

## Department of Defense

## 225.003

225.7401 General.  
225.7402 Contract clause.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36367, July 31, 1991, unless otherwise noted.

### 225.000 Scope of part.

This part also provides policy and procedures for—

- (1) Purchasing foreign defense supplies, services, and construction materials;
- (2) Foreign military sale acquisitions;
- (3) Coordinating acquisitions involving work to be performed in foreign countries;
- (4) Cooperative programs.

### 225.001 General.

To apply the policies and procedures of this part, analyze and evaluate offers of foreign end products generally as follows:

- (1) *Statutory or policy restrictions.*
  - (i) Determine whether the product is restricted by—
    - (A) Defense authorization or appropriations acts (see subpart 225.70); or
    - (B) DoD policy (see subpart 225.71 and FAR 6.302-3).
  - (ii) Where an exception to or waiver of a restriction would result in award of a foreign end product, apply the policies and procedures of the Buy American Act or the Balance of Payments Program, and, if applicable the trade agreements.
  - (2) *Memoranda of understanding or other international agreements.*
    - (i) Determine whether the offered product is the product of one of the countries (qualifying country), listed in 225.872-1.
    - (ii) If the product is the product of a qualifying country, evaluate the offer under subpart 225.5 and 225.872-4.
    - (3) *Trade agreements.*
      - (i) Determine whether the product is covered by the Trade Agreements Act or the North American Free Trade Agreement Implementation Act (see subpart 225.4).
      - (ii) If the product is an eligible product under subpart 225.4, evaluate the offer under subpart 225.5.
      - (iii) If the product is not an eligible product, a qualifying country end prod-

uct, or a U.S. made end product, purchase of the foreign end product may be prohibited (see FAR 25.403(c) and 225.403(c).

(4) *Contractors controlled by terrorist nations.*

(i) Determine whether the contractor is controlled by a terrorist nation.

(ii) If the contractor is controlled by a terrorist nation, comply with 209.104-1(g).

(5) *Buy American Act and Balance of Payments Program.* See the evaluation procedures in subpart 225.5.

[65 FR 19850, Apr. 13, 2000]

### 225.003 Definitions.

As used in this part—

- (1) “Caribbean Basin country end product” includes petroleum or any product derived from petroleum.
- (2) “Defense equipment” means any equipment, item of supply, component, or end product purchased by the DoD.
- (3) “Domestic concern” means a concern incorporated in the United States or an unincorporated concern having its principal place of business in the United States.
- (4) “Domestic end product” has the meaning given in the clauses at 252.225-7001, Buy American Act and Balance of Payments Program; 252.225-7007, Buy American Act—Trade Agreements—Balance of Payments Program; and 252.225-7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program, instead of the meaning in FAR 25.003.
- (5) “Eligible product” means, instead of the definition at FAR 25.003, a designated, NAFTA, or Caribbean Basin country end product in the categories listed in 225.401-70.
- (6) “Foreign concern” means any concern other than a domestic concern.
- (7) “Nondesignated country end product” means any end product which is not a U.S. made end product or a designated country end product.
- (8) “Nonqualifying country” means a country other than the United States or a qualifying country.
- (9) “Nonqualifying country end product” means an end product which is neither a domestic nor qualifying country end product.

(10) “Nonqualifying country offer” means an offer of a nonqualifying country end products, including the price of transportation to destination.

(11) “Qualifying country” is a term used to describe certain countries with memoranda of understanding or international agreements with the United States. These countries are listed in 225.872-1.

(12) “Qualifying country component” and “qualifying country end product” are defined in the clauses at 252.225-7001, Buy American Act and Balance of Payments Program; 252.225-7007, Buy American Act—Trade Agreements—Balance of Payments Program; and 252.225-7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program. “Qualifying country end product” is also defined in the clause at 252.225-7021, Trade Agreements.

(13) “Qualifying country offer” means an offer of a qualifying country end product, including the price of transportation to destination.

(14) “Source” when restricted by such words as foreign, domestic, qualifying country, etc., refers to the actual manufacturer or producer of the end product or component.

[65 FR 19850, Apr. 13, 2000]

### Subpart 225.1—Buy American Act—Supplies

SOURCE: 65 FR 19850, Apr. 13, 2000, unless otherwise noted.

#### 225.103 Exceptions.

(a)(1)(A) Specific public interest exceptions for DoD for certain countries are in 225.872.

(B) The Under Secretary of Defense (Acquisition, Technology, and Logistics) has determined that, for procurements subject to the Trade Agreements Act, it is inconsistent with the public interest to apply the Buy American Act to information technology products in Federal Supply Group 70 or 74 that are substantially transformed in the United States.

(ii)(A) Normally, use the evaluation procedures in subpart 225.5, but consider recommending a public interest

exception where the purposes of the Buy American Act are not served, or in order to meet a need set forth in 10 U.S.C. 2533. For example, a public interest exception may be appropriate—

(1) If accepting the low domestic offer will involve substantial foreign expenditures, or accepting the low foreign offer will involve substantial domestic expenditures;

(2) To ensure access to advanced state-of-the-art commercial technology; or

(3) To maintain the same source of supply for spare and replacement parts (also see paragraph (b)(iii)(B) of this section)—

(i) For an end item that qualifies as an American good; or

(ii) In order not to impair intergration of the military and commercial industrial base.

(B) A determination whether to grant a public interest exception shall be made after consideration of the factors in 10 U.S.C. 2533—

(1) At a level above the contracting officer for acquisitions valued at less than \$100,000;

(2) By the head of the contracting activity for acquisitions valued at \$100,000 or more but less than \$1,000,000; or

(3) By the agency head for acquisitions valued at \$1,000,000 or more.

(b)(i) A determination that an article, material, or supply is not reasonably available is required where no domestic offer is received or when domestic offers are insufficient to meet the requirement and award is to be made on a nonqualifying country end product.

(ii) Except as provided in FAR 25.103(b)(3), the determination must be approved—

(A) At a level above the contracting officer, if the acquisition is estimated not to exceed \$25,000;

(B) By the chief of the contracting officer if the acquisition is estimated not to exceed \$250,000;

(C) By the head of the contracting activity (HCA) or immediate deputy if the acquisition is estimated not to exceed \$2 million; or

(D) By the head of the agency, or designee at a level no lower than an HCA,