



OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000

November 9, 2006

ACQUISITION
TECHNOLOGY
AND LOGISTICS

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
(ATTN: ACQUISITION EXECUTIVES)
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
COMMANDERS OF THE COMBATANT COMMANDS
DIRECTORS OF DEFENSE AGENCIES

SUBJECT: Implementation for Procedures, Guidance and Information (PGI) No. 225-74, entitled "Solicitation and Award of Contracts for Performance in a Foreign Country or Delivery to any Unified Combatant Command Theater of Operation"

This memorandum provides information required in order to implement subject DRAFT PGI. This DRAFT PGI will be published as soon as the below requested information is requested.

The Defense Procurement and Acquisition Policy (DPAP) Office has established the initial webpage at <http://www.acq.osd.mil/dpap/contingency/>. Links from this DPAP website to the Contracting Office(s) of the respective COCOMs are required.

Commanders of the Combatant Commands will ensure that their respective COCOM Contracting Office(s) establish *and maintain* a webpage listing all prevailing regulations, policies, requirements, host nation laws, Orders/FRAGOS, COCOM Commander's directives, unique clauses and other considerations necessary for soliciting and awarding a contract for performance in or delivery to that COCOM's AOR.

Within 30 days from the date of the memorandum, Commanders of the Combatant Commands will ensure their respective COCOM Contracting Office provides its weblink information to DPAP. DPAP point of contact (POC) for coordination of weblink information is Ms. Wendy Pulliam, Wendy.Pulliam.ctr@osd.mil

DPAP POC for implementation of PGI No. 225-74 is Lt Col Jill Stiglich, Jill.Stiglich@osd.mil, 703-695-8567.

Shay D. Assad
Director, Defense Procurement
and Acquisition Policy

Attachment:
As stated

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PGI Case 0000-P066

Solicitation and Award of Contracts for Performance in a Foreign Country or Delivery to any Unified Combatant Command Theater of Operations

Sep 25, 2006

DFARS SUBPART 225.74--DEFENSE CONTRACTS OUTSIDE THE UNITED STATES

225.7401 Solicitation and award of contracts for performance in a foreign country or delivery to any Unified Combatant Command Theaters of Operations.

(a) If an acquisition requires performance of work in a foreign country by U.S. personnel or a third country contractor or delivery of goods to any Unified Combatant Command theater of operations, follow the procedures at PGI 225.7401(a).

(b) For work performed in Germany, eligibility for logistics support or base privileges of contractor employees is governed by U.S. German bilateral agreements. Follow the procedures in Army in Europe Regulation 715-9, available at

<http://www.per.hqusareur.army.mil/cpd/docper/GermanyDefault.aspx>.

(c) For work performed in Japan or Korea, see PGI 225.7401(c) for information on bilateral agreements and policy relating to contractor employees in Japan or Korea.

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PGI 225.74—DEFENSE CONTRACTS OUTSIDE THE UNITED STATES

PGI 225.7401 Solicitation and award of contracts for performance in a foreign country or delivery to any Unified Combatant Command theaters of operations.

(a)(1) *General.* If the acquisition requires performance of work in a foreign country by U.S. personnel or a third country contractor or delivery of goods to any Unified Combatant Command theater of operations, the contracting officer must ensure that the solicitation and contract include any applicable host country and theater performance considerations. Failure to obtain such information—

(i) May result in contractor personnel conflicting with theater operations or performing in violation of a theater commander's directives or host country laws; or

(ii) May cause contractor personnel to be wrongly subjected to host country laws.

(2) *Weblinks.* The OSD(AT&L)DPAP weblink <http://www.acq.osd.mil/dpap/contingency/> provides guidance and information which the contracting officer must follow in order to solicit and award a contract for performance in a foreign country or delivery to any of the Unified Combatant Command theaters of operations.

(i) *Foreign country.* If an acquisition requires performance of work in a foreign country by U.S. personnel or a third country contractor, follow the procedures at {website TBD}, at the weblink for the intended foreign country.

(ii) *Theater of operations.* If an acquisition requires performance of work in foreign country that is also a theater of operations or delivery of goods to a theater of operations, follow the procedures available in paragraph (2) above, at the weblink for the intended theater of operations.

(3) *Point of contact.* Access the COCOM link for the COCOM responsible for the area/theater of operations in which the contractor will be performing or to which the contractor will deliver the goods. From the respective COCOM website, link to the respective contracting office supporting the COCOM to identify the listed point-of-contact.

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(4) *Checklist.* Contracting officers shall use the following checklist as a guide to document consideration of each issue on the list, as applicable. A copy of the completed checklist shall be posted in the contract file.

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PGI 225.7401 Solicitation and award of contracts for performance in a foreign country or delivery to any Unified Combatant Command theater of operations.

CHECKLIST

The contracting officer shall verify that the procurement request includes the following information, as applicable:

(1) Whether the contemplated procurement will duplicate or otherwise conflict with existing efforts being performed or goods already provided in that area/theater of operations and whether economies of scope/schedule can be leveraged if there are already existing contracts in place for similar work or goods.

(2) The applicability of any international agreements to the acquisition. (Some agreements may be classified and must be handled appropriately.)

(3) Whether there are any security requirements applicable to the area.

(4) Whether there are any requirements for use of foreign currencies, including applicability of U.S. holdings of excess foreign currencies.

(5) Information on taxes and duties from which the Government may be exempt.

(6) If the acquisition requires performance of work in a foreign country, whether there are standards of conduct for the prospective contractor and, if so, the consequences for violation of such standards of conduct.

(7) If applicable, the availability of logistical support for contractor employees.

(8) If the contractor will employ foreign workers, whether a waiver of the Defense Base Act will be required (see FAR 28.305).

(9) Whether contractor personnel will need authorization to carry weapons for the performance of the contract.

(10) If the solicitation and contract will include the clause at DFARS 252.225-7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed outside the United States, the Government official authorized to receive the data and automated

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system to be used, in order for the contracting officer to be able to provide that information to the contractor, as required by paragraph (g)(1) of that clause.

(11) Any other requirements of the website for the country in which the contract will be performed or theater of operations to which deliveries will be made.

Furnish the following information to the applicable Contracting Office (see PGI 225.7401(3)):

(1) The solicitation number, the estimated dollar value of the acquisition, and a brief description of the work to be performed or the items to be delivered.

(2) Notice of contract award, including contract number, dollar value, and brief description of work to be performed or items to be delivered.

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(c) For work performed in Japan or Korea, U.S.-Japan or U.S.-Korea bilateral agreements govern the status of contractors and employees, criminal jurisdiction, and taxation. U.S. Forces Japan (USFJ) and U.S. Forces Korea (USFK) are sub-unified commands of Pacific Command (PACOM). The PACOM Staff Judge Advocate contact information is available at <http://www.pacom.mil/staff/staff-spec.shtml>. Links to USFJ and USFK websites can be found at the PACOM website at <http://www.pacom.mil> by clicking on "Site Index" and then clicking on "Subordinate Commands".

(1) For work performed in Japan—

(i) U.S. Japan bilateral agreements govern the status of contractors and employees, criminal jurisdiction, and taxation;

(ii) USFJ and component policy, as well as U.S. Japan bilateral agreements, govern logistic support and base privileges of contractor employees;

(iii) The Commander, USFJ, is primarily responsible for interpreting the Status of Forces Agreement (SOFA) and local laws applicable to U.S. Forces in Japan and for requirements in support of USFJ; and

(iv) To ensure that the solicitation and resultant contract reflect an accurate description of available logistic support and application of the U.S. Japan SOFA—

(A) Review the information on Contract Performance in Japan at the USFJ website, <http://usfj.mil>; or

(B) Contact the Staff Judge Advocate at (commercial) 011-81-3117-55-7717, or DSN 315-225-7717.

(2) For work performed in Korea—

(i) U.S. Korea bilateral agreements govern the status of contractors and employees, criminal jurisdiction, and taxation;

(ii) USFK and component policy, as well as U.S. Korea bilateral agreements, govern logistic support and base privileges of contractor employees;

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(iii) The Commander, USFK, is primarily responsible for interpreting the SOFA and local laws applicable to U.S. Forces in Korea and for requirements in support of USFK; and

(iv) To ensure that the solicitation and resultant contract reflect an accurate description of available logistic support and application of the U.S. Korea SOFA, review the SOFA information at the USFK website at <http://www.korea.army.mil>. Contact information for the Commander is also available at <http://www.korea.army.mil/org/index.htm>.