

Defense Federal Acquisition Regulation Supplement

Part 225—Foreign Acquisition

SUBPART 225.3--BALANCE OF PAYMENTS PROGRAM

(Revised April 13, 2000)

225.302 Policy.

(1) DoD implements the Balance of Payments Program using evaluation factors similar to those which implement the Buy American Act. The Balance of Payments Program restrictions—

- (i) Apply to acquisitions for foreign military sales;
- (ii) Do not apply to services, except services which primarily involve the acquisition of supplies;
- (iii) Do not apply to qualifying country end products;
- (iv) Do not apply to articles, materials, or supplies produced or manufactured in Panama when purchased by and for the use of U.S. forces in Panama; and
- (v) For acquisitions subject to the Trade Agreements Act, do not apply to information technology products in Federal Supply Group 70 or 74 that are substantially transformed in the United States.

(2)(i) Before solicitation, the determinations required by FAR 25.303(b) may be made by the following individuals or their immediate deputies:

ARMY

Deputy Chief of Staff for Research, Development and Acquisition,
Headquarters, U.S. Army Material Command
Commander in Chief, U.S. Army, Europe and DCSLOG, U.S. Army,
Europe
Commander, Eighth U.S. Army and Chief of Staff, Eighth U.S. Army
Commander, Corps of Engineers Command
Commander, U.S. Army, Japan
Commander, U.S. Army Medical Research and Development Command
Commander, U.S. Army Forces Command
Commander, U.S. Army, South

NAVY

Commander-in-Chief, U.S. Naval Forces, Europe
Commander, U.S. Naval Forces, Japan
Commander, U.S. Naval Forces, Philippines
Commander-in-Chief, U.S. Atlantic Fleet
Commander-in-Chief, U.S. Pacific Fleet
Commander, Military Sealift Command
Commandant, U.S. Marine Corps
Commander, Naval Facilities Engineering Command
Commanding General, III Marine Amphibious Force

Defense Federal Acquisition Regulation Supplement

Part 225—Foreign Acquisition

AIR FORCE

Commander, U.S. Air Forces in Europe
Commander, Pacific Air Forces
Commander, Air Mobility Command
Commander, Air Force Materiel Command
Commander, Air Combat Command
Commander, Air Force Space Command

ADVANCED RESEARCH PROJECTS AGENCY
Director, Contracts Management Office

DEFENSE INFORMATION SYSTEMS AGENCY
Director

DEFENSE LOGISTICS AGENCY
Executive Director, Procurement

NATIONAL IMAGERY AND MAPPING AGENCY
Deputy Director for Acquisition, Installations, and Logistics

DEPARTMENT OF DEFENSE EDUCATION ACTIVITY
Director

(ii) The authority to make the determinations referred to in paragraph (2)(i) of this section may be redelegated below the levels specified in that paragraph for acquisitions estimated at \$500,000 or less in foreign cost.

(3)(i) This authority is not intended for use in making repetitive supply acquisitions or acquisitions of total annual supply requirements of items available in the United States but not available within the time required.

(ii) DoD has determined that requirements for the items on the lists at FAR 25.104(a) and at 225.104(a)(iii) can only be filled by a foreign end product.

(4) DoD has determined the following items can only be acquired or performed in the country concerned:

(i) Maintenance and repair of, and acquisition of spare parts for, foreign-manufactured vehicles, equipment, machinery, and systems; provided, in the case of spare parts, the acquisition is restricted to the original manufacturer or its supplier in accordance with DoD standardization policy (see DoD Directive 4120.3, Defense Standardization and Specification Program).

(ii) Industrial gases.

(iii) Brand drugs specified by the Defense Medical Materiel Board.

(iv) Bulk construction materials: sand, gravel, and other soil materials, stone, concrete masonry units, and fired brick.

(v) Overhaul and repair of vessels, aircraft, and vehicles which—

Defense Federal Acquisition Regulation Supplement

Part 225—Foreign Acquisition

(A) Are home-ported/stationed/deployed overseas; and

(B) Cannot practically return to the United States or to U.S. operated repair facilities.

(vi) Ready-mixed asphalt and portland cement concrete, provided that foreign cost is estimated at not more than \$100,000.

(5)(i) Purchase of materials, equipment, and supplies for construction overseas shall generally be the responsibility of the contractor performing the work; but where necessary to comply with foreign law, to avoid taxation, or to obtain other advantages, consider direct purchase. Consider savings that may be obtained by exemptions from import and other taxes and, to the extent economical, take advantage of tax exemptions available under existing agreements.

(ii) When purchase of materials is the responsibility of the construction contractor, the evaluation differential is determined through the estimating process and applied before solicitation.

225.304 Procedures.

(a) *Solicitation of offers.* When soliciting orally, advise vendors that only domestic and qualifying country end products are acceptable unless an exception applies or the price of a domestic end product is unreasonable.

(b) *Evaluation of offers.*

(i) Use the evaluation procedures in Subpart 225.5 instead of the evaluation procedures in FAR Subpart 25.5. Treatment of duty may differ when delivery is overseas.

(A) Duty may not be applicable to nonqualifying country offers.

(B) The U.S. Government cannot guarantee the exemption of duty for components or end products imported into foreign countries.

(C) Foreign governments may impose duties, and offers including such duties must be evaluated as offered.

(ii) Where the evaluation procedures in Subpart 225.5 result in the award of a nonqualifying country end product, the acquisition of domestic end products is unreasonable or inconsistent with public interest. If no domestic end product offers are received, the determination in FAR 25.303(b)(1) is not required.