23.107-2 Biobased products.

(a) *Authorities.*

(1) The Farm Security and Rural Investment Act of 2002 (FSRIA), 7 U.S.C. 8102, as implemented at 7 CFR part 3201.

(2) The Energy Policy Act of 2005, Public Law 109-58.

(b) *USDA BioPreferred ® Program.* The BioPreferred Program was created in the 2002 Farm Bill and is managed by the *USDA*. The goal of the BioPreferred Program is to increase the purchase and use of *biobased products* (as defined in 2.101) by agencies.

(c) *Applicability.*

(1) This section applies to *contract actions* involving a *biobased product* in a *USDA*-designated product category if—

(i) The price of the *biobased product* exceeds $10,000; or

(ii) The aggregate amount paid for multiple purchases of the *biobased product*, or for a functionally equivalent product, in the preceding fiscal year was $10,000 or more.

(2) While *micro-purchases* are included in determining the aggregate amount paid under paragraph (c)(1) of this section, it is not necessary for an agency to track *micro-purchases* when—

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

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

(d) *Agency affirmative procurement program.* An agency *shall* establish an affirmative *procurement* program for *biobased products* in *USDA*-designated product categories if the agency's purchases of such *products* exceed the threshold set forth in paragraph (c)(1) of this section.

(1) Agency affirmative *procurement* programs *must* include—

(i) A *biobased products* preference program;

(ii) A program to promote the *biobased products* preference program;

(iii) A program for requiring preaward certification that *products* meet *USDA* recommendations (see 52.223-1, *Biobased Product* Certification) and reporting on *biobased products* used in performance of contracts (see 52.223-2, Reporting of *Biobased Products* Under Service and *Construction* Contracts); and

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

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

(3) Agencies have a period of 1 year to revise their *procurement* program(s) after *USDA* updates any *USDA*-designated product categories.

(e) *Procedures.* The following procedures apply when the thresholds set forth in paragraph (c)(1) of this section are exceeded.

(1) Once a *biobased product* is included in a *USDA*-designated product category, agencies *shall* purchase conforming *products* to the maximum extent practicable in accordance with 23.104(a), unless a justification, exception, or exemption applies (see 23.104(a), 23.105, and 23.106, respectively).

(2) Agencies *may* use their own specifications or *commercial product* descriptions when procuring *biobased products*; however, the contract *should* specify that the *biobased product* is composed of the—

(i) Highest percentage of biobased material practicable; or

(ii) *USDA*'s recommended minimum contents standards.

(3) When acquiring *biobased products*, the *contracting officer may* request information or data on such *products*, including biobased content or related standards of the *products* (see 11.301(c)).

(4) Agencies *shall* treat as eligible for the preference for *biobased products*, *products* from designated countries, as defined in 25.003, provided that those *products*—

(i) 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

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

(f) *Resources.*

(1) For information on *USDA*-designated product categories and minimum content standards for *biobased products*, see *https://www.biopreferred.gov.*

(2) *Contracting officers should* also consult their agency's affirmative *procurement* program for agency-specific guidance.

Parent topic: 23.107 Statutory purchasing programs.