

## 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.

**Parent topic:** [Subpart 23.4 - Use of Recovered Materials and Biobased Products](#)