(3) The acquisition is covered by the World Trade Organization Government Procurement Agreement;

(4) The acquisition of foreign end products or construction material is required by a treaty or executive agreement between governments;

(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;

(vi) 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) If the acquisition is in support of operations in Afghanistan, a South Caucasus/Central and South Asian state end product listed in 225.401–70 (see 225.7704–2); or

(iv) 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, if the acquisition is in support of operations in Afghanistan, the construction material is a South Caucasus/Central and South Asian state construction material (see 225.7704–2); 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.


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)(1) 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.

(2) Use the clause with its Alternate I if the acquisition is in support of operations in Afghanistan.

(b)(1) 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.

(2) For acquisitions with a value of $7,804,000 or more, but less than $9,110,318, use the clause with its Alternate I, unless the acquisition is in support of operations in Afghanistan.

(3) If the acquisition is for construction with a value of $9,110,318 or more and is in support of operations in Afghanistan, use the clause with its Alternate II.
(4) If the acquisition is for construction with a value of $7,804,000 or more, but less than $9,110,318, and is in support of operations in Afghanistan, use the clause with its Alternate III.


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—
(a) Section 886 and section 892 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181); and
(b) The determinations by the Deputy Secretary of Defense regarding participation of the countries of the South Caucasus or Central and South Asia in acquisitions in support of operations in Afghanistan.

[75 FR 81918, Dec. 29, 2010]

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.
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 Afghan Police Forces, or other Iraqi or Afghan security organizations—
(1) Use full and open competition to the maximum extent practicable, consistent with the provisions of 10 U.S.C. 2304;
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]