

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.