

Subpart 23.4 - Use of Recovered Materials and Biobased Products

Parent topic: [Part 23 - Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace](#)

23.400 Scope of subpart.

(a) The procedures in this subpart apply to all agency *acquisitions* of an *Environmental* Protection Agency (EPA) or *United States* Department of Agriculture (USDA)-designated item, if-

(1) The price of the designated item exceeds \$10,000; or

(2) The aggregate amount paid for designated items, or for functionally equivalent designated items, in the preceding fiscal year was \$10,000 or more.

(b) While *micro-purchases* are included in determining the aggregate amount paid under paragraph (a)(2) of this section, it is not recommended that an agency track *micro-purchases* when-

(1) The agency anticipates the aggregate amount paid will exceed \$10,000; or

(2) The agency intends to establish or continue an affirmative *procurement* program in the following fiscal year.

23.401 Definitions.

As used in this subpart-

(a) "EPA-designated item" means a product that is or can be made with *recovered material*-

(1) That is listed by EPA in a *procurement* guideline (40 CFR part 247); and

(2) For which EPA has provided purchasing recommendations in a related *Recovered Materials* Advisory Notice (RMAN) (available at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>).

(b) "USDA-designated item" means a generic grouping of *products* that are or can be made with biobased materials-

(1) That is listed by USDA in a *procurement* guideline (7 CFR part 3201, subpart B); and

(2) For which USDA has provided purchasing recommendations.

23.402 Authorities.

(a) The Resource Conservation and Recovery Act of 1976 (RCRA), [42 U.S.C.6962](#).

(b) The Farm Security and Rural Investment Act of 2002 (FSRIA), [7 U. S.C. 8102](#).

(c) Executive Order 13423 of January 24, 2007, Strengthening Federal *Environmental*, Energy, and Transportation Management.

(d) The Energy Policy Act of 2005, Pub.L.109-58.

(e) Executive Order 13514 of October 5, 2009, Federal Leadership in *Environmental*, Energy, and Economic Performance.

23.403 Policy.

Government policy on the use of *products* containing *recovered materials* and *biobased products* considers cost, availability of competition, and performance. Agencies *shall* purchase these *products* or require in the *acquisition* of services, the delivery, use, or furnishing (see [23.103\(b\)](#)) of such *products*. Agency contracts *should* specify that these *products* are composed of the highest percent of *recovered material* or biobased content practicable, or at least meet, but *may* exceed, the minimum *recovered materials* or biobased content of an EPA- or USDA- designated product. Agencies *shall* purchase these *products* to the maximum extent practicable without jeopardizing the intended use of the product while maintaining a satisfactory level of competition at a reasonable price. Such *products shall* meet the reasonable performance standards of the agency and be acquired competitively, in a cost-effective manner. Except as provided at [23.404\(b\)](#), *virgin material shall* not be required by the *solicitation* (see [11.302](#)).

23.404 Agency affirmative procurement programs.

(a) An agency *must* establish an affirmative *procurement* program for EPA and USDA-designated items if the agency's purchases of designated items exceed the threshold set forth in [23.400](#).

(1) Agencies have a period of 1 year to revise their *procurement* program(s) after the designation of any new item by EPA or USDA.

(2) Technical or requirements personnel and *procurement* personnel are responsible for the preparation, implementation, and monitoring of affirmative *procurement* programs.

(3) Agency affirmative *procurement* programs *must* include-

(i) A *recovered materials* and *biobased products* preference program;

(ii) An agency promotion program;

(iii) For EPA-designated items only, a program for requiring reasonable estimates, certification, and verification of *recovered material* used in the performance of contracts. Both the *recovered material* content and biobased programs require preaward certification that the *products* meet EPA or USDA recommendations. A second certification is required at contract completion for *recovered material* content; and

(iv) Annual review and monitoring of the effectiveness of the program.

(b) "Exemptions".

(1) Agency affirmative *procurement* programs *must* require that 100 percent of purchases of EPA or USDA-designated items contain *recovered material* or biobased content, respectively, unless the item cannot be acquired-

- (i) Competitively within a reasonable time frame;
- (ii) Meeting reasonable performance standards; or
- (iii) At a reasonable price.

(2) EPA and USDA *may* provide categorical exemptions for items that they designate, when procured for a specific purpose. For example, all USDA-designated items (see 7 CFR 3201.3 (e)) are exempt from the preferred *procurement* requirement for the following:

- (i) Spacecraft system and launch support equipment.
- (ii) Military equipment, *i.e.*, a product or system designed or procured for combat or combat-related missions.

(c) Agency affirmative *procurement* programs *must* provide guidance for purchases of EPA-designated items at or below the *micro-purchase threshold*.

(d) Agencies *may* use their own specifications or *commercial product* descriptions when procuring *products* containing *recovered materials* or *biobased products*. When using either, the contract *should* specify-

(1) For *products* containing *recovered materials*, that the product is composed of the-

- (i) Highest percent of *recovered materials* practicable; or
- (ii) Minimum content standards in accordance with EPA's *Recovered Materials* Advisory Notices; and

(2) For *biobased products*, that the product is composed of-

- (i) The highest percentage of biobased material practicable; or
- (ii) USDA's recommended minimum contents standards.

(e) Agencies *shall* treat as eligible for the preference for *biobased products*, *products* from "designated countries," as defined in [25.003](#), provided that those *products*-

(1) Meet the criteria for the definition of *biobased product*, except that the *products* need not meet the requirement that renewable agricultural materials or forestry materials in such product *must* be domestic; and

(2) Otherwise meet all requirements for participation in the preference program.

23.405 Procedures.

(a) *Designated items and procurement guidelines.*

(1) *Recovered Materials.* Contracting officers should refer to EPA's list of EPA-designated items (available via the Internet at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program#products>) and to their agencies' affirmative *procurement* program when purchasing *products* that contain *recovered material*, or services that could include the use of *products* that contain *recovered material*.

(2) *Biobased products.* Contracting officers should refer to USDA's list of USDA-designated items (available through the Internet at <http://www.biopreferred.gov>) and to their agencies affirmative *procurement* program when purchasing *supplies* that contain biobased material or when purchasing services that could include *supplies* that contain biobased material.

(3) When acquiring *recovered material* or *biobased products*, the *contracting officer* may request information or data on such *products*, including recycled or biobased content or related standards of the *products* (see [11.302\(c\)](#)).

(b) *Procurement exemptions.*

(1) Once an item has been designated by either EPA or USDA, agencies *shall* purchase conforming *products* unless an exemption applies (see [23.404\(b\)](#)).

(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, the *contracting officer* *shall* place a written justification in the contract file.

(c) *Program priorities.* When both the USDA-designated item and the EPA-designated item will be used for the same purposes, and both meet the agency's needs, the agency *shall* purchase the EPA-designated item.

23.406 Solicitation provisions and contract clauses.

(a) Insert the provision at [52.223-1](#), *Biobased Product Certification*, in *solicitations* that-

(1) Require the delivery or specify the use of USDA-designated items; or

(2) Include the clause at [52.223-2](#).

(b) Insert the clause at [52.223-2](#), *Affirmative Procurement of Biobased Products Under Service and Construction Contracts*, in service or *construction solicitations* and contracts, unless the contract will not involve the use of USDA-designated items at <http://www.biopreferred.gov> or 7 CFR part 3201.

(c) Except for the *acquisition* of commercially available off-the-shelf items, insert the provision at [52.223-4](#), *Recovered Material Certification*, in *solicitations* that-

(1) Require the delivery or specify the use of EPA-designated items; or

(2) Include the clause at 52.223-17, *Affirmative Procurement of EPA-designated Items in Service and Construction Contracts*.

(d) Except for the *acquisition* of commercially available off-the-shelf items, insert the clause at 52.223-9, *Estimate of Percentage of Recovered Material Content for EPA-designated Items*, in *solicitations* and contracts exceeding \$150,000 that are for, or specify the use of, EPA-designated items containing *recovered materials*. If technical personnel advise that estimates can be verified, use the clause with its *Alternate I*.

(e) Insert the clause at 52.223-17, *Affirmative Procurement of EPA-designated Items in Service and Construction Contracts*, in service or *construction solicitations* and contracts unless the contract will not involve the use of EPA-designated items.