

(2) The contract requires the consent of a USDA official. In that case, the contract, regardless of the amount, always is a covered transaction, and it does not matter who awarded it. For example, it could be a subcontract awarded by a contractor at a tier below a nonprocurement transaction, as shown in the appendix to this part.

(3) The contract is for federally-required audit services.

(c) Any procurement contract to be implemented outside the United States that is below the primary tier covered transaction in a USDA foreign assistance program is not a covered transaction, notwithstanding the provisions in paragraphs (a) and (b) of this section.

(d) Any procurement contract to be implemented outside the United States that is below the primary tier covered transaction in a USDA export credit guarantee program or direct credit program is not a covered transaction, notwithstanding the provisions in paragraphs (a) and (b) of this section.

(e) Notwithstanding the fact that procurement contracts to be implemented outside the United States that are below the primary tier covered transaction in a USDA foreign assistance program, export credit guarantee program or direct credit program are not covered transactions, pursuant to paragraphs (c) and (d) of this section, primary tier participants under these programs must check the EPLS prior to entering into any procurement contract that is expected to equal or exceed \$25,000 with a person at the first lower tier and shall not enter into such a procurement contract if the person is excluded or disqualified under the EPLS.

**§417.221 How would the exclusions from coverage for the USDA's foreign assistance programs apply?**

The primary tier covered transaction would be the food aid grant agreement entered into between USDA and a program participant, such as a U.S. private voluntary organization. USDA would have to check the EPLS before entering into the food aid grant agreement to ensure that the U.S. private voluntary organization that would be the primary tier participant is not ex-

cluded or disqualified. A transaction at the first lower tier might be a subrecipient agreement between the U.S. private voluntary organization and a foreign subrecipient of the commodities that were provided under the food aid grant agreement. Pursuant to §417.215(a)(8), this nonprocurement transaction would not be a covered transaction. In addition, a transaction at the first lower tier might be a procurement contract entered into between the U.S. private voluntary organization and a foreign entity to provide supplies or services that are expected to equal or exceed \$25,000 in value and that are needed by such organization to implement activities under the food aid grant agreement. Pursuant to §417.220(c), this procurement contract would not be a covered transaction. However, pursuant to §§417.215(b) and 417.220(e), the U.S. private voluntary organization would be prohibited from entering into, at the first lower tier, an agreement with a subrecipient or a procurement contract that is expected to equal or exceed \$25,000 with an entity that appears on the EPLS as excluded or disqualified.

**§417.222 How would the exclusions from coverage for USDA's export credit guarantee and direct credit programs apply?**

(a) *Export credit guarantee program.* In the case of the export credit guarantee program, the primary tier covered transaction would be the guarantee issued by the USDA to a U.S. exporter. The U.S. exporter usually assigns the guarantee to a U.S. financial institution, and this would create another primary tier covered transaction between USDA and the U.S. financial institution. USDA would have to check the EPLS before issuing a guarantee or accepting a guarantee assignment to ensure that the U.S. exporter or financial institution that would be the primary tier participant is not excluded or disqualified. A transaction at the first lower tier under the export credit guarantee program might be a payment obligation of a foreign bank to the U.S. exporter to pay on behalf of the importer for the exported U.S. commodities that are covered by the guarantee. Similarly, a transaction at the first