

PART 2024 - PROPERTY AND SUPPLY

Subpart A - Acquisition, Sales, and Leasing Authority

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PART 2024 - PROPERTY AND SUPPLY

Subpart A - Acquisition, Sales, and Leasing Authority

§2024.1 Purpose.

This subpart describes the delegations of authority for contracts, including small purchases, sales, and space acquisitions and assignments. It also includes responsibilities for contract management. Exhibit F of this subpart describes the authority for payment of noncontractual charges/expenses for which contracting authority and contractual warrants do not apply.

§2024.2 Policy.

Federal Acquisition Regulation (FAR) (48 CFR 1), Agriculture Acquisition Regulation (AGAR) (48 CFR 1), and this subpart (with exhibits) are to be used for procedures in procurement management.

§2024.3 Definitions.

The following definitions apply to this subpart:

Administrative expense are expenses incurred in the normal operation of any Agency office, e.g., office supplies, janitorial services, advertising office hours, etc. An administrative expense is charged to the Agency's Salaries and Expenses (S&E) Appropriation.

Contract numbering system is a system developed by the U.S. Department of Agriculture. The Agency shall use this numbering system when either an acquisition exceeds \$25,000 or when an acquisition is \$25,000 or less and not processed in accordance with FAR Part 13 (e.g., Task/Delivery order type actions). Refer to Block 3 C of the AD 838, "Purchase Order", FMI for the prescribed numbering system. (Added 07-21-93, PN 209.)

Contractual program loan cost expense is an expense associated with a contractual liability, e.g., repair to a single-family house, appraisals, payment assistance reviews, etc. A contractual program loan cost expense is charged as recoverable or nonrecoverable to one of the Agency's program accounts. (Revised 10-27-95, SPECIAL PN.)

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"Interest credit" and "interest credit assistance" terms, as they relate to Single Family Housing (SFH), are interchangeable with the term "payment assistance." Payment assistance is the generic term for the subsidy provided to eligible SFH borrowers to reduce mortgage payments. (Added 10-27-95, SPECIAL PN.)

Noncontractual program loan cost expense is an expense charged as recoverable or nonrecoverable to one of the Agency's program accounts, e.g., property taxes, filing fees, etc. (Revised 07-21-93, PN 209.)

Nonrecoverable expense is a contractual or noncontractual program loan cost expense not chargeable to a borrower or property account. (Revised 07-21-93, PN 209.)

Proper invoice is a request for payment which is submitted to the designated billing office. A proper invoice must include the following information: Name and Address of Contractor, Invoice Date, Agency contract number and task/delivery order number (when applicable), Description of work or services performed, Delivery and payment terms, The remit to name and address, and who shall be notified in the event of a defective invoice. (Revised 07-21-93, PN 209.)

Recoverable expense is a contractual or noncontractual program loan cost expense chargeable to either a borrower or property account. (Revised 07-21-93, PN 209.)

Type 60 purchase order system is a system at the National Finance Center (NFC) in New Orleans, Louisiana, used exclusively by the Agency for obligating, paying, and reporting contractual and noncontractual program loan cost expenses. (Revised 07-21-93, PN 209.)

§§2024.4 - 2024.6 [Reserved]

§2024.7 Appointing official. (Revised 07-21-93, PN 209.)

(a) The Director, Procurement Management Division (PMD), National Office, is designated the Head of the Contracting Activity (HCA) and thus is the appointing official for the Agency. (Revised 10-27-95, SPECIAL PN.)

(b) All Contracting Officer (CO) warrants must be signed by the HCA. Requests for warrant(s) must be submitted through the State Contract Program Manager (CPM). The CPM is responsible for certifying that a

§2024.7 (b) (Con.)

need exists for the warrant(s). The CPM is responsible for compliance with Exhibits E, G, and H of this subpart and Department Regulation 5001-1. The CPM will recommend to the HCA the appropriate warrant level based on the above guidelines. All supporting documentation will be submitted by the CPM with a transmittal letter that contains the CPM's certification and recommendation.

§2024.8 Maintenance training. (Added 07-21-93, PN 209.)

At least every three years contracting officers must, as a condition for retaining their warrants, obtain formal training in procurement covering such areas as new requirements, techniques, or procedures brought about by changes in law, regulations, policy, reviews, or business research. Level I contracting officers must obtain a minimum of 40 classroom hours, and Level II and III a minimum of 80 classroom hours every three years. Refer to Exhibit J (Part 401.603-3-4D(d)) of this subpart.

§§2024.9 - 2024.16 [Reserved]

§2024.17 Delegation of authority.

(a) For:

- (1) Contracts (small purchases under \$25,000), see Exhibit A of this subpart.
- (2) Sales, see Exhibit B of this subpart.
- (3) Leases, see Exhibit C of this subpart.
- (4) Contracts (of \$25,000 or more), see §2024.18 of this subpart.

(b) Delegated CO warrant authority is necessary for employees designated as "Ordering Officers" in indefinite-delivery contracts. These individuals may place orders under such contracts. These employees are considered to be agents of the CO who is responsible for approving purchases. (Revised 07-21-93, PN 209.)

(c) Contracting authority is delegated to individuals, rather than positions, and is not transferable (i.e., an individual "acting" in a certain position cannot assume the CO authority of the incumbent of that position).

(d) Exercise of delegated authority within this subpart is determined by an employee's CO qualifications rather than his/her supervisory capacity.

§ 2024.18 Procurement.

- (a) Program authority. Refer to Exhibit D of this subpart for the appropriate program authority in order to contract for goods and services to meet program needs (Type 60 purchase orders/contracts).
- (b) Purchases of \$25,000 or less. Acquisitions for supplies and services that are not personal must be made in aggregate amounts of not more than \$25,000 per order according to small purchase procedures. Requirements in aggregates of more than \$25,000 must not be broken down into several purchases which are less than \$25,000 in order to conform to small purchase procedures. Use forms designated by Exhibit J, Part 453 of this subpart for the acquisition of supplies and services of lodging, meals, and meeting expenses related to the training of Rural Development employees; however, budgetary and administrative procedures for S&E funds may apply to procurement of training and lodging.
- (c) Contracts in excess of \$25,000. Contracting authority is used for contracts for supplies and services from the private sector in excess of \$25,000 for each acquisition. This authority is limited to Rural Development employees in the National Office, PMS, the Finance Office, and Rural Development field office employees who have been granted special warrants in excess of \$25,000. Formal contracting authority is not granted by this subpart. Refer to § 2024.7 of this subpart for the applicable delegations made by the HCA for Rural Development. Requests for warrants may be made by using the format in Exhibit E of this subpart or the Departmental Regulation (DR) 5001-1. Copies of these and related formats or directives may be requested by the field from the State Office CPM.

§ 2024.19 Sales.

- (a) Personal property. See Exhibit B of this subpart for delegations of authority and amounts of sales. The General Services Administration (GSA) is responsible for the disposal of surplus personal property. GSA regional offices can authorize agencies to sell these items. These sales will be made only by persons designated in Exhibit B of this subpart and require the use of Federal Property Management Regulations (FPMR) 101-45.304, Agriculture Property Management Regulations (AGPMR) 10-45.302, and USDA Personnel Bulletin 735-204 for sales to Government employees. This paragraph does not concern foreclosure auctions of security property. (Revised 09-22-04, PN 379.)
- (b) Real property. There is no dollar limitation for disposal of inventory real property to be sold under program instructions by Community Development Managers, Rural Development Managers and State Directors authorized to execute sales documents.

§§ 2024.20 - 2024.22 [Reserved]

§ 2024.23 Leases, space acquisition, and assignment.

See Exhibit C of this subpart for delegations of authority and dollar limitations for leasing. Leasing authority includes the solicitation and acceptance of bids, execution of lease documents, and contracting with field offices of GSA to use both leased and Federal space. This includes Post Office facilities, and space leased by Rural Development. Use FPMR 101-17 and 101-18, AGAR Part 104, GSAR Part 570, FAR Part 15, and Federal Procurement Temporary Regulation D 73.

§ 2024.24 [Reserved]

§ 2024.25 Responsibilities.

(a) Director, Procurement Management Staff (PMS), National Office. The Director, PMS, is responsible for the:

(1) Development of programs, policies, standards, and related procedures and the direction and coordination of all acquisition management functions including the:

(i) Issuance and maintenance of current acquisition management instructions.

(ii) Delegation of contracting authority (including small purchases) to qualified employees.

(iii) Evaluation of contract activities through field reviews, and assessments during the conduct of field work.

(iv) Provision of technical advice and assistance to the field and National Office program units on the planning, organization, and administration of contract activities.

(v) Acquisition of personal property and nonpersonal services for National Office units.

(vi) Provision of leadership and direction in an agency-wide training program of workshops and programmed instructions related to procurement.

(2) Liaison between State Offices and the Office of Operations, Office of the General Counsel, Board of Contract Appeals and other Government agencies (including GSA, General Accounting Office, Small Business Administration, and the Department of Labor) on various acquisition matters.

§2024.25 (a) (Con.)

(3) Administration of all authorized contract transactions forwarded for action by National Office units, Finance Offices or State Offices through designated contract personnel.

(b) National Office, Assistant Administrators. The National Office Assistant Administrators are responsible for:

(1) Advising the Director, PMS, of the program needs and requirements for contract activities.

(2) Initiating requests for National Office requirements and providing program recommendations for requests for contract services originating from field offices.

(3) Coordinating procurement (and procurement-related program) matters with the PMS. Designating in writing a liaison with the PMS, and coordinating the above responsibilities with National Office Division Directors.

(c) Director, Property and Supply Management Staff (PSMS), Finance Office is responsible for:

(1) Acquisition, utilization, and management of office space in buildings acquired by leasehold and through GSA assignment State Office, Finance Office, and selected field locations where States do not have delegated leasing authority.

(2) Negotiation or advertisement of contracts for janitorial services, utilities, and alterations to office space in the field for States without delegated authority and the Finance Office.

(3) Acquisition, distribution, assignment, and utilization of office furniture and equipment in the field and Finance Office within stated delegations.

(4) Acquisition, storage, inventory control, and distribution of forms and selected supply items to the field and Finance Office.

(5) Contracts and contract administration for selected services and supply items for the Finance Office not available through established Government sources within stated delegations.

(6) Providing oversight and conducting reviews and training of administrative delegations to State Offices for leasing/small purchases.

(7) Providing advice to the Director, PMS, National Office, regarding administration needs and requirements for contract activities.

(8) Sale of surplus personal property as delegated by GSA and Departmental authorities.

(9) Overview and oversight responsibilities such as conducting program management reviews, functional assistance visits, training etc., in order for State Offices to acquire the leasing and/or small purchasing authority.

(d) State Directors. State Directors are responsible for:

(1) Appointing a full-time or a part-time State Office CPM.

(2) Insuring that the State CPM serves as a liaison with the National Office for contracting activities.

(3) Receipt and transmittal of directives on contract matters, Davis-Bacon and Service Contract Act wage determinations, etc., to their field offices.

(4) Establishment of general policies, within limitations prescribed by the FAR, FPMR, AGAR, and Rural Development acquisition regulations and guidance.

(5) Assurance that CO warrants are subject to determinations of conforming qualifications and training, as shown in Exhibits G and H to this subpart.

(6) Development and training of State, District, and County personnel to provide proper administration of contracts and purchase orders.

(7) Administration of an acquisition system for nonpersonal services or construction within delegated authorities.

(8) Collaboration with District Directors and County Supervisors on local contract practices, review and inspection of their contract practices, recommendations for improved methods, and coordination of contract activities throughout the State.

(9) Guidance, leadership and assistance in working out special procedures to safeguard against waste, fraud, and mismanagement.

(10) Administration of State leasing program within delegated authorities.

§2024.26 Small Business Competitiveness Demonstration Program.

NOTE: ALL PROCUREMENT ACTIONS WHICH ARE IDENTIFIED UNDER THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM SHALL BE REPORTED ON THE SF-279 "FEDERAL PROCUREMENT DATA SYSTEM (FPDS) INDIVIDUAL CONTRACT ACTION REPORT," WITH CODE "H," INSTEAD OF CODE "D," IN BLOCK 32. YOU MAY ALSO USE CODE "C," CODE "E," OR CODE "F" WHEN APPLICABLE.

The program affects procurements in Rural Development, both above and below \$25,000, for construction (repairs) and architectural and engineering (A&E) services, effective January 1, 1989.

(a) Procurements above \$25,000: All procurements for construction (repairs) and A&E services, estimated to be \$25,000 or more, shall no longer be set-aside for small businesses and shall continue to be reported in accordance with FAR 4.602.

(b) Procurements under \$25,000, but greater than \$500: Procurements for construction (repairs) and A&E services, estimated to be less than \$25,000, are to be reserved for emerging small businesses. Procurements less than \$25,000 and greater than \$500 for construction (repairs) and A&E services must be reported in accordance with FAR 4.602, with Block 5 of Form AD-838 being coded with a "22" thus avoiding any duplicate reporting. All other procurements which are under \$25,000, including construction or A&E services of \$500 or less, are to be reported with Block 5 of Form AD-838 being completed in the usual manner.

§2024.27 Stop payment, substitute/replacement checks, and check cancellation procedures for Type 60 purchase order transactions.

The following procedures are applicable for contractual and noncontractual charges to the program loan cost expense funds where the Type 60 Purchase Order System is used for obligating and paying the expense item. (Revised 07-21-93, PN 209.)

(a) Stop payment procedures (checks not issued).

(1) To stop an incoming receipt or invoice from being processed against an established purchase order, contact the NFC, New Orleans, Louisiana, Purchase Order Section Inquiry Unit at (504) 255-4724. Provide NFC with the purchase order number and the reason for requesting stop payment action. With this information, the technician at NFC will flag the master file resulting in any requests for payments rejecting from the system. The technician will then contact the appropriate Rural Development ordering/procurement office to inquire about the documents release. The date and the name of the NFC technician should be recorded if additional information is needed on the subject matter at a later date. (Revised 07-21-93, PN 209.)

(2) To stop a scheduled payment from being released by Treasury, contact the NFC, Purchase Order Section Inquiry Unit at (504) 255-4724. This must be done at least 3 days in advance of the release date. Provide NFC with the purchase order number, vendor invoice number, dollar amount, and the reason for stopping the payment. The date and the name of the NFC technician should be recorded for future reference on the subject. (Revised 07-21-93, PN 209.)

NOTE: A check cannot be stopped from being issued if the release date is within 3 days of the current date.

The release date of the check is contained in the Treasury schedule number which is available to the State Office. The schedule number is located in the upper right corner on screen PO62, through the NFC's online inquiry system, under "SCHEDULE NUMBER." The release date can be identified as follows:

3rd digit - Calendar Year
4th - 6th digits - Julian Date Example: T21169

(b) Requesting substitute/replacement checks.

(1) Before requesting issuance of a replacement check, it should first be determined whether or not the check was sent to the vendor's appropriate "Remit To" address and that an allowable mail-time has been considered. This may be done by contacting the NFC, Purchase Order Section's Inquiry Unit at (504) 255-4724. Furnish NFC with the complete purchase order number, vendor invoice number, and dollar amount. (Revised 07-21-93, PN 209.)

(2) If the allowable time has passed and the vendor/contractor has no record of receiving the check, the reissuance process is started by completing the Form AD-663, "Request for Issuance of Substitute or Replacement Check." This form can be prepared by the appropriate Rural Development office to expedite the process. However, it can also be prepared by NFC and forwarded to the vendor for signature certifying nonreceipt of the check. The required check information needed to complete the Form AD-663 can be obtained from the NFC Purchase Order Section's Inquiry Unit.

NOTE: If the check was originally issued in accordance with §2024.28 (b) of this subpart, the field office must notify the Research and Reentry Unit, Finance Office, at (314) 539-2424. (Revised 07-21-93, PN 209.)

§ 2024.27 (Con.)

(c) Check cancellation procedures.

(1) When it is necessary to cancel a check which has previously been issued using the Type 60 Purchase Order System, the check must not be returned to the NFC.

(2) The check and a completed Form RD 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation" and a copy of the Form RD 838-B, "Invoice-Receipt Certification," of should be mailed to the wholesale lockbox. (Revised 11-28-03, SPECIAL PN.)

(3) After receipt of the cancellation documentation by the Finance Office, the check cancellation transaction (e.g., L1/1L, 1K, 1X) will be processed to the Agency's accounting records. The Finance Office will advise the NFC to process the check cancellation to their records. (Renumbered 10-28-03, SPECIAL PN.)

(4) When the NFC processes the check cancellation to their systems records, the payment reversal will appear on the appropriate weekly paid activity report as a negative item, within approximately 5 working days. (Renumbered 10-28-03, SPECIAL PN.)

§ 2024.28 Requesting emergency checks.

The following procedure will be used for requesting emergency checks for contractual and noncontractual program loan cost expenses to be processed using the Type 60 Purchase Order System. Emergency checks will be issued only after approval by the State Director. Both NFC and the Finance Office have emergency payment procedures as follows: (Revised 07-21-93, PN 209.)

(a) Emergency payment by check. If a payment request (Form RD 838-B) has already been submitted to the NFC and is on hold subject to the "Prompt Payment Act," the State Office may authorize the immediate issuance of this check. A letter signed by the State Director, requesting the emergency issuance of this check must be submitted to the NFC-Certification and Disbursement Section indicating the reason for the emergency issuance and the date funds must be received.

(b) Emergency payment by electronic funds transfer.

(1) The Automated Clearing House/Electronic Funds Transfer System has been implemented for use and is available for the processing of emergency checks for the Type 60 Purchase Order System. The Finance Office must receive a copy of Form AD-838, Form RD 838-B, and the invoice prior to transferring the funds. These documents should be express mailed or faxed by the State Office to the attention of the Research and Reentry Unit, mail code 360D2, 1520 Market Street, St. Louis, MO 63103 (fax number (314) 539-3041).

(2) To confirm that the Finance Office has received the documents, call (314) 539-2424.

(3) A letter requesting emergency issuance should also be sent along with the payment request information. See Exhibit K of this subpart. This letter must be signed by the State Director or the individual acting on his/her behalf and include the following:
(Revised 07-21-93, PN 209.)

- (i) Date funds must be received;
- (ii) Type of payment (Loan Cost Payment);
- (iii) 9-Digit routing number (obtained from receipt bank);
- (iv) Depositor account number (obtained from receipt bank);
- (v) Amount of payment; and
- (vi) Payee name.

(4) The funds will be transferred within 24 hours after receipt of the request by the Finance Office, provided established cut off times have been met. Discretion must be exercised in determining whether emergency handling is necessary. If the number of requests for emergency handling reaches an unacceptable level, restrictions on the service may be imposed. (Revised 07-21-93, PN 209.)

§2024.28 (b) (Con.)

(5) If a receipt bank is not available to the field office, a check will be issued by the Finance Office and will be mailed from the Treasury Department within 2 working days after receipt of the request.

NOTE: The Finance Office will notify the NFC that the funds or check has been issued for proper reporting purposes.

§2024.29 Payments for administrative expenses.

Expenses are classified as administrative when the reason for incurring the expense cannot be identified to a specific borrower, acquired/inventory property account, or program fund code. Administrative expenses are charged to the S&E appropriation.

§2024.29 (Con.)

(a) Examples of administrative expenses are:

- (1) Billing for telephone services.
- (2) Rent and utilities for field offices.
- (3) Janitor/janitorial supplies.
- (4) Office equipment.
- (5) Office supplies purchased over the counter or obtained from the warehouse.
- (6) Post office box rentals.
- (7) Safety deposit/night depository rentals.
- (8) Repairs and maintenance of office space and equipment.
- (9) Notary fees.
- (10) Room rentals.
- (11) Advertising for office space, notice of office hours, or Rural Development program services.
- (12) Rural Development program services, including county committee elections.

(b) Responsibilities.

(1) General. Small purchase authority, delegated to State Offices in December 1988, allows the State Offices to directly procure administrative supplies or services from established Government sources or commercial vendors (open market). Two small purchasing manuals for administrative expenses have been issued to the State Offices by the PSMS, Finance Office. These two manuals are known as the Small Purchase Reference Manual and the Small Purchase Manual. These manuals explain how to obtain the majority of office supplies and equipment needed in the field. To obtain administrative supplies or services, District and County Office staffs must follow supplementary State procedures. Also, refer to the Form AD-757, "Miscellaneous Payment System." State Office personnel have been indoctrinated in small purchase procedures. Questions regarding purchases from S&E funds should be directed to the State's CPM or Administrative Officer (AO), as appropriate.

(2) Acquisitions of administrative supplies and services. At the State Office level, a warranted CO may make small purchases utilizing Forms AD-838, or the credit card International Merchant Purchase Authorization Card (IMPAC). States may authorize the use of IMPAC by their field offices.

(3) Payment for administrative supplies and services. Payments for all administrative expenses must be processed and approved at the State Office level.

(i) District and County Offices. District Directors and County Supervisors are responsible for expenses incurred by their offices. This responsibility includes submitting appropriate documentation, e.g., billings, invoices, receipts, or other evidence of Government liability or expenses, to the State Office for payment action, unless otherwise instructed through State Office issued procedures.

(ii) State Offices. State Directors, through their designated AO, are responsible for preparation, approval and certification of Form AD-757 for all administrative expenses incurred within their State's jurisdiction. See Exhibit I of this subpart outlining the responsibilities of certifying and disbursing officers. State Offices accomplish payment and financial reporting of these expenses through various disbursing systems and related procedures maintained by the NFC.

NOTE: STATE OFFICES SHOULD UTILIZE THE FORM AD-757 AND NOT THE TYPE 60 PURCHASE ORDER SYSTEM FOR PAYMENT OF DISTRICT AND COUNTY OFFICE EXPENSES.

(4) Credit card program. The CPM in each State will control and oversee the credit card (i.e., IMPAC) program, and will serve as their State's Administrative Office Contact and Dispute Office Contact. Approving officials and certifying officials shall be appointed in accordance with instructions contained in the manual entitled "Procedures for Government Commercial Credit Card and NFC Miscellaneous Payments," issued to State CPMs.

§§2024.30 - 2024.50 [Reserved]

Attachments: Exhibits A, B, C, D, E, F, G, H, I, J, and K

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Delegation of Contract Authority (up to \$100,000)

Under Agriculture Acquisition Regulation 401.6, contract authority (with redelegation rights) has been delegated to the Procurement Management Staff, National Office. This official is designated as the Head of the Contracting Activity. The delegation applies to equipment, supplies, construction, and services that are not personal.

Contract authority for State, District, and County Offices with limitations as outlined below is hereby redelegated to property warranted State Office Contract Program Managers (CPMs). State Office CPMs who have a Contracting Officer warrant of at least \$25,000 may, with concurrence from the State Director, appoint Contracting Officers with warrants of up to \$10,000. The CPMs shall sign the warrant, or Certificate of Appointment (Standard Form 1402), but shall first obtain the written concurrence of the State Director.

Following are specific delegations and levels of contracting authority:

<u>Description</u>	<u>Authority</u>
(a) For goods and services relating to program activities as specified in Exhibit D of this subpart	Limited by contract warrant level
(b) For lodging, meals, tuition and meeting expenses relating to training or meetings of Rural Development employees.**	\$25,000

** This may include use of Salaries and Expense funds and, as such, is subject to different administrative and budgeting procedures and approvals.

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Property Disposal Authority

Under GSA and Departmental authorities, sale of surplus Government-owned nonprogram personal property such as furniture and office equipment is delegated without authority to redelegate to:

National Office

Director, Procurement Management Staff

Finance Office

Director, Property and Supply Management Staff

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Authority to Lease Rural Development Office Space (Real Property)

<u>National Office, Washington, D.C.</u>	<u>AMOUNT NOT TO EXCEED</u>
Property and Space Management Specialist	50,000
<u>Finance Office</u>	
Chief, Space Management Branch	200,000
Supervisory Leasing Specialist (GS-12)	200,000
Leasing Analyst (GS-12)	50,000
Leasing Analyst (GS-11)	50,000
Leasing Analyst (GS-9)	50,000
Space Management Specialist (GS-12)	25,000

Delegations are limited to the lease terms as indicated below:

1. Chief, Space Management, Branch and Supervisory Leasing Specialist (GS-12), Finance Office, has authority for approval for 5-year firm term leases.
2. All other warranted personnel's authority is limited to a maximum of 120 days termination notice.

State Offices

State representative specially trained at National Office/Finance Office approved training course and warranted by Director, Property and Supply Management Staff.	\$50,000 with a maximum of a 120 day termination notice.
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PROGRAM LOAN COST EXPENSES

This Exhibit describes procedures for obtaining goods and services to be paid from program loan cost funds and guidelines for noncontractual payments to meet program needs in Rural Development. Procurement personnel will issue contracts with commercial sources when the need is fully supported and documented. Contracts may not be utilized; however, to procure services where discretion is involved for decision-making functions, which are inherently governmental.

I. Definitions.

Contractual program loan cost expense is an expense associated with a contractual liability, e.g., repair to a single-family house, appraisals, payment assistance reviews, etc. A contractual program loan cost expense is charged as recoverable or nonrecoverable to one of the Agency's program loan cost accounts.

Noncontractual program loan cost expense is an expense charged as recoverable or nonrecoverable to one of the Agency's program loan cost accounts, e.g., property taxes, filing fees, etc.

Nonrecoverable expense is a contractual or noncontractual program loan cost expense not chargeable to a borrower, property account, or subsidy funds.

Recoverable expense is a contractual or noncontractual program loan cost expense chargeable to a borrower, property account, or subsidy funds.

Proper invoice is a request for payment, which is submitted, to the designated billing office. (See Exhibit F for invoice requirements)

Type 60 purchase orders are processed through the National Finance Center (NFC) in New Orleans, Louisiana, for obligating, paying, and reporting contractual and noncontractual program loan cost expenses.

II. Program Loan Cost Funding.

A. Accounts.

Under the requirements of the Credit Reform Act of 1990, as outlined in the Office of Management and Budget (OMB) Circular A-34, funding for program loan costs is divided into the following accounts for each program area.

1. Salaries and Expense Account (Nonrecoverable): The account used to fund all program loan cost expenses that are not chargeable to a borrower, property account, or subsidy funds. The National Office Budget Division allots funds for this account from the Agency's Salaries and Expenses appropriation (Action Code "A").
2. Direct Loan Financing Account (Recoverable): The account used to fund all program loan cost expenses that are chargeable to a direct/insured borrower or property account in which the loan was obligated in Fiscal Year (FY) 1992 or subsequent years. This account also includes expenses paid by an applicant, borrower (e.g., credit reports), or out of subsidy funds, not chargeable to a borrower or property account. Funding for this account is apportioned from OMB; additional monies can only be obtained by OMB approving a reappropriation (Action Code "R").
3. Liquidating Account (Recoverable): The account used to fund all program loan cost expenses that are chargeable to a direct/insured and guaranteed borrower or property account in which the loan or primary loan was obligated prior to FY 1992. Funding for this account is apportioned from OMB; additional monies can only be obtained by OMB approving a reappropriation (Action Code "L").
4. Guaranteed Account (Recoverable): The account used to fund all program loan cost expenses that are chargeable to a guaranteed loan or property account obligated in FY 1992 or subsequent years. Funding for this account is apportioned from OMB; additional monies can only be obtained by OMB approving a reappropriation.

B. Processing.

Expenses to be paid from the accounts described in paragraphs II.A.1, II.A.2, and II.A.3 will be processed through NFC's Type 60 Purchase Order System (POS). Expenses to be paid from the Guaranteed Account will be processed on a case by case basis through the Finance Office (They will not be processed through NFC's POS). Expenses are to be charged to the oldest outstanding like loan.

C. Housing Program Loan Cost Funds.

The National Office Program Support Staff will establish annual program loan cost (contractual and noncontractual) funding allocations for each State Office consisting of specific dollar limits by account for Single Family Direct and Multi-Family Housing programs. The State Director is responsible for determining and documenting how all funds are used to

meet the needs of the State and is accountable for the use of funds. This includes monitoring the funds to insure that the allocation is appropriately utilized. If the State allocation is not sufficient to meet State requirements (e.g., due to disaster designations), the State Office may request an allocation increase. This request must be directed to the Deputy Director, Program Support Staff, Rural Housing Service.

D. Community Facilities and Water and Waste Program Loan Cost Funds.

The National Office will hold all program loan cost funds for Community Facilities and Water and Waste expenses. Field offices needing to process a program loan cost expense must submit a request to the appropriate Administrator to obtain funding authority prior to obligation. The request should be submitted to the National Office on Attachment 2 of this Exhibit. The request can be faxed to the appropriate Administrator to expedite processing.

III. Program Authority.

A. Program authority to obtain goods and services by contract and make noncontractual payments is granted only as specified in this Exhibit and must be in accordance with appropriate program regulations. However, the State Director may submit a written request to the Administrator, Rural Housing Service, to the attention of the appropriate Program area for authority to use contracting procedures for purposes not specifically authorized. The request must support and document the program need.

B. Obtaining program authority to utilize contracts does not allow an employee to award a contract. A contract can be awarded only by a duly authorized Contracting Officer who is appointed by the Head of the Contracting Activity in accordance with Departmental Regulation 5001-1, "Acquisition Workforce, Training, Delegation and Tracking System."

The Administrator may make written restrictions or revocations of any of the program authorities listed in this Exhibit at any time.

C. Tables D-1 through D-6 of this Exhibit specify for each program area both the program authority to utilize contracts and make noncontractual payments and the recoverability for each category of expense. Guaranteed Rural Housing program loan costs are not included in the Single Family Housing Table (D-5) since they are processed manually through the Finance Office per paragraph II.B.

D. Redelegation of Authority.

1. The State Director may redelegate through a State Supplement any program authority delegated to the State Director in this Exhibit to:

- a. State Office employees within the applicable loan programs.
- b. Rural Development Managers (or other Area Office position equivalent to the District Director position)
- c. Rural Development Specialists (or other Area Office position equivalent to the District Loan Specialist or Assistant District Director position)
- d. Community Development Managers (or other Local Office position equivalent to the County Supervisor position)

2. If program authority is redelegated to a position at a level below the State Office, those employees may redelegate their authority in writing to a qualified staff member with written concurrence of the State Director.

3. Program Authority for contractual loan expenses may not be redelegated to procurement personnel.

IV. Program Authority Code (PAC).

To control funds, track expenses, and determine program authority, each type of expense must be identified by a unique PAC. The PAC consists of four consecutive alphanumeric characters, [A-Z and 1-9].

First character: Identifies the Loan Program affected by the contractual/noncontractual payment action.

Second character: Identifies the Program Activity Phase.

Third character: Identifies the General Purpose.

Fourth character: Provides a Detail Description of the General Payment Purpose.

All four characters of the PAC must be specified on Form RD 1955-62, "Request for Contract Services for Custodial/Inventory Property or Program Services," prior to submission to the State's procurement office. The State's procurement office must include the PAC on the Purchase Order at the time of obligation.

In addition to entering PAC information on Form AD-838, "Purchase Order," the State Office Program Director requesting program loan cost funds for Community Facility and Water and Waste expenses must also enter this same PAC information on Attachment 2 of this Exhibit.

Program personnel must use Tables D-1 through D-6 of this Exhibit to identify the appropriate PAC, the program authority for the item, and the recoverability of the item. Until uniform designations are developed for all field offices, the codes indicating program authority will remain unchanged; (See Tables D-1 through D-6 for further clarification).

First Character: Loan Program

CODE LOAN PROGRAM

B	Business & Industry
C	Community Facilities
M	Multi-Family Housing
S	Single Family Housing
W	Water and Waste

Second Character: Program Activity Phase

CODE PROGRAM ACTIVITY PHASE

- 1 Loan Processing - all costs associated with applying for a loan/grant. Costs in this category include loan application reviews, appraisals of potential collateral, credit history checks (credit bureau reports), etc. This code is appropriate to use until a loan is actually closed.
- 2 Loan Servicing - all costs associated with normal servicing of a loan. Costs in this category include protective advances, payment assistance reviews, year-end analysis, taxes (Taxes cannot be paid if the borrower has escrowed funds), etc. This code is not applicable when custodial responsibility has shifted to the Agency or acquisition/liquidation process has begun, i.e., after the date of acceleration.

- 3 Custodial Property Management - all costs associated with managing and maintaining property when the Agency has custodial responsibility. Costs in this category include utilities, lawn mowing, changing locks, etc. Custodial responsibility begins when a borrower has abandoned collateral property and the Agency is maintaining it to protect the Government's security interest.
- 4 Property Acquisition/Liquidation - all costs associated with voluntary or involuntary acquisition/liquidation of security property. Costs in this category include appraisals, foreclosure expenses, etc. For housing, this code would be applicable when the Agency has accelerated the loan(s) and should be used until the date of foreclosure/date title is transferred to the Government (acquired) or sold to a third party at the foreclosure sale.
- 5 Inventory Property Management - all costs associated with managing acquired/inventory property. Costs in this category include sales commissions, appraisals, repairs, improvements, taxes, lawn mowing, and utilities.

Third Character: General Purpose

CODE GENERAL CONTRACT/NONCONTRACTUAL PURPOSE

A	Inspections
B	Appraisals
C	Analysis and Audits
D	Information Services
E	Other Services
F	Maintenance/Management
G	Repairs/Improvements
H	Real Estate Broker (Exclusive Listing)
I	Real Estate Broker (Open Listing)
J	Environmental
K	Asset Investigation
L-M	Reserved
N	Noncontractual Payments
O-X	Reserved
Y	Managerial
Z	Other

Fourth Character: Detail Description

The detail description codes are subcategories under each general purpose code. They are the same for each program area; however, the program authority to contract or make noncontractual payments may vary between program areas.

V. Noncontractual Charges to the Program Loan Cost Accounts.

A. General.

This section establishes and prescribes the policies and procedures related to paying noncontractual charges from the program loan cost expense funds by NFC. An employee does not need a contracting officer warrant to process noncontractual charges. The procedures in this section (Section V.) apply only to payments for the following:

1. Taxes on behalf of the borrower or after the Agency has acquired the property. If the borrower has funds escrowed with the Centralized Servicing Center (CSC), taxes must be paid from those funds.
2. Insurance by the Agency on behalf of the borrower where an unusual and severe hazard exists and/or insurance is necessary to protect the Government's lien or interest in the borrower's property (e.g., flood insurance). If the borrower has funds escrowed with the CSC, insurance must be paid from those funds.
3. Prior liens and junior liens under special circumstances.
4. Utilities on acquired or custodial properties.
5. Other miscellaneous expenses such as judgments, satisfaction of mortgage (out-of-pocket), and financing statements, etc.

Obligation and payment of noncontractual items will be processed utilizing Forms AD-838, "Purchase Order" and RD 838-B, "Invoice-Receipt Certification." Detailed instructions are found in the applicable Forms Manual Insert. In order to expedite the processing of the obligations and disbursements, the NFC's PC-PRCH software will be used.

B. Proper invoice requirements.

1. Invoices shall be submitted to the office specified in the contractual document. (See Exhibit F for invoice requirements)

2. When a vendor's invoice is not available, Rural Development requires a substitute invoice be prepared.

3. A Rural Development prepared invoice must be signed and dated by the payee. Attachment 1 to this Exhibit is an example of a Rural Development substitute invoice.

NOTE: The invoice number should be prefixed with "RD" followed by a sequentially assigned number, e.g., RD1, RD2, etc.

A receipt must support all Rural Development prepared invoices or billing retained with the office file copies of the Form RD 838-B and/or Form AD-838, as appropriate.

C. Agency required forms.

Form AD-838 will be submitted for obligations and Form RD 838-B, with the original vendor's invoice or a substitute invoice, will be submitted for payment requests. A copy of the vendor's/payee's invoice or bill shall be attached to the Agency's copy of the Form RD 838-B and retained in the preparing office to support the requested payment. In situations where no invoice was submitted, complete Attachment 1 of this Exhibit and attach it to the Form RD 838-B. For many of these transactions, Forms AD-838 and RD 838-B can be processed simultaneously. In addition, for Community Facilities Program and Rural Utilities Service requests, all applicable invoices should be submitted to the National Office with Attachment 2 of this Exhibit.

Recoverable charges to the subsidy account (e.g., mediation, Single Family Housing property appraisals) require use of the Direct Loan Financing Account funding. To disburse funds to pay these charges, Action Code "R" is used on Form AD-838 and the borrower's ID (block 14) is left blank on Form RD 838-B.

D. Filing requirements.

In accordance with RD Instruction 2033-A, all related documentation (e.g., copies of invoices, justification, funding documents, etc.) required in support of Forms AD-838 and RD 838-B shall be attached to a copy of the applicable forms for retention in the preparing office. For

recoverable costs charged to a borrower or property account, duplicate copies of invoices and Form RD 838-B shall be placed in position two of the applicable borrower or Real Estate Owned (REO) property case file.

Title 48 of the Code of Federal Regulations, Section 4.8, prescribes the requirements for establishing, maintaining and disposing of contract files.

E. Approving Officials.

The approving official for noncontractual charges is identified in Tables D-1 through D-6 of this Exhibit.

oOo

Rural Development Invoice

Invoice Number: RD_____

Date: _____

Purchase Order Number: 60_____

Remit to Name and Address:

Brief description of goods or services as appropriate:

Payment Terms: _____

Invoice Amount: \$_____

Payee's Signature _____ Date: _____

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FISCAL YEAR PROGRAM LOAN COST EXPENSE
RURAL HOUSING SERVICE - COMMUNITY PROGRAMS
RURAL UTILITIES SERVICE - WATER AND WASTE
RURAL BUSINESS-COOPERATIVE SERVICE - BUSINESS PROGRAMS

State: _____ Account: _____
Contact Person: _____ Fax No.: _____
Telephone Number: _____

Program Authority Code (PAC):
_____ (Loan Program) _____ (Program Activity)
_____ (General Purpose) _____ (Detail Description)

Program Authority Required: _____ (Indicate Yes/No)
Recoverable _____ Non-recoverable _____

Description of Request:

<u>CONTRACTUAL</u>		<u>NONCONTRACTUAL</u>	
Inspections	_____	Advertising	_____
Appraisals	_____	Real Estate Taxes	_____
Analysis and Audits	_____	Insurance	_____
Information Services	_____	(including flood)	_____
Other Services	_____	Other (Explain)	_____
Maintenance & Management	_____	Utilities*	_____
Repair/Improvement	_____	TOTAL	_____
Exclusive Broker	_____		
Open Listing Broker	_____		
Environmental	_____		
Other Field Contracting	_____		
Credit Bureau Reports	_____		
TOTAL	_____		

* Attach copies of
vouchers and/or documents.

State Program Director

Concurrence: _____ Date: _____
Associate Administrator/Deputy Administrator

TO BE COMPLETED BY NATIONAL OFFICE:
Account Balance after this obligation: _____
Initials: _____
Date: _____

Exhibit D, Tables D1 through D6 in PDF ONLY.

Request for Appointment of a Contracting Officer

1. There is a clear and convincing need to appoint a contracting officer at level _____ for the following reasons:

2. The contracting officer candidate is:

.....
(Name, Title, Series, and Grade)

3. The contracting officer candidate will occupy the following organizational level described below:

.....

4. The candidate's Qualification Statement is enclosed. It was found that:

_____ The candidate's experience and training meet the established qualification standards.

_____ This candidate does not meet the minimum qualification in _____ (experience and/or training as indicated in the enclosed justification); therefore, an interim appointment for the period of _____ is requested. These experience and/or training needs will be identified in the candidate's individual development plan and must be completed by _____.

5. The candidate's current conflict of interest disclosure statement is on file in the appropriate personnel office or is attached. (This applies to only GS/GM-13's and above.)

6. In addition to Procurement Laws, Regulations, and other applicable requirements, the following warrant limitations are imposed:

a. Dollar Threshold: _____

b. Other Limitations: _____

SUPERVISOR: [].....[].....
Concur Non-Concur
(Signature of Supervisor of the Candidate)

.....
(Date) (Typed Name)

.....
(Procurement Office) (Title)

APPROVED: [] DISAPPROVED: []*

.....
(Appointing Authority) (Date)

*Reason for disapproved or modification of request threshold or
limitation:

Contracting Officer Warrant Program
Qualification Statement

This format should be used by each candidate when applying for a contracting officer's warrant. A format such as a Personal Qualifications Statement (SF-171) may be used as a substitute for this format.

1. NAME:
2. TITLE, SERIES, GRADE:
3. OFFICE:
4. RELEVANT EXPERIENCE: (Begin with current position and work back four relevant positions.) Information on each position should include:
 - A. NAME OF EMPLOYER
 - B. DATES EMPLOYED
 - C. TITLE OF POSITION
 - D. KIND OF BUSINESS/ORGANIZATION
 - E. DESCRIPTION OF WORK
5. OTHER RELEVANT SPECIAL QUALIFICATIONS, CERTIFICATIONS OR SKILLS:
6. RELEVANT HONORS, AWARDS OF FELLOWSHIPS RECEIVED:
7. EDUCATION:
 - A. HIGHEST LEVEL COMPLETED
 - B. NAME OF HIGH SCHOOL
 - (1) Dates Attended
 - (2) Diploma Received
 - C. NAME OF COLLEGE/UNIVERSITY
 - (1) Dates Attended
 - (2) Years Completed

- (3) Number of Credits Completed - Indicate Whether Credits Are Semester Hours or Quarter Hours.
- (4) Type and Year of Degree
- (5) Chief Undergraduate College Subjects
- (6) Major Field of Study at Highest Level of College Work

8. PROCUREMENT RELATED TRAINING:

- A. NAME OF COURSE
- B. NAME OF SCHOOL
- C. DATES ATTENDED

Signature of Candidate

Date

Noncontractual Charges to the Revolving Fund

This exhibit establishes and prescribes the policies and procedures relating to the payment of noncontractual charges from the revolving funds by the National Finance Center. An employee does not need a contracting officer warrant to process noncontractual charges.

Revolving fund payments.

The procedures in this exhibit apply only to those payments that meet the following criteria:

1. Payment of taxes on behalf of the borrower or after the Agency has acquired the property.
2. Payment of insurance by the Agency on behalf of the borrower, where an unusual and severe hazard exists and/or insurance is necessary to protect the Government's lien or interest in the borrower's property (e.g., property insurance, flood insurance, or title insurance).
3. Payment of prior liens and junior liens under special circumstances.
4. Utilities on acquired or custodial properties.
5. Expenses incurred for advertising (program related).
6. Legal fees, recording and release fees.
7. Services (including noncontractual legal services) incurred in connection with foreclosures or voluntary conveyance.
8. Other miscellaneous expenses such as judgements, satisfaction of mortgages (out-of-pocket), and financing statements, etc.

Payment of noncontractual items will be processed utilizing Forms AD-838, "Purchase Order," and RD 838-B, "Invoice-Receipt Certification." Detailed instructions are found in the applicable forms manual insert.

Proper invoice requirements.

1. Invoices shall be submitted to the Rural Development issuing office authorizing the payment. The invoice must include the following information and/or attached documentation in order to constitute a proper invoice:
 - a. The complete Form AD-838 purchase order number assigned by the Rural Development office.

- b. The complete "Remit To" name and address of the vendor/payee to whom the check will be made payable and mailed. If desirable, the check can be sent to a Rural Development office (See paragraph (2) below).
- c. Invoice amount, number, and date.
- d. Description, price, and quantity, as appropriate.
- e. Payment terms (discount/net) if payment terms are not on the invoice, the system will use net 30 for prompt payment purposes.

2. When a vendor's invoice is not available, e.g., reimbursing employees for out-of-pocket expenses, etc., it will be necessary for Rural Development to prepare an invoice. A Rural Development prepared invoice must be signed and dated by the payee. Attachment 1 to this exhibit is an example of a Rural Development invoice.

NOTE: The invoice number should be prefixed with "RD" followed by a sequentially assigned number, e.g., RD1, RD2, etc.

All Rural Development prepared invoices must be supported by a receipt or billing retained with the office file copies of the Form RD 838-B and/or Form AD-838, as appropriate.

Agency required forms.

Form AD-838 will be submitted for obligations and Form RD 838-B, with the original vendor's invoice or a Rural Development prepared invoice, will be submitted for payment requests. A copy of the vendor's/payee's invoice or bill shall be attached to the Agency's copy of the Form RD 838-B and retained in the preparing office to support the requested payment. In those situations where no invoice was submitted, complete Attachment 1 to this exhibit and attach it to the Form RD 838-B. For many of these transactions, Forms AD-838 and RD 838-B can be processed simultaneously.

Filing requirements.

In accordance with RD Instruction 2033-A all related documentation (e.g., copies of invoices, justification, etc.), required in support of Forms AD-838 and RD 838-B shall be attached to a copy of the applicable forms for retention in the preparing office.

Approving Officials.

The approving official for noncontractual charges is identified in Exhibit D of this instruction.

Rural Development INVOICE

Invoice Number: RD _____

Date:

Purchase Order Number: 60 _____

Remit to Name and Address:

Brief description of goods or services as appropriate:

Payment Terms: _____

Invoice Amount: \$ _____

Payee's Signature _____

Date: _____

QUALIFICATION REQUIREMENTS

The Head of Contracting Activity (HCA) may delegate authority to Level I, II, and III Contracting Officers to obligate government funds at either the maximum monetary amounts set forth below, or any portion thereof.

1. Level IA - Small Purchase Contracting Officer (SPCO)

Obligation authority up to \$2,500 on the open market, and on Federal Supply Schedule contracts or other mandatory sources.

- (a) Experience. At least 6 months recent procurement experience in small purchases or simplified purchasing.
- (b) Education. A high school diploma or its equivalent is preferred.
- (c) Training. At the time of appointment successful completion of training in Government small purchases to reach Level IA of Exhibit H of this subpart.
- (d) Duties. The individual regularly dedicates 10 percent, or more, of time to procurement duties.

Level IB - SPCO

Obligation authority up to \$10,000 on the open market, and up to the maximum order limitation on Federal Supply Schedule contracts or other mandatory sources.

- (a) Experience. At least 1 year of procurement experience, including 3 months recent experience in small purchases or simplified purchasing.
- (b) Education. A high school diploma or its equivalent is preferred.
- (c) Training. At the time of appointment successful completion of training in Government small purchases to reach Level IB of Exhibit H of this subpart.
- (d) Duties. The individual regularly dedicates 25 percent, or more, of time to procurement duties.

Level IC - SPCO

Obligation authority up to the small purchase limitation on the open market, and up to the maximum order limitation on Federal Supply Schedule contracts or other mandatory sources.

- (a) Experience. At least 2 years of procurement experience, including 6 months recent experience in small purchases or simplified purchasing.
- (b) Education. A high school diploma or its equivalent is preferred.
- (c) Training. At the time of appointment successful completion of training in Government small purchases to reach Level IC of Exhibit H of this subpart.
- (d) Duties. The individual regularly dedicates 50 percent, or more, of time to procurement duties.

2. Level II - Intermediate Contracting Officer

Obligation authority up to \$100,000.

- (a) Experience. At least 4 current years of progressively complex and responsible procurement experience in negotiated/advertised procurements, contract administration, or related staff/policy support. Experience in the GS-1102 or GS-1105 series, or directly comparable military or private sector experience is highly desirable.
- (b) Education. Preferably an associate degree in a field of study appropriate for procurement such as procurement and contracting, business administration, accounting, economics, marketing, or law.
- (c) Training. At the time of appointment successful completion of training in Government acquisition to reach Level II of Exhibit H of this subpart.
- (d) Duties. The individual dedicates 60 percent, or more, of time to procurement and contracting duties.

3. Level III - Senior Contracting Officer

Obligation over \$100,000 up to the limitations of the appointment.

(a) Experience. At least 6 current years of progressively complex and responsible procurement experience in negotiated/advertised procurements, contracting, contract administration, or related staff/policy support. Experience in the GS-1102 job series, or directly comparable military or private sector experience as a Level II Contracting Officer is highly desirable.

(b) Education. A Bachelor's Degree is highly desirable, in an appropriate field of study, such as procurement and contracting, business administration, accounting, economics, marketing, or law.

(c) Training. At the time of appointment, successful completion of training in Government acquisition to reach Level III of Exhibit H of this subject.

(d) Duties. The individual primary duties are procurement and contracting.

4. Equivalencies

(a) Completion of a 2-year associate's degree program in procurement or a related field may be substituted for 6 months of procurement experience.

(b) Completion of a 4-year undergraduate program in procurement from an accredited college or university may be substituted for 1-year of procurement experience.

(c) Completion of graduate work in procurement from an accredited college or university may be substituted for procurement experience at the rate of 12 semester credit hours for 3 months of procurement experience.

(d) One year of concentrated experience in an advanced procurement subject area beyond the 4-year minimum for the intermediate level qualifications and the 6-year minimum for senior level qualifications may be substituted for 24 classroom hours of formal training in procurement.

(e) The maximum credit for the total additional years of experience in separate concentrated procurement subject areas is 96 classroom hours.

(f) HCA should establish reasonable equivalency standards for recognition of certification as a certified contracts manager by the National Contract Management Association, certified public purchasing officer by the National Institute of Government Purchasing, certified purchasing manager by the National Association of Purchasing Management or by some other professional acquisition organization.

5. Additional Qualifications

Contracting activities can establish qualification requirements in addition to the minimum requirements outlined in this directive for specialized contracting situations.

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FORMAL TRAINING REQUIREMENTS

1. General

(a) Contracting Officer (CO) training must be related to the body of knowledge of contract management and must include most of the described topics within the core subject areas. Courses completed prior to the effective date of this directive may be accepted if accompanied by a copy of a certification of completion (e.g., Standard Form (SF) 182, "Request, Authorization, Agreement and Certification of Training") or other documentation on evidence of training. See Attachment 1 to this exhibit for example of a request warrant.

(b) Each Head of Contracting Activity (HCA) should provide a system of recording and evaluating COs or candidates for appointment to assess the training accomplished toward achieving the various thresholds. Training may be cumulative, i.e., work done to satisfy the requirements of Level I or II may be used, at the contracting activities discretion, toward satisfaction of a higher level.

(c) An HCA should establish Individual Development Plans for its CO.

2. Level IA - Small Purchase Contracting Officer (SPCO) - \$2,500.

Level IA is an SPCO located at a remote location with a need to perform minimal procurement actions at low dollar values. A minimum of 24 classroom hours is necessary.

Level IB - SPCO - \$10,000.

Level IB performs the same type of procurement actions as Level IC, but at lower complexity and dollar values. The training program must convey an understanding of the general and core subjects. A minimum of 60 classroom hours is necessary to accomplish this purpose.

Level IC - SPCO - \$25,000.

Level IC is a complete introduction to the procurement and contracting process and a treatment of fundamental principles and techniques with emphasis on public sector procurement through small purchases, orders against Federal Supply Schedule (FSS) contracts, and purchases from mandatory sources. The training program must convey an understanding of the general and core subjects listed below. A minimum of 100 classroom hours is necessary to accomplish this purpose.

(a) General Subjects.

- (1) Principles of buying, market conditions, and competition.
- (2) Use of business judgment.
- (3) Federal procurement responsibility and authority.
- (4) Ethics and standards.
- (5) Purpose and objectives of small purchasing and use of mandatory sources.
- (6) Socio-economic requirements.

(b) Core Subjects.

- (1) Small or simplified purchasing requirements for planning, requisitioning, competition, solicitation, evaluation, pricing, and documentation.
- (2) Small purchase methods such as purchase orders, blanket purchase arrangements, requests for quotes, imprest funds, and credit cards.
- (3) Government sources of supply.
- (4) Requirements for selection, terms, and administration of FSS contracts, delivery orders, mandatory versus optional schedules, and term contracts.
- (5) Administration of orders, payment procedures, including fast pay, methods of inspecting and testing, transportation, and deliveries.
- (6) Purchasing reports.
- (7) Imprest fund requirements.
- (8) Department of Labor (DOL), Office of Federal Contract Compliance Programs (OFCCP), and Equal Employment Opportunity (EEO). (2 hours of formal classroom training or a minimum of 2 hours of on-the-job consultation with DOL/OFCCP/EEO representatives on the requirements for these programs.)

3. Level II - Intermediate Contracting Office - \$100,000.

Level II develops functional knowledge of the laws, policies, procedures, and methods pertaining to Federal contracts. The training program must convey an understanding of the following general and core subjects listed below. A minimum of 280 classroom hours is necessary to accomplish this purpose.

(a) General Subjects

- (1) Federal procurement policies.
- (2) Explanation of the procurement cycle and advance procurement planning.
- (3) Overview of budget and appropriation cycle.
- (4) Ethics and conduct standards.
- (5) Basic contract laws and regulations.
- (6) Socio-economic requirements in procurements.
- (7) Identification and comparison of types of contracts and clauses.
- (8) Advertised and negotiated methods of procurement.
- (9) Definition of value, cost, price, and profit.
- (10) Simplified (Small Purchase) negotiation techniques.
- (11) Protests, claims, disputes, and appeals.
- (12) Contract administration responsibilities.
- (13) Contract modifications.
- (14) Subcontracting relationships.
- (15) Special procurement methods and reports.
- (16) Technical data requirements.
- (17) Preparation of the procurement request.

(b) Core Subjects.

- (1) Formal Advertising.
 - Procedures
 - Bidder responsibility
 - Responsiveness and timeliness of bids
 - Evaluation and verification of bids for award
 - Protests

- (2) Negotiation.
 - Circumstances permitting negotiation
 - Determinations and findings
 - Negotiation procedures
 - Negotiation objectives and sessions
 - Simplified source evaluation and selection techniques
 - Officer responsibility

- (3) Cost and Price Analysis.
 - Fair and reasonable price determinations
 - Economic concept of value, cost, and profit
 - Cost and price analysis techniques
 - Profit factors
 - Awareness of cost principles: allowable and allocable
 - Identification of elements of financial statements
 - Simple cost control techniques
 - Truth Negotiation Act
 - Contract audits

- (4) Contract Administration.
 - Responsibilities and functions of contract administrator
 - Proper authority for change orders/supplemental agreements
 - Identification of equitable adjustment factors
 - Quality assurance, inspection, and compliance with contract terms
 - Delays/suspension of work
 - Labor provisions
 - Contract payments
 - Disputes and remedies
 - Liquidated damages
 - Terminations for convenience of Government and for default
 - Contract closeout

- (5) Contract Law.
 - Basic contract law principles
 - Federal contractual authority
 - Federal acquisition regulations (FPR, DAR, FAR)

- (6) DOL, OFCCP, and EEO. (2 hours of formal classroom training or a minimum of 2 hours of on-the-job consultation with DOL/OFCCP/EEO representative on the requirements for these programs.)
 - Obligations of contractors and subcontractors
 - Equal Opportunity Clause
 - Ancillary matters

For a course to qualify as credit toward a core subject area, it should contain most of the topics listed above under the subject area. A course which specializes in only one or two topics does not satisfy the entire subject area requirement for Level II. For example, a contract claims course does not fulfill all the requirements for a basic course in contract law.

4. Level III - Senior Contracting Officer - Over \$100,000

Level III courses concentrate on the analysis of advanced procurement methods and techniques to enable an individual to effectively manage more complex contractual relationships. The training requirements for Level II are also prerequisites for Level III. The essential difference between Level II and Level III courses is that Level II conveys general procurement knowledge, while Level III concentrates on the in-depth analysis of more complex and specialized procurement areas and presents a strategic overview of procurement management.

Advanced course content must include a combination of the following general and core subjects listed below. A minimum of 400 classroom hours is necessary to accomplish this purpose.

(a) General Subjects.

- (1) Acquisition management.
- (2) Advanced procurement planning.
- (3) Advanced procurement and contracting methods and techniques.
- (4) Complex contract types.
- (5) Procurement of major systems.
- (6) Analysis and interpretation of private sector market conditions.
- (7) Labor and socio-economic contract provisions.
- (8) Data management.
- (9) Incentive contracting; cost reduction.
- (10) Current policy issues.

(b) Core Subjects.

- (1) Formal advertising.
 - Specification and purchase description
 - Two-step formal advertising
 - Mistakes in bids
 - Protests

- (2) Negotiation (Art and Technique).
 - Technique and strategy of effective negotiation
 - Competitive range determinations
 - Advanced source evaluation and selection process and techniques

- (3) Cost and Price Analysis (Advanced).
 - Contract risk allocation
 - Financial management and interpretation of financial statements and determination of viability of a business concern
 - Overhead analysis and negotiation
 - Quantitative techniques for evaluation
 - Cost accounting standards
 - Cost control techniques
 - Design to cost; life cycle cost

- (4) Contract Administration.
 - Change orders/supplemental agreements; forward pricing
 - Settlement of contract claims and equitable adjustments
 - Terminations for convenience or default
 - Interpretation of specifications
 - Contractor performance measurement

- (5) Contract Law.
 - Evaluation of procurement statutes
 - Case studies and analysis of Comptroller General, Contract Appeals Boards, and court decisions involving major contract issues
 - Understanding legal procedures and interpreting legal concepts
 - Contemporary procurement law issues

- (6) DOL, OFCCP, and EEO. (2 hours of formal classroom training or a minimum of 2 hours of on-the-job consultation with DOL/OFCCP/EEO representatives on the requirement for these programs.)
 - Affirmative action programs and requirements
 - General enforcement and complaint procedures
 - Contractor evaluation and compliance reports

Request for Warrant

A format similar to this should be used by each candidate when applying for a Contracting Officer's warrant. A format such as a Personal Qualification Statement (Standard Form (SF)-171, "Application for Federal Employment") may be used as a substitute for this format.

1. NAME:
2. TITLE, SERIES, GRADE
3. OFFICE:
4. RELEVANT EXPERIENCE: (Begin with current position and work back four relevant positions.) Information on each position should include:
 - A. NAME OF EMPLOYER
 - B. DATES EMPLOYED
 - C. TITLE OF POSITION
 - D. KIND OF BUSINESS/ORGANIZATION
 - E. DESCRIPTION OF WORK
5. OTHER RELEVANT SPECIAL QUALIFICATIONS, CERTIFICATION, OR SKILLS:
6. RELEVANT HONORS, AWARDS, OR FELLOWSHIPS RECEIVED:
7. EDUCATION:
 - A. HIGHEST LEVEL COMPLETED
 - B. NAME OF HIGH SCHOOL
 - (1) Dates Attended
 - (2) Diploma Received
 - C. NAME OF COLLEGE/UNIVERSITY
 - (1) Dates Attended
 - (2) Years Completed
 - (3) Number of Credits Completed - Indicate Whether Credits Are Semester Hours or Quarter Hours.

- (4) Type and Year of Degree
- (5) Chief undergraduate college subjects
- (6) Major field of study at highest level of college work

8. PROCUREMENT RELATED TRAINING:

- A. NAME OF COURSE
- B. NAME OF SCHOOL
- C. DATES ATTENDED

oOo

Exhibit I not automated see manual

UNITED STATES

DEPARTMENT OF AGRICULTURE

FARMERS HOME

ADMINISTRATION

CONTRACTING HANDBOOK
FOR CONSTRUCTION AND SERVICES

EXHIBIT J to Rural Development
INSTRUCTION 2024-A

FOREWORD

This Rural Development Acquisition Procedures Manual provides guidance to State and local offices on procedures to be followed in acquisition of services in connection with Rural Development's many housing, farm, and community and business programs.

This manual is to be used in conjunction with the Federal Acquisition Regulation (FAR), the Department of Agriculture Acquisition Regulation (AGAR), and Departmental Directives (DRs). It will not provide supplemental information not contained in these regulations. It will not duplicate or repeat regulatory guidance contained in the FAR or AGAR. Copies of applicable parts of these regulations, along with related DRs, may be requested by the field organization from State Office Contract Program Managers (CPMs).

Numbering of the Rural Development Procedures Manual (Appendix J to RD Instruction 2024-A) will generally conform with the numbering systems contained in the FAR and AGAR, with the addition of a suffix 4D, which identifies the guidance as issued by Rural Development (see AGAR subpart 401.3).

FARMERS HOME ADMINISTRATION
CONTRACTING HANDBOOK
FOR CONSTRUCTION AND SERVICES
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PART 401-4D--FEDERAL ACQUISITION REGULATION SYSTEM
Subpart 401.6-4D--Contracting Officer Authority and Responsibilities
401.601-4D--General

In offices where staffing permits, the employee performing as the Contracting Officer (CO) shall be separated from other duties as much as possible, especially the duties of inspector of contractor performance.

401.602-4D--Contracting Officers
401.602-1-4D--Authority

COs cannot award contracts which exceed their CO Warrant authority. This limitation also applies to:

(1) The exercise of options unless prior approval from a higher level CO has been received; and

(2) The modification of a contract where the cumulative value of the basic contract and modifications would exceed the CO's Warrant authority. Such modifications must be referred as provided in 401.602-70-4D.

401.602-2-4D--Responsibilities and Lines of Authority

(a) CO - The CO and his/her designated representative are the only officials authorized to conduct business with the contractor in the administration of a contract or purchase order.

(b) Contracting Officer's Representative (COR) - The responsibility and authority of the COR is contained in the written designation signed by the CO and COR. The COR has authority to issue "task orders." However, any modifications to a contract or purchase order which would require additional compensation or decisions regarding questions of facts are made by the CO. The COR may be authorized by the CO to approve all invoices except the final invoice which must be approved by the CO.

(c) Inspector - The contract inspector's responsibility and authority are to inspect contractor performance for compliance with plans and specifications. The inspector is not authorized to make either "task" or "change" orders. The inspector is designated, in writing, by the COR or CO.
All

contract inspectors work under the direct supervision of the COR (or CO if no representative is designated). All dealings with the contractor regarding enforcement of the terms and conditions of the contract or purchase order, including technical specifications and any changes, are the specific responsibility of the COR and/or CO except changes requiring compensation which are restricted to the CO. The inspector does not act as foreman, perform any duties for the contractor, or interfere with the management of the work by the contractor. Wherever practical, the inspector should be a Rural Development employee or representative other than the CO; however, inspection services may be obtained by contract where authorized by Program regulations. The primary functions of an inspector are to:

- (1) Check the contractor's performance for compliance with the technical specifications, drawings, work schedules, and labor standards of the contract.
- (2) Advise the contractor promptly in writing about any deviations.
- (3) Report promptly to the COR any refusal or failure by the contractor to comply with any contract provisions.
- (4) Keep progress reports and official records about all actions and other developments in the event of a dispute or investigation.

401.602-70-4D--County and State Office Referral of Procurement Requests

(a) County Office

(1) When the Government cost estimate, low quote, or modification exceeds the contracting authority of the County or District CO, the completely prepared solicitation must be forwarded, along with a request for appropriate contract action, to the State Office. The solicitation will be forwarded under cover of Form RD 1955-62, Request for Contract Services for Custodial/Inventory Property or Program Services, and will contain the following:

- (i) Program justification
- (ii) Justification for any requested exception
- (iii) A list of addresses and telephone numbers of potential suppliers
- (iv) Local wage or hourly rates for the services and specific labor categories involved

(2) The CO at the State level shall have prime responsibility for carrying out the request.

(3) Urgent requests may be made by telephone. Applicable contractual and justification documents required by the CO shall be prepared by the County Office and be forwarded immediately.

(b) State Office

(1) When a low offer or modification exceeds the contracting authority of the State Office, the State Director or a State CO will request a solicitation, award, or change order from the National Office, Director, Procurement Management Staff (PMS), using Form RD 1955-62.

(2) The Director, PMS, will provide to the requesting State Office CO the following:

- (i) Notification that the request has been received, the name of the Contracting Specialist assigned to the procurement, reference to field solicitation number(s)
- (ii) A copy of the solicitation
- (iii) Appropriate COR appointment letter
- (iv) A copy of the contract

(3) The Director, PMS, will also notify the appropriate National Program Office of the above actions.

401.603-4D--Selection, Appointment, and Termination of Appointment

401.603-3-4D--Appointment

(a) Procedure

(1) The appointing official should appoint Rural Development COs only when a valid organizational need for warranted contracting personnel exists. When assessing the need for a CO appointment, factors such as volume of actions, complexity of work, and organizational structure should be considered. State Directors may not sign contracts unless issued a contract warrant. State Directors are subject to the qualifications and formal training requirements included in Exhibits G and H, respectively, of this subpart.

(2) Once the need is determined, a supervisor may nominate a CO candidate. The supervisor should inform the candidate in writing that he/she is being considered for appointment as a CO. The candidate must then prepare a qualification statement similar to the example contained in Exhibit E showing the extent of their qualifications and training as outlined in Exhibits G and H of this subpart. The supervisor must review the statement then prepare and sign a request for appointment similar to Exhibit E of this subpart and submit it to the appropriate appointing official.

(3) The appointing official will provide a written explanation to the supervisor if it is determined that:

- (i) The need for a CO does not exist; and/or
- (ii) The candidate does not meet the qualification requirements

(4) If the request is approved, the appointing official will issue an SF-1402, Certificate of Appointment.

(b) Documentation

CO's should display their warrants openly in or near their workstations allowing the public and co-workers to be aware of the limitations of the appointment. The appointing official will maintain a file for each CO including a copy of:

- (1) The qualification statement
- (2) The request for appointment
- (3) The SF-1402
- (4) Evidence that training has been maintained

(c) Method of Appointment

The appointment official will:

(1) Appoint COs in writing on a SF-1402 and state any limitation on the scope of authority to be exercised, other than limitations contained in applicable laws or regulations (i.e., type of contract or order, dollar threshold, etc.). (See FMI for SF-1402.)

(2) Make appointments to individuals only and not to positions. The individual's official position description should be amended to reflect any additional duties and responsibilities as a CO. If the individual's CO warrant is terminated or withdrawn, the official position description

must be amended to delete those additional duties and responsibilities, or the position must be filled by another duly appointed CO.

(3) Not appoint individuals as CO's if they do not meet the requirements of this subpart.

(d) Maintenance Training

At least every 3 years a CO must, as a condition for retaining his/her warrant, receive formal training in procurement covering such areas as new requirements, techniques, or procedures brought about by changes in laws, regulations, policies, reviews, or business research. CO's with up to \$25,000 contract authority must receive a minimum of 40 classroom hours, and CO's with over \$25,000 contract authority must receive a minimum of 80 classroom hours every 3 years or warrants must be revoked.

401.603-4-4D--Termination/Revocation of Appointment

The appointing official can revoke or terminate a CO warrant at any time. A termination or revocation of appointment notice given to a CO must be in writing. The terminated CO will return his/her warrant to the appointing official within 10 days of receipt of such notice; or, in the event the warrant has been lost or destroyed, a certified statement of this fact shall be furnished in place of the warrant. The appointing official will terminate/revoke warrants for the following example situations:

- (a) Failure to comply with applicable laws and regulations
- (b) Failure to maintain training standards after appointment
- (c) Reassignment of the individual to a position not requiring a warrant
- (d) Discontinuance of the organizational need for appointment
- (e) Separation of the individual from the organization
- (f) Failure to abide to acceptable standards of conduct and conflict of interest rules in the execution of CO duties.

401.671-4D--Ratification of Unauthorized Contract Awards

401.671-2-4D--Authority

Subject to the conditions cited in AGAR 401-671, unauthorized contract awards up to \$25,000 may be approved by the State Office CPM, with the written concurrence of the State Rural Development Director. Unauthorized contract awards in excess of \$25,000 must be approved by the Head of Contracting Activity (HCA).

402-4D--DEFINITIONS OF WORDS AND TERMS

Subpart 402.1-4D--Definitions

(a) Contracting Officer (CO) - An individual appointed with the authority to enter into, administer, and terminate contracts in accordance with Federal Acquisition laws and regulations and make related determinations and findings.

(b) Contracting Officer's Representative (COR) - The COR is designated by a CO for the daily administration of the contract and to assure compliance with drawings, specifications, conditions, and provisions of the contract. The COR is responsible for complete documentation of facts about the contract. This includes all correspondence, forms, records, reports, field data, and photographs accumulated during the administration of the contract.

(c) Head of Contracting Activity (HCA) - The official who has been delegated broad authority and responsibility by the head of the agency in the management of acquisition functions in the contracting activity. The Director, PMS, National Office, is the HCA for Rural Development.

(d) Procurement Duties - The total procurement process beginning with preparation and issuance of a solicitation through the completion of a contract. These include, but are not limited to:

- (1) Researching the market place for sources
- (2) Issuing Commerce Business Daily (CBD) notices
- (3) Evaluating offers
- (4) Negotiating
- (5) Awarding contracts
- (6) Contract administration

(e) State Office CPM - The individual designated by the State Director to serve as the CO in The State Office and who has responsibility for overseeing the contracting functions being performed by the Rural Development Managers/Community Development Managers COs within the State. Is also responsible for coordinating the CO Warrant System for the State.

(f) Warrant - The document (SF-1402) which states the appointment of an individual as a CO and the limitations of that appointment.

PART 403-4D--IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST
Subpart 403.1-4D--Safeguards
Subpart 403.101-4D--Standards of Conduct

(a) CO Responsibilities

The CO has the primary responsibility for ensuring that a conflict of interest or the appearance of a conflict of interest is avoided. When in doubt, the CO should request written guidance from the State Director. The State Director may request guidance from the Director, Personnel and Employee Relations Staff, Human Resources. (See also 5 CFR § 2635).
(Revised 09-22-04, PN 379.)

(b) Contractor Responsibilities

The CO shall insert the provision at 452.203-70-4D, Conduct, in all solicitations and contracts.

NOTE: There could be an appearance of a conflict of interest when a loan servicing/loan making contractor is a borrower. The Conduct clause (RD 452.203-70-4D) states, in part:

"The contractor will not, directly or indirectly, engage in financial transactions or any kind of business dealings relying on information obtained through the performance of this contract. The contractor will not have a direct or indirect financial or other interest that conflicts, or appears to conflict, with its responsibilities and duties under this contract."

The potential for allegations that the contractor received inside information or received preferential treatment in obtaining loan assistance does exist in those instances where the contractor is also a borrower.

(c) Guidance

A judgment will have to be made on a case-by-case basis. If there are good reasons to believe that the contractor or borrower has benefited or will benefit from being both a contractor and a borrower, then the contractor should be judged ineligible for a loan (or the borrower should be ineligible for the contract). In those cases where the contract specialist and loan specialist judge that there is or will be no conflict of interest, then this individual or entity should be treated like any other individual or entity. The results of the decision must be documented and retained in the files for future reference.

Examples of appropriate actions that could be taken include, but are not limited to, the following:

- A loan servicing contractor should not be allowed to make application and offer on property in the same county (or counties) in which he had access to records while working as a contractor.
- Contractors having access to Rural Development borrowers' names or files should be prohibited from using any information gained in any activity other than the one for which the contract was awarded.
- Borrowers should not be allowed to become contractors with access to files in the same county that he/she is a borrower.

PART 404-4D--ADMINISTRATIVE MATTERS
Subpart 404.8-4D--Contract Files
404.802-4D--Contract Files

(a) COs shall maintain a separate file for each contract. The organization and contents of the contract file shall be as illustrated in the Appendix E ("Contract File Organizer"), Procurement Management Review Handbook, published by the Office of Operations, USDA. PMR Handbook Exhibit E can be obtained from individual State Offices or from the National Office, PMS, Policy Section.

PART 405-4D--PUBLICIZING CONTRACT ACTIONS
Subpart 405.5-4D--Paid Advertisements
405.502-4D--Authority

(a) In accordance with AGAR section 405.502, authority for publication of advertisements, as necessary, in newspapers is hereby redelegated to State Office CPMs. Such advertising is to be used in circumstances where normal public announcement methods have not produced sufficient competition. This authority may be redelegated to the District and County level, as appropriate.

(b) The cost of such newspaper advertisements may be vouchered on Form RD 2024-1, Miscellaneous Payment System, if against a borrower's account, otherwise advertisements may be vouchered on Form AD-757 utilizing the 15-digit accounting code.

PART 409-4D--CONTRACTOR QUALIFICATIONS
Subpart 409.4-4D--Debarment, Suspension, and Ineligibility

(a) Debarment or suspension actions may only be accomplished by the U.S. Department of Agriculture, Director, Office of Operations, who is the official "Debarment Official," as provided in AGAR Subpart 409.4. Reference should also be made to Subpart 9.4 of the FAR.

Subpart 409.4

(b) COs shall not use RD Instruction 1940-M, formerly 1940-E, Suspension and Debarment Proceedings, to debar or suspend a contractor. It applies only to both individuals and group-type loans or grants in connection with any program administered by Rural Development.

Subpart 409.5-4D--Organizational Conflicts of Interest
409-504-4D--Contracting Officer Responsibilities

The CO shall insert in solicitations and contracts, as appropriate, the following clauses related to contractor ineligibilities:

- (a) Appraisers, the clause at
452.409-70-4D--Appraisers
- (b) Auctioneers, the clause at
452-409-71-4D--Auctioneers

- (c) Property Managers, the clause at
452-409-72-4D--Property Managers
- (d) Real Estate Brokers, the clause at
452-409-73-4D--Real Estate Brokers
- (e) Specification Writers, the clause at
452-409-74-4D--Specification Writers

409.570-4D--Contracting with Rural Development Borrowers and Relatives of Rural Development Borrowers

Because (1) every procurement situation is unique and (2) every Government contract must be impartially awarded and administered, there is no across-the-board Rural Development procurement policy with regard to allowing or disallowing contracts with Rural Development borrowers, relatives of Rural Development employees, or similar prospective contractors that present a potential conflict of interest. The CO must consider every case on its own merits, in light of relevant circumstances, to answer such business- and responsibility-related questions as: Will the contractor's performance be biased or otherwise diminished by the conflict?

Does the contractor have a satisfactory history of performing similar contracts? Does the contractor have adequate financial resources to perform the contract or the ability to obtain them? Will the contractor's performance under the contract result in an unfair competitive advantage over its competitors? (The normal flow of benefits from a contract is not considered to be an unfair advantage over others.) Can the conflict be mitigated? The governing principle is that the CO may not decline to award a contract solely because the contractor is a Rural Development borrower or a relative of a Rural Development employee. (See Rural Development Section 403.101-4D(c) for further guidance.)

409.571-4D--Contracts with Former Rural Development Employees

When source selection procedures involving point-scored technical evaluation criteria are used and a former employee is determined to be the successful competitor, the resulting proposed contract (if it is over \$500) is subject to Department approval. However, such a situation may occasionally arise in which it is possible to award to the former employee who scores well in the technical evaluation or attains a suitable high technical score (i.e., is capable

of fulfilling the technical requirement) but also is lowest-priced among all competitors (as opposed to being lowest-priced in the competitive range), then award may be made without higher approval. The predominant consideration in all competitive procurements involving former employees is that the evaluation criteria and related point-scoring must not be, or even appear to be, manipulated in order to award a contract to a former employee.

409.572.4D--Contracts with Former USDA Employees

A contract award to a former USDA employee who left USDA within 3 years immediately before the date of the solicitation requires approval by the Assistant Secretary for Administration, USDA, except as indicated in 409.571-4D of this section. (Refer to DR 5000-6 for appropriate procedures for obtaining approval.)

PART 413-4D--SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 413.1-4D--General

413.104-4D--Procedures

For purposes of this Instruction, only the purchase order will be addressed as a small purchase procedure. Imprest funds and blanket purchase agreements are not applicable.

413.106-4D--Competition and Price Reasonableness

(a) Oral Solicitations - If oral solicitations are used, records of oral price quotations shall be maintained with the file. Attachment 1 to this Exhibit shall be used to record oral quotes. The results of oral solicitations (i.e., purchase orders) shall always be reduced to writing on the Form AD-838 prior to award.

(b) Written Solicitations - Oral solicitations may be appropriate for some acquisitions, such as those cited in FAR 13.106(b)(2). However, because of the complex nature of most services contracted for by Rural Development and the administrative regulations applicable to them, written solicitations are encouraged for anticipated small purchase requirements over \$2,500 or 10 percent of the small purchase limitation.

(c) Contractor Agreement - For the original purchase order award, the contractor's authorized official may, at the CO's discretion, sign a Form RD 336, Continuation Sheet, provided for this purpose. (See Attachment 2 to this Exhibit for an acceptable format.)

413.107-70-4D--Solicitation of Quotations

(a) Forms

(1) Standard Form 18, Request for Quotations, will be used to obtain written quotations for the acquisition of services for Program and acquired property.

(2) AD-838, Purchase Order, will be used as:

- (i) The purchase order for all small purchases
- (ii) A change order and supplemental agreement for all small purchases
- (iii) An obligation document to NFC for awards over \$25,000
- (iv) A confirmation of an oral solicitation

(3) Form RD 336, Continuation Sheet, will be used with the SF-18 and AD-838 for reflecting the terms and conditions of the solicitation and purchase order.

(b) Use of the SF-18 (RFQ) and RD 336 (Continuation Sheet) - The SF-18 is used to solicit and obtain written quotations from vendors. These forms are not an order or a commitment but just a request for information. A binding agreement comes into being only when a vendor accepts an order to perform. Vendor acceptance can be indicated by written acceptance or performance of work (but see 413.106-4D(c) above). Upon receipt of the request for quotation, the contractor enters its quote and any other information on the SF-18 and RD 336. The contractor returns the form to the CO who will evaluate the quotations and issue a purchase order, AD-838, to the lowest responsible offeror.

(c) Use of the AD-838, Purchase Order - The AD-838 is used as the purchase order. RD 336 will be used to reflect the terms and conditions of the purchase. At the time of original award, the contractor may be requested to sign the purchase order signature page (Attachment 2 of this Exhibit) indicating acceptance, after the CO has signed and forwarded to the contractor the "Seller's Original" and signature page.

The contractor may sign and return the signature page to be retained in the contract file. At the time of any subsequent bilateral modification, the contractor must sign and return two copies of the modification first. The modification shall be issued on SF-30, Amendment of Solicitation/Modification of Contract. The CO then signs both copies on behalf of the Government, retains one for the field and sends the other to the contractor.

(d) Instructions on Preparation of SF-18, RD 336, and AD-838 are provided in appropriate FMIs.

413.107-71-4D--Receipt of Quotations

(a) Quotations received under negotiated solicitations shall not be publicly opened. After receipt of quotations, none of the information contained in them concerning the number or identity of the offerors shall be made available to the public or to anyone in the Government not having a legitimate interest.

(b) During the pre-award of a negotiated acquisition, only the CO, the CO's superiors having contractual authority, and others specifically authorized shall transmit technical or other information and conduct discussions with prospective contractors. Information shall not be furnished to a prospective contractor if, alone or together with other information, it may afford the prospective contractor an advantage over others. However, general information that is not prejudicial to others may be furnished upon receipt.

413.107-72-4D--Evaluation of Quotations

After the receipt of quotations for needed supplies or services, the CO decides which contractor offers the most favorable advantage to the Government. Where price and price-related factors are the only considerations (such as in construction), the award should be made to the lowest responsible offeror. Where evaluation factors in addition to price have been stated in the solicitation, selection should be made in accordance with the evaluation factors stated in the solicitation, with the award being made to the

responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, cost of price and other factors as specified in the solicitation consideration. No single set of rules will apply in all cases. If all prices are equal, technical evaluation could be the deciding factor. Delivery time and service may be critical to meet the Government time schedule. It is the CO's responsibility to decide which offer to select.

413.107-73-4D--Price Analysis

(a) Price analysis means the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit. The conclusion that a price is fair and reasonable must be based on some form of price analysis. How detailed this analysis will be depends on dollar value, the time available for acquisitions, and the complexity of the requirement.

(b) The most commonly used are:

(1) Price History - Comparison of proposed price with prices found reasonable in previous purchases, current price lists, catalogs, or advertisements of similar items in a related industry.

(2) Adequacy of Competition - Comparison of proposed prices received in response to the solicitation.

(3) Personal Knowledge - The CO's personal knowledge of the item(s) being purchased or any other reasonable basis.

413-107-74-4D--Recording of Quotations

The quotations received should be summarized for CO information purposes on a small purchase abstract as shown in Attachment 1 to this Exhibit.

413-107-75-4D--Determining Responsible Prospective Contractors

During the evaluation process the CO is required to make an affirmative determination of responsibility. Standards for determining contractor responsibility are prescribed in FAR Section 9.104. As a part of the responsibility determination, the CO should review the General Services

Administration (GSA) published lists of parties excluded from Federal procurement or nonprocurement programs to assure the contractor is eligible to receive the award. The list is issued monthly and is available through normal distribution.

413-107-75-4D--Late Proposals (Quotations) and Modifications

(a) "Modification," as used in this section, means modification of a proposal, including a final modification in response to the CO's request for "best and final" offers.

(b) Offerors are responsible for submitting offers, and any modifications to them, so as to reach the Government office designated in the solicitation on time. Unless the solicitation states a specific time, the time for receipt is 4:30 p.m., local time for the designated Government office on the date that proposals are due.

(c) A proposal, or modifications to it, that is received in the designated Government office after the exact time specified is "late" and shall be considered only if: (1) received before award is made, and (2) the circumstances, including acceptable evidence of date of mailing or receipt at the Government installation, meet the specific requirements of the provision at FAR 52.215-10, Late Submissions, Modifications, and Withdrawals of Proposals, which must be included in the solicitation, or (3) if it is the only proposal received. (Refer to FAR 15.412 for further guidance.)

PART 416-4D--TYPES OF CONTRACTS

Subpart 416.5-4D--Indefinite-Delivery Contracts

416.506-4D--Ordering

COs or CORs issuing task orders against contracts awarded by a higher level CO shall send a copy of the task order to the CO for informational purposes (e.g., a County Supervisor issuing a task order against a State awarded contract should forward a copy of the task order to the State CO).

PART 417-4D--SPECIAL CONTRACTING METHODS
Subpart 417.2-4D--Options
417.202-4D--Use of Options (Over \$25,000)

(a) The CO shall obtain prior approval (i.e., before issuing a solicitation) in writing from a CO one level higher than the originating CO before including an option amount in the contract, the total of which will make the contract's aggregate amount more than the requestor's warrant limit. The approving CO must have a warrant sufficient to cover the aggregate, including the option. Contract options may subsequently be awarded without further approval.

(b) The option shall be specifically mentioned in all announcements and advertising of the solicitation before it is used.

(c) Prior to exercising an option, the CO shall make the written determination required by FAR 17.207(g).

NOTE: Acquisitions which are within the Small Purchase limitation shall not have any option periods included, unless written concurrence has been obtained from HCA.

PART 419-4D--RESERVED

PART 422-4D--APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS
Subpart 422.3-4D--Contract Work Hours and Safety Standards Act
422.300-4D--Scope

This subpart prescribes policies and procedures for applying the requirements of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) (the Act) to contracts that may require or involve laborers or mechanics. In the subpart, the term "laborers or mechanics" includes apprentices, trainees, helpers, watchmen, guards, fire fighters, fireguards, and workmen who perform services in connection with dredging or rock excavation in rivers or harbors, but does not include any employee employed as a seaman.

422.301-4D--Statutory Requirement

The Act requires that certain contracts contain a clause specifying that no laborer or mechanic doing any part of the work contemplated by the contract shall be required or

permitted to work more than 40 hours in any work week unless paid for all such overtime hours at not less than 1-1/2 times the basic rate of pay.

(1) The basic rate is the straight hourly rate before any deduction is taken and before fringe benefits are added. It must not be lower than the basic hourly rate set forth in the applicable Department of Labor wage determination. Fringe benefits are not included in the figure on which the time and one-half rate is calculated.

Example: The minimum wage stated in a determination is:

Basic Rate	Pension	H&M
\$4.00	\$.10	\$.10

Employee is being paid the minimum rate. Multiply 1-1/2 x the basic rate: $\$4.00 \times 1\text{-}1/2 = \6.00 ; add fringe benefits: $\$6.00 + \$.20 = \$6.20$.

(2) Liquidated damages should be computed for each affected employee in the sum of \$10.00 per hour each calendar day in which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the Act.

(3) Refer to FAR Subpart 22-3 for further guidance with administration and enforcement; variations; tolerances and exemptions; and applicable contract clauses.

422.303-4D--Administration and Enforcement

(a) Verification of Compliance - Compliance with the requirements of the Act is verified through the review of contractor payrolls and through job site surveillance. Under the Act, job site surveillance must also be accomplished to assure safety of working conditions as required by the Act.

(b) Payrolls and Basic Records - The Payrolls and Basic Records clause is to be included in all construction contractors which include the Davis-Bacon Act. It requires the contractor to maintain payrolls and basic records relating to the payrolls during the course of work. The

records must be retained for a period of 3 years. In addition, the contractor must furnish to the Government the weekly payroll records as follows:

(1) Payrolls must be submitted to the Government within 7 days after the regular payment date for the payroll period.

(2) The contractor may use any payroll form desired as long as it contains the information required to audit for compliance with the labor statutes.

(3) Payroll submission is required even though no laborer is employed.

(4) All those (except the contractor) working at the site, including owner-operators and foremen, are listed on the payroll. Complete addresses are required. In case of those not covered by the Davis-Bacon Act (e.g., supervisory foremen), rates of pay are not listed--only their names, addresses, and titles.

(5) Contractor is responsible for reviewing, signing, and submitting subcontractors' payrolls.

(c) Audit or Payroll - The CO or his/her authorized representative, depending upon the duration and complexity of the effort, should assure that the first payroll submitted by the contractor complies with the items below. Subsequent payrolls may be spot checked for verification:

(1) Rates paid are not less than the minimum prescribed in the wage determination.

(2) Classification listed accurately describes the work the employee is doing. The project inspector is the only person who can verify this.

(3) Fringe benefits are itemized and bona fide.

(4) Deductions are itemized and permissible.

(5) Overtime rates are paid where required and are properly computed.

(6) Apprentices, if listed, are registered and their ratio to journeymen is in accord with the apprenticeship program.

(7) Payroll includes Statement of Compliance and is signed by a person with authority.

Subpart 422.4-4D--Labor Standards for Contracts Involving Construction
422.470-4D--Scope

This subpart implements the statutes which prescribe labor standard requirements for contracts in excess of \$2,000 for construction, alternation, or repair, including painting and decorating, of public buildings and public works. (See definition of "Construction" in section 22.401.) Labor relations requirements prescribed in other subparts of Part 22 may also apply.

Also refer to FAR Subpart 22.4 for detailed guidance as to applicability, statutory and regulatory requirements, administration and enforcement, and applicable contract clauses.

422.470-2-4D--Davis-Bacon Act

(a) The Davis-Bacon Act of 1931 was designed to prevent Federal construction dollars from being used as an instrument to depress local wage standards. A key provision of the statute is that the rate of wages for all laborers and mechanics employed by the contractor or any subcontractor shall not be less than the prevailing wage rate for work of a similar nature in the city, town, village, or other civil district of the State in which the contract is performed. A determination of the prevailing wage rate is to be made by the Secretary of Labor, and decision with respect to that wage is conclusive on all parties to the contract.

(b) The Act applies to all contracts involving the employment of laborers or mechanics in the construction, alternation, or repair of public buildings of the United States or of the District of Columbia, if the contract is for an amount in excess of \$2,000. Its coverage has also been extended to other Federally-funded construction by specific enactments.

(c) The Act provides that:

(1) Laborers and mechanics performing work at the sites of construction must be paid no less than the prevailing minimum hourly wage as set by the U.S. Department of Labor (DOL), in a determination included in the contract. Laborers and mechanics are those who work with their hands or with tools or machinery associated with the construction trade. The term includes working foremen and truck drivers employed by the construction contractor or subcontractors. It does not include office workers or supervisory foremen.

(2) The Government may withhold payments to the contractor if underpayments are made to workers.

(3) The Government may terminate the contractor for violation and complete performance by contracting with another firm. (Under such action, the terminated contractor is liable for any excess costs incurred by the Government.)

(4) The contractor may be debarred from receiving any future Government contracts.

(5) Classification of Laborers - The Department of Labor issues separate rates for three categories of construction: Heavy construction; Residential, up to and including four stories; and Bridges and Highways. Laborers must be paid according to the classification which most nearly describes the type of work they do. If they do different types of work, they must be paid at the different rates accordingly or at the highest rate earned during the day.

(6) Fringe Benefits - The normal wage determination includes a basic hourly rate of pay plus fringe benefits. Fringe benefits may include medical and hospital, care, unemployment benefits, vacation and holiday pay, etc. Establish at the pre-work meeting how the contractor intends to pay fringe benefits. The contractor fulfills its obligation to pay fringe benefits by:

- (i) Making direct payment in cash to employees equivalent to the amount specified in the wage determination for fringe benefits.
- (ii) Making contributions to a trustee or third party; (e.g., payment into an insurance fund).

- (iii) Incurring costs itself by a commitment to carry out a benefit program. This usually requires evidence that the contractor has assets in a separate account to ensure that it can meet its obligation under the program. The employee must be informed in writing of the details of this program.
- (iv) Any combination of the above.

NOTE: Disagreements concerning equivalent fringe benefits should be handled by the CO; the questions raised and the CO's recommendations should be submitted to the Secretary of Labor for final determination.

(7) Payments - Contractors and subcontractors must pay laborers and mechanics once each week.

(8) Poster - At the time of award, the contractor should be furnished with one copy of the poster "Notice to Employees Working on Federal or Federally Financed Construction Projects." The contractor should be instructed that the poster and the accompanying wage decision must be displayed on the job site so that it can be seen by all employees. Copies of the poster may be obtained by writing to:

U.S. Department of Labor
Employment Standards Division
Wage and Hour Division
200 Constitution Avenue
Washington, DC 20210
Phone: (202) 523-7541

422.470-3-4D--Types of Wage Determinations

The Department of Labor issues two types of wage determinations: general wage determinations and project wage determinations.

(1) General Wage Determinations - General wage determinations are published in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts." The GPO publication is divided into three volumes: East, Central, and West. It is published on an annual subscription basis with weekly updates. Each State Office may purchase an annual subscription of the volume appropriate to their

geographical location. State Directors should ensure maintenance and distribution of the wage data to all COs within their States. General wage determinations contain prevailing wage rates for the types of construction designated in the determination and are used in contracts performed within a specified geographical area. General wage determinations contain no expiration date and remain valid until modified, superseded, or canceled by a notice in the Federal Register by the Department of Labor. Once incorporated in a contract, a general wage determination normally remains effective for the life of the contract.

(2) Project Wage Determinations - A project wage determination is issued at the specific request from a contracting agency. It is to be used only when no general wage determination applies and is effective for 180 calendar days from the date of issuance. However, if a determination expires or is expected to expire before contract award, it may be possible to obtain an extension to the 180 day life of the determination (refer to FAR 22.404-5(b)(2)). Once incorporated in a contract, a project wage determination normally remains effective for the life of the contract.

422.470-4-4D--Obtaining Project Wage Determinations

If there are no general wage determinations published for your area, the following steps should be taken to secure the proper wage determination for Rural Development construction requirements.

(a) Request a project wage determination by submitting SF-308, Request for Determination and Response to Request, to the Department of Labor at the following address:

Branch of Construction Wage Determinations
Room S. 3012
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue
Washington, DC 20210

(b) On the SF-308, check off classifications of laborers and mechanics which will be needed for the work.

(c) Describe the required work, indicating the type of construction involved.

(d) State the location of the proposed construction work. Where available, provide pertinent wage payment information (not necessary in areas where wage patterns are clearly established).

422.470-5-4D--Effect of Modifications of Wage Determinations

(a) The Department of Labor may modify a wage determination to make it current. A modification shall be effective if it is received by the contracting agency, or notice of the modification is published in the Federal Register, more than 20 calendar days before bid opening.

(b) Modifications or notice of modification received less than 10 calendar days before bid opening are effective unless the CO finds in writing that there is no reasonable time available to notify bidders.

(c) Modifications of wage determinations received or notices published after bid opening shall not be effective and shall not be included in the solicitation.

(d) When a modification is received by the CO after award, the CO shall modify the contract to incorporate the wage modification retroactively and equitably adjust the contract price for any increased or decreased cost of performance resulting from changed wage rates.

422.470-6-4D--Administration of Davis-Bacon Act Requirements

(a) COs shall incorporate the appropriate wage determinations in solicitations and contracts. Where general wage determinations do not exist, COs should request project Wage Determinations at least 45 days (60 days if possible) before issuing the solicitation.

If the wage rate is not available for the solicitation, a statement that the wage rate will be made a part of any resultant contract award shall be included in the solicitation.

(b) COs shall provide the contractor with the Form WH-1321 which contractors are required to post prominently at

the work site with the wage determination. Copies of the poster may be obtained from the Finance Office in St. Louis or by writing to:

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
200 Constitution Avenue NW., Room S-3518
Washington, DC 20210
Phone (202) 523-7541

(c) COs or CORs shall inform contractors of their responsibilities under the Davis-Bacon Act.

(d) COs or CORs shall ensure contractor and subcontractor compliance with the Davis-Bacon Act requirements.

422.470-7-4D--Verification of Contractor Compliance

(a) Review of weekly payroll records.

(1) The primary tool used to monitor compliance with the requirement of the Act is the review of the contractor's weekly payroll records which must be submitted in accordance with the requirements of the contract clause entitled Payrolls and Basic Records. The CO or his/her designated representative must "spot check" contractor and lower-tier subcontractor payroll records to assure that the rates paid to the contractor's and subcontractor's laborers and mechanics are not less than those stipulated in the contract. This spot check, including interviews of employees on a sampling basis, should be conducted as often as necessary to ensure compliance. During any such reviews, particular attention must also be given to the correctness of the employees' wage rate classifications and the ratio of laborers, helpers, apprentices, or trainees to journeymen.

(2) The accuracy of the contractor's and subcontractor's records must be verified by direct observation at the work site and by random interviews of the contractor's employees. During such employee interviews, the CO or his/her representative should verify not only the accuracy of the payroll records but also the employee's wage rate classification. Oral or written statements made by employees during such interviews must be treated as confidential and must not be disclosed to the employer without the written consent of the employee. Site visits made by the CO should be scheduled on a random basis.

422.470-8-4D--Employees Covered by the Davis-Bacon Act

Questions may arise to whether certain categories of employees are covered by the Davis-Bacon Act. The general rule in determining coverage is: If the employee is a laborer or mechanic performing construction work at the site, he or she is covered. The following are examples of employees who are covered and of those who are not:

(a) Working Foremen - Are covered because they perform labor in addition to supervisory responsibilities. They are listed on the payroll according to their proper classification and must be paid at least the minimum wage for that classification.

(b) Supervisory Foremen - Are not covered because they spend no more than an incidental amount of their overall time (20 percent) in performing work.

(c) Owner-Operators of Construction Hauling Equipment (e.g., trucks) - Are covered. However, by decision of the Department of Labor, minimum hourly wages are enforced for these people.

(d) Owner-Operators of Construction Equipment (e.g., tractors, backhoes) - Are covered and must be paid by the hour at no less than the hourly rate shown in the wage determination for power equipment operator of the class of machinery being used.

(e) Office Clerks and Watchmen - Are not covered, since they normally only deliver materials to the site and perform no construction labor. If they also perform labor, at the site, they are covered for those hours.

(f) Partnerships and Joint Ventures - If two or more individuals submit a bid as a partnership or joint venture (a limited form of partnership), these individuals are all considered owners rather than laborers. They share in the contract's proceeds and are therefore not covered by the Act. However, all others working on the job would be covered.

(g) Apprentices and Trainees

(1) Apprentices are permitted to work only when they are included in an apprenticeship program registered

with the Bureau of Apprenticeship and Training, U.S. Department of Labor, or a State apprenticeship agency. Wage determinations do not include apprenticeship rates. They are usually included in the registered program and are based on prevailing State apprentice scales. The ratio of apprentices to journeymen in any classification cannot be greater than the ratio permitted the contractor for its entire work force under the apprenticeship program.

(2) The main technique for assuring compliance with the Apprentices and Trainees provision is for the CO during the course of site visitation to investigate any complaints initiated by employees. Random field interviews and payroll and field verification or permitted program ratios for trainees or apprentices are other means of assuring compliance.

422.471-4D--The Copeland Act
422.471-1-4D--General

The Copeland ("Anti-Kickback") Act protects laborers and mechanics on all construction contracts from being coerced or forced to give up any compensation lawfully due them. The Act requires the contractor and each subcontractor to furnish, with each payroll submitted to the Government, a statement with respect to the wages paid each employee during that payroll period.

422.471-2-4D--Authorized Payroll Deductions

(a) In order to assure compliance with the Copeland Act (i.e., to avoid kickbacks, the Department of Labor's regulations specify which deductions are proper). All other deductions require special approval from DOL. Deductions permissible without approval of DOL are:

- (1) Those made in compliance with Federal, State, or local law (e.g., tax withholding, social security tax).
- (2) Deduction to recoup salary advances to employees.
- (3) Those required by court process to be paid to someone rather than the contractor or subcontractor.

(4) Contributions by the employee to fringe benefit Program established by the employer, provided that:

- (i) The deduction is not prohibited by law
- (ii) Has the employee's prior consent in writing or is provided for in an applicable collective bargaining agreement
- (iii) Contractor neither makes a profit nor receives benefit from it

(5) Voluntary contribution for U.S. bonds or contribution to United Way Fund or other charitable organizations.

(6) Voluntary deduction to repay loan.

(7) Voluntary deduction of union dues, if the applicable collective bargaining agreement allows the deduction.

(8) Reasonable cost of board, room, and other facilities furnished, provided that employee first consents in writing.

(9) Safety equipment of nominal value, such as safety shoes, safety glasses, safety gloves, and hard hats, if the contractor is not required by law to furnish the equipment. (The deduction must be at the actual cost of the item without profit and must be voluntarily consented to in writing by the employee or provided for in a bona fide collective agreement between the contractor (or subcontractor) and representatives of the employees.)

(b) All deductions must be identified and itemized on each payroll form.

422.471-3-4D--Copeland Act Compliance

(a) Within 7 days after each employee payment date, weekly statements of wages paid to laborers and mechanics must be delivered by the contractor or subcontractor to the appointed Rural Development representative at the work site. In cases where an Rural Development representative is not present at the work site,

weekly statements must be mailed to the CO. Upon receiving these statements, they must be examined and either filed at the field office, or if violations are found, transmitted to the Department of Labor, along with a report stating the particular violation(s).

(b) Compliance with the Copeland Act provisions also require that contractors and subcontractors retain all weekly payroll records for 3 years from the date of contract completion. These records must contain:

- (1) Name and address of each laborer and mechanic
- (2) Correct classification
- (3) Pay rate
- (4) Daily and weekly work hours
- (5) Deductions made
- (6) Actual wage paid

(c) All such payroll records must be available at all times for inspection by the CO, his/her representative, or representatives of the Department of Labor.

422.472-4D--Construction Safety Standards

The Department of Labor's Safety and Health Regulations for Construction, commonly known as the Construction Safety Act, are made a part of every construction contract in excess of \$2,000 through incorporation by reference. Specifically, the Contract Work Hours and Safety Standards Act--Overtime Compensation clause stipulates that "The contract is subject to the Contract Work Hours and Safety Standards Act and applicable rules." The regulations pertaining to construction safety are promulgated under Section 107 of the Act; they may be found under Title 29 CFP 1926 and portions of 29 CFR 1910. The Department of Labor has primary responsibility for enforcement of the provisions of the Act; however, COs or their authorized representatives must take action to notify the contractor of compliance failures and must seek initial corrective action.

Subpart 422.8-4D--Equal Employment Opportunity

The U.S. Department of Labor, Office of Federal Contract Compliance, requires that contractor employees working on Federally-financed contracts in excess of \$10,000 (in aggregate) be advised of their rights under the Equal

Employment Opportunity Law. For this purpose, the contractor shall be required to display the poster "Equal Employment Opportunity is the Law," Form OFCCP-1420, on the job site in a location where it can be easily seen by all employees. A copy of this poster should be given to the contractor at the time of issuance of the contract.

Subpart 422.10-4D--Service Contract Act
422.1000-4D--Scope

This subpart prescribes policies and procedures implementing the provisions of the Service Contract Act of 1965, as amended (41 U.S.C. 351, et seq.), the applicable provisions of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201, et seq.), and related Secretary of Labor regulations and instructions (29 CFR Parts 4, 6, 8, and 1925). Refer to FAR Subpart 22-10 for further guidance with statutory requirements, applicability, and applicable contract clauses.

422.1001-4D General

The Federal Government has traditionally used its purchasing power to promote fair compensation for workers and to protect workers' health and safety. This section addresses provisions of the most important of the statutes requiring labor standards in service contracting: the McNamara-O'Hara Service Contract Act of 1965, 41 U.S.C. 351, referred to in this section as the "Act." This Act provides that the Secretary of Labor shall determine the minimum wages and fringe benefits to be paid "Service employees" working under Federal contracts in excess of \$2,500.

422.1002-4D--Coverage of the Act

(a) Definition of Service Employee - As defined in the Act, the term service employee includes guards, watchmen, and any person engaged in a recognized trade or craft, or other skilled mechanical craft, or in unskilled, semiskilled, or skilled manual labor occupations, as well as any other employee--including a foreman or supervisor--in a position having trade, craft, or laboring experience as the paramount requirement. It applies to all such persons regardless of any contractual relationship that may exist between a contractor or subcontractor and such persons.

(1) While the law originally covered only blue-collar workers, its provisions were amended by Public Law 94-489 (approved in October 1976) to extend coverage to white-collar workers. Accordingly, the protection of the Act now extends to all workers other than persons employed in a bona fide executive, administrative, or professional capacity (as those terms are used in the Fair Labor Standards Act of 1938 and in 29 CFR 451).

(2) In distinguishing between the terms "white-collar" worker (person covered by the Act) and "bona fide executive, administrative, or professional" employee (person exempt from the Act), the definitions shown in S422.1011-4D may be helpful.

(b) Types of Service Contracts Covered and Exempted - The types of contracts effected for the furnishing of services through the use of service employees are too numerous and varied to permit an exhaustive listing. The chart of this subpart provides illustration of some of the services called for by contracts that have been found to come within the coverage of the Act. It also provides illustrations of areas which are exempt from coverage. Any questions about the coverage of the Act may be referred to the U.S. Department of Labor, Wage and Hour Division (Employment Standards Administration).

422.1003-4D Provisions of the Act

(a) Under the Service Contract Act, the Secretary of Labor determines the minimum wages to be paid employees working under Federal contracts in excess of \$2,500. Wage levels vary by type of service and by locality. The wage determination is made an attachment to the contract, and the contractor and any subcontractor are obligated to comply with it. Consequently, the Contracting Office must obtain from the Department of Labor, prior to the award of a service contract, the determination of prevailing wages for the locality in which the contract is to be performed.

(b) The Act further provides that--regardless of the contract amount--no contractors or subcontractors performing work under a Federal contract for services shall pay any of their employees actually engaged in performing such services less than the minimum wage specified in Fair Labor Standards Act of 1938, as amended. (Because the Department of Labor wage determinations required in contracts over \$2,500 normally are higher than the minimum wages specified in the Fair Labor Standards Act, the practical effect of the Fair Labor Standards Act is usually limited to contracts under \$2,500.)

(c) The Act also authorizes the Secretary of Labor to establish occupational health and safety standards which are applicable to contractor and subcontractor employees. These standards are stated in 29 CFR 1900-1919. They contain the provision that:

No part of the services covered by this Act will be performed in buildings or surroundings or under working conditions, provided by or under the control or supervision of the contractor or any subcontractor, which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish the services.

In relation to that provision, contractors and subcontractors must maintain records of all work injuries for a period of 3 years.

422.1004-4D--Steps Required of COs

(a) Submission of Standard Forms 98, Notice of Intention to Make a Service Contract and Response to Notice, and 98a, Notice of Intention to Make a Service Contract and Response to Notice (Attachment A). (Also refer to FAR 22.1007.)

(1) The CO must obtain wage determinations for an anticipated service contract over \$2,500 by filing a completed copy of Standard Form 98, "Notice of Intention to Make a Service Contract and Response to Notice," and Standard Form 98a (an attachment) directly to the Department of Labor. Because the notice must be submitted 30 days prior to issuing the solicitation and prior to commencing negotiations with offerors for any contract expected to exceed \$2,500, it is important to take into account the administrative time that will be needed. In response to the notice, the Department of Labor will provide the applicable wage determinations.

(2) The Department of Labor is not required to issue wage determinations where there are five or fewer service employees to be employed. In contracts where no wage determination is issued, no contractor or subcontractor performing a contract whose principle purpose is to furnish services may pay less than the minimum wage specified in the Fair Labor Standards Act.

(3) When services are already being provided under contract or when renewal of a service contract is being considered, the purchasing activity must obtain any collective bargaining agreement between the present contractor and its employees. These items must be submitted with SF-98.

(4) The back of SF-98 contains instructions for its completion. (Only the original and three copies are to be forwarded.) Whenever the detailed information requested is not readily available, pertinent general information that is available should be provided. For example, if meaningful estimates of the number of service employees in various classes to be used on the contract cannot be made, estimates of the total number of employees may be supplied. The "Response" portion of the original of the form will be completed by the Wage and Hour Division and returned.

(5) The form must be accompanied by a completed SF-98a, Attachment A, listing:

- (i) Classes of service employees expected to be employed under the contract
- (ii) Number of employee expected to be employed in each class
- (iii) Hourly wage that would be paid for each class if the employee were a Federal employee.

(6) The "Additional Wage Data" notice in the form's instructions encourages the procuring office to submit any further wage determination and fringe benefit data, or any explanatory information.

(7) COs will need to check with their personnel officers to determine comparable wage rates for activity employees in the grades and classifications of the contractor's employees. This information is necessary to complete SF-98a.

(8) If the CO is unable to file the notice on time, he/she should remit it as soon as possible with a detailed explanation of the circumstances which prevented filing. In such a case, the solicitation should contain a statement similar to the one that follows:

The Provisions of the Service Contract Act of 1965 may apply to this solicitation. If a wage determination by the Department of Labor is applicable, an amendment to this solicitation will be issued indicating a minimum hourly wage.

423.1005-4D--Contract Modification to Incorporate a Wage Determination

If a required wage determination is not included in a contract (because the notice was not filed or was not filed in time) and if a wage determination from the Department of Labor is received within 30 days of the late filing of the notice or the discovery by the Department of Labor of the failure to include a required wage determination, the CO must attempt to negotiate a contract modification to:

- (a) Incorporate the wage determination, which is to be effective as of the date of issuance unless otherwise specified
- (b) Equitably adjust the contract price to compensate for any increased cost of performance under the contract which is caused by the wage determination

422.1006-4D--Provision of Department of Labor WH Publication 1313

(a) The CO must give the Department of Labor Publication WH 1313, "Notice to Employees Working on Government Contracts," to the contractor at the time of issuing of the contract. The form must be in the possession of the contractor for appropriate posting prior to performance of the contract.

(b) The form advises employees of their benefits under the Service Contract Act and satisfies the requirement of the contract clause pertaining to the Act which states that contractors must post the form at a prominent and accessible place at the worksite.

(c) Supplies of the form may be obtained from normal supply channels or from the Workplace Standards Administration, U.S. Department of Labor, Washington, DC 20210.

422.1007-4D--Inquiries Concerning the Service Contract Act

Contractors or contractor employees who have a need to inquire concerning the Act should be advised that rulings regarding such matters fall within the jurisdiction of the Department of Labor and should be given the address of the

appropriate Regional Director of the Wage and Hour Division of the Department of Labor (Phone: 202/524-7568).

422.1008-4D--Administration

Once a contract has been issued, the CO has the responsibility of enforcing the Service Contract Act. If an employee reports a violation or becomes aware of a violation by other means, the CO shall promptly refer the complaint to the appropriate regional office of the Department of Labor. In no event shall employee complaints be disclosed to the employer.

422.1010-4D--Definitions of "Bona Fide" Executive, Administrative, and Professional Personnel

(a) An executive employee is one:

(1) Whose primary responsibility is managing the enterprise (or a recognized subdivision) in which he/she is employed.

(2) Who regularly directs the work of two or more employees.

(3) Who has hiring and firing authority or whose recommendations in these areas have particular weight.

(4) Who makes decisions regularly.

(5) Who devotes at least 80 percent of his/her work time to the above related activities (60 percent for individuals employed in a retail or service establishment).

(6) Who is paid not less than \$155 per week (within the 50 States and the District of Columbia).

NOTE: An employee paid at least \$250 per week (within the 50 States and the District of Columbia) whose main responsibility is managing the enterprise (or a subdivision) and supervising at least two employees is judged to meet all of the above requirements.

(b) An administrative employee is one:

(1) Whose main responsibility is either performing: (a) office work relating directly to management policies or general business operations of his/her employer or customers, or (b) administrative functions in a school system or educational establishment which relate directly to instruction or training.

(2) Who makes decisions regularly.

(3) Who regularly assists an executive (see above) or administrator (or who works in specialized or technical areas requiring special knowledge) and receives only general supervision.

(4) Who performs special assignments while receiving only general supervision.

(5) Who devotes at least 80 percent of his/her work time to the above activities (at least 60 percent for individuals employed in a retail or service establishment).

(6) Who is paid not less than \$155 per week (within the 50 States and the District of Columbia).

(7) Who, if academic personnel, is paid according to (b) (6) above or at a rate equal to that paid to entrance-level teachers in the academic establishment.

NOTE: Academic employees paid at least \$250 per week (within the 50 States and the District of Columbia) who perform work listed under (b) (1) and (2) above are judged to meet all of the above requirements.

(c) A professional employee is one:

(1) Whose main work is: (a) an advanced type in science or learning which generally requires lengthy study and which differs from a general education, apprenticeship, or training in routine skills, or (b) original and creative in a recognized field (as opposed to work performed by persons with general educations and abilities), or (c) teaching within a school system or educational establishment.

(2) Who makes decisions regularly.

(3) Whose work is intellectual and varied (as opposed to routine manual or mental labor) and cannot be standardized within a set time period.

(4) Who devotes at least 80 percent of his/her work time to the above activities.

(5) Who is paid not less than \$170 per week (within the 50 States and the District of Columbia).

NOTE: Number 5 above does not apply to licensed lawyers; medical doctors, residents, or interns; or teachers. Employees performing work as described in (C) (1) (a) or (b) and who are paid at least \$250 per week (within the 50 States and the District of Columbia) are judged to meet all of the above requirements.

422.1011-4D--Service Contract Areas Covered and Not Covered by the Service Contract Act

(a) Types of contracts which have been found to be covered by the Service Contract Act:

- (1) Aerial Spraying
- (2) Aerial Reconnaissance for Fire Detection
- (3) Ambulance Service
- (4) Cafeteria and Food Service
- (5) Chemical Testing and Analysis
- (6) Clothing Alteration and Repair
- (7) Custodial and Janitorial Services
- (8) Drafting and Illustrating
- (9) Electronic Equipment Maintenance and Operation
- (10) Flight Training
- (11) Forest Fire Fighting
- (12) Geological Field Surveys
- (13) Grounds Maintenance
- (14) Guard or Watchman Service
- (15) Landscaping (other than part of construction)
- (16) Laundry and Dry Cleaning
- (17) Linen Supply Service
- (18) Lodging and Meals
- (19) Mail Handling
- (20) Maintenance and Repair of Motor Equipment
- (21) Maintenance and Repair of Office Equipment
- (22) Miscellaneous Housekeeping
- (23) Motor Pool Operation
- (24) Packing and Crating
- (25) Parking Services
- (26) Snow Removal
- (27) Stenographic Reporting
- (28) Support Services at Military Installations
- (29) Taxicab Services
- (30) Tire and Tube Repairs
- (31) Transporting Property or Personnel
- (32) Trash and Garbage Removal
- (33) Warehousing or Storage

- (b) Types of contracts which are exempt from the Service Contract Act:
- (1) Contracts for Construction or Repair
 - (2) Contracts under the Walsh-Healey Public Contracts Act
 - (3) Contracts for Carriage of Freight or Personnel
 - (4) Contracts for Communication Services
 - (5) Contracts for Public Utility Services
 - (6) Employment Contracts
 - (7) Contracts with the U.S. Postal Service
 - (8) Contracts for Services that Are Furnished Outside of the U.S.
 - (9) Contracts for Maintenance and Repair of Certain ADP, Scientific, Medical, and Office/Business Equipment
 - (10) Any Contract Exempted by the Secretary of Labor

422.1012-4D--Service Contract Checklist

- (a) Submittals and Documents: Pre-Award
- (1) SF-98
 - (2) SF-98a, including comparable Government employee rates
 - (3) Prior collective bargaining agreements
 - (4) Wage rate determination
 - (i) Statement on solicitation
 - (ii) Attachment to solicitation
 - (5) Contract clause
- (b) Submittals and Documents: Post-Award
- (1) Adequate work statement
 - (2) Wage Rate Determination as attachment
 - (3) WH-1313 to contractor

- (c) Small Purchase Procedure
 - (1) Small and small disadvantaged business opportunities
 - (2) Competition
 - (3) Evaluation
 - (i) Responsive
 - (ii) Responsible
 - (iii) Price and other factors

PART 432-4D--CONTRACT FINANCING
Subpart 432.7-4D--Contract Funding
432.703-4D--Contract Funding Requirements

An important item which must be taken into consideration by the CO for a purchase to be legal is the availability of funds.

(a) Custodial and Inventory Property - Procurement of nonpersonal services, supplies, repair, alteration, and construction for custodial and inventory property and for certain off-site work are funded from the Agriculture Credit Insurance Fund (ACIF), Rural Housing Insurance Fund (RHIF), or Rural Development Insurance Fund (RDIF).

(b) Program Services - Procurements for nonpersonal Program services which are not for custodial or inventory property are distributed annually from the revolving fund for the Program involved (RHIF, ACIF, or RDIF). Use of the appropriate revolving fund must be authorized in this subpart or by memorandum from the Administrator of Rural Development. Funds are obligated when the contract is awarded.

Subpart 432-70-4D--Contract Payment
432.7000-4D--*Policy*

(a) The CO is responsible for requesting that payment be made to the contractor after receiving written request from the contractor for payments reflecting partial work or progress work. Final payments are to be approved only by a CO who should be a separate official from the COR. (In most cases, this will be the CO who awarded the contract.) Refer to FMI for Form AD-838, Purchase Order; Form RD 838-B,

Invoice-Receipt Certification; and Chapter 5, NFC Handbook for procedures on processing invoices. Payments are categorized as follows:

(1) Partial Payment - A partial payment is made for a completed separate unit of contract work (e.g., maintenance is to be performed each month and the first month's work is finished or one of several dwellings has been completed and accepted).

(2) Progress Payment - A progress payment is made when a percentage of the total contract work is attained. Only one progress payment is made each month. A progress payment must not exceed 80 percent and is commensurate with work accomplished which meets the quality standards established in the contract.

(3) Final Payment - If there have been previous partial payments or progress payments, final payment is only for the last and unpaid separate unit of work or the unpaid percentage of the total work.

Payment to the contractor follows inspection/acceptance which shall be documented in the contract file and is based on an invoice. The Contract Officer must approve final payment. (See FMI for instructions on preparation of Form RD 838-B.)

All earnable fees, when applicable, (i.e., broker bonus payments) shall be delineated in the terms of the contract.

432.7001-4D--Prompt Payment Procedures

(a) The Prompt Payment Act (P.L. 97-177) required Federal agencies to pay their bills on time, to pay interest penalties when payments are made late, and to take discounts only when payments are made during the discount period. The Act also requires that all contracts must include a payment due date and mailing address for submitting invoices or requests for payment. In most cases purchase orders should state that payment will be due within 30 days of receipt and acceptance of a proper invoice.

(b) The Act requires that a proper invoice must include: (1) the name of the business concern and invoice date, (2) contract number, (3) description, price, and quantity of property or services delivered or rendered, (4) any special shipping and payment terms, and (5) name, title, phone number, and complete mailing address of responsible official to whom payment is to be sent.

(c) Provisions of the Prompt Payment Act require timely processing of all contract payments by the CO. The CO's designated representative will inspect and accept or reject work, supplies, or services and forward the recommendation to the CO immediately but not later than 7 days from the date of receipt of a properly completed contractor invoice dated subsequent to work completion. When an invoice is received by mail, an ink notation will be made on the invoice by the Rural Development employee receiving mail indicated (Received, Date, Initials). If the work is acceptable, the CO will authorize payment by signing his/her name on the Form RD 838-B and immediately process the form, attaching a copy of the invoice, to National Finance Center (NFC) for payment. In the event of non-acceptance, discrepancy in invoice, or nonagreement on payment amount, the CO will notify the contractor verbally as soon as possible and in writing mailed within 15 days of receipt of invoice. The National Finance Center will process the payment request and will, in turn, request the Treasury Disbursing Center to prepare and mail the Treasury check. In those cases where the county or district supervisor is the CO and also performs the inspection, the supervisor must forward copies of both the contractor's invoice and Form RD 838-B to the contracting authority at the next higher level (District, State, or National Office) for information.

(d) In those instances in which a contract is awarded at the State level and the contractor is billing periodically for work performed under task orders placed at the County or District level, partial payments may be approved by the COR at those respective levels with a copy being sent to the State Office CPM for information purposes. For fiscal control and record keeping purposes, all final payments under such contracts must be approved at the State Office level. The same requirement applies to similar contracts awarded at the National Office level on behalf of the State Office.

PART 433-4D--PROTESTS, DISPUTES, AND APPEALS
Subpart 433.1-4D--Protests

FAR Subpart 33.1 and AGAR 433.1 provide the procedures to be followed when a protest is received. This part is to outline, in general terms, the procedures followed by the General Accounting Office (GAO) in considering such protests. Refer to 4 CFR Part 21 for further information on the GAO procedures.

(a) Protests must be filed with the GAO in writing and must contain a detailed statement of the grounds for protest. Any interested party as defined in FAR 33.101 may protest a proposed procurement or contract award. The protest file shall be tabbed in the following arrangement:

- Tab (1) Name and address and telephone number of the protester
- Tab (2) Identify of the contracting activity and the number of solicitations or contracts
- Tab (3) A detailed statement of the grounds for protest, with reasons why the protest should be sustained
- Tab (4) A specific request for a ruling by the Comptroller General and a statement of the relief requested
- Tab (5) Indication that a copy of the protest was or is being filed with the CO or the appropriate individual or location within 1 day.

(b) Although most protests are against the acceptance or rejection of a bid or proposal, protests against solicitation defects are also considered.

Alleged restrictive specifications, omission of a required provision, or ambiguous or indefinite evaluation factors are bases for protest. There are some matters, however, that cannot be protested to GAO. Among them are:

- (1) Subcontract Awards
- (2) Size and Manufacturer/Regular Dealer Determinations
- (3) Responsibility Determinations
- (4) Matter is in Court
- (5) Contract Administration Matters

- (6) Section 8(a) Contracts
- (7) Protests to the GSA Board of Contract Appeals
- (8) Exempt Agencies and Activities

(c) Upon receipt of a protest, GAO will notify the contracting agency immediately by telephone and confirm that notice in writing. The agency will then give notice of the protest to the contractor if award has been made, or, if no award has been made, to all offerors who might be adversely affected if the protest is sustained and furnish copies of the protest documents to those parties. The agency will prepare a documented report which is responsive to the protest and furnish the report to GAO with a copy to the protester and other interested parties. In most cases, the agency must furnish a report within 25 working days of its receipt of the telephonic notification of the protest. In exceptional cases, GAO may allow the agency a period longer than 25 working days.

(d) Once the report is furnished, the protester and others are given 7 working days to submit comments on the report. A copy of these comments must be provided to the agency office which furnished the report and to all other interested parties of record. If these time limits are not complied with, GAO may resolve the protest without consideration of the comments. The protester, however, within the 7-day period, must either file comments, request an extension of time to do so, or state in writing that it wants the case to be decided on the existing record. Extensions of the time for filing comments may be requested by any party to the protest. Such extensions will be rarely granted.

(e) A conference may be held with the GAO if requested by the protester, the agency involved, or any interested party. Although the majority of bid protest cases are decided without such a conference, the conference can serve to clarify issues and factual situations and provide a better understanding of each party's positions. These conferences are informal and do not involve such formal procedures as transcripts, sworn testimony, and cross examination. However, all interested parties are invited to attend. The conference should be requested as early as possible. If GAO, in its discretion, decides to hold a conference, the conference will be held not later than 5 days after the parties have received the agency report. When a conference is held, separate comments on the report are not to be submitted. Instead, comments on both the report and the conference are to be submitted within 5 working days of the conference date, with a copy to the agency and all parties of

record. Again, the protester, within that period, must file comments, request an extension, or submit a request that a decision be based on the existing record. Ordinarily, only one conference will be permitted for a bid protest. The conference also will be permitted only with respect to the legal merits of the protest; a conference generally will not be held to discuss such things as jurisdiction, timeliness, and interested party status.

(f) When an agency is notified that a protest has been filed prior to contract award, the agency is required by law not to make the award prior to the resolution of the protest unless the head of the procuring activity decides that there are urgent and compelling circumstances significantly affecting interests of the United States which will not permit waiting for the GAO decision. When an agency is notified of a protest within 10 days after award has been made, the law requires the agency to direct the contractor to suspend performance until the protest is resolved. Performance may continue if the head of the procuring activity decides that performance of the contract is in the Government's best interest or that urgent and compelling circumstances significantly affecting the interests of the United States will not permit waiting for a GAO decision. In the event the agency decides to award a contract or continue performance prior to protest resolution, the agency must notify GAO.

(g) After all submissions have been received and after the holding of a conference if one was requested, the GAO attorney assigned to the case drafts a decision which is reviewed at various levels within the Office of General Counsel. After any necessary revisions are made, the draft decision is signed on behalf of the Comptroller General. Except in unusual circumstances, the decision will be issued within 90 working days from the date GAO received the protest.

(h) When a decision is issued, a copy is sent (usually by mail) to the protester, the head of the agency involved, and other interested parties. The decision will either deny or sustain the protest. A protest is denied unless it is shown that the award or proposed award was improper or illegal and the protester was prejudiced as a result. Where a protest is sustained, the Comptroller general normally

recommends appropriate corrective action. If the issue is decided before award, it can be expected that the contracting agency will take no procurement action inconsistent with the decision on the protest. Where the case is decided after award consideration may be given to the extent of performance, the Government's need for the supplies of services and similar factors. In appropriate circumstances an improper award will be recommended for termination. In other cases where this is not feasible the Comptroller General may recommend that any renewal options in the contract not be exercised.

(i) The Comptroller General may also declare that the protester is entitled to be reimbursed for the cost of preparing its bid or proposal and for the cost of filing and pursuing the protest. In such cases, GAO looks to the protester and the agency to determine the exact amount to be paid. If the protester and the agency cannot agree, GAO will decide.

(j) When corrective action is recommended, the Comptroller General is required by law (the Legislative Reorganization Act of 1970) to notify certain committees of the Congress and the Federal departments. Agencies, in turn, are required to report to those same committees on the action taken in response to the recommendation. Also, under the Competition in Contracting Act, the agencies are required to report to the Comptroller General whenever they have not fully implemented the recommendation within 60 days.

The Comptroller General, in turn, reports annually to the Congress on each instance where recommendations were not fully implemented.

Subpart 433.2-4D--Disputes and Appeals
433.212-4D--CO's Duties upon Appeal

Within 5 business days after being notified by the AGBCA of an appeal, the CO shall notify the Rural Development HCA in writing. This notice shall include a copy of the CO's decision concerning the matter in dispute.

PART 436-4D--ARCHITECT-ENGINEER CONTRACTS
436.1-4D--General

This part prescribes policies and procedures peculiar to contracting for architect-engineer services which are utilized in Rural Development. (Refer to FAR Part 36 and AGAR Part 436 for further assistance.)

436.102-4D--Definitions

"Architect-Engineer (A&E) services" means

(a) Professional services of an architectural or engineering nature, as defined by State law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such services.

(b) Other professional services associated with research, planning, development, design, construction, alteration, or repair of real property that the CO determines are of an architectural or engineering nature.

(c) Other professional services of an architectural or engineering nature (including surveying and mapping, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services) that the CO determines should logically or justifiably be performed by members of the architectural and engineering professions (and individuals in their employ).

"Construction" means construction, alternation, or repair (including dredging, excavating, and painting) of buildings, structure, or other real property., For the purposes of this definition, the terms "buildings, structure, or other real property" include but are not limited to improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, cemeteries, pumping stations, railways, airport facilities, terminals, docks, piers, wharfs, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, and channels. Construction does not include the manufacture, production, furnishing, construction, alteration, repair, processing, or assembling of vessels, aircraft, or other kinds of personal property.

436.601-4D--Policy

(a) It is the Agency's policy that professional services of an A&E nature (i.e., all surveying services, soils engineering, development or review of plans and

specifications, construction inspection services, and hazardous waste assessments) are those services defined by State law, if applicable, which are required to be performed by licensed, registered, or certified persons. When contracting for these services, the CO shall apply the Brooks Act.

(b) If there is not a State law applicable to A&E services and the acquisition is for services that are of an A&E nature, as those identified above, the CO shall apply the Brooks Act. In applying the Brooks Act, the CO shall follow the policies and procedures in FAR 36.6 in order to obtain such services. Also, as indicated in FAR, there is no requirement that the services be provided in conjunction with an A&E project.

(c) The Brooks Act requires the mandatory use of special procedures to procure A&E services. Under these procedures, requirements and evaluation criteria are publicly announced, the qualifications of interested firms are evaluated, discussions are held, and the three most qualified firms are ranked in order of preference. Negotiations are then held with the highest ranked firm. If an agreement cannot be reached on a fair price, negotiations are terminated and the second-ranked firm is invited to submit its proposed fee. While contracts are required to be awarded at fair and reasonable prices on the basis of demonstrated competence and qualifications, the Brooks Act procedures effectively eliminate price competition for these professional services.

436.602-4D--Selection of Firms for Architect-Engineering Contracts

436.602-5-4D--Short Selection Processes for Contracts not to Exceed the Small Purchase Limitations

Rural Development hereby authorizes either or both of the short processes described in FAR 36.602-5 in order to select firms for contracts not expected to exceed the small purchase limitation. Otherwise, the procedures prescribed in FAR 36.602-3 and FAR 36.602-4 shall be followed.

436.603-4D--Collecting Data and Appraising Firms' Qualifications

Each State Office CPM shall establish and maintain files of qualified architect-engineering vendors in accordance with FAR 36.603. This file shall be updated on an annual basis.

PART 437-4D--SERVICE CONTRACTING
Subpart 437.1-4D--Service Contracts - General
437.104-4D--Personal Services Contracts

In the absence of specific statutory authority, Federal agencies cannot contract out for personal services. It is Rural Development policy not to award personal service contracts in the field. Personal services are usually characterized by the existence of Government supervision of contractor personnel or contractor supervision of Government personnel. FAR 37.104(c) and (d) provide guidance on determining the existence of personal services.

Subpart 437.2-4D--Advisory and Assistance Services
437.200-4D--Scope of Subpart

This subpart prescribes policies and procedures for acquiring advisory and assistance services by contract. The subpart regulates these contracts with individuals and organizations for services. (Refer to FAR Subpart 37.2; OMB Circular A-120; and DR 5037-1 for further guidance.)

437.201-4D--Definitions

"Advisory and assistance services" means services, other than those excluded or exempted in this subpart, to support or improve agency policy development, decision making, management, and administration, or to support or improve the operation of management systems.

437.202-4D--Policy

Identification of requirements for advisory and assistance services should focus on three key areas: (1) the product/service to be submitted under the contract; (2) how the Department will use the product/service; and (3) the principal purpose of the contract.

With early preliminary identification, it is anticipated that program officials will consult with the CPM at an early date in order to (1) confirm that the requirement is for advisory and assistance services and (2) allow sufficient time to accomplish the procedural requirements for contracting as outlined by the Office of Operations in DR 5037-1.

437.204-4D--Exclusions

The following activities and programs are excluded or exempted from the definitions of advisory and assistance services which affect Rural Development. This listing is not all inclusive and CPMs are reminded to refer to publications noted under the scope of this subpart for further exclusions:

- (a) Architectural and engineering services as defined in Subpart 436.1-4D.
- (b) Initial training, training aids, and technical documentation acquired as an integral part of the lease or purchase of equipment.
- (c) Routine maintenance of equipment, routine administrative services (e.g., mail, reproduction, telephone), printing services, and direct advertising (media) costs.
- (d) Auctioneers, realty-brokers, appraisers, and surveyors.
- (e) Engineering and technical services as set forth in FAR 37.203(d).

PART 443-4D--CONTRACT MODIFICATIONS

443.102-4D--Types of Contract Modifications

Subpart 443.2-4D--General

FAR 43.103 describes the two types of contract modifications (i.e., bilateral and unilateral). Bilateral modifications are signed by the contractor and the CO and, in most cases, consummate agreements on changes in contract price, etc. Bilateral modifications are supplemental agreements. Unilateral modifications, for example, are those changes made by the CO as authorized under the Changes clause of the contract. If a CO issues a change order that causes a change in price then a bilateral document (supplemental agreement) is required to establish the agreed-to price change. For example, a contract has been awarded for replacing interior wood panels and sheet rock in an inventory property. After commencement of work, the contractor discovers that some of the wall studding which supports the panels and sheet rock are damaged by termites.

Since the repair work must continue, the CO issues a change order requiring the contractor to replace the damaged studs. Since this changes the amount of work required, the

contractor submits a proposed price change to the CO. After agreement is reached on the price increase, the CO prepares a bilateral modification formalizing the revised contract price. Before issuing a change order that increases the amount of contract work required, the CO must assure himself/herself that the proposed change for work is within the scope of the contract. If the change involves a requirement outside the scope of the contract, then the additional requirement must be purchased under a separate and independent contract. For example, if a contract calls for a definite quantity of an item of supply or service, any additional requirements must be purchased by a separate contract. Another example is a service contract that calls for performance of services over a given time period and the contract does not include any contract options for additional periods of performance. Any requirements beyond the period specified in the contract must be purchased by a separate contract.

Subpart 443.3-4D--Forms
443.301--Forms

- (a) Standard Form 30 is used for:
 - (1) Amending SF-18, Request for Quotations
 - (2) Amending SF-33, Solicitation, Offer and Award, prior to contract award
 - (3) Change orders and supplemental agreements on purchase orders and contracts regardless of amount, for recordkeeping purposes
- (b) Form AD-838 is used as the obligating document to NFC for change orders and supplemental agreements on purchase orders and contracts regardless of amount.
- (c) Form RD 336, Continuation Sheet, is used if the modification is more than one page, for the second and following pages.

PART 445-4D--GOVERNMENT PROPERTY
445-1-4D--General

This subpart prescribes policies and clarification for the use of Government-owned equipment and/or facilities by contractors for routine loan servicing and loan making tasks (i.e., Farm and Home Plan). This subpart will outline the

conditions under which a contractor may be allowed to use both Government-owned equipment and facilities. (Also refer to AGAR Part 445 and FAR Part 45.)

445.101-4D--Policy

(a) It is anticipated that automation of many of the program and administrative functions will, under heavy workloads, require the hiring of temporary personnel for data entry and other short-term services, not including those for which discretion is involved for decision-making functions which are inherently Governmental.

In determining if there is a requirement to allow a contractor to use Government-owned equipment and/or facilities, the contract must provide for a clear and definable objective which will produce a verifiable product. The intent is not to establish a vehicle for acquiring general office assistance.

(b) Implementation Responsibilities - Allowing contractors and/or non-Rural Development employees access to sensitive data to perform a contracted function is a long-standing and difficult issue requiring a balance between efficiency of operation and the protection of sensitive, personal data. The first option is to perform the function with Rural Development employees whose performance is under Rural Development control and thus avoids the whole problem. The next best option is to establish a situation where the contractor does not have access to Rural Development's data bases and the data to be entered is not sensitive or it cannot be identified with any specific individual. The third best option is for the contractor to sign a non-disclosure statement and for the CO/COR to apply strong oversight and tight controls over the data and the contractor's handling of the data.

When contractors and other individuals that are not permanent employees of Rural Development are given access to Rural Development facilities, hardware, software, and data bases in order for them to perform short-term work under contract in support of the Agency's mission, there are several critical issues that must be considered; i.e.,

- (1) Contracting Responsibilities
- (2) Systems Security
- (3) Personal Supervision
- (4) Privacy Act Implications

Since Rural Development systems may contain borrowers' personal data, one of the most important issues is the need to protect that data from abuse or misuse.

(1) Contracting Responsibilities - Program contracting authorities are described in RD Instruction 2024-A, Exhibit D. Personal services contracts are not authorized and precautions shall be taken to ensure that the contractor is not performing in an employer-employee relationship (see Item (b) (3) above).

The CO has the primary responsibility to negotiate terms and conditions of the contract/agreement pertaining to Government-owned property and/or facilities. The CO shall insert all necessary contract clauses and/or advanced understandings between the contractors and the Government.

The contract must contain language that warns the contractor against disclosing or using the information made available to them for anything but the purposes for which the information was intended.

All contractors who develop, program, operate, maintain, or use Rural Development automated information systems must obtain a security clearance. Prior to starting contractual work, the contractor is responsible for providing proof of clearance or submitting standard forms for obtaining clearances to the Rural Development Security Staff for all contract personnel who use information covered by the Privacy Act of 1974. The contractor is responsible for the cost of the security clearances.

Government facilities and property provided to contractors and non-permanent employees of Rural Development, their usage and management, and reporting shall be in accordance with the FAR Parts 45 and 52, the Agriculture Acquisition Regulations, Federal Property Management Regulations, and RD 2024-A. Rural Development has determined that it is in the best interest of the Government for contractors to use Government facilities and equipment. The actual need to utilize Government property or facilities will be authorized by the CO on a case-by-case basis.

(2) Systems Security - If the contractor is to work off-site and deliver the finished product on a disk that must then be integrated into a Rural Development data base, the State Information Resource Manager (IRM) must be consulted as to technical ADP requirements to be imposed in the contract. It would be advisable to have the IRM test the first disk on the Rural Development systems to ensure that introduction of the contractor's disk will not damage or significantly slow down Rural Development's systems.

Non-Rural Development persons' access to password and other means of access must be limited to the minimum necessary to accomplish the requirements of the contract. Passwords given to contractors should have expiration dates.

(3) Personnel Supervision - If it is necessary to provide strong oversight to the contractor for purposes of ensuring proper use of sensitive data, then there must be concern about developing an employer-employee relationship with the contractor. Supervisory responsibilities must be carried out by the private sector firm and not a Government employee. However, at the same time, the Agency must give technical, task-related instructions including orientation, assignment of tasks, and review of work products in order that the contractor may properly perform his services under the contract. This certainly includes the application of controls sufficient to protect the interests of the Government and the privacy rights of borrowers.

(4) Privacy Act Implementations - Under extreme circumstances where there is substantial concern about disclosure of sensitive data, it may be appropriate for the National Office to go through the formal process of notifying the public that Rural Development will be using contractors to perform operations with the data under the "routine use" condition of disclosure (see RD Instruction 2015-E, Exhibit E), which means that the use of the records in this fashion is necessary to the operation of Rural Development in performing its mission and are compatible with the purpose for which the data were originally collected. (Consult Rural Development's Privacy Act Specialist before proceeding.)

(c) For assistance on contracting issues, contact Roland Castle (FTS 245-5537) or Sheri Redmon (FTS 245-5538); Privacy Act issues, contact Aimee Fisher (FTS 382-9638); personnel or conflict of interest issues, contact Ralph Uttech (FTS 245-5500) located at the National Office, Washington, D.C. For security issues, contact Stan Haar (FTS 262-2807) in the Finance Office, St. Louis, Missouri.

PART 446-4D--QUALITY ASSURANCE
Subpart 446.1-4D--Inspection and Acceptance
446.102-4D--Policy

(a) Acceptance is the acknowledgment by the CO or the CO's designated representative (inspector) that the contract work has been completed under the terms and conditions of the contract. A final inspection is required after completion of all contract work. Interim inspection should be made as needed to ascertain contractor compliance with material, service, supply, or workmanship requirements. Progress or partial payments are not authorized without an inspection and acceptance of the work. A qualified representative of Rural Development other than the CO should perform all inspections. Only when another qualified Rural Development representative is not reasonably available or qualified will the CO perform inspections.

(b) Inspections are documented on Form RD 838-B. Any deficiencies, corrective actions, or other contract requirements are noted. If deemed necessary by the State Office, inspection and acceptance may be further documented on appropriate extra copies contained in the AD-838 packet (e.g., "Property Copy"). In addition, as directed by the CO, Form RD 1924-12 (Inspection Report) may be used to document inspection and acceptance of construction but cannot be used as a substitute for Form RD 838-B (Invoice - Receipt Certification).

PART 452-4D--SOLICITATION PROVISIONS AND CONTRACT CLAUSES
Subpart 452.2-4D--Texts of Provisions and Clauses
452.203-70-4D--Conduct

As prescribed in 403.101-4D insert this following clause in all solicitations and contracts.

CONDUCT (August 1990)

During the course of this contract, the contractor will maintain the same high standards of honesty, integrity, impartiality, confidentiality of information, and conduct as Government employees are expected to maintain. The contractor will not engage in other

employment which is incompatible with the duties of this contract. The contractor will not, directly or indirectly, engage in financial transactions or any kind of business dealings relying on information obtained through the performance of this contract.

The contractor will not have a direct or indirect financial or other interest that conflicts, or appears to conflict, with its responsibilities and duties under this contract.

(End of Clause)

452.409-70-4D--Appraisers

As prescribed in 409.504-4D(a) insert the following clause in all solicitations and contracts for appraisal services.

APPRAISERS (August 1990)

Appraisers and their affiliates are ineligible to purchase inventory property or to receive loan assistance for property they have appraised.

(End of Clause)

452.409-71-4D--Auctioneers

As prescribed in 409-504-4D(b) insert the following clause in all solicitations and contracts for auctioneer services.

AUCTIONEERS (August 1990)

The auctioneer, his/her sales agents, cooperating brokers or persons living in his/her or their immediate household are restricted from bidding or from subsequent purchase of any property sold or offered at the auctioneer's sale for a period of 1 year from the auction date.

(End of Clause)

452.409-72-4D--Property Managers

As prescribed in 409-504-4D(c), insert the following clause in all solicitations and contracts for property management services and repair of property.

PROPERTY MANAGERS (August 1990)

Property managers and their affiliates are ineligible to show property in their management for sale as real estate brokers until such property is listed with them by Form RD 1955-40, "Notice of Real Property for Sale," or other appropriate written listing. They and their affiliates are also ineligible to be awarded contracts for repair of property for which they provided specifications writing services if such repairs exceed \$500.

(End of Clause)

452.409-73-4D--Real Estate Brokers

As prescribed in 409.504-4D(d), insert the following clause in all solicitations and contracts for real estate broker services.

REAL ESTATE BROKERS (August 1990)

No commission will be paid where the sale is made to the broker, broker's salesperson(s), to persons living in his/hers or salesperson's immediate household, or to legal entities in which the salesperson(s) has an interest if the sale is contingent upon receiving Rural Development credit. If credit is not being extended in these instances (a cash sale), a commission will be paid.

(End of Clause)

452.409.74-4D--Specification Writers

As prescribed in 409.504-4D(e), insert the following clause in all solicitations and contracts for construction or repair of property.

SPECIFICATION WRITERS (August 1990)

Specification writers or their affiliates are ineligible to be awarded contracts for construction or repair of property for which they have provided specifications when such construction and repair exceeds \$500 unless the specifications were provided as a proposal under a construction or repair solicitation.

(End of Clause)

Subpart 453.3-4D--Illustration of Forms
453.300-4D--Scope

(a) Standard, optional, and Agency forms and formats to be used in Rural Development acquisitions are illustrated in separate FMIs.

(1) Solicitation and contract provisions relating to mandatory FAR, AGAR, and Rural Development provisions and clauses shall not be modified. For example, some acquisition documents may contain special solicitation provisions and contract clauses relating to multiple-county awards, stand-buy contracts, and options. If they are not individually or collectively appropriate to the particular procurement, they may be omitted.

(2) Before a solicitation is issued, COs should review all forms for completeness and consistency with the requirement. For example, all blanks should be filled in, as appropriate and minimum Government obligation amounts for Fixed-Price-Indefinite-Quantity contracts are entered.

PART 453-4D--FORMS
Subpart 453.3-4D--Illustration of Forms
453.300-4D--Scope

(a) Standard, optional, and Agency forms and formats to be used in Rural Development acquisitions are illustrated in separate FMIs.

(1) Solicitation and contract provisions relating to mandatory FAR, AGAR, and Rural Development provisions and clauses shall not be modified. For example, some acquisition documents may

contain special solicitation provisions and contract clauses relating to multiple-county awards, stand-by contracts and options. If they are not individually or collectively appropriate to the particular procurement, they may be omitted.

(2) Before a solicitation is issued, COs should review all forms for completeness and consistency with the requirement. For example, all blanks should be filled in, as appropriate, and minimum Government obligation amounts for Fixed-Price-Indefinite-Quantity contracts are entered.

Subpart 453.2-4D--Prescription of Forms

The forms prescribed for field use follows:

(a) Standard Form 18 (SF-18), Request for Quotations - Used by the CO to request written quotations from vendors for purchases of \$25,000 or less. The form obtains price, cost, delivery, and related information from potential suppliers. The SF-18 is a request for information (RFI) only and is not to be used as a purchase order.

(b) Standard Form 26 (SF-26), Award/Contract - Used as the contract award document for sealed-bid or negotiated contracts over \$25,000 where there are changes made subsequent to the submission of offers and the signatures of both the CO and the contractor are necessary. It does not replace any existing RURAL DEVELOPMENT form.

(c) Standard Form 30 (SF-30), Amendment of Solicitation/Modification of Contracts - Used by the CO to amend requests for quotations (RFQs) or requests for proposals (RFPs) to modify purchase orders (file documentation purposes) or to modify existing contracts over \$25,000 (file documentation purposes). It does not replace any existing Rural Development form.

(d) Standard Form 33 (SF-33), Solicitation, Offer and Award - Used by CO as both a solicitation and a contract award document (file documentation purposes). It is used for contracts expected to exceed \$25,000 to solicit sealed bids and to award contracts, for field documentation purposes, that result from the bids. SF-33 is also used in negotiated

acquisitions as a solicitation document. It may also be used as the award document, for file documentation purposes, if a SF-26 is not considered necessary. The SF-33 does not replace any existing Rural Development form.

(e) Form RD 336, Continuation Sheet - Used as a continuation sheet for SF-18, SF-26, SF-33, and AD-838 to record the provisions of the solicitation, purchase order, or contract. It replaces Form RD 2024-12.

(f) Form AD-838, Purchase Order - Used for purchases of \$25,000 or less (i.e., small purchases) to confirm an oral solicitation or convert an SF-18 into a purchase order. In small purchases, it is used as a recordkeeping document for the file and an obligating document to NFC. It is also used as an obligating or notification document to NFC for change orders, supplemental agreements, or administrative modifications for purchases of \$25,000 or less. For original award of contracts (or post-award actions under contracts) exceeding the small purchase limit, it is also used as an obligating or notification document to NFC. For recordkeeping (contract file) purposes, other forms (such as SF-26, SF-30, and SF-33) are used.

(g) Form RD 838-B, Invoice-Receipt Certification - Used to certify receipt of services and authorize payment. Used in conjunction with proper invoices from contractors.

Exhibit J Attachments 1 through 5 not automated see manual

REQUEST FOR EMERGENCY PAYMENT

To: USDA-Rural Development-Finance Office
ATTN: Research and Reentry Unit, FC-360D2
1520 Market Street
St. Louis, MO 63103

EMERGENCY CHECKS:

I am requesting an emergency check be issued and mailed as indicated below:

Payment amount _____
Payee name _____
Payee address _____
Date funds must be received _____

FINANCE OFFICE ELECTRONIC FUNDS TRANSFER:

I am requesting an electronic funds transfer be made as indicated below:

Payment amount _____
Date funds must be received _____
9-digit bank routing number (Obtained from receiving bank)
bank name, city, and state _____
Depositor's/payee's
account number (Obtained from receiving bank)
Payee name _____

I certify to the following:

- This request is an emergency and must be received by the date indicated above.
- The State's allocation is sufficient to cover this payment request.
- The type 60 purchase order obligation has been established or submitted to the National Finance Center.
- Copies of the Form AD-838, "Purchase Order," Form RD 838-B, "Invoice-Receipt Certification," and Invoice are attached.

STATE DIRECTOR OR
DESIGNATED OFFICIAL