

25.703 Prohibition on contracting with entities that engage in certain activities relating to Iran.

[75 FR 60256, Sept. 29, 2010]

25.703–1 Definition.

Person—

(1) Means—

(i) A natural person;

(ii) A corporation, business association, partnership, society, trust, financial institution, insurer, underwriter, guarantor, and any other business or organization, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise; and

(iii) Any successor to any entity described in paragraph (1)(ii) of this definition; and

(2) Does not include a government or governmental entity that is not operating as a business enterprise.

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25.703–2 Iran Sanctions Act.

(a) *Certification.*

(1) As required by the Iran Sanctions Act, unless an exception applies or a waiver is granted in accordance with paragraph (c) or (d) of this subsection, each offeror must certify that the offeror, and any person owned or controlled by the offeror, does not engage in any activity for which sanctions may be imposed under section 5 of the Iran Sanctions Act.

(2) In general, the following activities, which are described in detail in section 5 of the Iran Sanctions Act, are activities for which sanctions may be imposed on or after July 1, 2010—

(i) Knowingly making an investment of \$20,000,000 or more, or a combination of investments of \$5,000,000 or more that equal or exceed \$20,000,000 in a 12-month period, that directly and significantly contribute to the enhancement of Iran's ability to develop petroleum resources.

(ii) Knowingly selling, leasing or providing to Iran goods, services, technology, information, or support with a fair market value of \$1,000,000 or more, or during a 12-month period with an aggregate fair market value of \$5,000,000 or more, that could directly and significantly facilitate the maintenance

or expansion of Iran's domestic production of refined petroleum products, including any direct and significant assistance with respect to the construction, modernization, or repair of petroleum refineries.

(iii) Knowingly selling or providing to Iran refined petroleum products with a fair market value of \$1,000,000 or more, or during a 12-month period with an aggregate fair market value of \$5,000,000 or more.

(iv) Knowingly selling, leasing, or providing to Iran goods, services, technology, information, or support with a fair market value of \$1,000,000 or more, or during a 12-month period with an aggregate fair market value of \$5,000,000 or more, that could directly and significantly contribute to the enhancement of Iran's ability to import refined petroleum products, including—

(A) Certain insurance or reinsurance, underwriting, financing, or brokering for the sale, lease, or provision of such items, or

(B) Providing ships or shipping services to deliver refined petroleum products to Iran.

(v) Exporting, transferring, or otherwise providing to Iran any goods, services, technology or other items knowing that it would contribute materially to the ability of Iran to acquire or develop chemical, biological, or nuclear weapons or related technologies, or acquire or develop destabilizing numbers and types of advanced conventional weapons.

(b) *Remedies.* Upon the determination of a false certification under paragraph (a) of this subsection, the agency shall take one or more of the following actions:

(1) The contracting officer may terminate the contract.

(2) The suspending official may suspend the contractor in accordance with the procedures in subpart 9.4.

(3) The debarring official may debar the contractor for a period not to exceed 3 years in accordance with the procedures in subpart 9.4.

(c) *Exception for trade agreements.* The certification requirements of paragraph (a) of this subsection do not apply with respect to the procurement of eligible products, as defined in section 308(4) of the Trade Agreements Act

of 1974 (19 U.S.C. 2518(4)), of any foreign country or instrumentality designated under section 301(b) of that Act (19 U.S.C. 2511(b)) (*see* subpart 25.4).

(d) *Waiver*. (1) The President may waive the requirement of subsection 25.703-2(a) on a case-by-case basis if the President determines and certifies in writing to the appropriate congressional committees (Committee on Armed Services of the Senate, Committee on Finance of the Senate, Committee on Banking, Housing, and Urban Affairs of the Senate, Committee on Foreign Relations of the Senate, Committee on Armed Services of the House of Representatives, Committee on Ways and Means of the House of Representatives, Committee on Financial Services of the House of Representatives, and Committee on Foreign Affairs of the House of Representatives) that it is in the national interest to do so.

(2) An agency or contractor seeking a waiver of the requirement shall submit the request through the Office of Federal Procurement Policy (OFPP), allowing sufficient time for review and approval. Upon receipt of the waiver request, OFPP shall consult with the President's National Security Council, the Office of Terrorism and Financial Intelligence in the Department of the Treasury, and the Office of Terrorism Finance and Economic Sanctions Policy, Bureau of Economic, Energy, and Business Affairs in the State Department, allowing sufficient time for review and approval.

(3) In general, all waiver requests should include the following information:

(i) Agency name, complete mailing address, and point of contact name, telephone number, and e-mail address.

(ii) Offeror's name, complete mailing address, and point of contact name, telephone number, and e-mail address.

(iii) Description/nature of product or service.

(iv) The total cost and length of the contract.

(v) Justification, with market research demonstrating that no other offeror can provide the product or service and stating why the product or service must be procured from this offeror, as well as why it is in the national inter-

est for the President to waive the prohibition on contracting with this offeror that conducts activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act of 1996.

(vi) Documentation regarding the offeror's past performance and integrity (see the Past Performance Information Retrieval System (including the Federal Awardee Performance Information and Integrity System at <http://www.ppirs.gov>) and any other relevant information).

(vii) Information regarding the offeror's relationship or connection with other firms that conduct activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act of 1996.

(viii) The activities in which the offeror is engaged for which sanctions may be imposed under section 5 of the Iran Sanctions Act of 1996.

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25.703-3 Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, section 106.

The head of an executive agency may not enter into or extend a contract for the procurement of goods or services with a person that exports certain sensitive technology to Iran, as determined by the President and listed on the Excluded Parties List System at <https://www.epls.gov/>.

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Subpart 25.8—Other International Agreements and Coordination

25.801 General.

Treaties and agreements between the United States and foreign governments affect the evaluation of offers from foreign entities and the performance of contracts in foreign countries.

25.802 Procedures.

(a) When placing contracts with contractors located outside the United States, for performance outside the United States, contracting officers must—

(1) Determine the existence and applicability of any international agreements and ensure compliance with these agreements; and