendors doing business with USDA must have a taxpayer identification number (TIN).
- 2) Vendors registered in the System for Award Management (SAM) have a TIN, unless exempt per FAR 4.1102(a).
- 3) If awarding to a vendor that is not registered in SAM, work with the Office of the Chief Financial Officer (OCFO) to manually establish a vendor record.
- 4) When awarding in IAS and the vendor is not in SAM, contact the IAS help desk.

### SUBPART 404.4—SAFEGUARDING CLASSIFIED INFORMATION WITHIN INDUSTRY

#### 404.403 What are the Contracting Officer Responsibilities?

- 1) When a proposed solicitation is likely to require access to classified information, consult with USDA Departmental Administration, Personnel and Document Security Division, regarding the procedures that must be followed.
- 2) Reference FAR subpart 4.403 for guidance on safeguarding classified information that is released to contractors.
- 3) Reference the FAR 2.101 definition of a “classified contract” for the applicability of all phases of pre-contract activity, including solicitations (bids, quotations, and proposals), pre-contract negotiations, or post-contract activity, if the contract requires access to classified national security information (CNSI) by the contractor.
- 4) Prior to awarding a classified contract, coordinate with the National Industrial Security Program Office (NISPO) to ensure the requirements of Executive Order 12829, as amended, National Industrial Security Program, and the corresponding Department of Defense 5220.22-M, National Industrial Security Program Manual are met.
- 5) Ensure that appropriate and specific security classification guidance is issued for all classified contracts. Security Classification guidance is prepared by the program official in coordination with the NISP Office/ Personnel and Document Security Division (PDS).
- 6) Coordinate with the COR and the Security Contact to ensure protection of CNSI in the possession of contractors and pertaining to contracts.
- 7) Ensures the statement of work outlines specific duties relating to the need for accessing CNSI in their association with USDA, and specific language is included stating, “Contractor agrees to comply with the NISPO.”
- 8) Obtain verification from NISP/ PDS of a facility and personnel security clearance through the Security Contact and/or the Special Security Officer (SSO) (when access to Sensitive Compartmented Information (SCI) is required) prior to the disclosure or release of any classified information to a contractor.
- 9) Review and approve the Contract Security Classification Specification, DD Form 254, including taking the following actions:

- 10) Submit all DD Form 254s to the Defense Counterintelligence and Security Agency (DCSA), Industrial Security Directorate (ISD). You can find the correct regional office to submit the DD 254 by going to [ISD Field Locations \(dcsa.mil\)](https://www.dcsa.mil), or calling the DCSA Knowledge Center at 888-282-7862, option #3.
- 11) Issue a DD Form 254 (revised) whenever a modification to the contract occurs and/or classified duties and needs change during the course of the classified contract. Provide a copy of the revised [DD Form 254](#) to the NISP/PDSD.
- 12) Immediately report to the NISP/PDSD the contractor's intent to make public release of CNSI, disclosure of CNSI, and any occurrence of such activity for which prior written approval of the contracting officer or appropriate visit authorization was not received.
- 13) Ensure that any classified acquisition is conducted as required by the NISP or agency procedures, as appropriate, and include clause 52.204-2, *Security Requirements* in the solicitation and contract, and, as appropriate, in solicitations and contracts when the contract may require access to classified information.
- 14) Inform contractors and subcontractors of the security classifications and requirements assigned to the various documents, materials, tasks, subcontracts, and components of the classified contract.

#### **What are the company responsibilities?**

Companies that USDA wishes to enter into a classified contract with must have a reputation for integrity and lawful conduct in its business dealings. The company must also have a Facility Clearance (FCL) that is in good standing with the Department of Defense. USDA will not serve as a sponsor for a contractor to receive an FCL from the Department of Defense. An active FCL in good standing must be verified before a contract can be entered into with USDA which requires access to CNSI.

The DD Form 254 informs the contractor of the level of information they will be required to access, the level of security clearance the contractors will need, and how they will process, store, transmit, and destroy the classified information when the contract is complete. If the contractor then subcontracts the work, they are obligated, under the National Industrial Security Program (NISP), to pass those requirements on to the subcontract.

**Classified Contracts.** All non-employees who require a security clearance to meet contract or other obligations with the Department will be investigated and granted a security clearance in accordance with the provisions of the NISPOM. Security clearances are required for all contract work involving access to CNSI. Security clearances for personnel performing work on a classified contract must be granted their clearance by the Defense Industrial Security Clearance Office in accordance with the NISPOM.

#### **What are the NISP responsibilities?**

The USDA's Office of Homeland Security (OHS), Personnel and Document Security Division (PDSD), NISP Office and/or SSO, is the point of contact for additional Industrial Security guidance and information on completing the DD Form 254. Please email [ohs.nisp@usda.gov](mailto:ohs.nisp@usda.gov), [ohs.sso@usda.gov](mailto:ohs.sso@usda.gov) or [cnsis@usda.gov](mailto:cnsis@usda.gov). The following will be accomplished by the NISP Office:

- 1) Provide assistance and guidance to contracting and program personnel relating to the security requirements of any procurement action involving CNSI or sensitive information.
- 2) Receive requests for and verify facility security clearances for prospective contractors.
- 3) Assist the contractor, Contracting Officer, or program official, in the development of security classification guidance for contractors requiring access to CNSI.

For a fillable DD Form 254 and more information on completion of the form, go to [DD Form 254 \(pentagon.mil\)](https://pentagon.mil)

## SUBPART 404.5—ELECTRONIC COMMERCE IN CONTRACTING

### **Is use of automated procurement systems required?**

For contract actions that exceed the micro-purchase threshold (as defined at FAR Subpart 2.101 - Definitions), except those identified in the EXCLUSIONS below, Agencies must use one of the following automated procurement systems to process the action:

- 1) The Integrated Acquisition System (IAS);
- 2) Forest Service systems for incident management; or
- 3) The Web Based Supply Chain Management (WBSCM) System for food commodity procurements processed by the Agriculture Marketing Service or Farm Service Agency.

Program personnel must use the automated procurement system to create requisitions/requirements, where applicable, for supplies or services that require contracting authority of the Contracting Officer. Program personnel must coordinate with their contracting office for guidance on whether a requirement should be directed to the contracting office for issuance. FAR Subpart 4.803 lists examples of records that are normally contained in a contract file.

Each MASCO must:

- 1) Develop and implement procedures, such as periodic reviews of specific contracts that were directly processed in the Financial Management Modernization Initiative (FMMI), to ensure all required contracts are in IAS or in the appropriate automated procurement system.
- 2) Ensure contracts awarded in IAS include the complete contract file (as described in FAR Subpart 4.803) stored in IAS.
- 3) Ensure timely filing, as a best practice, filing should take place at the time of award or sooner. Documents must be uploaded to IAS no later than 30 days after award. Ensure that all required contracts awarded by their agency have contractors registered in the System for Award Management (SAM).

### **EXCLUSIONS**

Automated procurement systems are not required for the following:

- 1) Acquisitions from Federal agencies, which are processed through Intragovernmental Payments and Collections (IPAC), unless marked in IAS for payment via purchase card.
- 2) Acquisitions in support of all risk incidents (e.g., fire suppression, hurricanes, floods, or other natural disasters) if a suitable system is not available due to urgency or geographic location; and
- 3) General Services Administration (GSA) Capital Leasing transactions.

## SUBPART 404.6--CONTRACT REPORTING

### 404.602 General.

The unique identifier for each contract action reported to the Federal Procurement Data System must begin with the two-letter USDA Agency Prefix "12".

For information on National Interest Action (NIA) Codes, see PGI section 418.

#### USDA Federal Procurement Data Quality Plan:

Review of USDA's data certification process is essential for effective management and to ensure that the data submitted into FPDS is accurate. OMB requires Agencies to take additional steps to verify and validate the accuracy of data entered into the FPDS. In accordance with policy issued by OMB, Chief Acquisition Officers (CAOs) and Senior Procurement Executives (SPEs) must establish requirements for ensuring that FPDS data reflects accurate and timely contract information. To that end, USDA updated its process for submission of its Annual Statement of Verification and Validation that must be submitted annually to OFPP.

The USDA [FPDS Data Quality Plan](#) template with four appendices is provided as guidance. OCP added appendix three titled, "Improving the use of Contractor Performance System" to support past performance assessments within the department. Agencies must take action and follow the guidance as required by the plan to ensure that FPDS data reflects accurate and timely contract information.

#### 404.605 Procedures.

In order to protect vendor partners in Afghanistan, USDA agencies are instructed to use a generic entity identifier in FPDS when reporting contracts and awards to vendors located within or having a place of performance in Afghanistan. Contracting Officers must contact [procurement.policy@usda.gov](mailto:procurement.policy@usda.gov) prior to awarding to a vendor located within, or having a place of performance in, Afghanistan.

### SUBPART 404.8—GOVERNMENT CONTRACT FILES

#### 404.802 Contract Files.

- 1) Contract files must be maintained electronically, unless otherwise determined, in writing, by the HCA to be highly burdensome.
- 2) The Contracting Officer must create, retain, and maintain an official electronic contract file.
- 3) The Contracting Officer must place all information and documentation required by FAR 4.802 and 4.803 in the electronic contract file.

#### 404.803 Contents of Contract Files.

(a)(3) After the end of the period of availability for obligation of a fixed appropriation account and before the closing of that account, the account must retain its fiscal-year identity and remain available for recording, adjusting, and liquidating obligations properly chargeable to that account. Contracting Officers must obtain budgetary approval prior to using expired funds and document approval in the contract file.

(a)(24) For additional instructions regarding legal review see PGI 401.602-2.

#### 404.804 Closeout of Contract Files

##### *404.804-1 Closeout by the Office Administering the Contract.*

These closeout procedures apply to all contracts and orders, including orders that are placed using a Government purchase card. All contracts and orders, no matter how small, must be closed. The MASCO is

responsible for ensuring Contracting Officers complete closeout responsibilities described below, consistent with seasonal and Mission Area operational priorities.

Templates are provided as examples that may be supplemented or tailored to meet agency needs, [Sharepoint | Templates](#). Closeout documents must be retained in the contract file.

#### **What are the time standards for contract closeout?**

Contracting Officers should conduct contract closeout using the time standards below. “Closed” means all administrative actions, including final payment, have been completed and all disputes have been settled. Days referenced in this section relates to calendar days. **NOTE:** A contract must not be closed if the contract is in litigation, under appeal or investigation, pending a termination action, or has an outstanding claim.

#### **What are the Contracting Officer’s (CO) closeout responsibilities?**

The CO is responsible for overseeing the contract closeout with assistance from the COR or technical representative. If another office administers the contract, that administrative office is responsible for closing out the contract in accordance with FAR 4.804-2(b). Except for those actions requiring a Contracting Officer’s warrant, the CO or MASCO may delegate any of the duties of contract closeout to other procurement personnel such as contract specialists, purchasing agents or procurement clerks. The CO must follow FAR 4.804-5 procedures for closing out contract files.

- 1) Following completion of the contract or order, the CO must ensure closeout using the appropriate templates, [Sharepoint | Templates](#).
- 2) The CO must assemble all elements of the contract file and review its contents against the requirements contained in FAR 4.803, using Template A. If documents are unobtainable, the file should be annotated with reasons why documents are unavailable.
- 3) The CO must enter the contractor past performance evaluation into the Contractor Performance Assessment Reporting System (CPARS).
- 4) The CO must ensure that all PIV cards issued to contractor staff are returned to the appropriate security staff prior to final payment and contract closeout. See PGI 404.1301.
- 5) **Deobligation of Funds.** Deobligation is the cancellation of any remaining awarded funds from a contract or order. Deobligated funds regain availability following cancellation and may be re-obligated within the period of availability of the appropriation. The CO must verify that any remaining funds on the contract are available to be deobligated as follows:
  - a. **Determination Not to Deobligate.** If a determination has been made **not** to deobligate the funds, the CO must notify the Office of the Chief Financial Officer (OCFO) within **5 days** after the determination is made not to deobligate with the reason why the deobligation will not occur. Note: the OCFO notification at Template D is only required for non-IAS transactions. (See Template D.)
  - b. **Determination to Deobligate.** If a determination has been made to deobligate the funds, the CO must promptly issue a deobligating modification.
- 6) If a contractor is no longer active in the System for Award Management (SAM), contact the vendor and ask them to renew their SAM registration. If the contractor won’t or can’t reactivate their SAM account, contact the IAS help desk for assistance with creating a modification in IAS.
- 7) Insert the clause at AGAR 452.204-70, Modification for Contract Closeout, [Deviation July 2022](#), in all solicitations and contracts that use Simplified Acquisition Procedures (Part 13).

**What are the Contracting Officer's Representative's (COR) closeout responsibilities?** The COR must:

- 1) Assist the CO to ensure the settlement of any outstanding payments and claims, change orders, or value engineering change proposals.
- 2) Ensure all technical requirements of the contract have been met and that the contract has been satisfactorily completed.
- 3) Ensure the CPARS evaluations for each contract period have been completed, when required. Reference PGI 442.15.
- 4) Certify all deliverable items, including the final report, if applicable, were delivered and accepted, and that all services were performed and accepted.
- 5) If Government property is involved, review and verify the contractor's inventory of residual Government property is accurate. Coordinate with the Government property manager and provide instructions to the CO for the disposition of all residual Government property.
- 6) For cost-reimbursable contracts, review the completion voucher to ensure costs claimed are reasonable and consistent with the work performed.

**What are the Mission Area Senior Contracting Official's (MASCO) closeout responsibilities?**

The MASCO must assist in the quarterly review of Unliquidated Obligations (ULOs). The list of ULOs is provided by the OCFO to the MASCO. This MASCO and CFO responsibility may be delegated to staff within the contracting or CFO offices. Reviews of ULOs is covered in DR 2230-001, <https://www.usda.gov/directives/dr-2230-001>.

**What are the Contractor's closeout responsibilities?**

The contractor is responsible for the following actions, as appropriate:

- 1) Prepare and submit a final invoice or completion voucher with request for final payment.
- 2) When required by the payment clause, submit a Release of Claims (Template C), [Templates](#).
- 3) Settle all subcontract costs and any subcontract issues. Submit subcontracting compliance reports for all years to the Electronic Subcontract Reporting System at <http://www.esrs.gov>.
- 4) Submit the final patent and royalty reports and a final property inventory, if applicable.
- 5) For cost-reimbursement contracts, submit indirect cost rate proposals for all years in which a proposal was not previously submitted.
- 6) Ensure SAM registration remains active until contract closeout is complete.

#### *404.804-5 What are the Procedures for Closing Out Contract Files?*

The following procedures must be used following contract completion, the end of contract period of performance or contract termination.

**Simplified Acquisition Procedures (SAP)** in accordance with FAR Part [13.003\(c\)](#): These contracts or orders should be considered closed after the CO receives evidence of receipt and acceptance of supplies or services and following final payment. The CO should complete any necessary documentation generally within **30 days**. Contracting Officers have the option of using the Post Award, Closeout functionality in IAS to verify receipt, acceptance and final payment for all supplies and services.

**For deobligations on contracts or orders when SAP is used:**

- 1) A unilateral modification is allowable if the deobligation on a contract or order is \$1000 or less.

- 2) A unilateral modification is allowable if the amount of deobligation is over \$1000, and the bilateral modification is not signed by the contractor and returned within 60 days from the date of sending the modification to the contractor.
- 3) If there are no funds to deobligate, a modification isn't required to close the award.

The Contracting Officer must insert the clause at AGAR 452.204-70, Modification for Contract Closeout, [Deviation July 2022](#), in all solicitations and contracts that use simplified acquisition procedures (Part 13).

**Firm-Fixed-Price Contracts, where Simplified Acquisition Procedures were not used, including IAS actions:**

These contracts or orders should be considered closed after the CO receives evidence of receipt and acceptance of supplies or services and following final payment. The CO should complete the necessary documentation in steps a-c generally within **6 months**.

**All other contract actions, other than Cost-Reimbursement contracts (i.e., Simplified Acquisition Procedures not used, and/or not Firm-Fixed-Price):** These contracts or orders should be considered closed after the CO receives evidence of receipt and acceptance of supplies or services and following final payment. The CO should complete the necessary documentation in steps a-c generally within **20 months**.

- 1) **Contract Closeout Template A Completion Statement & Checklist.** Following final payment, the CO or closeout staff must review the contract file and complete the Contract Completion Statement & Closeout Checklist, [Sharepoint | Templates](#).
- 2) **Contract Closeout Template B COR Memo.** Following final payment, the COR or accepting personnel must complete the certification stating that all deliverables/services have been received, [Sharepoint | Templates](#).
- 3) **Contract Closeout Template C Contractor Release of Claims.** When appropriate, the CO or closeout staff must send the Release of Claims to the contractor after receiving the COR Certification. The Release of Claims may be sent by either email or regular mail. The CO must then review and sign the bottom of Template C, located [here, after receiving all outstanding documents](#). The FAR states that the release of claims is required for the following types of contracts:
  - a. Cost reimbursable or time-and-materials (other than commercial products or commercial services), (FAR 52.216-7 (h)).
  - b. Fixed price construction and architect-engineer (FAR 52.232-5(h)(3), and 52.232-10(d)).
  - c. Time-and-material and labor-hour (FAR 52.212-4, Alternate 1 (i)(7)).

The CO has discretion for other than the types of contracts listed above and may request a Release of Claims if deemed in the Government's best interest and when it is required in the contract.

**For deobligations on contracts or orders utilizing anything other than cost reimbursement (i.e., Simplified Acquisition Procedures not used, and/or not FFP):**

- 1) A unilateral modification is allowable if the deobligation on a contract or order is \$1000 or less.
- 2) A unilateral modification is allowable if the amount of deobligation is over \$1000, and the bilateral modification and Release of Claims is not signed by the contractor and returned within 120 days from the date of sending the modification/Release of Claims to the contractor.
- 3) If there are no funds to deobligate, a modification isn't required to close the award; however, a Release of Claims may still be required.



**Cost-Reimbursement Contracts:** COs may utilize the quick closeout procedures for cost reimbursement contracts meeting the conditions of FAR 42.708(a). Otherwise, in addition to the above actions required for Firm Fixed Price Contracts where Simplified Acquisition Procedures were not used, the following actions are required for Cost Reimbursement contracts, to include actions in IAS, generally within **36 months** of the CO receiving evidence of receipt and acceptance of supplies or services and following final payment:

- 1) **Audit.** The CO will request a final contract audit from the cognizant audit office, if applicable, following receipt of the contractor's response.
- 2) **Reports.** Any required reports will be forwarded to the responsible parties including the following, when applicable:
  - a. Reports and documentation related to patents, royalties, warranties and inventions must be forwarded to the COR and the Office of the General Counsel (OGC). (See FAR 12.404, 27.3, 27.4 and 46.7.)
  - b. Reports, actions, documentation for Government furnished equipment (GFE) or Government furnished property (GFP) must be forwarded to the COR and the Government property administrator.
- 3) **Desk Audit.** The CO or closeout staff must complete a desk audit of the contract, as applicable, within **60 days** after receipt of contractor's response. COs are encouraged to work with the cognizant auditor to verify information. Information obtained must be recorded in the contract file. This local desk audit must consist of a review of items such as, if applicable, in-house engineering estimates of the level of effort, audited cost information from contracts in process or recently negotiated contracts, adequately reviewed data on proposed subcontract items which constitute the major portion of the prime contractor's cost proposal, prices of standard commercial products and commercial services which constitute a major portion of the prime contractor's cost proposal; special forward pricing or overhead rates contained in advance agreements; current labor rates, overhead rates, loading factors, and per diem rates; recent audit reports or price negotiation memoranda.
- 4) **Final Equitable Adjustment of Price.** The CO must determine the final equitable price adjustment, as applicable, generally within **30 days** of completion of the desk audit or **90 days** after receipt of the final audit.
- 5) **Final Modification to Contractor.** The CO must send the final modification to the contractor following review and after all clearances on the modification are completed.
- 6) **Execution of final modification.** The contractor will return the signed modification within **30 days** after receipt. The CO must file the fully executed modification and provide a copy to the contractor.
- 7) **Request for Payment of Final Invoice.** The CO must make final payment after receipt of the contractor's request.

#### 404.805 How are Contract Files Stored and Handled?

Contracting Officers are required to use IAS to store the complete award/contract file which allows IAS to be the system of record for that file's FAR 4.805 retention requirements. When the complete award/contract file is stored in IAS, records already stored electronically are not a required element of the file (for instance, FPDS records and invoices in IPP). In the event a request is received for contract files for review, audit, litigation, etc., it is the Contracting Officer's responsibility to gather and provide all pertinent IAS and non-IAS files in no more than ten business days (or sooner if required.)

## RECORD RETENTION PROCEDURE

**NOTE: IAS record retention is handled by the USDA Procurement Systems Division (PSD). No further action is required if the complete contract file is saved in IAS. For other than IAS records, Mission Areas should establish internal procedures.**

The CO or contracting staff must consult with the appropriate agency document management personnel for filing and storage and must also coordinate with the Federal Records Center (FRC) of the National Archives and Records Administration. See the FRC Toolkit accessible at <http://www.archives.gov/frc/toolkit.html> for more instructions. Consider the following:

- 1) The CO must provide the closed contract files to the appropriate agency personnel to be appropriately boxed and stored at the appropriate agency facility.
- 2) FAR 4.805 *Storage, Handling, and Disposal of Contract Files*, lists the period of records retention for all contract documents and files.
- 3) Closed contract files that are two years or older may be shipped to the FRC.
- 4) Appropriate boxes for shipping may be available from the cognizant USDA agency records manager.
- 5) A completed form SF 135, “*Records Transmittal and Receipt*”, must be sent to the records center for approval prior to shipping the closed contracts. A list of contracts to be sent must also be included in accordance with FRC instructions (See <http://www.archives.gov/frc/toolkit.html>).
- 7) 6) Separate contract files by year using the final payment date. Each year must have a separate accession number, which is the number assigned by the FRC in order to locate it for later destruction or retrieval. Contract files should be boxed in numerical order. Task orders should follow the main contract.
- 8) The CO or staff will notify the records manager if there is a long warranty period involved in any contract going to FRC. Such contracts must have a separate accession number so the destruction date will occur after the warranty period. This is done in the event there is a warranty action against the Contractor during the warranty period.
- 9) The CO or contracting staff will contact the agency records manager for arrangements to transport boxes to FRC.

**Retrieval of Records.** If a record needs to be retrieved from the FRC, complete Form OF-11, “*Reference Request - Federal Records Center*”, and forward to the cognizant agency records manager.

**Notification of Final Destruction.** When records become eligible for destruction, the FRC will contact the records manager, who will then contact the agency to obtain permission to dispose of them.

404.870 Document Numbering System.

See PGI 404.16.

## SUBPART 404.10—UNIFORM USE OF LINE ITEMS

404.1003 Establishing Line Items.

LINE ITEMS (LIN):

- 1) Identify the items or services to be acquired;

- 2) Impose duties, responsibilities, and obligations upon the contractor.

#### 404.1004 Establishing Subline Items.

##### SUBLINE ITEMS (SLIN)

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

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

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

#### 404.1005 Data Elements for Line Items and Subline Items.

##### 404.1005-1 Required data elements.

Identify the contract type in the line item description when multiple line items are entered with different contract types in IAS.

##### **What are the Line Items numbering procedures?**

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

##### **What considerations are there for Line Item structure?**

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

- 1) **Supplies:** Line item quantities must match the actual count of the supplies to be provided. For instance, if more than one delivery is expected, the quantity cannot be "1". Services with tangible deliveries, such as repairs, must be structured like supply line items.
- 2) **Services:** Line item quantities should match the frequency with which performance will be reviewed, and on fixed-price line items, payments made, at the maximum extent possible. For example, a contract with a twelve-month period of performance should have a quantity and unit of measure suited to how the contract will be managed. If the intent is to review, accept, and pay for the services monthly, then

the quantity should be 12, with a unit of measure such as “Months” or “Lots”. If the intent is to review, accept, and pay for the services quarterly, then the quantity should be 4, with a unit of measure such as “Lot”. If the quantity used is 1, then no payment for delivery can occur until the end of the period of performance. The total price should be equally divisible by the unit of measure. For example, a total price of \$75,000 divided by 12 months is \$6,250 per month. Another example is a total price of \$350,000 divided by 12 months is \$29,166.67 (rounded up). The contractor will need to adjust the final invoice to account for the rounding: \$29,166.67 times 12 is \$350,000.04, so the twelfth invoice will need to be \$29,166.63. If the contractor invoices \$29,166.66 (rounded down), the final invoice would be \$29,166.74. Because this rounding method requires oversight, it’s recommended to negotiate an amount that is equally divisible by the number of payments.

**What considerations are there for Option Line Items structure?**

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

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

**What are the Subline Items numbering procedures?**

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

EXAMPLE OF LINE ITEM AND SUBLINE ITEM STRUCTURE:

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

**What are the procedures for Indefinite Delivery-Indefinite Quantity (IDIQ) Contracts in the Integrated Acquisition System (IAS)?**

- 1) At least one line item must be created on the base contract for delivery orders to be issued from it. The “Allow Delivery/Task Order” field under Items, General must be checked.
- 2) The Contracting Officer must enter the maximum amount to be ordered, including all orders placed against the contract, per FAR 4.1005-2 (a)(2).
- 3) When ordering supplies enter the Type of Supply applicable to the purchase – Intellectual, Personal or Real Property. Real Property is defined as “any interest in land, together with improvements, structures, and fixtures located thereon”, per 41 CFR 102-71.20.

Qualifier:

- 1) By Dollars – used for purchases for a one time/lump sum payment. When the Qualifier is By Dollars, there will be an Amount field only.
- 2) Not Separately Priced – used when the price is included in the unit price of another LIN.

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

**SUBPART 404.11—SYSTEM FOR AWARD MANAGEMENT**

404.1103 Procedures.

For general information about SAM including the log-in process, access the following link: [SAM instructions](#).

Per FAR 52.204-7(b)(1), “An Offeror is required to be registered in SAM when submitting an offer or quotation, must continue to be registered until time of award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.”

- 1) USDA employees must not enter information into the System for Award Management (SAM) database on behalf of prospective contractors. USDA employees working with prospective contractors that encounter difficulty in the creation or maintenance of their SAM entity record can obtain current GSA/SAM guidance at [SAM.gov | Entity Registrations](#) and should:
  - a. Limit direct assistance to downloading the registration template, SAM handbook and other information from the SAM website and providing copies of that material to requesters.
  - b. Direct the prospective offeror to the Federal Service Desk (FSD) for assistance.
  - c. Direct the prospective offeror to a Procurement Technical Assistance Center (PTAC) if one is available in the prospective offeror's location. Information on PTACs can be found at <https://www.sba.gov/local-assistance/federal-contracting-assistance>.

Review the prospective offeror's entity record at SAM.gov to verify the eligibility of a prospective offeror and to ensure the conditions specified in the FAR are satisfied.

## SUBPART 404.13—PERSONAL IDENTITY VERIFICATION

### 404.1301 Policy.

The Homeland Security Presidential Directive-12 (HSPD-12), dated August 27, 2004, requires the development and agency implementation of a mandatory Government-wide standard for secure and reliable forms of identification for Federal employees and contractors, including contractor employees. As directed by HSPD-12, on February 25, 2005, the Department of Commerce issued FIPS PUB 201, which is a Federal standard for secure and reliable personal identity verification (PIV) for routine physical access to Federally controlled facilities or information systems. Office of Management and Budget (OMB) memorandum M-05-24 dated August 5, 2005, provides instructions for implementing HSPD-12 according to FIPS PUB 201, and M-08-01, dated October 23, 2007, reminds all parties that a background investigation is required. In accordance with requirements in HSPD-12, USDA:

- 1) Uses a General Services Administration (GSA) shared service solution called USAccess.
- 2) Issues a LincPass for access to federally controlled facilities and systems.
- 3) Includes language in applicable solicitations and contracts that require contractors to have routine physical access to a Federally controlled facility and/or routine access to a Federal information system.
- 4) Requires LincPass certificate updated at the 3-year mark and LincPass renewal (new card) at the 5-year mark.

For additional information related to USDA implementation of HSPD-12, visit <http://hspd12.usda.gov>.

### **Requirements**

Contracting Officer Representatives or other designated program/project managers will serve as PIV Sponsors for contractor personnel. The Contracting Officer (CO) must include the PIV Sponsor duties when issuing the designation memorandum to the COR (or other designated program/project manager).

USDA contract statements of work must indicate that all applicable contractor employees requiring routine physical access to Federally-controlled facilities and/or routine access to Federally-controlled information systems must go through the identity proofing and registration process, must have been successfully identity

proofed, and have a successfully adjudicated National Agency Check with (Written) Inquiries (NACI) or Office of Personnel Management (OPM)/National Security (NS) community background investigation (BI) to serve on the contract.

Contractor ID credentials will be issued after successful identity proofing of the contractor employee applicant and upon a successfully adjudicated NACI or OPM/NS BI. All contracts must specify periods of performance. If an option year is exercised, the contractors must renew their credentials at the end of their period of performance. If no option year is exercised, the contractor must turn in their ID credential at the end of the performance period or when service on the contract ends.

Solicitations and contracts for supplies or services where the contractor's employees will NOT have routine unaccompanied physical access to a Federally controlled facility and/or routine unaccompanied access to a Federally-controlled information system may be excluded from coverage by this Subpart based on the LincPass Distribution Risk Assessment, which will be conducted by a USDA Sponsor as part of the PIV II registration, identity proofing, and credential issuance procedures. Examples of probable exclusions are couriers, express mail and package or other delivery persons.

Contracts that when originally awarded did not include the PIV requirements, but will be modified to include them, are covered by this Subpart. Sponsors from the requiring office (and the site security officer) must determine the applicability of the requirements of HSPD-12, FIPS PUB 201-1, OMB Memorandum M-05-24, and this Subpart. Details on applicability of these requirements follows:

**What if there are questions regarding applicability of PIV Requirements to a solicitation or contract?**

If there is a question concerning applicability of the PIV requirements or other HSPD-12, FIPS PUB 201-1, or OMB Memorandum M-05-24 requirements, Sponsors may contact the Office of Homeland Security and Emergency Coordination, Physical Security Division (OHSEC, PSD) for guidance. Include the OHSEC, PSD guidance in the contract file.

If the requiring office determines that performing contractor employees will require a LincPass based on the requirements set forth by HSPD-12, FIPS PUB 201-1, OMB Memorandum M-05-24, and the information herein, the Sponsor must notify the CO in writing. Upon notification of an HSPD-12 requirement for performing contractors, COs must do the following:

- 1) Insert language similar to verbiage in Desk Book 404.1303 in all covered solicitations and contracts that include FAR clause 52.204-9.
- 2) Detail PIV Sponsor duties to be delegated when issuing a designation memorandum to the COR (or other designated program/project manager).
- 3) Provide any contract information necessary for the PIV enrollment process (such as contract number, period of performance, and contractor name) to the Sponsor or designated coordinator.
- 4) The CO must notify the contractor in writing if the PIV process requires exclusion of a contractor's employee. The exclusion must limit specific details regarding the reasons for exclusion.
- 5) Follow procedures regarding the acquisition of personal identity verification products and services.
- 6) Maintain a log for tracking PIV distribution and return.
- 7) Ensure contractors return PIV cards to the security office as soon as any of the following occurs:
  - a. When no longer needed for contract performance;
  - b. Upon completion of a contractor employee's employment; or

- c. Upon contract completion or termination.
- 8) Verify all PIV cards are returned to the proper security office prior to final payment and contract closeout.

**What are the procedures for contractor employees?**

The procedures to be followed by contractors and contractor employees are specified in [DM 4620-002](#).

**How is Protection of Information maintained?**

Privacy of PIV information must be maintained in accordance with the Privacy Act of 1974.

**Should contractors be identified during meetings?**

It is recommended that Federal staff remain vigilant when openly communicating during meetings and understand that some topics aren't suitable for contractor staff.

Contracting Officers may incorporate the following language into statements of work/performance work statements, etc. Note that the list of actions by the contractor is not exhaustive and may be edited as needed:

- 1) In all situations where contractor personnel status is not obvious, all contractor personnel are required to identify themselves to avoid creating an impression that such contractor personnel are Government officials. This can occur during meeting attendance, through written (letter or email) correspondence or verbal discussions (in person or telephonic), when making presentations, or in other situations where their contractor status is not obvious to third parties.

Contractor employee(s) must:

- a. Not by word or deed give the impression or appearance of being a Government employee;
  - b. Wear appropriate badges visible above the waist that identify them as contractor employees when in Government spaces, at a Government-sponsored event, or an event outside normal workspaces in support of the contract/order;
  - c. Clearly identify themselves as contractor employees in telephone conversations and in all formal and informal written and electronic correspondence. Identification must include the name of the company for whom they work;
  - d. Identify themselves by name, their company name, if they are a subcontractor the name of the prime contractor their company is supporting, as well as the Government office they are supporting when participating in meetings, conferences, and other interactions in which all parties are not in daily contact with the individual contractor employee; and
  - e. Be able to provide, when asked, the full number of the contract/order under which they are performing, and the name of the Contracting Officer's Representative.
- 2) If wearing a badge is a risk to safety and/or security, then an alternative means of identification may be utilized if endorsed by the Contracting Officer's Representative and approved by the Contracting Officer.
  - 3) The Contracting Officer will make final determination of compliance with regulations regarding proper identification of contractor employees.

The following disclaimer is recommended to be stated by the Contracting Officer, Contract Specialist, or COR at the beginning of a meeting that vendors attend:



“Anything said during meetings, visits, or telephone calls must not be construed as a change to the contract. Nothing said or done in the meetings, visits, or telephone calls by any government attendee must be construed as a change to the contract. Only the Contracting Officer can make changes to the contract and the changes will be done in writing. Contractors are reminded to promptly notify the Contracting Officer of any conduct that may be regarded as a change to the contract in accordance with FAR 52.243-7, Notification of Changes.”

#### 404.1303 Personal Identity Verification Contract Language.

FAR Subpart 4.13, Personal Identify Verification of Contractor Personnel, establishes the policy and use requirements for FAR clause 52.204-9. The Contracting Officer must insert language similar to that shown below in all covered solicitations and contracts which include FAR clause 52.204-9:

##### PERSONAL IDENTITY VERIFICATION OF CONTRACTOR EMPLOYEES (MONTH YEAR)

- (a) The contractor must comply with the personal identity verification (PIV) policies and procedures established by the United States Department of Agriculture (USDA) Directives 4620-002 series.
- (b) Should the USDA Directives 4620-002 require the exclusion of a contractor's employee, the Contracting Officer will notify the contractor in writing.
- (c) The contractor must appoint a representative to manage compliance with the PIV policies established by the USDA Directives 4620-002 and to maintain a list of employees eligible for a USDA LincPass required for performance of the work.
- (d) The responsibility of maintaining a sufficient workforce remains with the contractor. Contractor employees may be barred by the Government from performance of work should they be found ineligible or to have lost eligibility for a USDA LincPass. Failure to maintain a sufficient workforce of employees eligible for a USDA LincPass may be grounds for termination of the contract.
- (e) The contractor must insert this clause in all subcontracts when the subcontractor is required to have routine unaccompanied physical access to a Federally controlled facility and/or routine unaccompanied access to a Federally controlled information system.
- (f) The PIV Sponsor for this contract is a designated program point of contact, which in most cases is the COR, unless otherwise specified in this contract. The PIV Sponsor will be available to receive contractor identity information from \* (hours and days) to \* (hours and days) at \* (office address for registration). The Government will notify the contractor if there is a change in the PIV Sponsor, the office address, or the office hours for registration; however, it is the contractor's responsibility to meet all aspects of paragraphs (c), (d), and (e).

#### SUBPART 404.16—UNIQUE PROCUREMENT INSTRUMENT IDENTIFIERS

##### 404.1603 Procedures.

Agency users (for example Contract Specialists, Contracting Officers) must use the Procurement Instrument Identifier (PIID) numbering procedures, as established in FAR 4.1603, on all solicitations, contracts, agreements, orders, calls, and related procurement instruments. Agency users must create PIIDs with 13 alphanumeric positions composed of the Address Activity Code (AAC) (positions 1-6), last two digits of the fiscal year (positions 7 and 8), type of instrument (position 9), and distinct assigned number typically in numerical order (position 10-13).

Contact your [IAS Agency Lead](#) for information on the correct AAC for your organizational unit. For information on type of instrument, refer to FAR 4.1603(a)(3) for the appropriate letter designation. Prior to using a letter designation indicated in FAR 4.1603(a)(3) as “Reserved for departmental or agency use,” approval must first be obtained by submitting a request to [procurement.policy@usda.gov](mailto:procurement.policy@usda.gov). The following reserved Departmental letters are approved:

- K – currently used by NRE for at-incident resource orders and awards
- T – currently used by NRE for preseason incident awards
- M – for Mission Area Use with prior permission and approval from SPE

Finally, PIIDs with amendments to solicitations or modifications to contracts, orders, and agreements must have supplementary PIIDs adding positions 14-19 to the end of the original 13 position PIID, in accordance with FAR 4.1603(b).

For further guidance, see FAR 4.605.

## SUBPART 404.21—PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATION AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

404.2102 Prohibition.

### (b) Exceptions

The criteria below are for evaluating and validating Exceptions and applicability for Section 889 Part B. This same information is also available in process chart graphics for the “Section 889 Service Diagram” and the “Section 889 Equipment Diagram”, as applicable, located at [Templates](#).

- 1) Does Prohibition under Part B Apply? - Is the equipment or service identified by the offeror/contractor as covered telecommunications equipment or service being **used** by the prime offeror/contractor?
  - a. If No, STOP -- Prohibition under Part B does not apply.
  - b. If Yes, continue through the decision tree to determine if Prohibition under Part B applies.
  
- 2) Is the **equipment** identified by the offeror/contractor covered? - *If you are only reviewing a telecommunications **service**, skip section 2 and go to section 3 of the decision tree.*
  - a. Is the answer to any of the following “Yes”?
    - i. Per (f)(3)(A) of Section 889 - Is the telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation or a subsidiary or affiliate of either?
    - ii. Per (f)(3)(B) of Section 889 - Is the equipment video surveillance and telecommunication equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company or a subsidiary or affiliate **AND** do any of the following purposes of the use of technology apply?
      1. Public Safety?
      2. Security of Government facilities?
      3. Physical security surveillance of critical infrastructure?
      4. Other National Security Purposes?
  - iii. Is the equipment a “covered telecommunications” as defined in (f)(3) of Section 889 or FAR 4.2101?

- 1) If the answer to both 2(a)(i) and 2(a)(ii) of the decision tree is No, STOP --Prohibition under Part B does not apply.
  - 2) If the answer to either 2(a)(i) or 2(a)(ii) of the decision tree is Yes, continue through the decision tree to determine if Prohibition under Part B applies.
  - b. Exception - Can the equipment route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles? (Assess whether the equipment has the ability to do so, not how the offeror/contractor chooses to use it; this exception only applies to equipment that "cannot" route or redirect user data traffic or permit visibility into any user data, not equipment that "does not" based on its current configuration.)
    - i. If No, exception at Section 889 (a)(2)(B) [(or FAR 4.2102(b)(2))] applies and Prohibition under Part B does not apply. If the CO determines that the exception applies at Section 889 (a)(2)(B) [FAR 4.2102 (b)(2)], provide a written determination to explain the basis of exception applicability. This may be included with the procedures at PGI 413.106-3 or PGI 415.308. The written determination, signed by the CO, must include (a) background information of the equipment in question, (b) information/documentation from the offeror claiming for exception (i.e., information of claim, report pursuant to paragraph (d) of FAR clause 52.204-25, and/or disclosures pursuant to paragraph (e) of FAR provision 52.204-24), and (c) the basis of the CO's determination.
    - ii. If Yes, continue through the decision tree to determine if Prohibition under Part B applies.
  - c. Repeat Section 2 for each piece of equipment identified by the offeror/contractor.
- 3) Is the **service** identified by the offeror/contractor covered? - *If you are only reviewing telecommunications equipment, use section 2 of the decision tree and skip section 3.*
- a. Is the answer to any of the following "Yes"?
    - i. Per (f)(3)(C) of Section 889 - Is the service telecommunications or video surveillance services provided by Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company or a subsidiary or affiliate?
    - II. Per (f)(3)(C) of Section 889 - Is the service using telecommunications or video surveillance equipment produced by Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company or a subsidiary or affiliate?
    - III. Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company or a subsidiary or affiliate?
    - IV. Technology Company, or Dahua Technology Company or a subsidiary or affiliate?
    - V. Is the service covered?
      1. If the answer to both 3(a)(i) and 3(a)(ii) of the decision tree is No, STOP -- Prohibition under Part B does not apply.
      2. If the answer to either 3(a)(i) or 3(a)(ii) of the decision tree is Yes, continue through the decision tree to determine if Prohibition under Part B applies.
  - b. Exception - Note that the exception at Section 889(a)(2)(A) only applies to services provided to the Government; this exception does not apply to an offeror's or contractor's use of a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements. Therefore, there is no exception to consider when evaluating an offer's or contractor's use of covered telecommunications services.
  - c. Repeat section 3 for each service identified by the offeror/contractor.
- 4) Is the telecommunications equipment or service identified by the offeror/contractor prohibited? (please review additional information provided by the offeror/contractor about the equipment/service(s))

- a. System
    - i. Is the covered equipment or service part of a system?
      - 1. If No, STOP -- Prohibition under Part B does not apply.
      - 2. If Yes, continue through the decision tree to determine if Prohibition under Part B applies.
    - ii. What is the system (define the system) that it is a part of?
  - b. Substantial/Essential, Critical - Is the answer to either of the following "Yes"?
    - i. Is the covered equipment or service a substantial or essential component of the defined system?
    - ii. Is the covered equipment or service Critical Technology of the defined system?
      - 1. If the answer to both 4(b)(i) and 4(b)(ii) of the decision tree is No, STOP -- Prohibition under Part B does not apply.
      - 2. If the answer to either 4(b)(i) or 4(b)(ii) of the decision tree is Yes, Prohibition under Part B applies.
- 5) The CO must document the file accordingly if the CO determines that the performance or extension of the contract (or order) will NOT result in a violation of the prohibition.
- 6) If the CO determines that the performance or extension of the contract (or order) will result in a violation of the prohibition, the CO must not award the contract (or order), unless a waiver in accordance with PGI 404.2104 was approved and document the file accordingly.

If there is doubt about how to evaluate a specific component after using this decision tree and reviewing the examples, contact [John.Donovan@usda.gov](mailto:John.Donovan@usda.gov) – Director OCIO/DISC Enterprise Network Services. As an additional resource, information on how GSA manages Section 889 for their Acquisition Workforce is available at [https://www.acquisition.gov/FAR-Case-2019-009/889 Part B](https://www.acquisition.gov/FAR-Case-2019-009/889_Part_B).

#### 404.2103 Procedures.

If the Contracting Officer has reason to question the representation by the offeror, the Contracting Officer should consult with their MASCO and legal counsel on how to proceed to ensure the procurement does not violate the prohibitions.

#### **What should the Contracting Officer do if the contractor plans to provide or use covered telecommunications?**

If an offeror or contractor represents that it will provide or does use covered telecommunications equipment or services per FAR 52.204-24 or identifies covered telecommunications equipment or services used during contract performance per FAR 52.204-25, the Contracting Officer must:

- 1. Follow-up with the offeror/contractor to confirm that it accurately completed the representation(s);
- 2. Determine if there is an existing approved waiver, if assistance is needed, contact [procurement.policy@usda.gov](mailto:procurement.policy@usda.gov);
- 3. Verify that the offeror provided the information required by paragraph (e) of the representation provision at FAR 52.204-24, or that the contractor provided the information required by paragraph (d) of the reporting clause at FAR 52.204-25, and review the submitted details to verify responsiveness with the requirements of paragraph (e) of the representation provision at FAR 52.204-24 or paragraph (d) of the reporting clause at FAR 52.204-25;
- 4. After consulting with [John.Donovan@usda.gov](mailto:John.Donovan@usda.gov) – Director OCIO/DISC Enterprise Network Services, legal counsel, and MASCO, Contracting Officers determine whether awarding to the apparent successful

offeror, or continued performance or extension of the contract (or order), will result in a violation of the prohibition(s). Contracting Officers must document the file with the rationale of their determination and any resulting actions that will be taken.

#### 404.2104 Waivers.

##### **How does the waiver process work?**

Waiver requests must include the information required in FAR 4.2104(a)(1). MASCOs and MASPMs must work together in obtaining agreement with the waiver request from USDA's Office of the Chief Information Officer (OCIO) and USDA's Office of Homeland Security (OHS). Forward waiver requests with OCIO and OHS concurrence to [procurement.policy@USDA.gov](mailto:procurement.policy@USDA.gov) for HCA and departmental review prior to being sent to the Office of the Director of National Intelligence (ODNI). Be advised that the waiver approval process is very stringent, and approvals are rare.

## SUBPART 404.70—CONTRACTOR RECOGNITION

##### **What are considerations when determining whether to reward or recognize contractor employees?**

USDA may reward Government personnel using a variety of methods, ranging from certificates of appreciation to time off and a monetary bonus. The Government does not have the same authority to recognize contractor employees. Contractors may have their own awards and bonus programs. Contracts may include incentives and awards for performance or work performed ahead of schedule. Recognition of a contractor employee may only take the form of honorary awards of little intrinsic value such as certificates. Use of appropriated funds outside the limits of the contract is not appropriate. Any proposed presentation, award, or recognition of a contractor employee should be sent to the warranted Contracting Officer to pass on to the Contractor, if appropriate, since any recognition may be used against the Government in a dispute involving contract performance.

## PART 405 PUBLICIZING CONTRACT ACTIONS

### SUBPART 405.3 SYNOPSES OF CONTRACT AWARDS

#### 405.303 Announcement of Contract Awards.

The "Announcement of Contract Award" [template](#) is required for awards (contracts and BPA calls) over \$4.5 million (base and all options total value), per FAR 5.303(a), unless an exception exists. The announcement is intended for members of Congress in the state or 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](mailto:OCR@usda.gov) with a courtesy copy (CC) to the Mission Area OCR representative. A list of representatives may be found at [OCR staff](#).

##### **What is the timeline for announcement?**

The Announcement of Contract Award must be sent to OCR staff at least three days prior to the date of award. OCR will reply within three days with any questions or concerns, or approval to notify the Mission Area's congressional office. It is the Mission Area's responsibility to contact the appropriate congressional office in sufficient time for announcement by 5 pm Washington, DC, time on the day of award. **OCR may notify the Office of the Secretary.** If notification is not received from OCR by the date of award, contact the Procurement

Policy Division at [procurement.policy@usda.gov](mailto:procurement.policy@usda.gov). Place a completed copy of the Announcement of Contract Award in the contract file.

**Are announcements required for orders?**

The Announcement of Contract Award does not need to be completed for an order if an Announcement of Contract Award was completed for the base contract. If an Announcement of Contract Award was not completed for the base contract, or if it is unknown whether it was completed, then one must be completed and sent per the above instructions for each order that is \$4.5M or more. The Announcement of Contract Award is not required for BPAs but is required for BPA Calls that meet the threshold.

**405.404 Release of Long-Range Acquisition Estimates.**

The MASCO will establish written procedures to control the release of long-range acquisition estimates as authorized under FAR 5.404-1. The [Government Performance and Results Act \(GPRA\) of 1993](#) and the [GPRA Modernization Act \(GPRAMA\) of 2010](#), along with the Office of Management and Budget (OMB) [Circular No. A-11](#) define long-range as four years. It is recommended that Mission Areas draft the Mission Area long-range acquisition estimates for four years following the year in which the estimate is submitted.

Sensitive Security and Classified information must be released in accordance with Departmental Manuals and Regulations (3400 series).

**SUBPART 405.5--PAID ADVERTISEMENTS**

**405.502 Authority.**

Policies and procedures regarding approval of Communications/Information Products and Services (CIPS) over \$25,000 other than newspapers are contained in USDA Departmental Regulations 1497-001 (Click for [DR-1497-001](#)). Approval must be obtained prior to submission of a purchase request(s).

**What services and products are included in the term “Communications/Information Services and Products”?**

- 1) Communications Research and Planning is the full range of communications and social marketing research services
- 2) Integrated Marketing
- 3) Outreach and Engagement
- 4) Media Relations
- 5) Communications Materials and Product Development
- 6) Web Design, Development, and Management
- 7) Social marketing
- 8) Writing, publishing, or producing articles, news items, new stories, pamphlets, logos, print media, exhibits, scripts for radio or television, scripts for film presentations, radio broadcasts, television broadcasts, films, or filmed material

## PART 406--COMPETITION REQUIREMENTS

### SUBPART 406.1—FULL AND OPEN COMPETITION

#### 406.101 Policy.

##### **What techniques should Contracting Officers consider to increase competition?**

- 1) Requirements Development - Ensure work statement is not unduly restrictive and specifications are not unnecessarily detailed and ensure commercial products and commercial services are acquired to the maximum extent practicable. The acquisition team will work collaboratively to apply their respective skillsets to understand the market, how industry is structured, potential cost drivers, and the competition state.
- 2) Performance Based Acquisition - Allow vendors the opportunity to offer innovative solutions to meet the Government's performance needs and to offer market-tested commercial solutions at competitive pricing with risks that can be reasonably managed under a fixed-price contract.
- 3) Category Management - Use an existing Departmental or Federal Strategic Sourcing Initiative (FSSI) when the requirement can be satisfied under the contract vehicle(s). USDA-wide contract sources can be found at <https://ias.usda.gov/usdacontracts/>. Additional resources are located at [Sharepoint | Policy and Regulations](#) .
- 4) Task and Delivery Orders - Ensure acquisitions have meaningful competition. State significant technical factors and subfactors and the relative importance of the factors when conducting the "fair opportunity process."

### SUBPART 406.3—OTHER THAN FULL AND OPEN COMPETITION

#### 406.302-70 Otherwise Authorized by Law.

The SPE authorized a class justification and approval, SS-16-002 dated 09/30/2016, for APHIS' National Animal Health Laboratory Network (NALHN) for testing on approved samples.

#### 406.303 Justifications.

[Click for FAR 6.302 Justification for Other Than Full & Open Competition](#)

#### 406.304 Approval of the Justification.

Contracting Officers are reminded that the value of options, including an option to extend, must be included in the value of the justification requiring approval.

The Contracting Officer must amend a justification and obtain the 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.

For additional information on options, refer to FAR 17.202 and PGI 417.202.

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.)

### SUBPART 406.5—ADVOCATES FOR COMPETITION

The Chief, Procurement Policy Division, Office of Contracting and Procurement, has been designated as the Competition Advocate for USDA.

406.501 Requirement.

Each MASCO serves as the competition advocate for their contracting activity.

## PART 407--ACQUISITION PLANNING

### SUBPART 407.1--ACQUISITION PLANS

407.101 Definitions.

<b>Definitions</b>	
Abbreviated Acquisition Plan (AAP)	A simplified Acquisition Plan format developed by USDA to meet acquisition planning in a streamlined, checklist-based manner. A separate AAP is required for each planned contract award AND for any options or modifications that are +/- 10% of the originally planned/approved AAP amount.
Acquisition Planning	The process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling the agency need in a timely manner and at a reasonable cost. May be met through an Acquisition Strategy/Acquisition Plan (AS/AP), an Abbreviated Acquisition Plan, and/or a Formal Acquisition Plan.
Acquisition Project	A project that involves a single contract. The acquisition project starts when the program identifies a procurement need and starts the Acquisition Management Lifecycle.
Acquisition Strategy	Used by a Major Program or IT Investment to describe the approach to acquiring (via contracting or grants/agreements) for the variety of requirements that will support the program. Once an acquisition strategy is developed for the program, typically Formal Acquisition Plans are not required for individual requirements during the period of the strategy; Abbreviated Acquisition Plans are acceptable. The Acquisition Strategy should be treated as a living document and updated as the needs change. Refer to Acquisition Planning Matrices in Part 407 for list of reviewers and approvers.
Assistant CIO	Chief Information Officer at the Mission Area level.
Associate CIO	Chief Information Officer at the USDA level.
Acquisition Strategy/	The acquisition planning document completed for a Major Program or IT Investment (defined below) that includes the acquisition strategy and high-level information on the



<b>Definitions</b>	
Acquisition Plan (AS/AP)	acquisition plan for each contract need associated with the Major Program or IT Investment. A Major Program or IT Investment that includes distinct systems and purposes may elect to complete the multiple AS/AP documents for the same Major Program or IT Investment. If AAPs for new contracts are not attached at the time the AS/AP is approved, the AAP must be completed prior to submitting a requisition for the new contract action.
Formal Acquisition Plan	A detailed Acquisition Plan that meets FAR acquisition planning requirements in a detailed, narrative format. The Formal Acquisition Plan is generally used for very high dollar value (>\$50M), high complexity and/or high-risk acquisitions, as determined by the CO, that are not included in an AS/AP.
Major IT System Acquisition Program (also known as a Major IT Investment by OCIO)	An IT investment requiring special management attention because of its importance to the mission or function of the government; significant program or policy implications; high executive visibility; high development, operating, or maintenance costs; unusual funding mechanism; or (per USDA) an investment meeting one or more of the criteria in <a href="#">DR-3130-008</a> , 4.b.
Non-Major IT Investment	Any IT Investment in the USDA portfolio with a unique investment identifier that has not been identified as a Major IT Investment.
Non-IT Major Acquisition Project	A single non-IT contract valued over \$50M.
Major Program	A mission critical collection of programs and services, to include acquisitions, grants and full-time equivalents which are designated by the Agency Head (or as delegated) and are programs which: (1) are directed at and critical to fulfilling an agency mission need, (2) entail allocating relatively large resources for the agency, and (3) warrant special management attention, including specific agency-head decisions.

#### 407.104 General Procedures.

##### **Acquisition Forecasts**

Program personnel, using the contracting process to accomplish their programs, must ensure that: (1) Advanced Acquisition/Forecasts and Acquisition Plans are completed, as required; (2) A Procurement Forecast notice per DR 5090-003 is submitted to the Mission Area Small Business Coordinator once any acquisition plan is finalized; (3) Requirements are clearly defined and specified; (4) Quality standards are prescribed and met; (5) Performance or delivery is timely; and (6) Files are documented to substantiate the judgments, decisions, and actions taken.

##### How to Plan

##### **Why do we plan?**

To make sure that we get what we need, to make the process go smoother and to ensure we evaluate what we did in the past and are considering what the future may require. We take time to think about what we need to have and what is nice to have, what it should cost and what we can afford. We talk to vendors about what they offer, determine the expertise they need and how we will know they can do the work. To make sure we buy

commercial products and commercial services if they are available; to support competition to the maximum extent practicable; and to select the appropriate contract type. The extent of market research required during planning will vary, depending on factors such as urgency, estimated dollar value, and complexity of the requirement. Taking the time to make a good plan will save you more time than it took to plan. For best practices on reducing Procurement Administrative Lead Time (PALT) [click here](#). A “Procurement Strategy Roadmap” with information on required sources can be found at [Sharepoint | Policy and Regulations](#).

### **Does everything have to be planned?**

Planning is required for every acquisition. The level of planning and type of template is determined by many factors. See the Acquisition Planning Matrices in this Desk Book section (below) and FAR 7.1 to determine what type of acquisition planning is required.

### **Who is responsible for planning?**

Planning is the responsibility of the “Planner” who is a member of the requiring office or who works with the requiring office to develop the plan. The Planner must be the accountable, responsible representative of the requesting office throughout the acquisition planning process. If not already designated, the requesting office must, at a minimum, assign a project manager, if supporting project, or program manager, if supporting a program without a subordinate project component, to serve as the Planner throughout the acquisition planning and pre-award phases of the acquisition process.

Planning should be a collaborative process between the requiring office, contracting office, technical subject matter experts (SMEs) and other stakeholders, as appropriate. Contracting officials are not “Planners” but they can be a valuable resource. If the requiring office needs assistance in planning, there are tools available, including at the Virtual Acquisition Office (VAO), which provides templates, guides, and examples: <https://www.gotovao.com/>. An enterprise license has been purchased for USDA use. For access contact the [VAOCustomerCare@gotovao.com](mailto:VAOCustomerCare@gotovao.com) and provide your USDA email address.

### **How is planning documented?**

It depends on the requirement. When written acquisition planning is required, there are templates like the AS/AP, the Formal Acquisition Plan, or the Abbreviated Acquisition Plan. When there is no specific template required, there must still be documentation included in the contract file that shows planning activities (e.g., Summary Worksheet, Justification and Approval, Market Research, etc.).

### **Do I need a plan for every action on a Blanket Purchase Agreement or Indefinite Delivery Type contract?**

It depends. Acquisition plans are valid for the life of the contract, so acquisition plans are generally prepared prior to the base contract solicitation. If there is a significant change in what is being acquired versus what was included in the approved plan (such as a change in total value or quantity of +/- 10%), acquisition planning would be required (i.e., modification for work within scope more than 10% of original approved plan).

For calls and orders against GSA (Part 8), Part 13 Blanket Purchase Agreements (BPAs) or other Indefinite Delivery Vehicles (IDVs), an acquisition plan is required if the call or order is not included in the acquisition strategy or plan. For example, an acquisition plan would generally be required for a task order against a GSA BPA. An acquisition plan may not be required for a call against a Part 13 BPA if the acquisition plan for the BPA discusses the planned BPA call, and specific projects were planned at the time the BPA was established.

**My program requires a lot of contracts, do I need a plan for every contract?**

You may, but it would be best to use an AS/AP to define the overall acquisition strategy for your program and associating acquisition plans for specific contract needs with that strategy. An AS/AP is required for every non-IT Major Program and every IT Investment (Major and Non-Major IT Investment types, at the unique investment identifier, or UII, level), but can be used for any acquisition that requires strategic planning in addition to planning at the contract level. Major Programs and IT Investments that do not have an AS/AP in place must submit the AS/AP by July 1 of the fiscal year prior to the first fiscal year in which new contracts are needed, per SPE direction.

Requiring offices (i.e., program offices) may elect to complete more than one AS/AP for a program or IT Investment if strategies for various components differ or are more easily understood as separate strategies (e.g., a single IT Investment that includes distinct systems with different acquisition approaches). Acquisition strategies must use the AS/AP template or must incorporate the elements from the template into an alternate strategy format, such as in situations where the program has an existing strategic planning document.

**What are the requirements for updating an AS/AP?**

Program Offices must review their AS/AP annually, using the AS/AP to plan their requirements for upcoming fiscal years. An AS/AP is updated every year to include new or changed requirements and to update the existing and new contract information, at a minimum. Refer to the AS/AP template for specific annual review and update instructions. For IT Investments, the updated AS/AP must be uploaded to AgMAX annually and provided to the contracting office. Re-approval of the AS/AP is required if substantive changes are made during the annual review, as defined in the AS/AP template.

**How do I know what type of plan I need?**

The Acquisition Planning Matrices will help you determine what documentation and approvals will be required. Generally, the more complex, risky, or expensive a requirement, the more documentation and a higher level of approval is required.

**Non-Information Technology (Non-IT) Requirements**

**What is required for a Non-IT requirement?**

Use the Acquisition Planning Matrix for Non-IT Contracts for requirements which have no IT or less than \$25,000 of IT in a single award. If the requirement is a mix of Non-IT and IT, use guidance in both matrices to determine required reviews and approvals based on the Non-IT and IT dollar values.

*Acquisition Planning Matrix for Non-IT Contracts*

<b>Total Contract Value and Acquisition Type</b>	<b>Contract Type &amp; Competition</b>	<b>Type of Plan</b>	<b>Review / Clearance</b>	<b>Final Signatory Approver<sup>1</sup></b>
<b>Any Action ≤\$7.5M and not a major program</b>	Any	FAR Required Documentation	Follow Mission Area Procedures	Contracting Officer
<b>&gt;\$7.5M to ≤\$50M and not a major program</b>	FFP, Competitive or Set-Aside	Abbreviated Acquisition Plan (AAP)	Requiring Office’s SES for services	MASCO or Designee
<b>&gt;\$7.5M to ≤\$50M and not a major program</b>	Not FFP	Formal Acquisition Plan	Requiring Office’s SES for services	MASCO or Designee
<b>&gt;\$50M, but not designated a major acquisition project by SPE</b>	FFP, Competitive or Set-Aside	Abbreviated Acquisition Plan (AAP)	Requiring Office’s SES for services, MASPM, MASCO	HCA
<b>Major Program and All Associated Requirements known at time of strategy development<sup>3</sup> or &gt;\$50M and not FFP</b>	Any	Formal Acquisition Plan <u>OR</u> Acquisition Strategy/ Acquisition Plan (AS/AP)	Contracting Office <sup>4</sup> , Requiring Office’s SES for services, MASPM, MASCO, and Mission Area Undersecretary	SPE <sup>2</sup>
<b>Interagency Agreements (New or Modification) for assisted acquisitions</b>	N/A	Copy of the planned agreement	MASPM and MASCO	HCA
<b>Bridge contract of any time length<sup>3</sup> “Bridge” defined at <a href="#">Sharepoint   Policy   Bridge</a></b>	Any	Select appropriate plan in accordance with thresholds above	Requiring Office’s SES	HCA
<b>As required by the HCA</b>	N/A	As directed	As directed	As directed

<sup>1</sup> If approval outside the Mission Area is required, (e.g., approval needed by HCA or SPE) the plan must be signed by the Requiring Office’s SES, MASPM, and MASCO and be submitted to the USDA Procurement Policy Division (PPD) at [procurement.policy@usda.gov](mailto:procurement.policy@usda.gov). Also follow any specific Mission Area clearance procedures.

<sup>2</sup> Mission Area program office will complete and brief the “Acquisition Planning Decision Memo” located at [Sharepoint | Templates](#). The Date of the Decision Memo must be the date of the briefing to the SPE and participants. The SPE’s approval will be documented on the “Acquisition Planning Decision Memo.”

<sup>3</sup> New requirements (not known at the time of planning) associated with a Major Program with an approved AS/AP may use the Abbreviated Acquisition Plan and approval levels if the planning for the new requirement is consistent with the approved AS/AP. If the planned approach for the new requirement is not consistent with the AS/AP or changes the value of the investment by +/- 10%, the AS/AP must be updated and re-approved with the new requirements incorporated.

<sup>4</sup> Mission Areas must identify the FAC-C certified representative from their Contracting Office by role, to serve as a signatory on the AS/AP. This may be: (1) the Contracting Officer responsible for awarding the contract(s), (2) a

*Acquisition Planning Matrix for Non-IT Contracts*

Procurement Analyst who reviews AS/APs prior to MASCO signature, (3) a Branch Chief or other supervisory role, or (4) some other warranted role specified by the Mission Area.

### Information Technology (IT) Requirements

#### **What is IT?**

USDA uses the definition as it is expressed in the OMB Memo [M-15-14](#).

#### **What is required for an Information Technology (IT) Requirement?**

Per the Federal Information Technology Acquisition Reform Act (FITARA), the USDA CIO or their designee is the approver of all acquisition strategies and plans for IT contracts. The Contracting Officer must award IT contracts consistent with the CIO approved strategies and plans. If a proposed contract award is inconsistent with the CIO approved AS/AP, the CIO must either re-approve the AS/AP or approve the contract itself. Additional information on IT contract approval requirements is included in the [IT Contract Planning and CIO Approval Standard Operating Procedure](#).

#### **What is the AS/AP requirement for IT investments, and how does this relate to IT requirements?**

All IT Investments (at the UII level) must have an AS/AP in place per the Acquisition Planning Matrix for IT Contracts. Completed, approved AS/APs must be attached to appropriate requisitions or provided directly to the contracting office. Planners must review guidance for AS/AP processing in the 'Acquisition Planning Requirements for IT' memo located at [USDA Acquisition Workforce - Templates - All Documents \(sharepoint.com\)](#).

#### **Why do I have to get a CIO Acquisition Approval Request (AAR)?**

To meet USDA-specific appropriation law requirements, information technology actions that are estimated to meet or exceed \$25,000 in obligations in a fiscal year require an additional approval, the AAR. The AAR is in addition to the standard requirements package completed by requiring/program offices.

#### **How do I get an AAR?**

IT contracts must have Chief Information Officer (CIO) approval of funding and technical requirements through the AAR process that is completed in AgMAX. Program offices should work with their agency CIO office for AAR guidance and approval.

#### **What do I do with my approved AAR?**

The requiring/program office must submit one or more approved AAR numbers associated with each contract action at the time of requisition. If AAR(s) are not approved at the time of requisition, the requisitioner must instead enter the AAR submission ID, which identifies that an AAR has been submitted to OCIO through AgMAX. The AAR Submission ID will enable the Contracting Office to track the status of the AAR approval via a system interface between AgMAX and IAS. All AARs associated with a contract action MUST be in "approved" status in AgMAX and IAS prior to contract award.

#### **I am a Contracting Officer, what does the AAR mean to me?**

Every contract action with a planned IT obligation valued at \$25,000 or more in a Fiscal Year must be approved by the CIO via an AAR. A single AAR may include CIO approval for IT spend for a single contract, multiple

contracts and/or multiple IT Investments. The Contracting Officer may not award an IT contract until one or more AAR numbers are provided to document CIO approval of the IT spend. Note that new AARs are required every Fiscal Year (or more frequently if additional IT spend approvals are needed), whereas acquisition planning is generally required prior to initial contract award only, unless there are substantive changes to the original approved acquisition planning. IAS will prevent IT contract award unless valid, approved AAR number(s) are provided. **The AAR approval requirement does not prohibit the contracting office from accepting the requisition (note: an AAR Submission ID must be populated on the requisition which means it has been formally submitted to AgMAX and is awaiting approvals), issuing a solicitation, and collaborating with the requiring office in the development of the award.**

*Acquisition Planning Matrix for IT CONTRACTS*

*\*In Addition to Acquisition Planning, IT Contracts Require an Acquisition Approval Request (AAR) from the USDA OCIO if the obligation is over \$25,000\**

**Acquisition Strategy / Acquisition Plan (AS/AP) Requirement (All IT Investments)**

<b>Total Contract Value and Acquisition Type</b>	<b>Type of Plan</b>	<b>Review / Clearance<sup>2</sup></b>	<b>Final Signatory Approver<sup>2</sup></b>
Major IT Investment and All Associated Requirements known at time of strategy development <sup>1,3</sup>	AS/AP	Contracting Office <sup>4</sup> , Requiring Office's SES for services, MASPM, MASCO, HCA	CIO
Non-Major IT Investment and All Associated Requirements known at time of strategy development <sup>1,3</sup>	AS/AP	Contracting Office <sup>4</sup> , MASPM, MASCO	Assistant CIO

**Updates to AS/AP Outside of Annual Review<sup>3</sup>**

Any requirement >SAT (\$250K) consistent with AS/AP strategy and within approved cost <sup>3</sup>	Abbreviated Acquisition Plan (AAP)	Contracting Officer	Assistant CIO or designee
Any requirement >SAT (\$250K) NOT consistent with AS/AP strategy and/or NOT within approved cost <sup>3</sup>	Revise/reapprove AS/AP prior to solicitation and complete AAP	Re-approve AS/AP per above; attach AAP for simultaneous approval or approve AAP after AS/AP re-approval	Re-approve AS/AP per above; attach AAP for simultaneous approval or approve AAP after AS/AP re-approval
Any requirement at or below the Simplified Acquisition Threshold not included in the AS/AP <sup>3</sup>	Add to AS/AP during annual review	In accordance with AS/AP annual review	In accordance with AS/AP annual review

**Other Situations:**

As directed by the Head of the Contracting Activity (HCA) or HCA Designee (HCAD)	As directed by the HCA or HCAD	As directed by the HCA or HCAD	As directed by the HCA or HCAD
Interagency Agreements (New or Modification) for assisted acquisitions	Copy of the planned agreement	MASPM and MASCO	HCA in consultation with CIO
Bridge contract of <u>any time length</u> <b>“Bridge” defined here</b>	Select appropriate plan in accordance with thresholds above	Requiring Office’s SES	HCA
Any Contract Type or Value that includes <u>Financial IT</u>	See above	Add OCFO to review/clearance	See above

<sup>1</sup> IT Investment Types include Major and Non-Major. Standard IT Investments should follow the procedures for the appropriate Major or Non-Major Investment type based on the CIO definition of Major IT in [DR 3130-008](#). If you are unsure if your contract is part of a Major or Non-Major IT Investment, please contact your Mission Area CIO Capital Planning staff or email the [USDA Capital Planning mailbox](#) for assistance.

<sup>2</sup> If review and approval outside the Mission Area is required, (e.g., approval needed by HCA, OCFO or CIO) the plan must be signed by the Mission Area roles listed in the “Review/Concur” column and be submitted to the USDA Procurement Policy Division (PPD) at [procurement.policy@usda.gov](mailto:procurement.policy@usda.gov). No final solicitation may be released prior to acquisition plan approval or waiver of acquisition planning requirements. Units must also follow any specific Mission Area clearance procedures. Note on Assistant CIO approvals: if the requirement is at the Department level (not in a Mission Area), the approver is the USDA Associate CIO.

<sup>3</sup> New requirements (not known at the time of planning) associated with an approved AS/AP should use the Abbreviated Acquisition Plan and approval levels, if the planning for the new requirement is consistent with the approved AS/AP. If the planned approach for the new requirement is not consistent with the AS/AP or changes the value of the investment by +/- 10%, the AS/AP must be updated and re-approved with the new requirements incorporated as well as completing an AAP for the new requirement.

<sup>4</sup> Mission Areas must identify the FAC-C certified representative from their Contracting Office by role, to serve as a signatory on the AS/AP. This may be: (1) the Contracting Officer responsible for awarding the contract(s), (2) a Procurement Analyst who reviews AS/APs prior to MASCO signature, (3) a Branch Chief or other supervisory role, or (4) some other warranted role specified by the Mission Area.

## Approvals

### Who approves the plan?

The Acquisition Planning Matrix provides approval levels required. The program office is responsible for coordinating the necessary coordination, review, and approvals.

### How do departmental approvals occur?

For acquisition plans requiring approval outside of the mission or staff area (e.g., HCA, SPE, etc.; or HCA, OCFO and OCIO for IT), prior to developing the plan and submitting requirements packages to the contracting office, the mission area must brief a high-level description of the need to the appropriate concurring and approving parties. This will allow for a collaborative approach in defining the plan and should shorten the overall review time required for approval. The MASCO, Contracting Officer (if assigned), or other designated contracting

official will provide support and will normally participate during these briefings. At a minimum, the following items are required to be included in the briefing:

- 1) The Government's need, what are we procuring and why;
- 2) Acquisition History, including technical and contractual history of the acquisition;
- 3) Market Research completed by the Program, if any;
- 4) An estimate of cost or the Independent Government Cost Estimate (IGCE);
- 5) Potential risks associated with the acquisition or requirement-operational, political, financial, etc.;
- 6) Type and length of contract contemplated;
- 7) Type of small business set-aside, if applicable;
- 8) Level of competition expected;
- 9) Other topics deemed significant by the HCA, MASCO, Program Office, MASPM, or Contracting Officer; and
- 10) For IT Investments, it is recommended that the briefing be completed as part of IT Governance board meetings.

## Acquisition Program Management

### **What do acquisition program managers do?**

Program and project managers (P/PM) ensure that requirements are appropriately written, performance standards are established, and contractors deliver what they promise. "P/PMs develop requirements, lead integrated project teams (IPTs), and oversee budgeting and governance processes" (per OMB Memorandum titled "Revisions to the Federal Acquisition Certification for Program and Project managers (FAC-P/PM)", dated December 16, 2013, located here). All these activities are critical to ensuring that agency mission needs are filled and expected outcomes achieved.

### **Who is responsible for developing contract requirements?**

The requirements owner is responsible for determining what is needed in collaboration with stakeholders. FAR 11, FAR 37.6, and FAR 46.4 provide minimum requirements and clauses for a performance work statement (PWS) and statement of work (SOW), as well as minimum standards to check that we are getting what we are paying for by using a Quality Assurance Surveillance Plan (QASP). USDA has examples of these documents and the acquisition planning templates at [Sharepoint | Templates](#).

### **Why is there a Mission Area Senior Program Manager?**

To fulfill agency head responsibilities in the FAR and AGAR, the USDA Secretary has determined that each Mission Area have a Mission Area Senior Program Manager (MASPM) who is responsible for overseeing the planning of acquisitions in the Mission Area.

### **How do Mission Area Senior Program Managers (MASPMs) support acquisition program managers?**

MASPMs will work with their MASCO to have governance in place to ensure requirements of this part and part 11 are followed and documented in the appropriate acquisition planning document.

## SUBPART 407.5--INHERENTLY GOVERNMENTAL FUNCTIONS



#### 407.502 Applicability.

##### **What type of work is inherently governmental?**

The FAR provides an extensive list of many inherently governmental functions which cannot be contracted. It also includes a list of closely associated functions, most of which would be deemed “advisory and assistance” contracts. For a list of product service codes typically considered advisory and assistance, see <https://www.acq.osd.mil/asda/dpc/ce/p2p/transparency-of-procurement-spending.html>, and <https://psctool.us/references>. Also see PGI Part 437 for additional requirements for advisory and assistance services.

#### 407.503 Policy.

##### **What do I have to do if I have a service requirement?**

Requesting activities must provide a written determination required by FAR 7.503(e), that none of the functions to be performed are inherently governmental, when submitting requests for procurement of services. This can be done as part of the acquisition plan, when plans are applicable.

In the event of a disagreement as to whether the functions to be performed are inherently governmental, the MASCO may refer the matter to the HCA for resolution. When submitting disagreements to the HCA for resolution the MASCO must provide a summary of the areas of disagreement, supported by the following:

- 1) the MASCO’s assessment of whether the services are “inherently governmental”;
- 2) the basis for that assessment (include references to the definition and policy in FAR subpart 7.5 and/or Office of Federal Procurement Policy letter 92-1);
- 3) a copy of the statement of work; and,
- 4) the requesting activity’s written determination in accordance with FAR 7.503(e).

Disagreements must be resolved prior to issuance of the solicitation. For additional information regarding inherently governmental functions click [here](#).

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

#### 408.002 Priorities for Use of Mandatory Sources.

##### **Where can I find additional information on required sources for USDA?**

An “Acquisition Strategy Roadmap” with information on required sources can be found at [Sharepoint | Policy and Regulations](#).

#### 408.003 Use of Other Mandatory Sources.

##### Small package delivery

The Office of Management and Budget (OMB) Memorandum M-17-29 mandates the use of the Next Generation Delivery Services (NGDS) contract and directs all Federal agencies to use the new government-wide contract to meet their global air and ground small package delivery services.

##### **Where can I find copies of each contract?**

Copies of each contract and attachments (to include pricing sheets) are posted on the Acquisition Gateway. If currently not registered, Agency users must register for a Max.gov account to access the Acquisition Gateway. Once logged into the Acquisition Gateway, <https://hallways.cap.gsa.gov/login-information>, scroll down and select Transportation and Logistics Services. Scroll down and select Package Delivery and Packaging to find helpful information on contracts and rates. To determine the applicable pricing rates for your agency, please note your pricing profile.

Prices, terms and conditions are negotiated up front with the contractor (vendor). No further price reductions, waiving of accessories, or changes to terms and conditions can be negotiated at the shipper level. Overhead fees are paid by the contractor on a transactional basis and embedded with their rate (~1.3% of shipment cost). If a shipper already ships under DDS3, TDS, DLA's SSP, or a surface ground tender account(s), previously established accounts will be carried over to the NGDS contract(s).

The NGDS Shippers Guide can be found at [Sharepoint | Policy and Regulations](#). Aggregate shipping totals for the fiscal year that exceed the micro-purchase threshold require Fair Opportunity/competition among the three contractors that received the NGDS award only (i.e., Federal Express Corporation, United Parcel Service, and Polar Air Cargo (DHL subcontractor)).

USDA agencies must submit a waiver to the Procurement Policy Division, Office of Contracting and Procurement (OCP) at [Procurement.Policy@usda.gov](mailto:Procurement.Policy@usda.gov) for approval to obtain a delivery service provider other than NGDS. The NGDS waivers must provide:

- 1) Substantial evidence/determination of a cost benefit;
- 2) Pertinent background information (market research/justification); and
- 3) Copy of the waiver request signed by the Mission Area Senior Contracting Official (MASCO).

#### **Other USDA and Government-wide Interagency Instruments**

The USDA website for multi-use contracts is <https://ias.usda.gov/usdacontracts/index.html>. Category management instructions are located at [Sharepoint | Policy and Regulations](#). A Governmentwide searchable database of contracts and other procurement instruments intended for use by multiple agencies is available at <https://www.contractdirectory.gov/>.

#### **Orders Against Other Agency Contracts**

Other agency contracts, including Federal Supply Schedules, may have terms different from USDA included in the contract. Before placing covered orders against such contracts, the CO must review the terms, and if the contract does not include the necessary terms, either not use the contract or include USDA terms in the order placed against the contract.

### **SUBPART 408.4--FEDERAL SUPPLY SCHEDULES**

#### **408.405-6 Limiting Sources.**

Contracting Officers are reminded that the value of options, including an option to extend, is to be included in the value of the justification needing to be approved.

The Contracting Officer must amend a justification and obtain the 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.

[Click for FAR 8.4 Limited Sources Justifications](#)

### **What is the Federal Strategic Sourcing Initiative?**

The General Services Administration, through the Federal Strategic Sourcing Initiative (FSSI) has awarded Indefinite Delivery, Indefinite Quantity (IDIQ) contracts for office supplies. This FSSI initiative is called Office Supplies Fourth Generation (OS4). <https://www.gsa.gov/buying-selling/purchasing-programs/federal-strategic-sourcing-initiative/fssi-os4/office-supply-fourth-generation-os4-awarded-vendors>. Any USDA employee with a Contracting Officer's Warrant or the authority to acquire office supplies by purchase card may use the IDIQ contracts within purchase limits (\$10,000.00 and below) without the need for further authorization. No additional competition is required.

## **SUBPART 408.7--ACQUISITION FROM NONPROFIT AGENCIES EMPLOYING PEOPLE WHO ARE BLIND OR SEVERELY DISABLED**

### 408.701 Definitions.

"Committee Member" is the Presidential appointee representing USDA as a member of the Committee for Purchase from People Who Are Blind or Severely Disabled.

"Organization head" is the Under Secretary or Assistant Secretary of a mission area or the head of a USDA staff office.

### 408.703 Procurement List.

USDA has mandatory items on the list. [https://www.abilityone.gov/procurement\\_list/index.html](https://www.abilityone.gov/procurement_list/index.html).

### 408.705 Procedures.

- 1) The organization head must appoint one person as the AbilityOne Liaison to represent the organization and to coordinate the organization's actions with the Committee Member. The AbilityOne Liaison is currently within the Office of Small and Disadvantaged Business Utilization (OSDBU) staff, [OSDBU Website](#).
- 2) AbilityOne Liaisons may represent more than one organization. Liaisons need not be acquisition officials.
- 3) The organization head must issue and maintain a performance plan to promote and enhance the organization's acquisitions from AbilityOne participating nonprofit agencies.
- 4) The performance plan must: (1) announce the organization's support for the AbilityOne Act; (2) establish a promotion program for the products and services provided by the AbilityOne participating nonprofit agencies; (3) provide for the AbilityOne's role in acquisition planning; (4) establish measurable program goals for growth or other accomplishments in the organization's AbilityOne program actions; and (5) establish an awards program for successful participation in the AbilityOne program.

*408.705-2 Direct order process.*

The MASCO may apply to a central nonprofit agency for authorization to order specific supplies or services directly from an AbilityOne participating nonprofit agency.

A copy of the application should be provided to the AbilityOne Liaison who will inform the USDA Committee Member.

*408.705-3 Allocation process.*

- 1) The MASCO may apply to a central nonprofit agency for a production allocation of specific supplies or services to an AbilityOne participating nonprofit agency.
- 2) A copy of the application should be provided to the AbilityOne Liaison who will inform the USDA Committee Member.

*408.705-4 Compliance with orders.*

Prior to attempting to resolve a failure to perform by a participating nonprofit agency with the Committee, the MASCO should provide advance notice to the AbilityOne Liaison who will inform the USDA Committee Member.

*408.706 Purchase exemptions.*

Prior to applying to the Committee for a purchase exemption, the MASCO should provide advance notice to the AbilityOne Liaison who will inform the USDA Committee Member.

*408.707 Prices.*

Prior to applying for a price revision, the MASCO should provide advance notice to the AbilityOne Liaison who will inform the USDA Committee Member.

*408.711 Quality complaints.*

Prior to attempting to resolve a complaint regarding the quality of goods or services provided by participating nonprofit agency with the Committee, the MASCO should provide advance notice to the AbilityOne Liaison who will inform the USDA Committee Member.

*408.712 Specification changes.*

Prior to providing 90-days advance notification to the Committee on actions that affect supplies and services on the Procurement List, the MASCO should provide advance notice to the AbilityOne Liaison who will inform the USDA Committee Member.

*408.714 Communications with the central nonprofit agencies and the Committee.*

Any matter requiring referral to the Committee must be provided to the AbilityOne Liaison who will coordinate the matter with the Committee Member.

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

*408.802 Policy.*

The Contracting Officer must ensure the procedures in PGI 405.502 are followed, if applicable, prior to contracting for any items listed in FAR 8.801.

### **How can I purchase printing and duplicating services?**

The Office of the Secretary has mandated that Mission Areas in the National Capital Region (NCR) (and recommend nationwide) use the Office of Operations (OO), Mail and Reproductive Services (MRS) for duplicating services before contracting outside of USDA for the same or similar services. For a list of products and services available from OO, click [here](#). The Decision Memo mandating this requirement can be found [here](#).

### **Can I purchase Business Cards?**

Yes, in addition to the OO MRS, the U. S. General Services Administration (GSA) has issued a Federal Supply Schedule contract to Envision Print, 2301 S. Water St., Wichita, Kansas, 67213. Step-by-step instructions can be found at <http://www.envisionbusinesscards.com>.

Funds Available: The U. S. Department of Justice's (DOJ) Office of Legal Counsel, along with the U. S. General Accounting Office (GAO) has determined and affirmed that appropriated funds can be used to obtain business cards for Government employees who regularly deal with the public or organizations outside their immediate office (B-280759).

Check with your Mission Area on any specific guidance regarding purchasing business cards. For instance, FSIS employees must use the Agency Printing Office.

## **SUBPART 408.11--LEASING OF MOTOR VEHICLES**

### **408.1103 Contract Requirements.**

If the requirement includes the need for the vendor to provide operational maintenance such as fueling, lubrication, or other fluid changes or replenishment, the Contracting Officer must include in the contract:

- 1) a requirement for the use of fluids and lubricants containing the maximum available, amounts of recovered materials and alternative fuels whenever available; and
- 2) a preference for retreaded tires meeting the Federal retread specifications, tires with the maximum recovered material content, or retreading services for the tires on the vehicle.

## **PART 409--CONTRACTOR QUALIFICATIONS**

### **SUBPART 409.2—QUALIFICATIONS REQUIREMENTS**

#### **409.202 Policy.**

USDA activities have a variety of needs for which it is critical that vendors provide products of the highest quality and reliability. These products must be capable of being used with products already in USDA's inventory, and with products supplied by other vendors. Accordingly, qualification requirements (QRs) may be defined for USDA Activities including systems of application, testing and record keeping, to assure that products, vendors, or manufacturers are tested and qualified prior to contract award. The imposition of a QR can restrict competition and as a result is strictly managed.

### **How are qualification requirements established?**

For each Mission Area, the information in FAR Subpart 9.2 is to be prepared and submitted to the Under Secretary, who may re-delegate no lower than a sub-agency head (e.g., Chief of the FS, Administrator Farm Service Agency) without further delegation, for approval to establish or change a QR. For each Mission Area, the Under Secretary will maintain information on the QRs established by USDA.

QRs that are applicable to requirements managed or directed by USDA activities (such as wildfire suppression programs) must be approved by the Office of Contracting and Procurement (OCP) and posted to [Qualification Requirements | USDA](#). QRs not posted will not be enforceable by a USDA activity for its acquisitions or the acquisitions of others.

Each Mission Area is responsible for maintaining data that supports the need for a QR, and for making this data available to the public. The Under Secretary must submit the data as shown below to complete the listing matrix in adequate time for the OCP to update the information posted at [Qualification Requirements | USDA](#).

USDA PROCEDURES, GUIDANCE, AND INFORMATION (PGI) v3.5

<b>USDA Qualification Requirement by Name or Number</b>	<b>QR Submission Procedures for Testing (Location, Contact Person, Office or URL)</b>	<b>OMB Control # Paperwork Reduction</b>	<b>Version Date</b>	<b>Expiration Date</b>	<b>Determination of need for QR (Location, Contact Person, Office or URL)</b>	<b>Market Research Report Supporting QR (Location, Contact Person, Office or URL)</b>	<b>GPE Notice for QR (Contact Person, Office or URL)</b>	<b>Technical Contact for QR</b>	<b>Address for Submittal of Application for Listing on QR</b>
<i>RCCD-OD-01-0003</i>			<i>7/18/2022</i>	<i>7/17/2023</i>			<i>Link to SAM Announcement</i>	<i>Name, #, email</i>	<i>Link to Products</i>

All data necessary for the update must be submitted at one time to the Chief, Procurement Policy Division. The posting will require approximately 20 calendar days to accomplish. In the case of deficient data, the appropriate Mission Area will be notified of the deficiencies and the QR will not be posted.

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

## SUBPART 409.4--DEBARMENT, SUSPENSION AND INELIGIBILITY

### 409.403 Definitions.

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

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

### 409.404 Exclusions in the System for Award Management.

#### **What are the key roles within the suspension and debarment program?**

The Department Debarring Officer, also known as the "'S&D' Official", is the Director of OCP and is USDA's single point of contact with GSA for suspension and debarment (S&D) actions taken under this subpart. Each Mission Area has a debarring official who must notify the Department Debarring Officer of each S&D action by promptly submitting a copy of the debarment or suspension notice and any later changes to the debarment or suspension status. The Department Debarring Officer will forward a copy of each notice to GSA for inclusion in the Government-wide list. The Chief, Procurement Policy is USDA's procurement point of contact (POC) for agency coordination.

### 409.405 Effect of Listing.

The HCA has redelegated authority to request determinations under FAR 9.405 to the MASCO. Compelling reasons occur when failure to contract with the debarred or suspended contractor would seriously harm the agency's programs and prevent accomplishment of mission requirements.

### 409.406 Debarment.

#### *409.406-3 Procedures.*

- 1) Investigation and referral. When a Contracting Officer becomes aware of possible irregularities or any information which may be sufficient cause for debarment, the case must be immediately referred through the MASCO to the Department Debarring Officer. Accompany the case with a complete statement of the facts (including a copy of any criminal indictments, if applicable) along with a recommendation for action. Where the statement of facts indicates the irregularities are possible criminal offenses, or for any other reason further investigation is considered necessary, refer the matter to the MASCO who should consult with the Office of Inspector General (OIG) to determine if further



investigation is required prior to referring to the debarring official.

- 2) Decision-making process. If the debarring official determines debarment is justified (after reviewing the recommendations and consulting with the OIG and Office of the General Counsel (OGC), as appropriate) the debarring official must initiate the proposed debarment in accordance with FAR 9.406-3(c) and notify the MASCO of the action taken.
- 3) Fact-finding proceeding. For actions listed under FAR 9.406-3(b)(2), allow the contractor the opportunity to appear at an informal hearing. The hearing should be at a location and time that is convenient to the parties concerned, if possible. The contractor and any specifically named affiliates may be represented by counsel or any duly authorized representative. Witnesses may be called by either party. The proceedings must be conducted quickly and in such a manner that each party will have an opportunity to present all important information for the proposed debarment. Give the contractor a copy of the proceedings transcript as established in FAR 9.406-3(b)(2)(ii).

#### 409.407 Suspension.

##### 409.407-3 Procedures.

- 1) Investigation and referral. When a Contracting Officer becomes aware of possible irregularities or any information which may be sufficient cause for suspension, the case must be immediately referred through the MASCO to the Department Debarring Officer. Accompany the case with a complete statement of the facts along with a recommendation for action. Where the statement of facts indicates the irregularities are possible criminal offenses, or for any other reason further investigation is considered necessary, refer the matter to the MASCO who should consult with the OIG to determine if further investigation is required prior to referring it to the debarring official.
- 2) Decision-making process. If the debarring official determines suspension justified (after reviewing the recommendations and consulting with the OIG and OGC, as appropriate) the debarring official must initiate the proposed suspension in accordance with FAR 9.407-3(c) and notify the MASCO of the action taken.
- 3) Fact-finding proceedings. For actions listed under FAR 9.407-3(b)(2), allow the contractor to appear at an informal hearing, similar in nature to the hearing for debarments as discussed in 409.406-3(c).

#### 409.470 Appeals.

##### **What is the appeals process?**

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

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

#### 409.503 Waiver.

##### **What must be included in waiver requests?**

- 1) The general rule or procedure proposed to be waived;
- 2) An analysis of the potential conflict, including the benefits and detriments to the Government and prospective contractors;

- 3) A discussion of why the conflict cannot be avoided, neutralized, or mitigated; and
- 4) Advice of counsel obtained under FAR 9.504(b).

#### 409.504 Contracting Officer Responsibilities.

##### **What must the Contracting Officers consider when drafting the final Organizational Conflict of Interest (OCI) determination for the contract file?**

- 1) Describe the concerns in the letter within two underlying principals –
  - a. Preventing the existence of conflicting roles that might bias a contractor’s judgment; and
  - b. Preventing unfair competitive advantage. In addition to the other situations described in this subpart, an unfair competitive advantage exists where a contractor competing for award of any Federal contract possesses-
    - i. Proprietary information that was obtained from a Government official without proper authorization; or
    - ii. Source selection information (as defined in FAR 2.101) that is relevant to the contract but is not available to all competitors, and such information would assist that contractor in obtaining the contract.
- 2) Use CO judgement.
- 3) Make sure to tailor the letter to the specific circumstances.
- 4) Don’t ask very specific questions – present the concern and ask the vendor to address it and explain why either no OCI exists or how any OCI can be (or has been) neutralized or mitigated.

## PART 410—MARKET RESEARCH

#### 410.001 Policy.

Agencies are reminded of FAR 10.001(a)(2) and (3). While Category Management must be considered, the achievement of socioeconomic and other small business goals must be prioritized over achievement of category management goals if the achievement of both goals (which would be optimal) is not possible.

##### **Why is market research necessary?**

In addition to those uses listed in FAR 10.001, agencies must use the results of market research to–

- 1) Ensure the minimum use of hazardous or toxic materials;
- 2) Ensure the maximum use of biobased products and biofuels; and
- 3) Identify products and services on or eligible for addition to the Javits-Wagner-O’Day Act Procurement List in order to achieve USDA’s goal to increase participation in this program.
- 4) Determine whether the acquisition should be set-aside to meet USDA’s specific socioeconomic small business goals.

#### 410.002 Procedures.

Market research must include obtaining information on the commercial quality assurance practices as an alternative for Government inspection and testing prior to acceptance.

## PART 411--DESCRIBING AGENCY NEEDS

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

#### 411.101 Order of Precedence for Requirements Documents.

##### **Where can I find information on requirements documents?**

USDA has samples of statements of work, statements of objectives and performance work statements available at [Sharepoint | Templates](#) . Mission Areas may also have recommended templates. It is encouraged to utilize these tools and tailor to the specific need. Some additional sites available are:

[https://fast.faa.gov/PPG\\_SOW\\_Templates.cfm](https://fast.faa.gov/PPG_SOW_Templates.cfm)

<https://hallways.cap.gsa.gov/app/#/doclib>

The Head of the Contracting Activity (HCA) redelegated the authority to the MASCO to submit the determination required by [OMB Circular A-119.pdf](#).

#### 411.103 Market Acceptance.

The Head of the Contracting Activity (HCA) redelegated the authority to the MASCO to make a determination that offerors must demonstrate, in accordance with FAR 11.103(a), the market acceptability of their items to be offered. The Contracting Officer must place a copy of this determination, signed by the MASCO, in the solicitation file.

#### 411.104 Use of Brand Name or Equal Purchase Descriptions.

##### **What is the difference between a “brand name or equal” purchase and a “brand name” purchase?**

A "brand name or equal" purchase is not considered sole source, does not require justification, must include FAR 52.211-6, and the description must include the following type of information:

- 1) Identification of the item by generic description.
- 2) Make, model number, catalog designation, or other description, and identification of a commercial catalog where it is listed.
- 3) Name of manufacturer, producer, or distributor of the item and complete address.
- 4) All salient characteristics of the "brand name or equal" product or products which have been determined by the program office to be essential to the Government's minimum requirements.

A “brand name” purchase, by comparison, is used when only items peculiar to one manufacturer will meet a need (particular make or model). Brand name purchases are considered sole source and do require use of a justification, depending on the amount of the purchase, and which FAR authority is applicable. Access the “J&A Template Decision Matrix” [here](#).

#### 411.106 Purchase Descriptions for Service Contracts.

When contract personnel are used, the requiring official must record on the requisition and/or the Statement of Work or Performance Work Statement, a determination whether harm to the Government might occur if contractor personnel do not identify themselves as non-Government officials.

#### 411.107 Solicitation Provision.

Contracting Officers must immediately discontinue use of the following AGAR provision and clause in all contracts: the provision at AGAR 452.211-70, *Brand Name or Equal*, and its prescription at AGAR 411.171.

Contracting Officers must continue to use, as appropriate, the FAR provision at 52.211-6, *Brand Name or Equal*, as prescribed in FAR 11.107(a).

### SUBPART 411.6—PRIORITIES AND ALLOCATIONS

#### 411.600 Scope of Subpart.

The Defense Priorities and Allocation System (DPAS) excludes USDA activities (see 15 CFR 700.18(b)). USDA Contracting Officers are not authorized to place rated orders under DPAS unless authorized to do so by the Department of Commerce or a government agency authorized by delegation from the Department of Commerce.

## PART 412—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

### SUBPART 412.2 — Special Requirements for the Acquisition of Commercial Products and Commercial Services

Contracting Officers cannot use a time and material or labor hour contract if the contract has not been competed in accordance with FAR 12.207(b).

## PART 413—SIMPLIFIED ACQUISITION PROCEDURES

#### 413.003 Policy.

Existing purchase card limits are not automatically raised through a deviation. If there is a need to change a purchase card limitation, see your Agency Program Coordinator and Approving Official within your Agency.

### SUBPART 413.1—PROCEDURES

#### 413.106 Soliciting Competition, Evaluation of Quotations or Offers, Award and Documentation.

##### *413.106-1 Soliciting Competition.*

Contracting Officers are reminded that they should notify potential offerors of the basis of award. The basis of award should be **as simple as possible** and does not need to define the relative importance of factors nor include subfactors. Use the “Single Source or Brand Name Justification Less Than SAT” to document justification and approval, as necessary.

[Click for FAR 13 Single Source or Brand Name Justification Less Than SAT](#)

*413.106-2 Evaluation of Quotations or Offers.*

Contracting Officers are reminded that formal plans, establishing a competitive range, conducting discussions and scoring offers should generally NOT be used.

*413.106-3 Award and Documentation.*

Use the SAP Summary Worksheet or a similar tool to document the decision.

[Click for SAP Summary Worksheet](#)

## SUBPART 413.3—SIMPLIFIED ACQUISITION METHODS

### 413.301 Governmentwide Commercial Purchase Card.

#### **Where can I find guidance on the USDA Purchase Card program?**

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

Purchase card holders are reminded that prior to purchasing Unmanned Aerial Systems (UAS) they must first review and adhere to the requirements outlined in [Departmental Regulation 3465-002](#).

### 413.302 Purchase Orders.

#### *413.302-5 Clauses.*

Contracting Officers must insert the clause at AGAR 452.204-70, Modification for Contract Closeout, Deviation July 2022, in all solicitations and contracts that use simplified acquisition procedures (Part 13). The Deviation can be found at [USDA Acquisition Workforce - AGAR Class Deviations - All Documents \(sharepoint.com\)](#).

### 413.303 Blanket Purchase Agreements (BPAs).

BPAs may establish procedures for individual purchases not to exceed the simplified acquisition threshold for commercial products and commercial services (Subpart 13.5). The MASCO must submit a determination and findings for approval by the HCA during acquisition planning for BPA calls that exceed the thresholds in FAR 13.5.

BPA calls over \$25,000 require synopsis to the government point of entry, even if a synopsis was done at the BPA level. Exemption at FAR 5.202(a)(11) does not apply.

### 413.306 SF 44, Purchase Order-Invoice-Voucher.

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

### 413.307 Forms.

Form AD-838, Purchase Order, is prescribed for use by USDA in lieu of the Optional Form (OF) 347, Order for Supplies or Services, except that use of the OF 347 is authorized when utilizing the USDA Integrated Acquisition System (IAS).

## SUBPART 413.5--SIMPLIFIED PROCEDURES FOR CERTAIN COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

413.501 Special Documentation Requirements.

Use the “Single Source or Brand Name Justification Exceeding SAT” template to document justification and approval, as applicable.

[Click for FAR 13.5 Single Source or Brand Name Justification Exceeding SAT](#)

## PART 414--SEALED BIDDING -- RESERVED

## PART 415--CONTRACTING BY NEGOTIATION

### SUBPART 415.1--SOURCE SELECTION PROCESSES AND TECHNIQUES

415.102 Oral Presentations.

Oral presentations can be an innovative way to receive information from the team who will actually execute the requirement.

<https://hallways.cap.gsa.gov/app/#/gateway/acquisition-innovation-0/20994/docs/17960/Oral%20Presentations%20-%20PIL%20Technique%201%20-%202018June7%20Workbook-1535905636.pdf>

See more innovative ways at:

<https://www.dhs.gov/pil>

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

415.207 Handling Proposals and Information.

Throughout the source selection process, agency personnel and non-Government evaluators with access to proposal information must not disclose the number of offerors or their identity, except as authorized by FAR 15.5. (See also FAR 5.403)

The Contracting Officer must obtain agreement via the source selection evaluation board agreement prior to the release of any proposal to a government or non-government evaluator.

[Click for Source Selection Evaluation Board Agreement](#)

The release of a proposal to a non- Government evaluator for evaluation does not constitute the release of information for purposes of the Freedom of Information Act (FOIA) (5 U.S.C. 552).

The Contracting Officer must attach a cover page bearing the following notice: GOVERNMENT NOTICE FOR HANDLING PROPOSALS - This proposal must be used and disclosed for evaluation purposes only. Attach a copy of this Government notice to every reproduction or abstract of the proposal. Any authorized restrictive notices which the submitter places on this proposal must be strictly complied with.

Disclosure of this proposal outside the Government for evaluation purposes must be made only to the extent authorized by, and in accordance with, FAR 3.104- 4 and FAR 15.207. Use the template for a proposal cover sheet, [Proposal Cover Sheet](#).

## SUBPART 415.3—SOURCE SELECTION

### How are source selection plans approved?

A source selection plan (SSP) must be created and approved after the acquisition plan has been approved. The “Source Selection Plan” template may be tailored for use. Source selection plans must be approved in accordance with the following matrix. The SSP must always be reviewed by someone other than the preparer. If more than one characteristic applies, the characteristic which requires the highest level of approval takes precedence. The Source Selection Authority (SSA), if other than the CO, must approve the SSP as well.

[Source Selection Plan template](#)

<b>SOURCE SELECTION PLAN APPROVAL MATRIX</b>			
<b>Characteristics/IGCE</b>	<b>&lt;\$25M</b>	<b>\$25M&lt;x≤\$50M</b>	<b>&gt;\$50M</b>
Single or Multiple Award (including construction)	if a Contract Specialist prepared the Contracting Officer; otherwise, level above Contracting Officer	Level above Contracting Officer if Contract Specialist prepared; otherwise, the MASCO	MASCO
SOO	if a Contract Specialist prepared the Contracting Officer; otherwise, level above Contracting Officer	MASCO	HCA
Other than commercial products or commercial services (excluding construction)	MASCO	MASCO	HCA
As determined by HCA/MASCO	As determined by HCA/MASCO	As determined by HCA/MASCO	As determined by HCA/MASCO

#### 415.303 Responsibilities.

The MASCO has the authority to appoint an individual other than the CO as SSA or to require a higher level of approval of the SSP.

#### 415.308 Source Selection Decision

Use the “Source Selection Decision Document” (SSDD) as a template for the decision, [Source Selection Decision Document](#).

## SUBPART 415.4--CONTRACT PRICING

#### 415.404 Proposal Analysis.

USDA will use a structured approach to determine the profit or fee pre-negotiation objective in acquisition actions when price negotiation is based on cost analysis.

#### **Which types of acquisitions are exempt from the requirements of the structured approach?**

The following types of acquisitions are exempt from the requirements of the structured approach, but the Contracting Officer must comply with FAR 15.404-4(d) when analyzing profit for these contracts or actions:

- 1) Architect-engineer contracts;
- 2) Construction contracts;
- 3) Contracts primarily requiring delivery of material supplied by subcontractors;
- 4) Termination settlements; and
- 5) Cost-plus-award-fee contracts.

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

#### *415.406-1 Prenegotiation Objectives.*

Pre-negotiation objectives must be documented in a pre-negotiation memorandum prior to beginning negotiations or there must be documentation of the decision not to negotiate. Documentation approval at levels above the Contracting Officer may be required by the MASCO or the HCA.

[Click for Prenegotiation Memorandum](#)

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

See debriefing guidance before developing the agenda.

[Debriefing Guidance](#)

### SUBPART 415.6—UNSOLICITED PROPOSALS

#### 415.606 Agency Procedures.

Reference FAR 15.605 for the content of unsolicited proposals. Each MASCO is responsible for establishing [points of contact](#) for the control of unsolicited proposals and providing the names of points of contact to [procurement.policy@usda.gov](mailto:procurement.policy@usda.gov).

An unsolicited proposal must be formally submitted to the Agency by way of the point of contact. When an unsolicited proposal is received by an individual, safeguard the proposal and promptly send it to the point of contact no later than within 1 day of receipt.

- When preliminary contact is made by a potential offeror of an unsolicited proposal, provide information noted in FAR 15.604(a) and information on agency objectives, existing research programs, and techniques to assist the offeror in developing its proposal.
- When designated by the agency point of contact, participate in a comprehensive evaluation of unsolicited proposals and provide the necessary evaluation documentation.



### What does the Point of Contact do?

- 1) Coordinate the receipt and handling of unsolicited proposals.
- 2) Provide guidance to potential offerors of unsolicited proposals as to the criteria for determining valid unsolicited proposals and guidance on the procedures for their submission and evaluation.
- 3) Ensure unsolicited proposal is not duplicated or distributed within the Agency unless there is an urgent need to do so. Otherwise, unsolicited proposals must be safeguarded, particularly data identified by the offeror as being subject to duplication, use, or disclosure restrictions.
- 4) Ensure a preliminary review of the proposal is conducted to determine if it meets the requirements of the FAR and can be considered a valid unsolicited proposal. If the proposal meets these requirements, the point of contact will promptly acknowledge receipt and process the proposal for evaluation. If a proposal is rejected because it does not meet the necessary requirements, the point of contact will promptly inform the offeror, in writing, of the reasons for rejection and of the proposed disposition of the unsolicited proposal.
- 5) Coordinate comprehensive evaluations and attach or imprint on each unsolicited proposal circulated for evaluation the required legend to safeguard the proposal, unless the offeror clearly states in writing that no restrictions are imposed on the disclosure or use of the data contained in the proposal. When performing a comprehensive evaluation of an unsolicited proposal, evaluators will consider the required factors in FAR 15.606-2, in addition to any others appropriate for the particular proposal. The evaluators will notify the Agency point of contact of their recommendation when the evaluation is complete.

A favorable comprehensive evaluation of an unsolicited proposal does not in itself justify awarding a contract without providing for full and open competition. The cognizant Agency Contracting Officer may commence negotiations on a sole source basis only when:

- a. an unsolicited proposal has received a favorable comprehensive evaluation;
- b. a justification and approval has been obtained for research proposals or other appropriate provisions of the FAR;
- c. the agency technical office sponsoring the contract furnishes the necessary funds; and
- d. the cognizant Contracting Officer has complied with the synopsis requirements of the FAR.

## PART 416--TYPES OF CONTRACTS

### SUBPART 416.1--SELECTING CONTRACT TYPES

For contracts other than fixed price, the rationale for selection in accordance with 16.103(d)(1) must be approved by the level shown in Appendix C Delegation Matrix if an acquisition plan is not required (see 407.104) unless a higher-level approval is required by the FAR. See [Appendix B](#) for a comparison of contract types.

See determination and findings (D&F) [templates](#) for:

- 1) Firm Fixed Price Level of Effort
- 2) Letter Contracts
- 3) Time and Material or Labor Hour

## SUBPART 416.2—FIXED PRICE CONTRACTS

### 416.203 Fixed-Price Contracts with Economic Price Adjustment.

#### *416.202-1 Description.*

Funds must be “committed” for potential economic price adjustments when using Firm-Fixed-Price-Economic Price Adjustment contract types.

Resources for contracting flexibilities related to inflation can be found in the following Sharepoint folder:

[Contracting Flexibilities.](#)

## SUBPART 416.4--INCENTIVE CONTRACTS

### 416.401 General.

The HCA may designate an acquisition official other than the Contracting Officer as the fee determination official (FDO) to make the final determination of the award fee. The designated official must have warranted contracting authority at the same level as the Contracting Officer or higher and must not have participated in preparing the contractor performance evaluation. If the HCA does not designate an FDO, the MASCO must act as the FDO.

## SUBPART 416.5—INDEFINITE-DELIVERY CONTRACTS

### *General*

Contracting Officers should develop simplified methods to place, provide fair opportunity, award, and pay for orders. The use of the government purchase card for award and payment is encouraged.

### *Task and Delivery Order Ombudsman*

The Chief, Procurement Policy Division, Office of Contracting and Procurement, has been designated as the Departmental Task Order Ombudsman.

Each MASCO must designate a task order ombudsman for the Mission Area. The MASCO must forward a copy of the designation memorandum to the Departmental Task Order Ombudsman. Mission Area ombudsmen must review and resolve complaints from contractors concerning task or delivery orders placed by the Mission Area contracting offices.

Any contractor who is not satisfied with the resolution of a complaint by a Mission Area ombudsman may request the Departmental Task Order Ombudsman to review the complaint.

### 416.505—Ordering.

The “Justification for Exception to Fair Opportunity or Brand Name Justification” must be used as applicable in accordance with FAR 16.505.

[Click for FAR 16.5 Justification for Exception for Fair Opportunity or Brand Name](#)

## SUBPART 416.70—Shared First – Category Management

Each Mission Area should support Category Management efforts; however, the achievement of socioeconomic and other small business goals must be prioritized over achievement of category management goals if the achievement of both goals (which would be optimal) is not possible. This includes diversifying the supplier base by awarding more individual competed awards to 8(a) and other small disadvantaged businesses, woman-owned, service-disabled veteran-owned, and small businesses working in HUBZones, if in the best interest of USDA. Acquisition workforce members should become familiar with the USDA [Category Management Instruction Plan](#). This includes particular attention to each of the following key performance indicators (KPIs):

- 1) Spend Under Management (SUM): the percentage of obligations through contracts that are actively managed in compliance with the SUM contract tiered maturity model.
- 2) Best in Class (BIC) Obligations: the percentage of obligations tracked via FPDS through BIC solutions.
- 3) Cost Avoidance: demonstrates the extent to which the program is delivering increased value for the goods and services acquired by agencies, measured in dollars.
- 4) Pilot Measure – Reduction in Duplicative Contracts: within Tier 0 and within single agency, if a vendor has multiple contracts within the same market scope (PSC, NAICS), then these are flagged as duplicative; the measure will be tracked separately for all vendors and Other than Small to ensure that there are no adverse impacts to small business vendors.
- 5) Small Business Utilization: demonstrates the extent to which the program maintains or increases government use of small businesses (measured as a percentage) while implementing category management strategies.
- 6) Category Management Training: tracks the number of individuals trained in the aspects and components of category management.

The Category Management Appendices can be found at [USDA Acquisition Workforce - Policy and Regulations - All Documents \(sharepoint.com\)](#). “Category Management Appendix A Market Research Assessment,” is required when there is a preferred solution available to meet the needs; however, the agency determines it is not in the best interest of the Government. “Category Management Appendix B Exception Form” is only for those acquisition that do NOT utilize a mandatory contract.

Annual targets are set strategically from OMB based on agency status of the KPIs of Category Management. All requirements must be evaluated for suitability for fulfillment using the order of precedence set form in FAR 8.002 and 8.002, and the Category Management Program Procedures available in the supplemental instruction.

Once initial award is made for a multiple Mission Area or Department-wide vehicle, the MASCO must submit the required Contract Notification Template, to include ordering instructions, within 30 days of availability of the contract award. Submit completed templates to [procurement.policy@usda.gov](mailto:procurement.policy@usda.gov).  
[Contract Notification Template](#)

## PART 417--SPECIAL CONTRACTING METHODS

### SUBPART 417.2--OPTIONS

#### 417.202 Use of Options.

Contracting Officers must avoid using unpriced options in contracts. All options must be priced at the time of the original contract award. Option periods, when used, must have justifications approved for their use prior to the release of the solicitation/award.

FAR clause 52.217-8, as prescribed in FAR 17.208(f), must be included when there is a possibility that the contract performance may need to be extended beyond the term of all option periods (i.e., base, 4 option periods, and a 6-month extension). FAR clause 52.217-9, as prescribed in 17.208(g), must be included when option periods are included (i.e., base and 4 option periods).

#### 417.204 Contracts.

A D&F is required when a contract for supplies or services will exceed 5 years unless Information Technology is being procured in accordance with FAR 17.204 or an AP, AAP or AS/AP was approved in the past by the SPE/HCA. This requirement applies to both multi-year and multiple year contracts.

### SUBPART 417.5—INTERAGENCY ACQUISITIONS

#### 417.502 Procedures.

Also see 416.70 Shared First-Category Management.

#### 417.502-2 The Economy Act.

If a Mission Area issues an agreement with another Mission Area or with another department to provide acquisition assistance, the requesting Mission Area must notify the HCA and provide a copy of the agreement prior to execution.

## PART 418—EMERGENCY ACQUISITION

### SUBPART 418.2 Emergency Acquisition Flexibilities

#### 418.203 Emergency Declaration or Major Disaster Declaration.

Upon issuance of a Presidential Declaration for an emergency or major disaster, USDA thresholds automatically increase for procurements in support of the declared emergency. Any purchases using the authority must have a clear and direct relationship to support the emergency, and the Contracting Officer must document the connection to the emergency.

#### **What are the thresholds?**

Increased thresholds are described below and must only be applicable during the time of the Presidential declaration to the end date declared by the Federal Emergency Management Agency (FEMA), <https://www.fema.gov/disaster/declarations>.

- 1) The micro-purchase threshold (MPT) will be increased per FAR 2.101/FAR 13.201(g)(1).
- 2) The simplified acquisition threshold (SAT) will be increased per FAR 2.101 for any contract to be awarded and performed, or purchase to be made, inside the United States.

- 3) The threshold for the use of simplified procedures for certain commercial products and commercial services will be increased per FAR 13.500(c).

When the Presidential Declaration is under the Stafford Act, Contracting Officers must give preference to local firms in the emergency area, per FAR 26.2. Contracting Officers should first consider small business local area set asides when feasible. The SPE may issue additional guidance if necessary.

### **National Interest Action (NIA) Codes**

#### **What are NIA codes?**

NIA codes are used to identify contract actions (not funds) in FPDS issued in immediate response to a catastrophic emergency or a Department of Defense (DoD) designated contingency operation.

#### **What are the criteria for creation of an NIA code?**

- Commitment of significant national financial resources,
- Nationwide (not just regional) impact,
- Significant multi-Department Federal *procurement* impact
- Great national interest,
- Widespread political interest, and
- Two or more Departments exercise, or intend to exercise, the special emergency procurement authority to increase procurement thresholds.

#### **What is the process for USDA's establishment of an NIA code?**

USDA agencies having determined the need for establishment of a NIA code need to formulate a request that:

- 1) Meets the criteria specified above;
- 2) Contains contact information for the agency POC that can speak to the criteria for creation of an NIA code;
- 3) Contains the contact information for the other agency(ies) that are supporting the need for establishing the NIA code;
- 4) Has approval of the agency Senior Procurement Official/OCP Director;
- 5) Is provided to the USDA IAE CCB Representative for submission to DOD/DPAP, DHS/CPO via the GSA/IAE utilizing the GSA/IAE Sharepoint.

#### **What entity approves the creation of an NIA code?**

Responsibility for National Interest Action (NIA) code management is assigned to the U.S. Department of Defense (DoD), Defense Procurement and Acquisition Policy (DPAP) Office, the U.S. Department of Homeland Security (DHS) Office of the Chief Procurement Officer (CPO) and U.S. General Services Administration (GSA) Integrated Award Environment (IAE) Program Management Office. Agencies determining the need for establishment of an NIA code should submit request to DOD/DPAP, DHS/CPO via the GSA/IAE. USDA requests should be submitted by the USDA IAE CCB Representative.

## **PART 419--SMALL BUSINESS PROGRAMS**

### **SUBPART 419.2—POLICIES**

#### **419.201 General Policy.**

##### **What is the policy for contracting with small businesses?**

It is the policy of USDA to provide maximum practicable contracting and subcontracting opportunities to small business (SB), small disadvantaged business (SDB), HUBZone small business (HUBZone), women-owned small business (WOSB), and service-disabled veteran-owned small business (SDVOSB) concerns. Departmental Regulations (DRs) pertaining to Small Business Programs are contained in DR 5090-001 and DR 5090-005, found [here](#).

Purchases exceeding the micro-purchase threshold (MPT) and not exceeding the simplified acquisition threshold (SAT) are reserved exclusively for small businesses, including all preference program areas named above, unless the Contracting Officer documents that they are unable to obtain offers from two or more small business concerns that are competitive with market prices and in terms of quality and delivery of the goods or services being purchased. Documentation of these circumstances is subject to review.

#### **What actions require a form [AD-1205](#)?**

Per DR [5090-001](#), the following actions require a signed form AD-1205:

- 1) All unrestricted procurements over the SAT not already set aside or reserved for small business participation.
- 2) Multiple Award contracts over \$1Million not using a small business acquisition method.
- 3) Awards over \$1Million against Federal Supply Schedule contract not using a small business acquisition method.
- 4) Bundled acquisition of \$2Million or more not entirely reserved or set aside for small business.

Office of Small and Disadvantaged Business Utilization (OSDBU) may also review unrestricted procurements over the MPT and under the SAT not awarded to small business concerns, but an AD-1205 isn't required for OSDBU review and approval.

#### *419.201-70 Office of Small and Disadvantaged Business Utilization (OSDBU).*

(OSDBU develops rules, policy, procedures and guidelines for the effective administration of USDA's small business program that includes all categories named under Part 419.201. Information regarding OSDBU can be found at <https://www.usda.gov/da/osdbu>.

#### *419.201-71 Small Business Coordinators.*

Supervisors of small business coordinators should provide sufficient time for the coordinators to fulfill their small business program duties. Coordinators' duties must include, but not be limited to, the duties listed in 48 CFR 1519.201-72, <https://www.law.cornell.edu/cfr/text/48/1519.201-72>.

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

### **419.401 General.**

USDA's OSDBU manages an ongoing [Partnership Agreement](#) with the US Small Business Administration (SBA). The Agreement delegates SBA's 8(a) Business Development contract execution authority to the USDA (including all warranted USDA Contracting Officers) and establishes the basic procedures to expedite award of contracts pursuant to the 8(a) Program. Section 8(a) of the Small Business Act (15 USC 644, as amended) and Title 13 Code of Federal Regulations, Part 124.501. Additional information regarding the 8(a) program can be found [at SBA](#).

Specific guidelines and responsibilities are maintained by OSDDBU who may be contacted at <https://www.usda.gov/da/osdbu>.

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

419.602 Procedures.

### *419.602-1 Referral.*

Contracting Officers must refer determinations of non-responsibility regarding small businesses directly to the SBA Regional Office servicing the location where the contractor's office (home) is located. See FAR 19.602-1(a)(2) for situations when referrals are exempt.

## SUBPART 419.8—CONTRACTING WITH THE SMALL BUSINESS ADMINISTRATION (THE 8(A) PROGRAM)

419.800 General.

USDA and the SBA have an existing [partnership](#) that allows the SBA 8(a) program as outlined in [15 U.S.C. 637](#) to delegate to USDA related contract execution functions in accordance with [13 CFR 124.501](#). FAR 19.8 provides details on key steps to implement 8(a) contracts.

### *419.804-2 Agency Offering.*

Offering letters must contain the information described in FAR 19.804-2. Once completed, offering letters must be sent via email to the appropriate [SBA District Office](#).

### *419.804-3 SBA Acceptance.*

Refer to FAR 19.804-3 for SBA acceptance timelines, as well as information on when Contracting Officers may proceed with award if response is not received within timelines described.

## PART 420 – RESERVED

## PART 421— RESERVED

## PART 422--APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

### SUBPART 422.1--BASIC LABOR POLICIES

422.102 Federal and State labor requirements.

#### *422.102-1 Policy.*

Personnel must be either U.S. citizens or Lawful Permanent Residents, also known as “green card” holders, in order to access:

1. USDA Mission Areas, Agencies and Staff Offices or controlled facilities; or
2. Information Technology (IT) systems or security items or products.

This includes federal employees, contractors, subcontractors, experts, consultants, and paid/unpaid interns hired for work within the United States or its territories.

Contractors must identify in their proposals the names and citizenship of all non-U.S. citizens proposed to work under the contract. Any additions or deletions of non-U.S. citizens after contract award must be reported to the Contracting Officer (CO) or Contracting Officer's Representative (COR).

The “Hiring of Foreign Nationals Memo” applies to all positions with the USDA and its Mission Areas, Agencies and Staff Offices.

See the “Hiring of Foreign Nationals [Memo](#)” for additional information.

422.103 Overtime.

*422.103-4 Approvals.*

Requests for the use of overtime must be approved by an acquisition official at a level above the Contracting Officer in accordance with the procedures in FAR 22.103-4(a) and (b).

## SUBPART 422.8--EQUAL EMPLOYMENT OPPORTUNITY

422.803 Responsibilities.

The contracting office must submit questions involving the applicability of Executive Order 11246 and FAR subpart 22.8 through the MASCO to the HCA and SPE for resolution by the Deputy Assistant Secretary.

422.807 Exemptions.

The Contracting Officer must submit requests for exemptions under FAR 22.807(a)(1), (a)(2), and (b)(5) through the MASCO to the HCA and SPE for determination by the Deputy Assistant Secretary.

## SUBPART 422.10—SERVICE CONTRACT LABOR STANDARDS

422.1003 Applicability.

When purchasing services that are exempt from Service Contract Labor Standards, micro-purchase procedures are authorized up to the threshold in FAR 2.101 as authorized by the MASCO.

In accordance with FAR 22.1003-4(d), the buyer of exempted services must include in the contract file the Service Contract Labor Standards Exemption Documentation template, signed by the vendor certifying exemption conditions are met.

[Click for Template for Service Contract Labor Standards Exemption Documentation](#)



## SUBPART 422.13—EQUAL OPPORTUNITY FOR VETERANS

### 422.1305 Waivers.

The Contracting Officer must submit requests for exemptions under FAR 22.1305(a) and (b) through the MASCO to the HCA and SPE for determination by the Director, Office of Federal Contract Compliance Programs, Department of Labor.

### 422.1308 Complaint Procedures.

The Contracting Officer must forward complaints received about the administration of the Vietnam Era Veterans Readjustment Assistance Act directly to the Department of Labor as prescribed in FAR 22.1308.

## SUBPART 422.14--EMPLOYMENT OF WORKERS WITH DISABILITIES

### 422.1403 Waivers.

The Contracting Officer must submit requests for waivers through the MASCO to the HCA and SPE for determination by the Director of the Office of Federal Contract Compliance Programs of the U.S. Department of Labor (Director of OFCCP).

### 422.1406 Complaint Procedures.

The Contracting Officer must forward complaints received about the administration of Section 503 of the Rehabilitation Act of 1973, as amended, directly to the Office of Federal Contract Compliance Programs (OFCCP) as prescribed in FAR 22.1406.

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

### SUBPART 423.2--ENERGY AND WATER EFFICIENCY AND RENEWABLE ENERGY

#### 423.202 Policy.

Information on Energy Star, energy efficient, water efficient, and low standby products covered by this policy is available at <https://www.energy.gov/eere/femp/federal-energy-management-program>.

### SUBPART 423.4--USE OF RECOVERED MATERIALS AND BIOBASED PRODUCTS

#### 423.403 Policy.

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

#### 423.404 Agency Affirmative Procurement Programs.

##### **What are the components of the USDA affirmative procurement program (APP)?**

APP components include:

- 1) Recovered materials preference program. In accordance with the requirements of Section 402(c) of Executive Order 13101, Greening the Government Through Recycling, Waste Prevention, and Federal Acquisition, USDA agencies will include, in all applicable solicitations and contracts, a preference for products and services which meet or exceed the EPA purchasing guidelines as contained in the EPA product Recovered Materials Advisory Notices (RMANS). Agencies may choose an evaluation factor preference, or other method of indicating preference in accord with their agency needs. Agencies will, as appropriate, eliminate virgin material requirements in contract specifications and replace them with a statement of preference for recycled materials.
- 2) Promotion program. USDA agencies will actively promote a preference for recovered materials, environmentally preferable products, and biobased products in contacts with vendors, in written materials, and other appropriate opportunities.
- 3) Reasonable estimation of recovered materials used in the performance of contracts for EPA-designated items. USDA agencies annually will provide in writing to the SPE, in response to a call for data for the Resource Conservation and Recovery report, reasonable estimates, certification, and verification of recovered material used in the performance of contracts.
- 4) Annual review and monitoring of effectiveness of the program. USDA agencies will provide an annual assessment of the effectiveness of their affirmative procurement program actions in increasing the purchase and use of EPA designated products.
- 5) Purchase of EPA designated products. USDA agencies will require that 100% of purchases of EPA-designated products contain recovered material, unless the item cannot be acquired-
  - a. Competitively within a reasonable timeframe;
  - b. Meeting appropriate performance standards; or
  - c. At a reasonable price.

The 100% purchase requirement of paragraph (5) of this section applies to all USDA agency purchases, including those at or below the micro-purchase threshold.

#### 423.405 Procedures.

The threshold of purchase for EPA designated items is \$10,000 per year at the USDA departmental, not individual Mission Area level. Therefore, the Affirmative Procurement Program (APP) requirements, including the 100% purchase requirement, apply at the individual agency and staff office level. Contracting Officers should refer to EPA's list of designated products and products identified as recycled content when purchasing supplies or services. Information on EPA designated products is available at:

<https://www.biopreferred.gov/BioPreferred/faces/pages/AboutBioPreferred.xhtml>.

All Mission Areas and USDA Contracting Officers must take necessary actions to carry out the provisions of the USDA APP policy described in this subpart.

##### **What are the specific roles and responsibilities in support of USDA's BioPreferred Program – Designated Biobased Items for Contract Requirements?**

- 1) Program Officials:  
Responsible for identifying the contract needs of their respective programs and, where possible, must consider including biobased products to replace non-biobased products for a specific contract

requirement. When developing the statement of work, performance-based work statement, statement of objective, product item descriptions for a contract requirement that contains Biobased products, program personnel should conduct market research to determine availability and cost of the identified biobased products. After the requirements package has been completed, it must be forwarded to the contracting office serving the program official's organization.

- 2) Contracting Officials:
  - a. When Biobased products are included in a requirement, Contracting Officials must incorporate applicable Biobased requirements in the solicitation/contract. Reference the "Biobased (BioPreferred) Quick Reference Guide for Contracting Officers" at [Sharepoint | Templates](#).
  - b. Ensure proper codes are selected in the Integrated Acquisition System (IAS) and Federal Procurement Data System (FPDS).
  - c. Ensure contractor complies with Biobased requirements in the System for Award Management (SAM). Reference FAR 52.223-2, Affirmative Procurement of BioBased Products under Service and Construction Contracts.
- 3) MASCO: Champion Biobased and BioPreferred policies and ensure federal and departmental compliance.

## SUBPART 423.5--DRUG-FREE WORKPLACE

423.506 Suspension of Payments, Termination of Contract, and Debarment and Suspension Actions. 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 MASCO to the HCA and SPE and must include a full description of the disruption of USDA operations should the determination not be waived.

## SUBPART 423.7--CONTRACTING FOR ENVIRONMENTALLY PREFERABLE PRODUCTS AND SERVICES

### 423.703 Policy.

USDA's Affirmative Procurement Program promotes energy-efficiency, water conservation, and the acquisition of environmentally preferable products and services. USDA supports federal "green purchasing" principles in the acquisition of products and services that are environmentally preferable or that are biobased content products and services. USDA agencies will actively promote this preference for environmentally preferable products and biobased products in contacts with vendors, in written materials, and other appropriate opportunities.

## PART 424--PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

### SUBPART 424.1--PROTECTION OF INDIVIDUAL PRIVACY

#### 424.103 Procedures.

USDA regulations implementing the Privacy Act are found in 7 CFR, Subtitle A, Part 1, Subpart G. Contracting Officers must follow these regulations when responding to requests for information or awarding contracts that

involve the design, development, or operation of a system of records on individuals to accomplish agency functions.

## SUBPART 424.2--FREEDOM OF INFORMATION ACT

### 424.203 Policy.

USDA regulations implementing the Freedom of Information Act (FOIA) are found in 7 CFR, Subtitle A, Part 1, Subpart A. Contracting Officers must follow these regulations when responding to requests for information.

## PART 425--FOREIGN ACQUISITION

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

#### 425.001 General.

FAR Case 2021-008, effective 10/25/2022, added substantial changes to the implementation of the Buy American Act. There are various resources to assist Contracting Officers within the following links:

- 1) [Made in America FAR Case 2021-008 Decision Trees | FAI.GOV](#)
- 2) [Buy American Decision Tool - Federal Clause and Provision Selection | Review 360 \(articulate.com\)](#)
- 3) [Buy American Decision Tool - Federal Evaluating Foreign Offers | Review 360 \(articulate.com\)](#)

#### 425.103 Exceptions.

Submit copies of determinations of non-availability in accordance with FAR 25.103(b) or 25.202(a)(2), for articles, material or supplies not listed in FAR 25.104.

OMB created a Made in America Office (MIAO) per OMB Memo M-21-26, "[Increasing Opportunities for Domestic Sourcing and Reducing the Need for Waivers from Made in America Laws](#)", dated June 11, 2021, and OMB Memo titled "[Improving the Transparency of Made in America Waivers](#)", dated October 26, 2021.

#### **What must Contracting Officers do when requesting a waiver pursuant to FAR 25.103(b)?**

- 1) Obtain USDA approval. For acquisitions between \$10,000 and equal to \$25,000, submit a completed [Made in America Nonavailability Waiver D&F](#) to the MASCO for approval. For acquisitions expected to be greater than \$25,000, submit a completed [Made in America Nonavailability Waiver D&F](#) through the MASCO to the HCA;
- 2) After obtaining the required USDA approval, submit the waiver request via [Made in America](#).
- 3) Save a copy of the D&F and all associated documentation in the contract file.
- 4) A proposed nonavailability waiver must be submitted for MIAO review even if competition yields no offers of domestic end products. (Although posting competitive procurements is not required per FAR 25.103(b)(3), it is required by OMB Memo titled "[Improving the Transparency of Made in America Waivers](#), Page 6, footnote 12).
- 5) Waivers may be posted prior to issuing a solicitation or after issuing a solicitation, as long as the waiver is posted prior to award.
- 6) The award may not be issued until confirmation is received that the MASCO or HCA approves, as applicable, and then that MIAO has completed its review of the proposed waiver.

- 7) MIAO has waived the requirement for a review if an exception applies under FAR 25.401(a) or 25.401(b).
- 8) If the acquisition is conducted under reduced competition due to urgency (see FAR 6.302-2 and 13.106-1(b)) or the agency is otherwise required by law to act more quickly than the review procedures allow, an “Urgent Requirement Reports” waiver must be created.

The MIAO has established a [Made in America Waiver Process](#) MAX page, which contains resources on the waiver process.

#### 425.105 Determining Reasonableness of Cost.

Requests for determination must be submitted by the MASCO to the HCA and SPE, in writing. Requests must provide a detailed justification supporting why evaluation factors higher than those listed in FAR 25.105 should be applied to determine whether the offered price of a domestic end product is unreasonable.

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

#### 425.202 Exceptions.

A Contracting Officer may propose that use of a particular domestic construction material should be waived for a contract on the grounds that its use would be impracticable, per FAR 25.202(a)(1). The Contracting Officer must submit this proposed determination with supporting information through the MASCO to the HCA and SPE for approval or disapproval.

An exception per FAR 25.202(a)(2) must follow the procedures in the Desk Book 425.103:

- 1) Conduct appropriate market research and outreach, document findings and conclusions;
- 2) Obtain USDA approval for acquisitions expected to be greater than \$25,000 by submitting a waiver request through the MASCO to the HCA;
- 3) After obtaining USDA HCA approval, submit the waiver request via [SAM.gov](#).

### PART 426—OTHER SOCIOECONOMIC PROGRAMS -- RESERVED

### PART 427--PATENTS, DATA AND COPYRIGHTS -- RESERVED

### PART 428--BONDS AND INSURANCE

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

#### 428.202 Acceptability of Corporate Sureties.

The Department of the Treasury listing of approved sureties is available at: <https://www.fiscal.treasury.gov/surety-bonds/list-certified-companies.html>

## SUBPART 428.3—INSURANCE

### 428.306 Insurance Under Fixed-Price Contracts.

The Contracting Officer must insert the following language in solicitations and contracts which include the clause at FAR 52.228-5, Insurance - Work on a Government Installation.

- 1) **Workers Compensation and Employer's Liability.** The Contractor is required to comply with applicable Federal and State workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they must be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with a Contractor's commercial operations that it would not be practical to require this coverage. Employer's liability coverage of at least \$100,000 must be required, except in States with exclusive or monopolistic funds that do not permit worker's compensation to be written by private carriers.
- 2) **General Liability.** The Contractor must have bodily injury liability insurance coverage written on a comprehensive form of policy of at least \$500,000 per occurrence.
- 3) **Automobile Liability.** The Contractor must have automobile liability insurance written on a comprehensive form of policy. The policy must provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing the contract. Policies covering automobiles operated in the United States must provide coverage of at least \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage or loss.
- 4) **Aircraft Public and Passenger Liability.** When aircraft are used in connection with performing the contract, the Contractor must have aircraft public and passenger liability insurance. Coverage must be at least \$200,000 per person and \$500,000 per occurrence for bodily injury, other than passenger injury. Coverage for passenger injury must be at least \$200,000 multiplied by the number of seats or passengers, whichever is greater.

If property liability insurance is required, the Contracting Officer must substitute the following for paragraph (2) above, when additionally the contractor must have property damage liability coverage:

- (2) **General Liability.** (a) The Contractor must have bodily injury liability coverage written on a comprehensive form of policy of at least \$500,000 per occurrence. (b) The Contractor must have property damage liability insurance required in the amount of \_\_\_\_\_ \* \_\_\_\_\_ per occurrence.

**\*Contracting Officer must insert amount required.**

### 428.307 Insurance Under Cost-Reimbursement Contracts.

Under cost-reimbursement contracts, before buying insurance under a group insurance plan, the contractor must submit the plan to the Contracting Officer for review. During review, the Contracting Officer must use all sources of information available, such as audits, industry practice, or other sources of information, to determine whether acceptance of the plan submitted would be in the Government's best interest.

### 428.370 Government-Owned Vehicles Operated In Foreign Countries.

USDA is authorized to obtain insurance to cover liability incurred by any of its employees while acting within the scope of their employment and operating a Government-owned vehicle in a foreign country. (7 U.S.C. 2262).

## PART 429--TAXES

### SUBPART 429.3—STATE AND LOCAL TAXES

429.302 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” may be provided.

[Click for a Blanket Tax Exempt Certificate](#)

## PART 430---COST ACCOUNTING STANDARDS ADMINISTRATION

### SUBPART 430.2--CAS PROGRAM REQUIREMENTS

430.201 Contract Requirements.

*430.201-5 Waivers.*

Contracting Officers must prepare waiver requests in accordance with FAR 30.201-5 and submit them through the MASCO to the HCA and SPE.

430.202 Disclosure Requirements.

*430.202-2 Impracticality of Submission.*

Prepare requests for a determination that it is impractical to secure the contractor’s disclosure statement in accordance with 48 CFR Chapter 99, Subsection 9903.202-2. Requests must contain the proposed report for the Cost Accounting Standards Board (CASB). Contracting Officers prepare requests and submit through the MASCO to the HCA and SPE for concurrence and submittal to the Secretary.

*430.202-8 Subcontractor Disclosure Statements.*

Requests for a determination that it is impractical to secure a subcontractor’s disclosure statement are to be prepared and forwarded as described in 430.202-2.

## PART 431--CONTRACT COST PRINCIPLES AND PROCEDURES

### SUBPART 431.1--APPLICABILITY

431.101 Objectives.

Submit requests for advance approval of class deviations concerning cost principles through the MASCO to the HCA and SPE.

## PART 432--CONTRACT FINANCING

### 432.003 Simplified Acquisition Procedures Financing.

The MASCO may approve contract financing on a contract to be entered under the simplified acquisition procedures. Class approvals may not be made. The signed approval must contain the supporting rationale for the action and an estimate of the cost and/or risk to the government.

### 432.006 Reduction or Suspension of Contract Payments Upon Finding of Fraud.

#### *432.006-3 Responsibilities.*

When a Contracting Officer suspects that a request for advance, partial, or progress payment is based on fraud, refer requests directly to the OIG in accordance with their instructions. Submit a copy of the referral through the HCA to the SPE.

#### *432.006-4 Procedures.*

- 1) Immediately upon submittal of the referral described in 432.006-3, the HCA and the Contracting Officer must confer with the SPE and representatives of the OIG to discuss the potential for reduction or suspension of further payments based on the considerations listed in FAR 32.006-4(d)(1) through (5).
- 2) The SPE determines whether the contractor has contracts with other Departments or contracting activities and involves them, as necessary, in the decision-making process.
- 3) The OIG determines the need for, and the extent of, an investigation.
- 4) Immediately upon completion of the OIG investigation (or, if deemed necessary by the OIG and the SPE, before completion of the investigation) the SPE, in coordination with the HCA, the Contracting Officer, and the OIG, must make a report on the action to the Agency's Remedy Coordination Official (RCO), who is the Assistant Secretary for Administration.
- 5) Upon receipt of the report, the RCO will submit a recommendation to the Secretary.
- 6) Upon receipt of the RCO's report the Secretary will:
  - a. Notify the contractor in writing, allowing 30 calendar days after receipt of the notice, that the contractor may submit in writing information and arguments in opposition to the recommendation; and
  - b. Consider the RCO's recommendation, the SPE's report, the response of the contractor, and any other relevant information to make an appropriate final determination.
- 7) Provide this determination to the contractor and to the SPE for distribution to the agencies involved and for appropriate action under the determination.
- 8) Place the determination and the supporting documentation in the contract file(s) and a copy will be maintained by the SPE.
- 9) The Contracting Officer will advise the SPE of the actual date of the reduction or suspension action.
- 10) Not later than 150 calendar days after the actual date of the reduction or suspension action, the SPE will prepare for the RCO a review of the agency head's determination and will propose a recommendation from the RCO to the agency head as to whether the reduction or suspension action should continue. The RCO will submit the recommendation (including a recommendation for the time period of a follow up review) to the agency head. This recommendation will be considered by the Secretary and handled as a final action described in paragraph (f) of this section.
- 11) The contract may not be closed, nor final payment made prior to a final determination by the Secretary.



## SUBPART 432.1-- FINANCING FOR OTHER THAN A COMMERCIAL PURCHASE

### 432.102 Description of Contract Financing Methods.

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

### 432.103 Progress Payments Under Construction Contracts.

#### **What must be considered when approving progress payments under construction contracts?**

- 1) The Contracting Officer must indicate the amount to be paid by the payment office and include in the contract file the rationale in support of the payment.
- 2) When a retainage is made, the Contracting Officer must place in the contract file a written determination stating the reason(s) for the retainage.
- 3) When a progress payment under a construction contract has been approved, the amount to be paid, the amount of any retainage withheld, and the reason(s) for the retainage must be provided to the contractor by the Contracting Officer in writing before the payment due date.
- 4) When the contractor, under a fixed-price construction contract, furnishes evidence to the Contracting Officer that the surety has been paid in full for bond premiums and requests reimbursement, the first subsequent progress payment must include the total amount attributable to such bond premiums and the Government must pay that amount in full. This amount paid for the bond premiums is not an amount in addition to the stated contract price.

### 432.113 Customary Contract Financing.

The Contracting Officer may determine the necessity for customary contract financing. The determination and finding that customary contract financing is needed must be placed in the contract file.

### 432.114 Unusual Contract Financing.

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

## SUBPART 432.2--COMMERCIAL PRODUCT AND COMMERCIAL SERVICE PURCHASE FINANCING

### 432.202 General.

#### *432.202-1 Policy.*

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

*432.202-4 Security for Government Financing.*

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

*432.207 Administration and Payment of Commercial Financing Payments.*

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

## SUBPART 432.4--ADVANCE PAYMENTS FOR OTHER THAN COMMERCIAL ACQUISITIONS

*432.407 Interest.*

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

## SUBPART 432.6—CONTRACT DEBTS

*432.610 Compromising Debts.*

Compromise of a debt within the proceedings under appeal to the Board of Contract Appeals is the responsibility of the Contracting Officer.

## SUBPART 432.7—CONTRACT FUNDING

*432.703 Contract Funding Requirements.*

Incrementally Funded Fixed-Price Contracts:

"Severable services" means services that are continuing and ongoing in nature—such as help-desk support, maintenance, or janitorial services—for which benefit is received each time the service is rendered. Severable services cannot extend past one year or it is a bona fide needs violation.

"Non-severable services" means work that results in a final product or end-item and for which benefit is received only when the entire project is complete, such as systems design, building conversion, or environmental study.

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

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

An incrementally funded fixed-price contract must be fully funded as soon as funds are available. Use language similar to the following in solicitations and resultant incrementally funded fixed-price contracts:

LIMITATION OF GOVERNMENT'S OBLIGATION (MONTH YEAR)

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

Line Item	Price	Currently Allotted Funding	Funds Required for Complete Funding

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

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

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

(e) If, solely by reason of failure of the Government to allot additional funds, by the dates indicated below, in amounts sufficient for timely performance of the contract line item(s) identified in paragraph (a), the Contractor incurs additional costs or is delayed in the performance of the work under this contract and if additional funds are allotted, an equitable adjustment will be made in the price or prices (including

appropriate target, billing, and ceiling prices where applicable) of the item(s), or in the time of delivery, or both. Failure to agree to any such equitable adjustment hereunder will be a dispute concerning a question of fact within the meaning of the clause entitled "Disputes."

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

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

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

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

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

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

Upon receipt of the contractor's notice under paragraph (c) above, the Contracting Officer must promptly provide written notice to the contractor that the Government is—

- a. Allotting additional funds for continued performance and increasing the Government's limitation of obligation in a specified amount;
- b. Terminating the contract; or
- c. Considering whether to allot additional funds; and
  1. The contractor is entitled by the contract terms to stop work when the Government's limitation of obligation is reached; and
  2. Any costs expended beyond the Government's limitation of obligation are at the contractor's risk.
- d. Upon learning that the contract will receive no further funds, the Contracting Officer must promptly give the contractor written notice of the Government's decision and terminate for the convenience of the Government.

The Contracting Officer must ensure that, in accordance with paragraph (b) above in, "Limitation of Government's Obligation", sufficient funds are allotted to the contract to cover the total amount payable to the contractor in the event of termination for the convenience of the Government.

## SUBPART 432.8--ASSIGNMENT OF CLAIMS

#### 432.805 Procedure.

The information described in FAR 32.805 must be filed with the Contracting Officer. The Office of the Chief Financial Officer (OCFO) has published procedures on assignment of claims in the OCFO bulletin 20-01 dated 02/28/2020, "Procedures for Processing Assignment of Claims" ([click for link to document](#)).

### SUBPART 432.10---PERFORMANCE-BASED PAYMENTS

#### 432.1007 Administration and Payment of Performance-Based Payments.

The responsibility for receiving, reviewing, and approval of performance-based payment requests may not be transferred from the Contracting Officer.

### SUBPART 432.11---ELECTRONIC FUNDS TRANSFER

#### 432.1108 Payment by Governmentwide Commercial Purchase Card.

Agencies and cardholders must comply with the DATA Act when using the purchase card as a method of payment. The USDA CFO has directed agencies to comply with the procedures outlined in "Completing DATA Act Award ID on FMMI Direct-Entry Obligations and Expenditures", <https://www.nfc.usda.gov/FSS/Publications/FMS/Bulletins/ocfo-docs/ocfo17-02.pdf> to meet the Act requirements.

Purchase card payments are considered direct entry obligations since they are not obligated via IAS. Until an automated process is implemented, purchase cardholders must report the Procurement Instrument Identifier (PIID) for all payments made with the purchase card that exceed the micro-purchase threshold. Reporting will occur by populating the PIIDs into US Bank's System, AXOL, and FPDS.

Contract payments made outside of IPP when the GPC is used as the payment method is DATA Act reportable without regard to thresholds. For example, if the contract is for \$200,000, and a GPC is used to pay a \$5,000 invoice for the contract, the payment is DATA Act reportable and must reference the PIID.

#### **Are Convenience Checks and Treasury Checks allowed?**

Mission Areas and cardholders may not use convenience checks for purchases or payments unless an applicable Treasury check waiver is obtained and the Mission Areas determines that there is no other way, under the circumstances of the required transaction, to accomplish the transaction.

Treasury check waivers can be obtained for the following:

- 1) 31 CFR Part 208.3 Payment by Electronic Funds Transfer (EFT). Sets the requirement that all federal agencies payments are to be made by EFT.
- 2) 31 CFR Part 208.4 Waivers. Defines waivers to 31 CFR Part 208.3 These waivers are very narrowly defined, and most payments do not qualify for a waiver.

Please see the reference above for the full text of the waivers. The following is a synopsis:

Waiver Number	Usage
1	For benefits payments to an individual and does not apply to convenience checks
2	For foreign infrastructure issues and does not apply to convenience checks
3	For a presidentially declared disaster area and does not apply without the declaration
4	For military operation or war, normally does not apply to convenience checks
5	For national security issues, normally does not apply to convenience checks
6	For a one-time payment to a vendor (a second payment by check is not authorized)
7	For unusual, unforeseen, nonrecurring circumstances <b>and</b> compelling urgency <b>and</b> serious injury to the government <b>or</b> sole source vendor <b>and</b> serious injury to the government

Full requirements and definition can be found at:

<http://www.gpo.gov/fdsys/pkg/CFR-2011-title31-vol2/pdf/CFR-2011-title31-vol2-sec208-4.pdf>

The Treasury waiver authority does **NOT** authorize the use of convenience checks for the following:

- 1) Payments when the vendor accepts the VISA Purchase Card for the supplies/services being acquired;
- 2) Contract payments;
- 3) Purchases above the micro-purchase limit as defined in the Federal Acquisition Regulations 2.1;
- 4) Indemnity payments;
- 5) Imprest fund replenishment;
- 6) Vehicle maintenance and repairs;
- 7) Utility payments;
- 8) Telecommunications services, supplies, or equipment in excess of \$10;
- 9) Official Travel; and,
- 10) Local travel (except when reimbursement cannot be made through travel systems, time and attendance systems, or FMMI).

**Reminder Regarding the Use of Purchase Cards to Acquire Personal Property Costing \$5,000 or More and Mission Areas-Determined Sensitive Property**

USDA procurement personnel are reminded to ensure that appropriate information is entered into the Electronic Access System (EAS) (i.e., the correct accounting code(s) and Budget Object Classification Code (BOC)). The BOC is the identifier that triggers the personal property purchase to be fed over to the Corporate Property Automated Information System-Personal Property (CPAIS-PP) for the Mission Areas to establish property records in CPAIS-PP. Some Mission Areas prohibit the use of the purchase card to acquire accountable property. Consult your Mission Areas regulations or your Agency Property Management Officer (APMO) for further information. Sensitive property, as defined by your Mission Areas, similarly needs to be addressed.

In order to improve accountability and tracking of assets, as well as support the accuracy of USDA financial statements, procurement personnel are reminded that accurate and timely information regarding the purchase of accountable property with the purchase card needs to be entered into EAS.

Procurement personnel must ensure that the appropriate BOC is entered into EAS when reconciling a transaction involving the acquisition of accountable property. A BOC Quick Guide for accountable property is available from the USDA Office of the Chief Financial Officer's web site at:

[https://www.nfc.usda.gov/FSS/Publications/FMS/SAP\\_Resources/MasterData/BOC\\_Personal\\_Property\\_Quick\\_Guide.pdf](https://www.nfc.usda.gov/FSS/Publications/FMS/SAP_Resources/MasterData/BOC_Personal_Property_Quick_Guide.pdf).

BOCs are normally determined by the cost of each item, not the total amount of an order, unless your budget personnel establish a different criterion for the purchase. Procurement personnel must also provide any additional purchase information, beyond what is contained in EAS, as needed by property management personnel, to ensure accurate data entry of accountable property into CPAIS-PP. Accountable personal property is defined in the Agriculture Property Management Regulations, Subchapter N, Section 110-50.001-1 as: "all capital leases (this would exclude operating leases for personal property) and all owned personal property having an acquisition cost of \$5,000 or more, and any item valued at less than \$5,000, but determined by an Agency Property Management Officer (APMO) to be sensitive."

#### **What is real property?**

Real property is defined in the Agriculture Property Management Regulations, Subchapter N, Section 110-50.001-16 as: "any interest of the United States Government in land, buildings, or structures, including any permanently attached fixtures, appurtenances, and improvements of any kind located thereon. Under no circumstances is real property to be acquired using the purchase card."

Failure to comply with these requirements may result in revocation of purchase card and convenience check privileges, and other administrative actions, as appropriate.

## **PART 433--PROTESTS, DISPUTES AND APPEALS**

### **SUBPART 433.1--PROTESTS**

433.103 Protests to The Agency.

#### **How are Agency protests tracked?**

Agency protests must be entered into the Integrated Acquisition System (IAS) to provide USDA-tracking and reporting capability. Non-agency protests are optional, but recommended, to be entered into IAS.

Instructions on entering protests can be found in the IAS User Guide, located [here](#).

When a protest is received, the adjudicating official must take prompt action towards resolution and notify the protester in writing of the action taken. The written final decision must include a paragraph substantially as follows:

This decision must be final and conclusive unless a further written notice of protest is filed with the Government Accountability Office in accordance with 4 CFR Part 21. Neither the filing of a protest with USDA nor the filing of a protest with the Government Accountability Office affects your right to file an action in a district court of the United States or the United States Court of Federal Claims.

When a protest is received and there is a request for an independent review, then the HCA will conduct such review. Requests for independent review must be made in writing to [procurement.policy@usda.gov](mailto:procurement.policy@usda.gov). The responsible MASCO must provide all necessary documentation to the HCA for review and determination

immediately. Independent reviews are available as an appeal of a Contracting Officer decision on a protest. If the HCA had previous personal involvement in the procurement requiring independent review, the SPE or the CAO must conduct the independent review.

If the Mission Area in receipt of a protest prior to award determines it is in the best interest of the government to make award, then the MASCO must first provide a written Justification or Determination in accordance with the FAR Subpart 33.103 to the HCA for approval.

In accordance with FAR 33.103(f)(3), if in receipt of a protest within 10 days after contract award or within 5 days after debriefing date offered to the protest, any resolution to continue performance must be approved by the HCA in writing via a MASCO provided Justification or Determination.

#### **What are the procedures to resolve payments of protester's costs?**

- 1) In accordance with the guidance of USDA, Office of General Counsel (OGC), the requiring office agency whose appropriation is used to procure the goods or services is responsible for the payment of costs associated with a sustained protest of the procurement. Government Accountability Office (GAO) has explained the Competition in Contracting Act (CICA) cost reimbursement statute (31 U.S.C. § 3554(c)) as follows: “The costs and fees are payable from the contracting agency’s procurement appropriations.” See [GAO, Principles of Federal Appropriations Law \(Redbook\), 3d ed., v. 1](#), at 4-83, 2004 WL 5661377, at \*25. OGC’s interpretation is that the “contracting agency” is merely the administered by office, not the requiring office agency. In addition, the FAR, Subpart 33.104(h)(1) Protests to GAO, Award of Costs, states, “The agency shall use funds available for the procurement to pay the costs awarded.”
- 2) Contracting Officers must seek legal advice, whether protests are submitted before or after award and whether filed directly with the agency, GAO, or the U.S. Court of Federal Claims ([FAR 33.102, General](#)). When a protest is sustained, and it is recommended the agency pays the protester’s costs, the Contracting Officer shall:
  - a. Consult with OGC, who:
    - I. Reviews the protester’s documents to ensure the costs accurately reflects reasonable allowable costs (*e.g.*, filing and pursuing the protest, including reasonable attorney, consultant, expert witness fees, and bid and proposal preparation costs, etc.);
    - II. May attempt to reach an agreement with the protester on an amount of costs to be paid; and
    - III. Provides to the Contracting Officer the final amount that the agency must pay the protester.
  - b. Collaborate with OGC to obtain any other information that OGC may deem relevant to help with settling the protester costs.
  - c. Provide copies of the relevant documents (legal/GAO/COFC’s email to pay/Bid Decision (sustain), Protester’s documents/invoice, etc.) to the requiring office program official. The requiring office program official will request their financial staff process a direct entry payment in the financial system to reimburse the Protester’s costs [see [FAR 33.103\(d\)\(2\)](#)].

**Note:** There isn’t a legal contractual relationship requiring the furnishing of products or services to pay for the Protestor’s costs via a contract vehicle, so do not issue a purchase order, purchase card action, contract, etc. to pay the Protestor’s costs.



- d. Request that the requiring office (program office) official notify the Contracting Officer when payment is released by the Department of Treasury, confirming the matter closed.
- e. No later than 15 business days after the outcome of the protest, enter protest information in IAS.

## SUBPART 433.2--DISPUTES AND APPEALS

### 433.209 Suspected Fraudulent Claims.

The Contracting Officer must refer all matters related to suspected fraudulent claims by a contractor under the conditions in FAR 33.209 to the Office of Inspector General for additional action or investigation.

## PART 434--MAJOR SYSTEM ACQUISITION

### SUBPART 434.0--GENERAL

#### 434.004 Acquisition Strategy.

- 1) The program manager will develop, in coordination with the MASCO or Major Information Technology Systems Executive, a written charter outlining the authority, responsibility, accountability, and budget for accomplishing the proposed objective.
- 2) The program manager will develop, subject to the approval of the MASCO or Major Information Technology Systems Executive, a project control system to schedule, monitor, and regularly report on all aspects of the project. The control system must establish reporting periods and milestones consistent with the key decisions listed in paragraph 9 of A-109.
- 3) Upon initiation of the project, the program manager will report regularly to the MASCO or Major Information Technology Systems Executive.
- 4) Specific procedures and requirements for information technology systems are included in the USDA Information Technology Capital Planning and Investment Control Departmental Regulation which can be accessed at [DR 3130-013](#), and more information can be found on the USDA OCIO Website [here](#).

### SUBPART 434.2—EARNED VALUE MANAGEMENT SYSTEM

#### **Requirement for Use of an Earned Value Management System (EVMS)**

Required use of an Earned Value Management System (EVMS) for USDA IT investments enables investment/program managers and senior management to better track the progress of IT investments and enhances USDA's ability to make informed decisions concerning these investments. Earned Value Management (EVM) is a project management technique for measuring project performance and progress in an objective manner. The USDA OCIO has set forth policy, budget justification, and reporting requirements in [DR 3130-006, Information Technology Earned Value Management](#), that apply to all USDA acquisitions that are subject to the use of EVM for major IT capital investments.

#### 434.201 Policy.

##### **Where can I find EVM policy resources?**

Current and relevant Federal policy for the required use of EVM is available in the FAR, [Subpart - 34.2, Earned Value Management System](#) and the OMB Circular A-11, Part 7 and the supplement to Part 7, Capital

Programming Guide, v3.1, Supplement to [Circular A-11, Planning, Budgeting, and Acquisition of Capital Assets](#), 2022. The USDA CIO oversees the agency's IT investments and determines which projects are deemed "major acquisitions" for IT development consistent with FAR Subpart 34.2, Earned Value Management System and OMB-Circular A-11. The Agency MASPM will assist project managers, Contracting Officers, and Contracting Officer representatives with Earned Value Management questions, including whether an EVMS is required for a particular acquisition.

#### 434.203 Solicitation Provisions and Contract Clause.

The determination of whether a solicitation/contract should include a requirement for a contractor to have an EVMS must be coordinated between the IT investment/program manager and the Contracting Officer. Whenever an acquisition includes an EVMS requirement, the acquisition plan must be documented accordingly. For an acquisition that includes a requirement for EVM, the Contracting Officer must use FAR clauses prescribed in FAR 34.203, Solicitation provisions and contract clause, to place the EVM requirement in solicitations and contracts.

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

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

#### 436.201 Evaluation of Contractor Performance.

##### **When are performance evaluation reports prepared?**

In addition to the requirements of FAR 36.201, performance evaluation reports must be prepared for indefinite-delivery type contracts when either the contract maximum or the contracting activity's reasonable estimate of services to be ordered exceeds \$750,000.00. For these contracts, performance evaluation reports must be prepared for each order at the time of final acceptance of the work under the order.

#### 436.203 Government Estimate of Construction Costs.

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

#### 436.204 Disclosure of the Magnitude of Construction Projects.

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

### SUBPART 436.5--CONTRACT CLAUSES

#### 436.575 Maximum Workweek-Construction Schedule.

Contracting Officers must immediately discontinue use of the following AGAR clause in all contracts:

- 1) The clause at AGAR 452.236-75, *Maximum Workweek – Construction Schedule*, and its prescription at AGAR 436.575.
- 2) Contracting Officers must continue to use, as appropriate, the FAR clause at 52.236-15, *Schedules for Construction Contracts*, as prescribed in FAR 36.515.

## SUBPART 436.6--ARCHITECT- ENGINEER SERVICES

### 436.601 Policy.

#### *436.601-3 Applicable Contracting Procedures.*

The technical official's listing of areas where recovered materials cannot be used in accordance with FAR 23.404(b), and 23.405(b)(2), and any approvals or disapprovals, are to be retained in the solicitation file.

### 436.602 Selection of Firms for Architect-Engineer Contracts.

#### *436.602-2 Evaluation Boards.*

The procedures may provide for the appointment of private practitioners of architecture, engineering, or related professions when such action is determined by the MASCO to be essential to meet the Government's minimum needs.

#### *436.602-3 Evaluation Board Functions.*

The selection report required in FAR 36.602-3(d) must be prepared for the approval of the MASCO. The MASCO may authorize an acquisition official above the level of the Contracting Officer to execute the required approval.

#### *436.602-4 Selection Authority.*

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

### 436.603 Collecting Data on and Appraising Firms' Qualifications.

The procedures must include a list of names, addresses, and phone numbers of offices or boards assigned to maintain architect-engineer qualification data files. The list must be updated annually.

### 436.604 Performance Evaluation.

#### **When are performance evaluation reports prepared?**

In addition to the requirements of FAR 36.604, performance evaluation reports must be prepared for indefinite-delivery type contracts when either the contract maximum or the contracting activities reasonable estimate of services to be ordered is \$35,000.00 or more. For these contracts, performance evaluation reports must be prepared for each order at least annually, and at the time of final acceptance of the work under the order. The Contracting Officer may require a performance evaluation report on the work done by the architect-engineer after the completion of or during the construction of the designed project.

### 436.605 Government Cost Estimate for Architect-Engineer Work.

The Contracting Officer may release the Government's total cost estimate in accordance with FAR 36.605(b).

#### 436.609 Contract Clauses.

##### *436.609-1 Design Within Funding Limitations.*

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

## PART 437--SERVICE CONTRACTING

### SUBPART 437.2--ADVISORY AND ASSISTANCE SERVICES

#### 437.200 Scope of Subpart.

A listing of product service codes which are identified as advisory and assistance is available at <https://www.acq.osd.mil/asda/dpc/ce/p2p/transparency-of-procurement-spending.html>, and <https://psctool.us/references>.

#### 437.204 Guidelines for Determining Availability of Personnel.

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

#### 437.504 Contracting Official's Responsibilities.

If contract performance requires identification of the contractor's key personnel, Contracting Officials may insert the following language into the Performance Work Statement:

- (a) The Contractor must assign to this contract the following key personnel:
- (b) During the first ninety (90) days of performance, the Contractor must make no substitutions of key personnel unless the substitution is necessitated by illness, death, or termination of employment. The Contractor must notify the Contracting Officer within 15 calendar days after the occurrence of any of these events and provide the information required by paragraph (c) below. After the initial 90-day period, the Contractor must submit the information required by paragraph (c) to the Contracting Officer at least 15 days prior to making any permanent substitutions.
- (c) The Contractor must provide a detailed explanation of the circumstances necessitating the proposed substitutions, complete resumes for the proposed substitutes, and any additional information requested by the Contracting Officer. Proposed substitutes should have comparable qualifications to those of the persons being replaced. The Contracting Officer will notify the Contractor within 15 calendar days after receipt of all required information of the decision on substitutions. The contract will be modified to reflect any approved changes of key personnel.

## PART 438—FEDERAL SUPPLY SCHEDULE CONTRACTING -- RESERVED

## PART 439—ACQUISITION OF INFORMATION TECHNOLOGY

## SUBPART 439.1--GENERAL

### 439.101 Policy.

- 1) In addition to policy and regulatory guidance contained in the FAR:
  - a. The USDA Information Technology Capital Planning and Investment Control Guide (CPIC) establishes requirements for the acquisition of information technology.
  - b. Specific thresholds at which USDA Office of the Chief Information Officer (CIO) Information Technology Acquisition Approval is required have been established.
  - c. The procurement authority delegated to USDA Agencies is established in Departmental Regulations 5000 series.
  - d. The CPIC Guide and USDA CIO policy and procedural guidance are available on the USDA OCIO Website at <https://www.usda.gov/directives/directives-categories#3000>.
  - e. USDA Program offices must ensure they provide applicable information, in accordance with OCIO policies, and include the appropriate OCIO and Cybersecurity Supply Chain Risk Management (SCRM) language (found [here](#)) in requirements documents (Performance Work Statement (PWS), Statement of Work (SOW), or Statement of Objectives (SOO)) and incorporate them in the resultant contract action.
- 2) **What actions should Mission Area contracting offices take to support E.O. [M-23-13](#) which bans TikTok?**
  - a. Ensure that no newly issued contracts contain requirements that may include the use of a covered application in the performance of the contract, except in cases of approved exceptions; and,
  - b. Cease use of contracts that contain requirements that may include use of a covered application in performance of the contract or modify applicable contracts to conform with the prohibition on covered applications, except in cases of approved exceptions.

#### **How are exceptions approved?**

- a. Exception requests must include the information listed in Section IV of E.O. [M-23-13](#).
  - b. MASCOs submit exception requests thru the HCA to the Chief Acquisition Officer for approval.
- 3) Acquisition of on-line courseware libraries and learning management system services requires specific approval of the Assistant Secretary for Administration and CIO.
  - 4) The Prohibition on Use of the Purchase Card To Acquire Telecommunications is partially removed. USDA purchase cardholders and warranted Contracting Officers up to the lesser of their single purchase limit, or the Acquisition Approval Request (AAR) limit, for IT and telecommunications may acquire or pay for telecommunications services, supplies, or equipment. The purchase card should be used in accordance with all USDA departmental regulations and other Federal regulations regarding the acquisition of telecommunications consistent with the AAR limit for agency/staff offices. Refer to the following link for more information pertaining to USDA Telecommunications Management Policy:  
<http://www.ocio.usda.gov/policy-directives-records-forms/directives-categories#3000>.

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 referenced from the USDA National Finance Center Website:

[https://www.nfc.usda.gov/FSS/Publications/FMS/SAP\\_Resources/MasterData/BOC\\_Codes.pdf](https://www.nfc.usda.gov/FSS/Publications/FMS/SAP_Resources/MasterData/BOC_Codes.pdf).

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

“**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.

USDA Mission Areas may use the purchase card to acquire or to pay for telecommunications services, supplies, or equipment. **Except for these prohibitions:**

The purchase card **MAY NOT** be used for the purchase of telecommunications when the following conditions exist:

- 1) All directly billed and recurring telecommunication services 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 (Network or General Services Administration), Treasury Offset Program (TOPS), etc. The government purchase card, however, may be used as the payment tool when appropriate de-obligation of funds commitment has been recorded.
- 2) Purchase of telecommunications supplies or services above the single purchase limit or above the warrant level of the purchase cardholder.
- 3) Purchase of telecommunications supplies or services above the AAR limit (currently \$25,000) without the approval of the Office of the Chief Information Officer.
- 4) USDA Standard Data Visualization Tool – Tableau guidance
- 5) The attached memo establishes Tableau as the USDA standard data visualization tool and provides the rationale. It also designates mission area and office dashboard champions as the primary point of contact for reviewing preliminary business cases justifying the use of alternate data visualization tools. Subsequent approvals by the mission area Assistant CIO and USDA OCIO are also required. The memo is titled “CIO Memo Guidance on Tableau Standard Data Visualization Tool 08292019”, and is available at [Policy and Regulations](#).

IT Security/Privacy language must be included in contracts, when applicable. A sample of such language can be found [here](#).

#### 439.105 Privacy.

USDA employees, as well as contractors and grantees acting on behalf of USDA, are reminded that prior to purchasing Unmanned Aerial Systems (UAS) they must first review, and adhere to, the requirements outlined in [Departmental Regulation 3465-002](#).

## SUBPART 439.2--ELECTRONIC AND INFORMATION TECHNOLOGY

### 439.201 Scope of Subpart.

The FAR provides the regulatory instructions necessary to implement Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 (d)), as amended by the Workforce Investment Act of 1998 (P.L. 105-220, August 7, 1998) in solicitations, contracts, and the supporting acquisition files. The FAR focuses attention on the necessity of trained requirements personnel to prepare statements of work that express the procurement requirement including the need for 508 compliant Electronic and Information Technology (EIT). The requirements personnel are responsible for the market research during which the agency determines both whether commercial EIT will be available in time to meet our need and whether providing conforming EIT would be an undue burden. The market survey results are conveyed within the statement of work.

### 439.203 Applicability.

#### **How is Section 508 managed 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. USDA employees are required to review [DR 4030-001](#) "Section 508 Program" and the associated Section 508 information available at <https://www.usda.gov/ocio/guidelines-and-compliance-resources/section-508-accessibility-compliance>.

#### **Acquiring Information Technology - Recommended Language to Comply with Internet Protocol version 6 (IPv6)**

Per FAR 11.002(g) "unless the agency Chief Information Officer waives the requirement, when acquiring information technology using Internet Protocol [IP], the requirements documents must include reference to the appropriate technical capabilities defined in the USGv6 Profile (NIST Special Publication 500-267)". Department policy is also aligned with the Office of Management and Budget (OMB) memoranda M-21-07, "Completing the Transition to Internet Protocol Version 6 (IPv6)", published November 19, 2020. More information on IPv6 can be found at <https://www.nist.gov/programs-projects/usgv6-program>.

USDA is reaffirming alignment and commitment to policies set forth by OMB and supported by the USDA Chief Information Officer (CIO) and is providing recommended compliance language to the requirements office to assist the CIO in meeting this requirement. Therefore, it is recommended that the requirements office insert the following compliance language, or its equivalent, tailored appropriately, in the requirements documents (Statements of Work/Performance Work Statements) for all new information technology acquisitions that use IP technology unless the CIO waives the requirement. Any exceptions must be approved by the CIO in writing in advance of the acquisition and accompany the requirements documents. The requirements office must ensure that the compliance language below is incorporated in the requirements documents for all new IT acquisitions using IP technology to be IPv6 compliant.

#### **Compliance with Internet Protocol version 6 (IPv6) in Acquiring Information Technology**

- a. Any system, hardware, software, firmware or networked component (voice, video or data) developed, procured or acquired in support or performance of this contract must be capable of transmitting, receiving, processing, forwarding and storing digital information across system boundaries utilizing system packets that are formatted in accordance with commercial standards of Internet Protocol (IP) version 6 (IPv6) as set forth in the USGv6 Profile (NIST Special Publication 500-267) and corresponding

declarations of conformance defined in the USGv6 Test Program. In addition, this system must maintain interoperability with IPv4 systems and provide at least the same level of performance and reliability capabilities of IPv4 products:

- b. Specifically, any new IP product or system developed, acquired, or produced must:
  - 1. Interoperate with both IPv6 and IPv4 systems and products, and
  - 2. Have available contractor/vendor IPv6 technical support for development and implementation and fielded product management.
- c. As IPv6 evolves, the Contractor commits to upgrading or providing an appropriate migration path for each item developed, delivered or utilized at no additional cost to the Government.
- d. The Contractor must provide technical support for both IPv4 and IPv6.
- e. Any system or software must be able to operate on networks supporting IPv4, IPv6 or one that supports both.
- f. Any product whose non-compliance is discovered and made known to the Contractor within one year after acceptance must be upgraded, modified or replaced to bring it into compliance at no additional cost to the Government.

The USDA's Cloud Broker Office (CBO) has developed a centralized portal environment that guides agencies through the process of establishing and consuming approved and authorized USDA Cloud Solutions. This portal can be found at <https://cloud.ocio.usda.gov/>.

## PART 440 – RESERVED

## PART 441--ACQUISITION OF UTILITY SERVICES -- RESERVED

## PART 442--CONTRACT ADMINISTRATION AND AUDIT SERVICES

### 442.002 Interagency Agreements.

All contract audit services required by Contracting Officers, except those which can be accomplished in-house, must be coordinated through the Office of Inspector General (OIG). The OIG will coordinate with the Defense Contract Audit Agency (DCAA), when needed.

## SUBPART 442.7—INDIRECT COST RATES

### 442.708 Quick-Closeout Procedure.

Refer to 404.804, FAR, 42.708, and the Contract Closeout templates located at [Sharepoint | Templates](#).

## SUBPART 442.15--CONTRACTOR PERFORMANCE INFORMATION

### 442.1502 Policy.

Use of CPARS as the Government wide evaluation reporting tool for all past performance reporting is required in accordance with FAR Subpart 42.15 and is mandatory for USDA.



The Office of Federal Procurement Policy (OFPP) issued a memorandum, titled *Making Better use of Contractor Performance Information*, dated July 10, 2014, located [here](#), and *Improving the Use of Contractor Performance Information*, dated July 29, 2009, located [here](#), that require USDA and other agencies to submit their internal procedures for collecting and reporting past performance information.

#### **What procedures must be used when submitting contractor information into CPARS?**

- 1) All acquisition personnel must establish an account in CPARS **within 30 days** following the receipt of a USDA Contracting Officer's Warrant, or following designation as Contracting Officer, or COR.
- 2) Individuals must complete the required CPARS system training as soon as the next existing online class is available after establishing a CPARS account but not later than **60 days** after designation as applicable personnel. The CPARS training is available on the CPARS website, under the *Learning Center* menu, and it is offered by function and role. See 401.601-71 for additional information pertaining to required CPARS training.

#### **What are the CPARS roles and responsibilities?**

##### 1) MASCO Responsibilities

The MASCO will designate individual(s) to serve as the CPARS Focal Point (and Alternate Focal Point, if required) for his/her contracting activity. Once individuals receive access into the CPARS, the MASCO will notify the Procurement Policy Division by email at [procurement.policy@usda.gov](mailto:procurement.policy@usda.gov) to update the CPARS Focal Point list on the USDA Procurement homepage at:

- a. Each MASCO must ensure his/her contracting personnel complete applicable training within required timelines.
- b. MASCOs may issue additional internal agency procedure on CPARS guidance to program officials and acquisition workforce members as long as it does not conflict with department or federal CPARS policy guidance.

##### 2) CPARS Agency Contracting Activity Focal Point Responsibilities

Within the CPARS portal, a Focal Point is responsible for registering Assessing Official and Assessing Official Representative (AOR) users in the system, adding Contract Offices for their organization, registering applicable contract actions and creating Access Matrices for their organization. The following are responsibilities of the Focal Point(s) within CPARS. The Focal Point(s) must:

- a. Request access/register as Focal Point within **30 days** of appointment at the following website: <https://cpars.gov/access.htm>.
- b. Assign Alternate Activity Focal Point(s) as necessary.
- c. Provide system access to Agency users.
- d. Refer issues to the USDA Office of Contracting and Procurement, Procurement Policy Division (PPD) as necessary by emailing [procurement.policy@usda.gov](mailto:procurement.policy@usda.gov).
- e. Register applicable contract actions identified by CO's as well as those listed on CPARS Auto Registration Report.
- f. Create/update CPARS Contract Action Access Matrices for each applicable contract action upon receipt of CPARS registration request from the CO.

##### 3) Assessing Official (AO) responsibilities

The AO, typically the Contracting Officer, is responsible for evaluating contractor performance and for validating the proposed ratings and remarks entered by the AOR, if assigned. Within the CPARS portal, the AO has

“signature” authority and is allowed to forward assessments to the Contractor Representative for review and comment. The following are responsibilities of the AO within CPARS. The AO must:

- a. Ensure each applicable contract action is registered **within 30 days** after contract award.
- b. Ensure Contract Access Matrix is created via the Agency Focal Point **within 14 days** after registration of the contract, task order or delivery order in CPARS. Required Matrix information must include at a minimum:
  - i. Contract number;
  - ii. Contractor Representative(s) name(s), email(s), phone(s);
  - iii. RO name, email, phone;
  - iv. AOR (i.e. CS, COR/COTR), if assigned, name(s), email(s), phone(s);
  - v. AO (i.e. CO) name, email, phone;
  - vi. Period of performance; and
  - vii. Contract action award amount.

*NOTE: It is the AO’s responsibility to request the Access Matrix be updated by the Agency Focal Point should any contact information (i.e., AO, AOR, RO, and Contract Representative) change during the period of performance.*

- c. Ensure meaningful communication and feedback on performance is exchanged between the AO, AOR and Contractor Representative throughout contract performance; obtain documentation for contract file and for use in CPARS evaluations.
- d. Ensure an evaluation is initiated in CPARS within **14 days** of Contract completion (or of annual interim anniversary). If the contract action was properly registered (and an Access Matrix created) upon award, CPARS will automatically notify the AO and AOR via email when an evaluation is due.
- e. Submit the evaluation in CPARS to the Contractor’s point of contact for review/comment within **30 days** of Contract completion (or annual interim anniversary).

*NOTE: The Contractor has 60 days to review and submit comments on any evaluation; however, the evaluation will upload to the View Performance Records module in CPARS within 14 days following the AO’s signature on the initial evaluation.*

- f. Elevate the Contractor Representative do not concur response and comments to the Reviewing Official and respond to comments within **30 days** of receipt. Ensure contract file includes documentation of the final rating determination.
- g. Finalize all evaluations in CPARS **not later than 120 days** after Contract completion (or annual interim anniversary) date.
- h. Review Compliance Assessment Reports, initiate required actions for his/her contract actions, and provide status updates to Agency Focal Point(s) (see Paragraph 6).

4) Assessing Official Representative (typically Contract Specialist or COR) responsibilities:

Within the CPARS portal, the AOR initiates and updates performance assessments, but **does not** have the authority to send the assessment to the Contractor Representative or to finalize an assessment. The following are responsibilities of the AOR within CPARS. The AOR must:

- a. Provide narrative for the ratings and comment sections of the evaluation.
- b. Submit ratings and comments into CPARS for applicable contract actions **within 14 days** from the date of the email message request generated by the CPARS.
- c. Address Contractor rebuttal comments, if received, as requested by CO.

5) Reviewing Official (RO) responsibilities:

When there is a disagreement between the AO and Contractor Representative, the RO (typically one level above AO) is the official responsible for ensuring the evaluation is a fair and accurate evaluation of the Contractor's performance. The following are responsibilities of the RO within CPARS. The RO must:

- a. Review both parties' supporting documentation in the event of a disagreement between the AO and the Contractor Representative in the ratings assigned.
- b. Return the evaluation to the AO within the CPARS system if additional detail and/or clarification is required.
- c. Make a final rating determination and enter comments in "Reviewing Official Comments" field in CPARS.
- d. Validate and close all evaluations elevated for RO determination **not later than 120 days** after Contract completion (or annual interim anniversary) date.

**What are the steps for the final evaluation process?**

1) Evaluation Initiation, Rating Assessment & Review Process:

- a. The AO must submit a request for the Agency Focal Point(s) to create an Access Matrix for registered contract actions within **14 days** of registration.
- b. The AO must ensure the Agency Focal Point(s) registers all applicable contract actions into CPARS within **30 days** of award.
- c. The AOR (or AO if no AOR is assigned) must initiate a "Final" evaluation in CPARS **within 14 days** of contract completion upon receipt of system-generated email notification indicating evaluation is due.
- d. The AO must review evaluation ratings and comments and discuss with the AOR, if needed, for clarification or in the event of discrepancies.
- e. The AO must forward the evaluation to the Contractor in the CPARS portal **not later than 30 days** after contract completion date.
- f. The system will notify the Contractor via email to review the evaluation information. As a best practice, it must be the policy of USDA that the AO must also follow up with an email message or phone call to confirm that the Contractor received the evaluation information.

2) Contractor's Review & Rebuttal Submission Process:

- a. The Contractor has **60 days** to submit comments, rebutting statements, or additional information to the AO. If no comments are received by 61 days after the date CPARS provided notification to the Contractor that the evaluation was available for review, the evaluation will be locked by the system and no longer available for comment to the Contractor.
- b. If the Contractor provides a rebutting statement prior to Day 61, the AO will discuss the Contractor's comments with the AOR (if applicable) within **14 days** after receipt from the Contractor. The AO must notify the AOR of any changes made or information added to the evaluation. Disagreements in the evaluation between the parties must be resolved by the AOR at a level above the AO in accordance with FAR 42.1503(d).

The AO must finalize the evaluation into CPARS within **30 days** of receipt of the Contractor's statements, or not later than 120 days from contract completion (or annual anniversary date for interim evaluations).

**SUBPART 442.70—CONTRACTING OFFICER REPRESENTATIVE (COR)**

CORs are the "eyes and ears" of the Contracting Officer (CO) and should assist with technical monitoring, contract administration, and provide contractor surveillance to ensure performance requirements are met. COs are responsible for ensuring that contract services conform to requirements based on recommendations from the COR and should reject nonconforming services. They may require the contractor to re-perform

nonconforming services, with no increase on fixed-price contracts or fee on cost-reimbursable contracts. When re-performance cannot correct issues, COs may reduce the contract price or fee based on the reduced value of services not properly performed, per FAR 52.246-4 or 52.246-5.

## PART 443--CONTRACT MODIFICATIONS

### SUBPART 443.1--GENERAL

#### 443.102 Policy.

##### **How are requests for time extensions handled?**

- 1) Do not grant time extensions for the contractor's convenience or without justification. Consider the effect of all contract modifications on contract performance time and document the reasons for any time extension in the contract file. Granting additional contract time has value to the contractor and is also a change to contract terms and conditions; therefore, grant only in exchange for consideration to the Government.
- 2) If a time extension was granted on a contract, negotiate a price reduction or another form of consideration.
- 3) When negotiating the reduction, calculate additional Contracting Officer (CO) and COR costs; include travel expenses to administer the contract and any direct costs incurred to the government due to the time extension.
- 4) Contracting Officers have authority to grant time extensions but may not delegate this authority to others.
- 5) The COR reviews the written requests from the contractor; ensures requests specify the length of time, and the stated circumstances warrant an extension.
- 6) The COR forwards the requests, along with the COR's recommendation, to the CO for a determination.

### SUBPART 443.2—CHANGE ORDERS

#### 443.201 General.

##### **What is a constructive change?**

A constructive change occurs when a contractor performs work different from what is prescribed by the terms of the contract, and the government ordered such work by other than formal change order, or such work was the result of an error by the CO or designated representative. The COR must immediately forward to the CO any written notification from the contractor, which indicates the contractor considered an oral order to be a change. The CO will determine if the change was an unauthorized commitment. If resulting in an unauthorized commitment, the CO will follow the procedures for Ratification of Unauthorized Commitments in section 401.602-3.

## PART 444 – SUBCONTRACTING POLICIES AND PROCEDURES -- RESERVED

## PART 445--GOVERNMENT PROPERTY

## SUBPART 445.1—GENERAL

445.103 General.

See Section 404.804 for Contract Closeout Procedures.

## PART 446 – QUALITY ASSURANCE

### SUBPART 446.7—WARRANTIES

446.710 Contract Clauses.

The use of a warranty clause is approved for USDA.

## PART 447—TRANSPORTATION -- RESERVED

## PART 448 – VALUE ENGINEERING -- RESERVED

## PART 449--TERMINATION OF CONTRACTS

### SUBPART 449.1--GENERAL PRINCIPLES

449.106 Fraud or Other Criminal Conduct.

- 1) If the Contracting Officer suspects fraud or other criminal conduct, a written determination of the facts must be submitted by the MASCO to the Office of Inspector General (OIG). Copies of documents or other information connected with the suspected fraud or criminal conduct must be provided with the determination. Concurrently, a copy of the determination must also be submitted to the HCA.
- 2) Depending on the findings of the OIG, the HCA may initiate suspension or debarment action as prescribed in FAR 9.4 and PGI 409.4.

449.111 Review of Proposed Settlements.

Proposed settlement agreements must be reviewed and approved by the MASCO.

### SUBPART 449.4--TERMINATION FOR DEFAULT

449.402 Termination of Fixed-Price Contracts for Default.

In addition to the requirements of FAR 49.402-3(g), the notice of termination must contain instructions regarding the disposition of any Government property in the possession of the contractor (see FAR 45.602-1) and, in the case of construction contracts, such materials, appliances, and structures as may be on the site of the construction work. The notice must also contain a statement concerning the liability of the contractor or its surety for any liquidated damages (see FAR 49.402-7).

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

## PART 451—USE OF GOVERNMENT SOURCES BY CONTRACTORS -- RESERVED

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

## PART 453--FORMS

453.000 Scope of part.

This part: (a) Prescribes USDA (AD) forms for use in acquisition, and (b) Contains requirements and information generally applicable to AD forms.

### SUBPART 453.1--GENERAL

453.103 Exceptions.

- 1) The Contracting Officer must submit a request for exceptions to forms prescribed in FAR Part 53 through their HCA to the SPE for referral to the GSA.
- 2) Requests for exceptions to AD forms prescribed in Part 453 must be handled as individual or class deviations, as appropriate (see Subpart 401.4).

453.108 Recommendations Concerning Forms.

MASCOs must submit recommendations for new forms or to revise, eliminate, or consolidate forms prescribed by FAR 53 and Part 453 through the Procurement Policy Division to the SPE.

### SUBPART 453.2—PRESCRIPTION OF FORMS

453.270 Request for Contract Action (AD-700).

Form [AD-700](#), "Procurement Request", may be used as a contract requisition document by contracting activities in USDA.

Form [AD-1205](#), "USDA Small Business Program – Procurement Request Review", is used in accordance with DR 5090-001, found [here](#). See also Desk Book 419.201.

### SUBPART 453.3 FORMS USED IN ACQUISITIONS

453.300 Listing of Standard, Optional, and Agency Forms.

Forms are not illustrated in the Federal Register or Code of Federal Regulations (CFR). Individual copies may be obtained from your USDA contracting activity.

USDA OCP templates found at [Sharepoint | Templates](#) may be modified for individual Mission Area use. Templates in process do not need to be updated to the new version, unless OCP announces that prior versions are not to be used. Fields and content required per the FAR, AGAR, or USDA Contracting Desk Book must remain unchanged.

Forms issued by other offices, including GSA, USDA OCIO, etc., may not be modified. USDA “AD” forms may be found [here](#). Contact the OCP Procurement Policy Division at [procurement.policy@usda.gov](mailto:procurement.policy@usda.gov) for recommendations or requests for revisions.

## PGI APPENDIX A – TEMPLATES

The following list of templates are located at [Sharepoint | Templates](#), unless otherwise noted, and are used for standardization in USDA acquisitions.

Template Name	Desk Book Reference	Format
Acquisition Plan Abbreviated Acq Plan	PGI 407	Word
Acquisition Plan Formal Acquisition Plan	PGI 407	Word
Acquisition Planning Decision Memo	PGI 407	Word
Acquisition Planning Requirements for IT (signed memo)	PGI 407	PDF
Acquisition Process Roles and Responsibilities	PGI 401.670	PDF
Acquisition Strategy – Acquisition Plan ASAP	PGI 407	Word
Announcement of Contract Award	PGI 405.303	PDF
Biobased (BioPreferred) Quick Reference Guide for Contracting Officers	PGI 423.405	PDF
Blanket Tax Exempt Certificate	429.302	PDF
Contract Closeout Template A, Completion Statement and Closeout Checklist	PGI 404.804	PDF
Contract Closeout Template B, COR Closeout Certification	PGI 404.804	PDF
Contract Closeout Template B, COR Closeout Memo	PGI 404.804	PDF
Contract Closeout Template C, Contractor Release of Claims	PGI 404.804	PDF
Contract Closeout Template D, Deobligation Memo to OCFO	PGI 404.804	PDF
Contract Closeout Template List	PGI 404.804, 442.7	PDF
Contract Notification Template	PGI 416.70	Word
COR Designation	PGI 401.602-2	Word
COR Designation - Alternate	PGI 401.602-2	Word
COR Designation Instructions	PGI 401.602-2	PDF
COR Nomination	PGI 401.602-2	PDF
D&F Award Fee	PGI 416.401	Word
D&F Firm Fixed Price level of Effort Contract	PGI 416.1	Word
D&F Letter Contracts	PGI 416.1	Word
D&F Time & Materials Labor Hour Contract	PGI 416.1	Word
Debriefing Guidance	PGI 415.5	URL
Decision Memo for Acq Plan	PGI 407.104	Word
Delegation Matrix	PGI 401.601-70, Appendix C	PDF
FAC-C Experience (OJT Toolkit)	PGI 401.601-72	Excel
FAC-PPM All Levels Self-Assessment Application (Entry)	PGI 401.601-72	PDF
FAC-PPM-IT, Self-Assessment Application	PGI 401.601-72	PDF
FAR 13, Single Source or Brand Name Justification Less Than SAT	PGI 413.106	Word
FAR 13.5, Single Source or Brand Name Justification Exceeding SAT	PGI 413.501	Word
FAR 16.505, Justification for Exception for Fair Opportunity or Brand Name	PGI 401-601.70, 416.5	Word



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<b>Template Name</b>	<b>Desk Book Reference</b>	<b>Format</b>
FAR 6.302, Justification for Other Than Full and Open Competition	PGI 406.3	Word
FAR 8.4, Limited Sources Justification Exceeding SAT	PGI 408.405-6	Word
FAR 8.4, Limited Sources Justification Less Than SAT	PGI 408.405-6	Word
FPDS Data Quality Plan	PGI 404.602	Word
J&A Template Decision Matrix		Word
Made in America Nonavailability Waiver Request	PGI 425.103	Word
Prerenegotiation Memorandum	PGI 415.406-1	Word
Proposal Cover Sheet	PGI 415.2	Word
Sample Independent Government Cost Estimate (IGCE)		Excel
Sample Performance Work Statement		Word
Sample Proposal Evaluation Criteria		Word
Sample Quality Assurance Surveillance Plan		Word
Sample Statement of Objectives		Word
Sample Statement of Work		Word
SAP Summary Worksheet	PGI 413.106-3	Word
Section 889 Equipment Diagram	PGI 404.2102	Word
Section 889 Service Diagram	PGI 404.2102	Word
Service Contract Labor Standards Exemption Documentation	PGI 422.10	Word
Source Selection Decision Document	PGI 415.3	Word
Source Selection Evaluation Board Agreement	PGI 415.207	Word
Source Selection Plan Template	PGI 415.3	Word
UAC Contracting Officer's Determination & Findings for Ratification, Attachment 2	PGI 401.602-3	PDF
UAC Request to Ratify an Unauthorized Commitment, Attachment 1	PGI 401.602-3	PDF
USDA Blank Powerpoint Template		PPT
Warrant Appointment Request	PGI 401.603	PDF
Warrant Waiver Request	PGI 401.601	PDF

PGI APPENDIX B- Contract Types

DAU, 1/30/2023 at <https://www.dau.edu/tools/t/Comparison-of-Major-Contract-Types-Chart>

## Comparison of Major Contract Types

	Firm-Fixed-Price (FFP)	Fixed-Price Economic Price Adjustment (FPEPA)	Fixed-Price Incentive Firm Target (FPIF)	Fixed-Price Award-Fee (FPAF)	Fixed-Price Prospective Price Redetermination (FP <sup>2</sup> R)	Cost-Plus-Incentive-Fee (CPIF)	Cost-Plus-Award-Fee (CPAF)	Cost-Plus-Fixed-Fee (CPFF)	Cost or Cost-Sharing (C or CS)	Time & Materials (T&M)
<b>Principal Risk to be Mitigated</b>	None. Thus, the contractor assumes all cost risk.	Unstable market prices for labor or material over the life of the contract.	Moderately uncertain contract labor or material requirements.	Risk that the user will not be fully satisfied because of judgmental acceptance criteria.	Costs of performance after the first year because they cannot be estimated with confidence.	Highly uncertain and speculative labor hours, labor mix, and/or material requirements (and other things) necessary to perform the contract. The Government assumes the risks inherent in the contract, benefiting if the actual cost is lower than the expected cost, or losing if the work cannot be completed within the expected cost of performance.				
<b>Use When . . .</b>	The requirement is well-defined. •Contractors are experienced in meeting it. •Market conditions are stable. •Financial risks are otherwise insignificant.	The market prices at risk are severable and significant. The risk stems from industry-wide contingencies beyond the contractor's control. The dollars at risk outweigh the administrative burdens of an FPEPA.	A ceiling price can be established that covers the most probable risks inherent in the nature of the work. The proposed profit sharing formula would motivate the contractor to control costs and to meet other objectives.	Judgmental standards can be fairly applied by the fee determining official. The potential fee is large enough to both: •Provide a meaningful incentive. <sup>1</sup> •Justify related administrative burdens.	The Government needs a firm commitment from the contractor to deliver the supplies or services during subsequent years. The dollars at risk outweigh the administrative burdens of an FPRP.	An objective relationship can be established between the fee and such measures of performance as actual costs, delivery dates, performance benchmarks, and the like.	Objective incentive targets are not feasible for critical aspects of performance. Judgmental standards can be fairly applied. Potential fee would provide a meaningful incentive.	Relating fee to performance (e.g., to actual costs) would be unworkable or of marginal utility.	The contractor expects substantial compensating benefits for absorbing part of the costs and/or foregoing fee or the vendor is a non-profit entity.	No other type of contract is suitable (e.g., because costs are too low to justify an audit of the contractor's indirect expenses).
<b>Elements</b>	A firm-fixed-price for each line item or one or more groupings of line items.	•A fixed-price, ceiling on upward adjustment, and a formula for adjusting the price up or down based on: •Established prices. •Actual labor or material costs. •Labor or material indices.	•Ceiling price •Target cost •Target profit •Delivery, quality, or other performance targets (optional) •Profit sharing formula •120 % ceiling and 50/50 share are points of departure	•Fixed-price. •Award amount •Award fee evaluation criteria and procedures for measuring performance against the criteria	•Fixed-price for the first period. •Proposed subsequent periods (at least 12 months apart). •Timetable for pricing the next period(s).	•Target cost •A minimum, maximum, and target fee •A formula for adjusting fee based on actual costs and/or performance •Performance targets (optional)	•Estimated cost •Base amount, if applicable, and an award amount •Award fee evaluation criteria and procedures for measuring performance against the criteria	•Estimated cost •Fixed fee	•Total estimated cost •No fee •If CS, an agreement on the Government's share of the cost.	•Ceiling price •A per-hour labor rate that also covers overhead and profit •Provisions for reimbursing direct material costs
<b>Contractor is Obligated to:</b>	Provide an acceptable deliverable at the time, place and price specified in the contract.	Provide an acceptable deliverable at the time and place specified in the contract at the adjusted price.	Provide an acceptable deliverable at the time and place specified in the contract at or below the ceiling price.	Perform at the time, place, and the price fixed in the contract.	Provide acceptable deliverables at the time and place specified in the contract at the price established for each period.	Make a good faith effort to meet the Government's needs within the estimated cost in the Contract, Part I the Schedule, Section B Supplies or services and prices/costs.			Make a good faith effort to meet the Government's needs within the ceiling price.	
<b>Contractor Incentive (other than maximizing goodwill)<sup>1</sup></b>	Generally realizes an additional dollar of profit for every dollar that costs are reduced.	Generally realizes an additional dollar of profit for every dollar that costs are reduced.	Realizes profit on cost by completing work below the ceiling price. May earn higher profit by incurring costs below the target cost or by meeting objective performance targets.	Generally realizes an additional dollar of profit for every dollar that costs are reduced; earns an additional fee for satisfying the performance standards.	For the period of performance, realizes an additional dollar of profit for every dollar that costs are reduced.	Realizes a higher fee by completing the work at a lower cost and/or by meeting other objective performance targets.	Realizes a higher fee by meeting judgmental performance standards.	Realizes a higher rate of return (i.e., fee divided by total cost) as total cost decreases.	If CS, shares in the cost of providing a deliverable of mutual benefit.	
<b>Typical Application</b>	Commercial supplies and services.	Long-term contracts for commercial supplies during a period of high inflation.	Production of a major system based on a prototype.	Performance-based contracts.	Long-term production of spare parts for a major system.	Research and development of the prototype for a major system.	Large scale research study.	Research study.	Joint research with educational institutions.	Emergency repairs to heating plants and aircraft engines.
<b>Principal Limitations in FAR/DFARS Parts 16, 32, 35, and 52<sup>2</sup></b>	Generally NOT appropriate for R&D.	Must be justified.	Must be justified. Must be negotiated. Contractor must have an adequate accounting system. Cost data must support targets.	Must be negotiated.	MUST be negotiated. Contractor must have an adequate accounting system that supports the pricing periods. Prompt redeterminations.	The contractor must have an adequate accounting system. The Government must exercise surveillance during performance to ensure use of efficient methods and cost controls. Must be negotiated. Must be justified. Statutory and regulatory limits on the fees that may be negotiated. Must include the applicable Limitation of Cost clause at FAR 52.232-20 through 23.			D&F required (w/ HCA if over 3 years). Government MUST exercise appropriate surveillance to ensure efficient performance. Document any ceiling increases.	
<b>Variants</b>	Firm-Fixed-Price Level-of-Effort.		Successive Targets (FPIS), with ceiling and floor on firm target profit.		Retroactive Redetermination			Completion or Term.		Labor Hour (LH)

<sup>1</sup> Goodwill is the value of the name, reputation, location, and intangible assets of the firm. <sup>2</sup> Comply with any USD(A&S) (formerly AT&L), DPC (formerly DPAP), or other memoranda not yet incorporated into the DFARS, DoD Directives, or DoD Instructions.

PGI APPENDIX C – [DELEGATION MATRIX](#)

All references included in the matrix refer to the Federal Acquisition Regulation (FAR). The USDA Acquisition Regulation (AGAR) and the USDA Contracting Desk Book (PGI) are organized in the same manner as the FAR and should be viewed for USDA specific guidance related to the referenced section. When the approver is higher than MASCO (HCA, SPE, etc.), approvals should be routed through the MASCO. The Delegation Matrix may also be found [here](#).

FAR Reference	Scenario/Situation	Approver
1.403(a)	Authorize AGAR deviations.	HCA
1.602-3	Ratification authority (with reporting to HCA).	MASCO
1.603	Warrant selection, appointment, and termination; signatory for all Warrant Appointment Requests. Note: MASCO warrant requires HCA approval.	MASCO
3.104-5(c)(2)	Authorize disqualified officials to resume participation in the procurement or determine that an additional disqualification period is necessary to protect the integrity of the procurement process.	MASCO
3.104-7(a)(1)	CO receives information of a violation or possible violation must determine if the violation has any impact on the pending award or selection of contractor. If no impact, determination provided to HCA for signature. <b>This authority is not delegable below SES.</b>	HCA
3.602	Authorize exceptions to award a contract to a Government employee or to a business concern or other organization owned or substantially owned or controlled by one or more Government employees. <b>This authority is not delegable.</b>	HCA
3.704(c)	Consider further actions in case of final conviction of violation relating to a contract.	MASCO
3.1104(b)	May impose conditions that provide mitigation of a personal conflict of interest or grant a waiver. <b>This authority is not delegable.</b>	HCA
4.604(a)	Coordinate with SPE to ensure accuracy of Federal Procurement Data System (FPDS) reporting.	HCA
4.605(c)(2)(iii)	Use of generic entity identifier when public identification of the contracted party could endanger the mission, contractor, or recipients of the acquired goods or services.	CO
4.2104(a)(3)(ii)(A)	Determination for prohibition on Contracting with Certain Telecommunications and Video Surveillance Services or Equipment due to an emergency condition.	CO
5.102(a)(5)(iii)	Exception to posting on GPE.	SPE
5.502(a)	Authorize publication of paid advertisements in newspapers (44U.S.C. 3702).	MASCO
6.202(a)	Exclusion of a source from a contract action.	SPE
6.304(a)(3)	Approve justification for other than full and open competition for a proposed contract over \$13.5 million, but not exceeding \$75 million. <b>This authority is not delegable below SES.</b>	HCA
6.501	Designate Competition Advocate.	MASCO
7.103	Agency Head designee responsibilities for planning.	MASPM
7.107-2(a)	Consolidation is necessary and justified.	SPE/OSDBU
7.107-3(a)	Bundling is necessary and justified.	Deputy Sec
7.107-4(b)(5)	Substantial bundling is necessary and justified.	Deputy Sec
7.108	Telecommuting by contractor employees prohibited.	CO
7.503(e)	Determination that none of the functions to be performed are inherently governmental.	CO
8.404(h)(3)(ii)(A)	Use of a Time and Material or Labor-Hour order for commercial services if total performance period is less than three years.	CO
8.404(h)(3)(ii)(C)	Approve time and material or labor hour order for commercial services if total performance period is more than three years.	MASCO
8.405-1(d)(3)(ii)	Fewer than 3 quotes received from schedule contractors that can fulfill the requirement for supplies and services without a scope of work, and include efforts made to obtain quotes.	CO
8.405-2(c)(3)(iii)(B)	Fewer than 3 quotes received from schedule contractors that can fulfill the requirement for services with a statement of work, and include efforts made to obtain quotes.	CO
8.405-6(b)(3)(ii)(C)	Access through e-Buy is not in the Government's interest.	SPE

FAR Reference	Scenario/Situation	Approver
8.405-6 (d)(3)(i)	Approve limiting sources for a proposed order or BPA with an estimated value exceeding \$15 million, but not exceeding \$75 million. <b>This authority is not delegable below SES.</b>	HCA
8.602(a)(2)	Comparison of Federal Prison Industries price, quality and time of delivery to supplies available from the private sector.	CO
9.105-2(a)	Determination of non-responsibility.	CO
9.202(b)	When it's unreasonable to specify the standards for qualification that must be met. Waive the requirements of 9.202(a)(1)(ii) through (4) for up to 2 years with respect to the item subject to the qualification requirement.	Requiring Under Secretary
9.405-1(a)(2)	Request approval to continue contract or subcontract with a contractor debarred, suspended or proposed for debarment.	MASCO
9.405-2(a)	Request approval to continue subcontract with a subcontractor debarred, suspended or proposed for debarment.	MASCO
9.503	Waive any general rule or procedure of this subpart by determining that its application in a particular situation would not be in the Government's interest (as AH designee). <b>This authority is not delegable below HCA.</b>	HCA
9.506(d)(3)	Approve or direct action resolving a conflict of interest or potential conflict before award.	MASCO
10.002(e)	Ensure appropriate market research documentation.	MASCO
11.101(b)	Submit the determination required by OMB circular A-119 that a voluntary consensus standard is inconsistent with law or otherwise impracticable.	MASCO
11.103(a)	Determine offerors demonstrate the market acceptability of the items to be offered.	MASCO
12.101	Ensure compliance with commercial products and commercial services policy.	MASCO
12.302(c)	Approve waivers to tailor provisions and clauses.	MASCO
13.303-5(b)	Use of a BPA call greater than the commercial products and commercial services simplified acquisition threshold.	HCA
14.201-7(b)(2)	Waive the requirement for inclusion of FAR clause 52.214-27, "Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding," in a contract with a foreign government or agency of that government.	MASCO
14.202-4(c)	State the reasons why acceptable products cannot be acquired without the submission of bid samples.	CO
14.202-5(b)	State the reasons why product acceptability cannot be determined without the submission of descriptive literature.	CO
14.404-1(c), (e)(1)	Cancellation of invitations after opening and rejection of all bids.	Level above CO
14.407-3(a)(b)(d)	Permit bidder to correct a mistake (as AH designee). <b>This authority is not delegable.</b>	HCA
15.204	Exempt contracts from the uniform contract format.	HCA
15.303(a)	Appoint source selection authorities other than the CO.	MASCO
15.305(a)(4)	Establish procedures regarding the release of cost information to members of the technical evaluation team.	MASCO
15.403-1(c)(4)	Waive the requirement for submission of cost or pricing data in exceptional cases. <b>This authority is not delegable.</b>	HCA
15.403-3(a)(4)	Determine offeror is eligible for award without the submission of other than certified cost and pricing data if it is best interest to award	MASCO
15.403-4(a)(2)	Authorize the Contracting Officer to obtain cost or pricing data for pricing actions below threshold, provided the action exceeds the simplified acquisition threshold. <b>This authority is not delegable.</b>	HCA
15.404-1(h)(2)(ii)	The contracting approach selected is in the best interest of the Government and the basis for the determination.	CO
15.407-1(d), 42.1503(h)	Defective certified cost or pricing data submitted and relied upon, and any corrective action taken.	CO
15.606(b)	Establish a point of contact for unsolicited proposals	MASCO
16.203-3	Use of a fixed-price contract with economic price adjustment.	CO
16.203-4(d)(2)	Approve use of EPA clause.	MASCO
16.203-4(d)(2)	Approve post-award price adjustment after firm fixed price EPA clause is implemented.	HCA
16.206-3(d)	Approve use of fixed-ceiling-price contracts with retroactive price redetermination. <b>This authority is not delegable below HCA.</b>	HCA
16.401(d)	Approve use of incentive and award-fee contracts.	MASCO
16.401(e)(2)	Designate the Fee Determining Official (if other than CO) to make the final award fee determination.	HCA
16.504(c)(1)(ii)(D)(1)	Task or delivery order against an Indefinite Quantity contract exceeding \$100M, including all options.	Head of Agency

FAR Reference	Scenario/Situation	Approver
16.505(b)(2)(ii) (C)(3)(i)	Approve exception to fair opportunity for a proposed order exceeding \$15 million, but not exceeding \$75 million. <b>This authority is not delegable below SES.</b>	HCA
16.505(b)(8)	Designate a task order ombudsman.	MASCO
16.601(d)(1)	Approve use of time and materials contract or order. Approved by HCA when base and option periods exceeds 3 years.	CO/HCA
16.603-2(c)	Approve a reasonable price or fee for letter contracts in accordance with FAR subpart 15.4 and part 31, subject to appeal as provided in the disputes clause.	MASCO
16.603-2(c)	Extend the period for defining a letter contract required by FAR 16.603-2(c).	HCA
16.603-3	Approve use of a letter contract.	MASCO
17.202(a)	Use of options.	CO
17.204(e)	Approve contracts which exceed the five-year limitation.	HCA
17.206(b)	Not evaluating offers for option quantities.	Level above CO
17.207(f)	Exercise of options.	CO
17.502-2(c)	Economy Act order to obtain supplies or services by interagency acquisition. Notify HCA prior to execution.	CO
18.125, 33.104(b)(1), 33.104(c)(2)	Determine that the contracting process may continue after the Government Accountability Office (GAO) has received a protest when urgent and compelling circumstances exist. <b>This authority is not delegable.</b>	HCA
18.2	Use acquisition flexibilities.	HCA
19.201(b)	Implementing the small business programs.	MASCO
19.201(d)	Designate a Small Business Coordinator.	MASCO
19.306,307,308(h)(1) (ii) & (h)(3)	Award after receipt of protest of offeror's status but before SBA decision.	CO
19.306,307,308(i)(3) (i) & (i)(5)(i)	Protest sustained but termination is not in the best interest of the Government.	CO
19.502-3(a)(4), 19.502-4(a)(4)	Authorize a partial set-aside if only two responsible offerors are expected.	MASCO
19.502-8(a)	Rejecting the Small Business Administration's recommendation.	MASCO
19.502-8(f)	Justification to continue action on an acquisition pending SBA's decision, including a notice to the SBA.	CO
19.506(b)	Rationale for not accepting the recommendation made by OSDDBU.	MASCO
19.602-3(a)(3)&(4)	Appeal issuance of a Certificate of Competency (COC) to SBA.	HCA
19.705-2(c)	Rationale for not including a subcontracting plan.	Level above CO
19.810(b)(2)	Justification to continue action on an acquisition after receipt of SBA's appeal, or intent to appeal, but before agency head determination.	CO
19.816(b)	Issuing a new 8(a) contract to an 8(a) contractor that is suspended from the 8(a) program. Requires SBA approval.	SPE
19.1305(d)(2), 19.1405(d), 19.1505(g)(3)	Award after receipt of notice of SBA's intent to appeal the CO's decision to reject the SBA's recommendation.	MASCO
22.101-1(e)	Designate programs or requirements when contractors must notify the Government of actual or potential labor disputes that are delaying or threaten to delay timely contract performance.	MASCO
22.302	Review determination of liquidated damages.	MASCO
22.404-6(b)(6)	Request an extension from Department of Labor Administrator.	MASCO
22.406-8(d)(1)	Report violations of labor standards.	HCA
22.604-2(b)(1)	Prepare exemption request for ASA signature.	MASCO
22.8	Perform tasks in this subpart as defined by the AGAR.	MASCO
22.805(a)(8)	Justification for award when a pre-award evaluation by the Office of Federal Contract Compliance Programs (OFCCP) cannot be completed by the required date.	MASCO

FAR Reference	Scenario/Situation	Approver
22.807(a)(1)	Exemption to EO 11246. MASCO submits to the HCA.	MASCO
22.1003-4(c)(3)(ii)	Specify offeror's applicable exemption to the Service Contract Labor Standards statute.	CO
22.13	Perform tasks in this subpart as defined by the AGAR. Submit waivers to the SPE for referral to the ASA.	MASCO
22.14	Perform tasks in this subpart as defined by the AGAR. Submit waivers to the SPE for referral to the ASA.	MASCO
22.1802(d)	Waive E-Verify requirement. <b>This authority is not delegable.</b>	HCA
23.405(b)(2)	When an exemption is used for an EPA-designated item or the procurement of a product containing recovered material does not meet or exceed the EPA recovered material content guidelines.	CO
23.601(d)	Establish instructions to identify a protection officer.	HCA
25.103(b)(2)(i)	Exceptions to the Buy American statute, supplies.	HCA
25.105	Use of higher evaluation factors.	Head of Agency
25.202(a)(2)	Exceptions to the Buy American statute, construction.	HCA
25.202(b), 25.603(b), 25.604(c)	Use of certain foreign construction materials may be used without regard to the Buy American statute or Section 1605 of the Recovery Act, with a list of the excepted materials.	CO
25.603(b)(2)	Provide a notice to the Federal Register within 3 business days after determinations of the inapplicability of section 1605 of the Recovery Act, with a copy to the Administrator for Federal Procurement Policy and to the Recovery Accountability and Transparency Board. This authority is not delegable.	Head of Agency
25.1001(a)(2)(iii)	Use of 52.212-5, Alt I or 52.215-2, Alt III in negotiated contracts with foreign contractors, with concurrence of Head of Agency and Comptroller General when applicable per FAR.	MASCO to SPE
26.203(b)	Exception to transitioning awards for response, relief and reconstruction to local firms.	Head of Agency
26.204(a)	Expenditure of Federal funds under an emergency response contract not awarded to a local firm.	CO
27.306(a) and (b)	Allow the Government to require the licensing to third parties of inventions owned by the contractor.	HCA
27.404-5(a)(2)(ii)(B)	Approve final determination regarding unauthorized, omitted, or incorrect markings.	MASCO
28.102-2(b)(2)(i)	Payment bond in the amount required by the FAR is impractical.	CO
28.105	Approve using other types of bonds in connection with acquiring particular supplies or services.	MASCO
28.106-2(a)	Approve substitution of bonds.	MASCO
28.106-6(c)	Furnish certified copy of bonds.	MASCO
28.204	Establish procedures to ensure protection and conveyance of deposited securities.	MASCO
30.201-5	Request a waiver of the CAS requirement. <b>This authority is not delegable.</b>	HCA to SPE
31.101	Give advance approval of an individual deviation concerning cost principles. HCA submits to the SPE.	SPE
31.205-46(a)(3)(ii)	Actual costs in excess of the maximum per diem rates are allowable, provided that they do not exceed amounts authorized for Federal civilian employees.	MASCO
32.003	Approve contract financing for SAP contract.	MASCO
32.007(a)(3)	Prescribe a shorter period for financing payments.	MASCO
32.006-4(g)	Decision to reduce or suspend payments based on the agency's remedy coordination official's recommendation.	HCA
32.102(e)(2)	Authorize progress payments based on a percentage or stage of progress, given that: progress payments based on costs cannot be employed practically and adequate safeguards are provided for the administration of progress payments based on a percentage or stage of completion.	HCA
32.113	Customary contracting financing is needed.	CO
32.114	Approve unusual contract financing.	HCA
32.202-1(d)	Authorization for unusual contract financing.	MASCO
32.402(c)(1)(iii), 32.410	Authorization for advance payments.	HCA
32.406	Coordinate on letters of credit.	HCA

FAR Reference	Scenario/Situation	Approver
32.407(d)	Authorize advance payments without interest.	HCA
32.501-2(a)(3)	Approve unusual progress payments.	MASCO
32.803(d)	Inclusion of a no-setoff commitment and posted in the Federal Register.	MASCO
32.904(b)(1)(ii)(B)(4)	Justification to extend the constructive acceptance period beyond 7 days for other than commercial contracts.	CO
32.904(c)(2)	Justification to extend the constructive acceptance or approval period beyond 7 days for architect-engineer contracts.	CO
32.904(d)(1)(i)(B)	Justification to extend the due date beyond 14 days to adequately inspect construction contract work.	CO
32.904(d)(2)(iv)	Justification to extend the constructive acceptance or approval period beyond 7 days for construction contracts.	CO
33.102(d)	Stay performance of a contract when protest is likely.	CO
33.103(d)(4), (f), 33.104(c)(2)	Perform independent review of protest, resolve protest, approve award after receipt of protest, and authorize reimbursement of costs. <b>This authority is not delegable.</b>	HCA
33.104(b)(1), 33.104(c)(2)	Determine that the contracting process may continue after the Government Accountability Office (GAO) has received a protest when urgent and compelling circumstances exist. <b>This authority is not delegable.</b>	HCA
33.104(g)	Report to GAO when the agency has not fully implemented the GAO recommendations with respect to a solicitation for a contract or an award or a proposed award of a contract within 60 days of receiving the GAO recommendations.	MASCO
34.003(a)	Tasks regarding Major Systems as defined by AGAR.	MASCO
36.208	Approve instances where cost-plus-fixed-fee, price incentive, or other types of contracts with cost variation or cost adjustment features are permitted concurrently, at the same work site, with firm-fixed-price, lump sum, or unit price contracts.	MASCO
36.209	Approve contract to firm who designed the project (as AH authorized representative).	HCA
36.213-2(a)	Waive presolicitation notices on any construction requirement when the proposed contract is expected to exceed the simplified acquisition threshold.	HCA
36.301(b)(3)(vi)	Establish criteria for two phase build design decision.	MASCO
36.303-1(a)(4)	Approve determination for the number of offerors that will be selected to submit phase-two proposals when it is greater than five.	MASCO
36.602-1(b)	Approve use of design competition (as AH designee).	MASCO
36.602-2(a)	Establish procedures for evaluation boards.	MASCO
36.602-3(d)	Approve selection report.	MASCO
36.602-4(a)	Serve as Source Selection Authority (as AH designated selection authority).	MASCO
36.602-5	Establish procedures for evaluation boards.	MASCO
36.603(a)	Establish procedures to maintain data on architect-engineer firms.	MASCO
36.609-1(a)	If a firm's design fails to meet the contractual limitation on construction cost, provide reasons that the firm should not redesign the project	CO
36.609-1(c)(1)	Determine in writing that cost limitations are secondary to performance considerations and additional project funding is expected <b>(Delegable only to official authorized to commit funds).</b>	HCA
36.609-1(c)(2), (3)	Determine in writing that the design is for a standard structure and is not intended for a specific location or there is little or no design effort involved.	CO
37.203(d)(1), 37.204(d), 37.205	Authority to use contractors to perform proposal evaluations when Government personnel are unavailable. (Required prior to issuing a solicitation.)	HCA
41.201(d)(3)	Enter into contracts or interagency agreements for the purchase or transfer of electricity.	MASCO
41.202(c)(2)	Acquiring utility services without a written contract.	MASCO
41.204(c)(1)(ii)	Determine that the use of an area-wide utility contract is not advantageous to the Government.	MASCO
42.202(c)(2)	Approve delegation of authority to issue orders under provisioning procedures in existing contracts and under basic ordering agreements for items and services identified in the schedule.	MASCO
42.1503(h)(1)	Receipt of defective cost or pricing data.	CO
44.305-3(a)	Withdrawing approval of a contractor's purchasing system.	CO
45.102(e)	Approve government property installed permanently in contractor facility.	MASCO

<b>FAR Reference</b>	<b>Scenario/Situation</b>	<b>Approver</b>
45.103(a)(5)	Approval for charging rent on the basis of use.	MASCO
45.301(f)	Approve contractor use of government property for commercial use where nongovernment use is expected to exceed 25 percent of the total use of government and commercial work performed.	HCA
46.407(c)(1)	Acceptance or conditional acceptance of nonconforming supplies or services.	CO
47.304-3(b)(2)	Justification for the solicitation of offers on other than an f.o.b. origin for shipments from CONUS to overseas destinations.	CO
47.305-5(a)(2)	Justification for issuing a solicitation when the destination is unknown.	CO
48.104-3(a)	Determination that the cost of calculating and tracking collateral savings will exceed the benefits to be derived.	MASCO
49.106(a)	Determination of fraud or criminal conduct provided to the Office of Inspector General (OIG) with a copy to the HCA.	MASCO
49.109-7(d)	Settlement agreement with the amount due, supported by detailed schedules, analyses, and each major item of disallowance explained.	CO
49.206-3, 49.303-2	Justification to extend the 120-day requirement for the contractor to submit the inventory disposal schedule.	CO
49.401(e)	Reinstatement of a terminated contract is required, and reinstatement is advantageous to the Government.	CO
49.501	Approve special purpose termination clauses.	HCA
51.102(a)	Authorization for a contractor to use Government supply sources.	CO



## Attachment A, Marketing and Regulatory Programs (MRP)

Acquisition Procedures (MAP) are found at <https://usdagcc.sharepoint.com/sites/aphis-mrp-aam/svcs/acquisitionservices/SitePages/Acquisition-Services.aspx>

Attachment B, Research, Education and Economics (REE)  
Acquisition Programs and Oversight Branch (APOB), [Pages - Home - Axon \(usda.gov\)](#)

## Attachment C, Food, Nutrition and Consumer Services (FNCS)

### Acquisition Operating Procedures

Number	Title/Description
1	Establishment of AOPs for the Food, Nutrition and Consumer Services, Contracts Management Division
2	Procurement Action Lead Time (PALT)
3	Certification and Appointment of Contracting Officer Representatives
4	File Indexes and Electronic Contract Files
5	Pre-solicitation and Pre-award Reviews
6	Acquisition Planning and Market Research
7	Procurement Quality Review (PQR) Program
8	Congressional Notifications
9	Justifications and Approvals - Other than Full and Open Competition
10	Unauthorized Commitments
11	Unsolicited Proposals

## Attachment D, Natural Resources and Environment (NRE)

Procedures Guidance and Information (PGI), [USDA Acquisition Workforce - Natural Resources and Environment \(NRE\) \(FS\) - All Documents \(sharepoint.com\)](#)

Number	Title/Description
Part 4D01	Federal Acquisition Regulation (FAR) System
Part 4D02	Definition of Words and Terms
Part 4D03	Improper Business Practices and Personal Conflicts of Interest
Part 4D04	Administrative Matters
Part 4D05	Publicizing Contract Actions
Part 4D06	Competition Requirements
Part 4D07	Acquisition Planning
Part 4D08	Required Sources of Supplies and Services
Part 4D09	Contractor Qualifications
Part 4D13	Simplified Acquisition Procedures
Part 4D16	Types of Contracts
Part 4D17	Special Contracting Methods
Part 4D19	Small Business Programs
Part 4D22	Application of Labor Laws to Government Acquisitions
Part 4D24	Protection of Privacy and Freedom of Information
Part 4D27	Patents, Data and Copyrights
Part 4D28	Bonds and Insurance
Part 4D32	Contract Financing
Part 4D33	Protests, Disputes and Appeals
Part 4D36	Construction and Architect-Engineer Contracts
Part 4D37	Service Contracting
Part 4D42	Contract Administration and Audit Services
Part 4D46	Quality Assurance
Part 4D48	Value Engineering

### Guides

PPS Contracting Customer Guide

## Attachment E, Farm Production and Conservation (FPAC)

[https://usdagcc.sharepoint.com/sites/nrcs\\_mgmtacquisitionsdiv/procurement/regulation/SitePages/Home.aspx](https://usdagcc.sharepoint.com/sites/nrcs_mgmtacquisitionsdiv/procurement/regulation/SitePages/Home.aspx)

Attachment F, Food Safety and Inspection Services (FSIS)  
[FSIS Agency Clauses and Provisions](#)

Attachment G -- RESERVED

Attachment H, Departmental Administration & Staff Offices (DASO)  
Acquisition Workforce Sharepoint, [Departmental Administration & Staff Offices \(DASO\)](#).



## Attachment J, Rural Development (RD)

**Procurement Operations Procedures (POPs)**, <http://teamrd.usda.gov/rd/daom/pas/pmd.html>.

Number	Title/Description
1	Establishing of Rural Developments POPs
1.6	Ratifications of Unauthorized Commitments
4	Advisory and Assistance Services
4.1	Contract File Content Checklists
4.1(A)	Procurement Reviews
5	Termination of Contracts
6.3	Justification for Other than Full and Open Competition
7.1	Acquisition Plans
8.4	Federal Supply Schedule Procedures – Limited Source JOFOC
10	Contracting for Training Events and Conferences
15.3	Source Selection and Source Selection Chart
15.6	Unsolicited Proposals Plans
24	Agency and Contracting Officer Protests and Claims Procedures
28	Cooperative Agreement Review Board
36.6	Architect-Engineer (A&E) Services
37	Service Contracts for the Use of Private Sector Temporaries
42	Contract Administration Plans
70-1	Measurement of Negotiated Savings

### Guides

- Acquisition Evaluation Guidelines
- Acquisition Guideline for USDA Mandatory Sources for Office Supplies
- BPA Acquisition Guideline
  - BPA Acquisition Guide Quick Reference Table
  - Evaluation Criteria Illustrations

### Samples

- Change of Name Modification
- Closeout Completion Statement
- Closeout CPARS Evaluation Letter
- Closeout Modification
- Closeout Property Report
- Construction Contract
  - Construction Prenegotiation and Negotiation Memorandums
- Construction Purchase Order
- Contract Closeout Guidance
- Contract Justifications for Contract Types and Options
- Contractor notification Letter and Release of Claims
- Cost and Price Analysis, Exercise of Option Period
- FAR Part 15.406-3 Blank Price Negotiation Memorandum
- Green Procurement Requirements

Market Research Survey  
Memorandum of Prenegotiation Objectives  
Novation Agreement and Change of Name Letters  
Price Analyses  
Price Negotiation Memorandum  
Simplified Technical Evaluation Plan – Open Market  
    Simplified Technical Evaluation Plan – GSA/FSS  
    Source Selection Plan – Legal Support Services  
    Vendor Communication Plan

Forms  
    Contract Review Coversheet Checklist  
    COR Designation Letter  
    Determination of Prospective Contractor Responsibility  
    JOFOC

Modification/Task Order Checklist  
    Statement of Work Template  
    Supporting Documentation for Negotiated Savings