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.

(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, some USDA-designated items such as mobile equipment hydraulic fluids, diesel fuel additives, and penetrating lubricants (see 7 CFR 2902.10 et seq.) are excluded from the preferred procurement requirement for the application of the USDA-designated item to one or both of 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 (including plant, animal, and marine materials) or forestry materials in such product must be domestic; and

(2) Are obtained from manufacturers that are located in a designated country.
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(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 “http://www.epa.gov/cpg/products.htm” 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.usda.gov/biopreferred) 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.

(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.

(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.usda.gov/biopreferred or 7 CFR Part 2902.

(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.


Subpart 23.5—Drug-Free Workplace

SOURCE: 54 FR 4968, Jan. 31, 1989; 55 FR 21707, May 25, 1990, unless otherwise noted.

23.500 Scope of subpart.

This subpart implements the Drug Free Workplace Act of 1988 (Pub. L. 100–690).

23.501 Applicability.

This subpart applies to contracts, including contracts with 8(a) contractors.