

ANNEX B

“BUY RECYCLED’ AND “BIO-PREFERRED’ PROGRAMS REQUIREMENTS

B.1 “BUY RECYCLED’ PROGRAM”

B.1.1 List of EPA-Designated items. The EPA designates items that when purchased or used in Contracts must contain recovered material. The designated items (or CPG items) currently fall into eight Categories (Construction, transportation, park and recreation, paper and paper products, non-paper office products, vehicular, landscaping, and miscellaneous). The CPG items include many of the things purchased every day at Army installations including paper, desk accessories, file folders, envelopes, trash bags, bathroom tissue, printer ribbons, toner cartridges, and award plaques. Designated products such as carpeting, paint, Ceiling tile, and insulation are used in Construction and building renovations. Many service contracts also involve the use of designated products. Since EPA adds CPG items every few years, the list is not included in this guide but can be found at <http://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>

B.1.2 Recovered Material Advisory Notices (RMANs). The RMANs are companion documents to the CPGs and are published concurrently. The RMANs recommend minimum recovered material content levels and provide guidance for purchasing items with recovered materials for each of the CPG items. A complete list of the RMAN standards may be obtained online at www.epa.gov/cpg/ The RMAN levels are expressed as percentages of post-Consumer content and/or total recovered Content (see Appendix A for explanation of terms). However, the RMANs apply to specific compositions of the CPG items, and may vary for CPG items made of different materials. For example, the RMAN for binders lists several different recovered material levels depending on the composition of the binder (for example, solid plastic, plastic-coated, or paper coated).

Note: Recycled content requirements apply only when purchasing a CPG item made of a material Specified in the RMAN. The guidelines do not preclude the purchase of an item made from materials other than those specified in the RMAN.

Example. *In choosing an office garbage can liner, the buyer must comply with the CPGs only when purchasing a liner made of plastic. The buyer is free to purchase a liner with other environmentally preferable characteristics such as one made of biodegradable cornstarch.*

B.2 "BIO-PREFERRED" PROGRAM. The USDA is tasked with designating bio-based products for purchase by Federal Agencies. There are numerous USDA-designated bio-based items including products in the categories of construction and industrial, food service, facility operations and maintenance, janitorial, and miscellaneous. Federal Agencies, to include Army installations, must begin showing preference for bio-based products 1 year from item designation. More information about proposed and designated bio-based items is available at USDA's Web site at <https://www.biopreferred.gov/BioPreferred/>

B.3 APPLICABILITY. RCRA and 40 CFR 247 require "procuring agencies" to purchase CPG items composed of the highest percentage of recovered materials practicable, taking into consideration competition, price, performance, and availability. A "procuring agency" is defined as any Federal Agency, or any state or local agency or contractor that uses appropriated Federal funds. 40 CFR 247 states "Federal procuring agencies should note **that the requirements of RCRA Section 6002 apply to them whether or not appropriated Federal funds are used** for procurement of designated items." Tenant activities must also comply with Federal GP requirements. Therefore, GP requirements apply to non-appropriated fund (NAF) activities on Army installations. The 2002 Farm Bill requires Federal Agencies to give purchasing preference to items composed of the highest percentage of bio-based products practicable, taking into Consideration Competition, price, performance, and availability. Note that unlike RCRA, the Farm Bill requirements do not apply to contractors or state or local agencies.

Note: In accordance with RCRA, the "buy recycled" and "buy bio-based" requirements apply when the purchase price of an item exceeds \$10,000 or when the total cost of such items, or of functionally equivalent items, purchased by the agency during the preceding fiscal year was \$10,000 or more. The Department of Defense (DOD) meets the definition of the term "agency." Since DOD is assumed to spend more than \$10,000 annually on most of the EPA- and USDA designated items, the procurement requirements apply to all DOD personnel.

B.4 AFFECTED PROCUREMENT ACTIONS. The requirements to buy recycled content and bio-preferred products when purchasing an EPA- or USDA-designated item apply to all purchases regardless of the dollar amount, the purchasing mechanism, or the supply source. All contracts that involve the use or purchase of EPA- or USDA-designated items must specify that GP requirements be met and include required FAR provisions and clauses pertaining to GP (See Annex C for FAR provisions and clauses). Contracts should also include specifications to show preference for the use of other environmentally friendly products and services. Personnel responsible for procuring products used for weapon system maintenance and operation shall not deviate from products specified in standard system documentation without written authorization from

the program management office. Standard system documents include technical manuals, depot maintenance work requirements, lube orders, field manuals, military specifications and standards, Contract statements of Work, and other standardized documentation. These documents sometimes require specific materials, products, or processes to perform maintenance and operating procedures. Unauthorized substitution of green products can lead to reliability, safety, and occupational health problems. These specified requirements are not over-ridden by GP policy or guidance. Where system documents do not specify materials, products, or processes, alternative green products may be procured.

B.5 EXCEPTIONS. RCRA and the Farm Bill allow exceptions to the requirements based on at least one of three conditions. Those conditions are that the recycled content or bio-based product is (1) unreasonably priced compared to a comparable product made of virgin or non-biobased material, (2) will not perform adequately or meet the user's need, or (3) is not available within a reasonable timeframe or at a sufficient level of competition (for contract actions). The exceptions are commonly referred to as price, performance, and availability and apply to both the "Buy Recycled" and "Bio-preferred" programs.

B.5.1 Documenting Exceptions. The purchaser or requirements/specifications generator must prepare and file a record of an exception used for any procurement action above the micro purchase threshold. The documentation must specify which of the exceptions was used and provide an explanation of the basis for using the exception. For Contract actions, a copy should be maintained in the official contract file. It is also recommended that documentation of exceptions be centrally maintained by the installation GPP manager. This will allow the GP team to evaluate hindrances, establish blanket exceptions, and evaluate trends in GPP implementation. Installations may develop their own system of documenting exceptions; however, the Army recommends the use of the Army GP Written Justification Form. This will facilitate a standard procedure, enable thorough collection of information, and assist the user by providing a template for recording the necessary information.

B.5.2. Using Exceptions. The decision to use an exception is normally made early in the acquisition process by the purchaser or requirements generator. However, it is entirely possible that information about the price, performance, or availability of specified products may be revealed during the bidding or vendor/contractor selection process. If this happens, the contracting official should coordinate with the requirements generator to determine if the specifications need to be changed based on new information. Exceptions should be approved at the level of Contracting Officer or above.

The level of approving authority should be established in the Installation GP Plan. Valid justifications for using the three exceptions are explained below. It is recommended that an exception more than 2 years old be reevaluated to determine if the cost has decreased, acceptable quality products are now available, or availability issues have changed (based on which exception was used). New and improved technologies continually emerge!

B.5.2.1 Price. It is recommended that price be evaluated from a life-cycle cost perspective. For example, plastic lumber containing recovered material costs more than traditional lumber, however, the maintenance costs are lower and it lasts longer (more durable). Thus, the plastic lumber may be less expensive over a longer term. In addition to cost benefits, it will not splinter and maintains its aesthetic quality longer than wood. The decision to pay more for a recycled content or bio-based product will normally lie with the purchaser or requirements generator and be based on life-cycle cost considerations, available funds, and installation or organization policies on GP. The installation can establish a policy as part of its GPP that encourages purchasers to buy green products even if they are more expensive than a comparable virgin product. For certain products, the installation may want to conduct a best value source selection as a way to encourage the purchase of green products. For example, one Army installation has a policy that allows expenditures of up to 15% more for products that meet GP requirements since use of such products improves the overall quality of life and the environment.

B.5.2.2 Performance. The purchaser or procurement official can use an exception to GP requirements if justification is provided that the recycled or bio-based product will not meet performance requirements. The decision to use the performance exception should be based on either certification or documentation by a testing, standardizing, or accrediting organization regarding overall performance or performance under certain conditions. It may also be acceptable to document performance shortfalls by in-house testing of the product in question. It is important to realize that a one-time trial of a single product is not sufficient justification for using the performance exception. An example of a performance exception would be an installation with unusually stringent fire codes requiring the use of a specific type of fire retardant carpeting. In this case, carpet with recovered material may not meet this performance standard and an exception is justified. The quality of recycled-content products has improved over time and continues to improve for many of the items. Also, some of the products will vary in quality from one manufacturer to another. If a poor quality recycled-Content product is purchased, the user should attempt to find a source that provides a better quality product. This type of information may be available through networking with personnel on

your installation or at other installations in your region, or by utilizing the GP list server at the Federal Green Government Board at

https://www.fedcenter.gov/kd/go.cfm?destination=Page&pge_id=3678&dialog=0

B.5.2.3 Availability or Sufficient Level of Competition. The purchaser or procurement official can use an exception to Affirmative Procurement requirements if the product cannot be procured within a timeframe that meets mission requirements. Also, an exception can be used if including GP requirements in a solicitation results in the inability to meet requirements for sufficient competition.