

(5) Use of a procedure specified in 225.7703-1(a) is authorized for an acquisition in support of operations in Iraq or Afghanistan;

(6) The end product is acquired for commissary resale; or

(7) The contracting officer determines that a requirement can best be filled by a foreign end product or construction material, including determinations that—

(i) A subsistence product is perishable and delivery from the United States would significantly impair the quality at the point of consumption;

(ii) An end product or construction material, by its nature or as a practical matter, can best be acquired in the geographic area concerned, e.g., ice or books; or bulk material, such as sand, gravel, or other soil material, stone, concrete masonry units, or fired brick;

(iii) A particular domestic construction material is not available;

(iv) The cost of domestic construction material would exceed the cost of foreign construction material by more than 50 percent, calculated on the basis of—

(A) A particular construction material; or

(B) The comparative cost of application of the Balance of Payments Program to the total acquisition; or

(v) Use of a particular domestic construction material is impracticable;

(b) After receipt of offers—

(1) The evaluated low offer (*see* Subpart 225.5) is an offer of an end product that—

(i) Is a qualifying country end product;

(ii) Is an eligible product; or

(iii) Is a nonqualifying country end product, but application of the Balance of Payments Program evaluation factor would not result in award on a domestic offer; or

(2) The construction material is an eligible product; or

(c) At any time during the acquisition process, the head of the agency determines that it is not in the public interest to apply the restrictions of the

Balance of Payments Program to the end product or construction material.

[67 FR 20694, Apr. 26, 2002, as amended at 67 FR 77939, Dec. 20, 2002; 69 FR 1928, Jan. 13, 2004; 70 FR 2363, Jan. 13, 2005; 70 FR 73155, Dec. 9, 2005; 71 FR 58540, Oct. 4, 2006; 73 FR 53153, Sept. 15, 2008]

225.7502 Procedures.

If the Balance of Payments Program applies to the acquisition, follow the procedures at PGI 225.7502.

[71 FR 62566, Oct. 26, 2006]

225.7503 Contract clauses.

Unless the entire acquisition is exempt from the Balance of Payments Program—

(a) Use the clause at 252.225-7044, Balance of Payments Program—Construction Material, in solicitations and contracts for construction to be performed outside the United States with a value greater than the simplified acquisition threshold but less than \$7,804,000.

(b) Use the clause at 252.225-7045, Balance of Payments Program—Construction Material Under Trade Agreements, in solicitations and contracts for construction to be performed outside the United States with a value of \$7,804,000 or more. For acquisitions with a value of \$7,804,000 or more, but less than \$9,110,318, use the clause with its Alternate I.

[71 FR 9271, Feb. 23, 2006, as amended at 73 FR 4116, Jan. 24, 2008; 75 FR 32637, June 8, 2010]

Subpart 225.76—Secondary Arab Boycott of Israel

SOURCE: 71 FR 39006, July 11, 2006, unless otherwise noted.

225.7601 Restriction.

In accordance with 10 U.S.C. 2410i, do not enter into a contract with a foreign entity unless it has certified that it does not comply with the secondary Arab boycott of Israel.

225.7602 Procedures.

For contracts awarded to the Canadian Commercial Corporation (CCC), the CCC will submit a certification from its proposed subcontractor with

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the other required precontractual information (see 225.870).

225.7603 Exceptions.

This restriction does not apply to—

(a) Purchases at or below the simplified acquisition threshold;

(b) Contracts for consumable supplies, provisions, or services for the support of United States forces or of allied forces in a foreign country; or

(c) Contracts pertaining to the use of any equipment, technology, data, or services for intelligence or classified purposes, or to the acquisition or lease thereof, in the interest of national security.

225.7604 Waivers.

The Secretary of Defense may waive this restriction on the basis of national security interests. To request a waiver, follow the procedures at PGI 225.7604.

[71 FR 62566, Oct. 26, 2006]

225.7605 Solicitation provision.

Unless an exception applies or a waiver has been granted in accordance with 225.7604, use the provision at 252.225-7031, Secondary Arab Boycott of Israel, in all solicitations.

Subpart 225.77—Acquisitions in Support of Operations in Iraq or Afghanistan

SOURCE: 73 FR 53153, Sept. 15, 2008, unless otherwise noted.

225.7700 Scope.

This subpart implements Section 886 and Section 892 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181).

225.7701 Definitions.

As used in this subpart—

Product from Iraq or Afghanistan means a product that is mined, produced, or manufactured in Iraq or Afghanistan.

Service from Iraq or Afghanistan means a service (including construction) that is performed in Iraq or Afghanistan predominantly by citizens or permanent resident aliens of Iraq or Afghanistan.

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Small arms means pistols and other weapons less than 0.50 caliber.

Source from Iraq or Afghanistan means a source that—

(1) Is located in Iraq or Afghanistan; and

(2) Offers products or services from Iraq or Afghanistan.

[73 FR 53153, Sept. 15, 2008, as amended at 75 FR 18039, Apr. 8, 2010]

225.7702 Acquisition of small arms.

(a) Except as provided in paragraph (b) of this section, when acquiring small arms for assistance to the Army of Iraq, the Army of Afghanistan, the Iraqi Police Forces, the Afghani Police Forces, or other Iraqi or Afghani security organizations—

(1) Use full and open competition to the maximum extent practicable, consistent with the provisions of 10 U.S.C. 2304;

(2) If use of other than full and open competition is justified in accordance with FAR Subpart 6.3, ensure that—

(i) No responsible U.S. manufacturer is excluded from competing for the acquisition; and

(ii) Products manufactured in the United States are not excluded from the competition; and

(3) If the exception at FAR 6.302-2 (unusual and compelling urgency) applies, do not exclude responsible U.S. manufacturers or products manufactured in the United States from the competition for the purpose of administrative expediency. However, such an offer may be rejected if it does not meet delivery schedule requirements.

(b) Paragraph (a)(2) of this section does not apply when—

(1) The exception at FAR 6.302-1 (only one or a limited number of responsible sources) applies, and the only responsible source or sources are not U.S. manufacturers or are not offering products manufactured in the United States; or

(2) The exception at FAR 6.302-4 (international agreement) applies, and United States manufacturers or products manufactured in the United States are not the source(s) specified in the written directions of the foreign government reimbursing the agency for the cost of the acquisition of the property or services for such government.