

DFARS Procedures, Guidance, and Information

PGI 201—Federal Acquisition Regulations System

(Revised June 15, 2012)

PGI 201.6—CAREER DEVELOPMENT, CONTRACTING AUTHORITY, AND RESPONSIBILITIES

PGI 201.602 Contracting officers.

PGI 201.602-2 Responsibilities.

(i) When designating Department of State personnel as a contracting officer's representative (COR for contracts executed by DoD in support of Department of State in Iraq), follow the procedures in the Director, Defense Procurement and Acquisition Policy memorandum dated [July 11, 2011, Contracting Officer's Representative Designation—Iraq](#).

(ii) DoD COR certification standards define minimum COR competencies, experience, and training requirements according to the nature and complexity of the requirement and contract performance risk. These COR certification standards should be considered when developing service requirements, soliciting proposals, and performing surveillance during contract performance. The DoD standards are provided in the OUSD (AT&L) memorandum dated [March 29, 2010, DoD Standard for Certification of Contracting Officer's Representatives \(COR\) for Service Acquisitions](#).

(iii) DoD agencies and components shall use the DoD Contracting Officer Representative Tracking Tool to electronically track COR nominations, appointments, terminations, and training certifications for service contracts with a value greater than the micro-purchase threshold. For further guidance on using this tool, see [the OUSD \(AT&L\) memorandum dated March 21, 2011, Deployment of the Department of Defense \(DoD\) Contracting Officer Representative Tracking tool \(CORT Tool\)](#).

(iv) A COR assists in the technical monitoring or administration of a contract.

(A) Contracting officers shall designate a COR for all service contracts, including both firm fixed price and other than firm fixed price contracts, awarded by a DoD component or by any other Federal agency on behalf of DoD. The surveillance activities performed by CORs should be tailored to the dollar value/complexity of the specific contract for which they are designated. Contracting officers may exempt service contracts from this requirement when the following three conditions are met:

(1) The contract will be awarded using simplified acquisition procedures;

(2) The requirement is not complex; and

(3) The contracting officer documents the file, in writing, why the appointment of a COR is unnecessary.

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(B) For other than service contracts that are cost reimbursement contracts, contracting officers shall either retain or delegate surveillance activities to a COR or DCMA.

(C) The contracting officer shall include a copy of the written designation required by DFARS [201.602-2](#)(2)(v) in the official contract file.

(v) In addition to the requirements of DFARS [201.602-2](#)(2), a COR must maintain a file for each contract assigned. This file must include, as a minimum—

(A) A copy of the contracting officer's letter of designation and other documentation describing the COR's duties and responsibilities; and

(B) Documentation of actions taken in accordance with the delegation of authority.

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PGI 209—Contractor Qualifications

(Revised June 15, 2012)

PGI 209.4--DEBARMENT, SUSPENSION, AND INELIGIBILITY

PGI 209.405 Effect of listing.

(1) Environmental Protection Agency (EPA) responsibilities under Executive Order 11738, Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act With Respect to Federal Contracts, Grants, or Loans, have been delegated to the EPA Suspending and Debarring Official (EPA SDO).

(i) Submit notifications and reports required by DFARS [209.405\(b\)](#) to the EPA SDO at the following address:

Office of Grants and Debarments
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue NW
Washington, DC 20640

Telephone: 202-564-5399

(ii) Unless agency procedures specify otherwise, coordinate submissions to the EPA SDO through the applicable agency suspending and debarring official.

(2) Executive Order 11738 is available at <http://www.epa.gov/isdc/eo11738.htm>.

(3) Contracting officers are required to review the Excluded Parties List System (EPLS) twice, once after opening of bids/receipt of proposals (FAR 9.405(d)(1)) and again immediately prior to award (FAR 9.405(d)(4)). Document the contract file for both searches; the documentation may include a copy of the EPLS search.

PGI 209.406 Debarment.

PGI 209.406-3 Procedures.

(a) When referring any matter to the agency debarring and suspending official for consideration, provide the following specific information and documentation, to the extent practicable. Send two copies (one paper and one electronic) of each report, including enclosures.

(b) For all referrals, provide the following:

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(1) Name, address, and telephone number of the point of contact for the activity making the report.

(2) Name and address of the referred individual/contractor, CAGE code, and DUNS number, if applicable.

(3) Name and addresses of the members of the board, principal officers, partners, owners, and managers of the referred contractor.

(4) Name and addresses of all known affiliates, subsidiaries, or parent firms, and the nature of the business relationship to the referred individual/contractor.

(5) If a contracting office initiates the report, the comments and recommendations of the contracting officer and of each higher-level contracting review authority regarding—

(i) Whether to suspend or debar the contractor;

(ii) Whether to apply limitations to the suspension or debarment;

(iii) The period of any recommended debarment; and

(iv) Whether to continue any current contracts with the contractor (or explain why a recommendation regarding current contracts is not included).

(6) To the extent that this information is available through FPDS-NG, a list of other agencies that hold current contracts with the referred individual/contractor.

(c) For referrals based on judicial actions (indictments, convictions, civil judgments, etc.), provide the following:

(1) Copies of indictments, judgments, and sentencing actions.

(2) Copies of investigative reports when authorized by the investigative agency.

(3) Witness statements or affidavits when authorized by the investigative agency.

(4) If judicial action is contract-related, the contract number, description of supplies or services, and contract amount.

(d) For “fact-based” referrals (no judicial action), for each contract affected by the misconduct or poor performance being reported, provide the following:

(1) The contract number, description of supplies or services, contract amount, percentage of completion, and amounts paid to and withheld from the contractor.

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(2) Whether the contract is assigned under the Assignment of Claims Act and, if so, to whom.

(3) The contract fund citations involved, to expedite accurate return of funds to open accounts and commands, as appropriate.

(4) For any other contracts outstanding with the contractor or any of its affiliates, the contract number, description of supplies or services, and contract amount.

(5) A complete summary of all pertinent evidence and the status of any legal proceedings involving the contractor.

(6) An estimate of any damages sustained by the Government as a result of the contractor's action (explain how the estimate was calculated).

(7) A copy of pertinent extracts of each pertinent contract.

(8) Copies of investigative reports when authorized by the investigative agency.

(9) Witness statements or affidavits when authorized by the investigative agency.

(10) A copy of any available determinations of nonresponsibility in accordance with FAR 9.105-2(a)(1).

(11) Any other appropriate exhibits or documentation.

(e) Decisionmaking process.

(1) The agency debarring and suspending official shall follow the procedures and decisionmaking process stated in FAR 9.406-3(c) for proposed debarments and debarments) and FAR 9.407-3 (for suspensions), DFARS Appendix H, and any agency-specific procedures that are to be provided to the individual/contractor with the notice of proposed debarment or suspension, either by enclosure or electronic reference.

(2) The absence of a referral in accordance with this section, or the absence of any information specified in this section, will not preclude the debarring and suspending official from making decisions to suspend, propose for debarment, or debar an individual/contractor.

(3) The signature of the debarring and suspending official on the notice of suspension, proposed debarment, or debarment is sufficient evidence that the debarring and suspending official has made the specified decision.

(4) If a debarring and suspending official determines that a referral lacks sufficient evidence of a cause for suspension or debarment, the debarring and suspending official may refer the matter for further review or investigation, as appropriate, by an appropriate agency or other Government entity, including a contracting activity, inspector general, auditing agency, or a criminal investigative agency.

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PGI 209.407 Suspension.

PGI 209.407-3 Procedures.

Use similar procedures as in DFARS [PGI 209.406-3](#) for suspensions.

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PGI 217—Special Contracting Methods

(Revised June 15, 2012)

PGI 217.74—UNDEFINITIZED CONTRACT ACTIONS

PGI 217.7404-1 Authorization.

(1) The requiring activity, in coordination with the contracting office, will prepare the request for approval package for an undefinitized contract action (UCA) requirement. The approval package shall—

- (i) Document why a UCA is required (for letter contracts see DFARS [216.603](#));
- (ii) Provide a detailed explanation for the need to begin performance before definitization;
- (iii) Address the adverse impact on agency requirements that would result from delays in beginning performance;
- (iv) Identify the risk of using a UCA and the means by which the Government will mitigate such risk;
- (v) Identify and justify the specific contractual instrument to be used;
- (vi) Establish limitations on the obligation of funds; and
- (vii) Provide the definitization schedule of agreed-upon events that support timely definitization.

(2) A sample format with certain variations for letter contracts is provided [here](#).

PGI 217.7404-2 Price ceiling.

(1) The rationale for the not-to-exceed price will be documented and retained in the contract file. Examples of such supporting rationale include—

- (i) The Independent Government Cost Estimate;
- (ii) Price analysis based on prior buys; and
- (iii) The contractor's proposal.

(2) The maximum not-to-exceed price is the firm-fixed price for firm-fixed price contracts, the ceiling price for fixed-price incentive contracts, and the estimated cost and fee for cost-reimbursement contracts.

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PGI 217.7404-3 Definitization schedule.

In order to meet the definitization dates, the contracting officer shall closely coordinate and monitor each UCA. Contracting officers should frequently communicate with the program office and requiring officials as appropriate to actively manage the definitization of UCAs. The contracting officer should alert the approval authority if, for any reason, the definitization schedule appears to be in jeopardy.

PGI 217.7404-6 Allowable profit.

To improve the documentation and provide guidance on determining the profit for UCAs with substantial incurred cost, contracting officers shall follow the mandatory instructions at DFARS [215.404-71-3\(d\)\(2\)](#) regarding lowering contract type risk assessments for the incurred costs when performing weighted guidelines analysis. Additional guidance on analyzing profit or fee (DAU continuous learning course 104) is provided [here](#).

PGI 217.7405 Plans and reports.

(1) By October 31 and April 30 of each year, departments and agencies shall submit an updated Consolidated UCA Management Plan, and a Consolidated UCA Management Report, identifying each UCA with a value exceeding \$5 million. In addition, departments and agencies shall submit a copy of the record of weighted guidelines for each definitized UCA with a value of \$100 million or more. If there is no record of weighted guidelines (e.g., not required for a cost plus award fee contract per DFARS [215.404-74](#)), then departments and agencies shall submit alternative documentation that addresses appropriate recognition of the contractor's reduced cost risk during the undefinitized performance period. Submit the required information to—

Deputy Director, Defense Procurement and Acquisition Policy
(Contract Policy and International Contracting)
3060 Defense Pentagon
Washington, DC 20301-3060.

(2) The Consolidated UCA Management Plan and the Consolidated UCA Management Report shall be prepared using the following formats:

(i) *Consolidated UCA Management Plan:*

Title: Consolidated Undefinitized Contract Action (UCA) Management Plan
Period Covered:

1. Applicable military department, defense agency, or DoD component.

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- a. Headquarters point of contact.
- b. Contact information.
2. Description of actions planned and taken to ensure:
 - a. Appropriate use of UCAs.
 - b. Timely definitization of UCAs.
 - c. Minimized obligation amounts at the time of UCA award, consistent with the contractor's requirements for the undefinitized period.
 - d. In determining profit/fee, appropriate recognition of the contractor's reduced cost risk during the undefinitized performance period.
 - e. Documentation of the risk assessment in the contract file.
3. Milestones for completion of planned events.
4. Other.
 - (ii) *Consolidated UCA Management Report:*

The required format for the Consolidated UCA Management Report is available [here](#).
- (3) A list of Frequently Asked Questions about UCA reporting requirements is available [here](#).

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PGI 222.10--SERVICE CONTRACT LABOR STANDARDS

PGI 222.1008-1 Obtaining wage determinations.

(1) The contracting officer shall secure the assistance of cognizant customer/technical personnel to ensure maximum use of the Service Contract Act Directory of Occupations (Directory) and incorporation of all service employee classes (Directory and non-Directory) expected to be utilized.

(2) When the statement of work job title, for which there is a Directory equivalent, differs from the Directory job title, provide a cross-reference on the e98.

(3) Include and note as such any classifications and minimum hourly wage rates conformed under any predecessor contract. When a previously conformed classification is not included in the Directory, include the job description on the e98.

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PGI 222.4--LABOR STANDARDS FOR CONTRACTS INVOLVING CONSTRUCTION

PGI 222.404 Construction Wage Rate Requirements statute wage determinations.

PGI 222.404-2 General requirements.

(c)(5) Clarification concerning the proper application of wage rate schedules to the type or types of construction involved shall be obtained from—

- (A) For the Army - The appropriate district commander, Corps of Engineers.
- (B) For the Navy - The cognizant Naval Facilities Engineering Command division.
- (C) For the Air Force - The appropriate Regional Industrial Relations Office.

PGI 222.406 Administration and enforcement.

PGI 222.406-8 Investigations.

(a) Under Reorganization Plan No. 14 of 1950, contracting agencies are tasked with the primary responsibility for the conduct of labor standards compliance activities for construction contracts subject to the Construction Wage Rate Requirements statute. When such compliance assurance activities disclose potential violations that are substantial in amount (wage underpayments in excess of \$1,000) or when requested by the Department of Labor, the contracting officer or a designee should take the following steps to ensure compliance with the investigative requirements of the Department of Labor:

- (i) *Beginning of the investigation.* The investigator shall—
 - (A) Inform the contractor of the investigation in advance;
 - (B) Verify the exact legal name of the contractor, its address, and the names and titles of its principal officers;
 - (C) Outline the general scope of the investigation, including the examination of pertinent records and the interview of employees;
 - (D) Inform the contractor that the names of the employees to be interviewed will not be divulged to the contractor; and

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(E) When requested, provide a letter from the contracting officer verifying the investigator's authority.

(ii) *Conduct of the investigation.* Labor standards investigations are comprised of the following essential components:

(A) Review of the contract.

(1) Verify that all required labor standards and clauses and wage determinations are included in the contract.

(2) Review the following items in the contract file, if applicable:

(i) List of subcontractors.

(ii) Payroll statements for the contractor and subcontractors.

(iii) Approvals of additional classifications.

22.406-4. (iv) Data regarding apprentices and trainees as required by FAR

(v) Daily inspector's report or other inspection reports.

(vi) Employee interview statements.

(vii) Standard Form (SF) 1413, Statement and Acknowledgement.

(B) Interview of the complainant. If the investigation is based upon the receipt of a complaint, the investigator should interview the complainant unless this is impractical. The interview shall cover all aspects of the complaint to ensure that all pertinent information is obtained. Whenever an investigation does not include an interview of the complainant, explain such omission in the investigator's report.

(C) Interview of employees and former employees.

(1) Interview a sufficient number of employees or former employees, who represent all classifications, to develop information regarding the method and amount of payments, deductions, hours worked, and the type of work performed.

(2) Interview employees at the job site if the interviews can be conducted privately and in such a manner so as to cause the least inconvenience to the employer and employees.

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(3) Former employees may be interviewed elsewhere.

(4) Do not disclose to any employee any information, finding, recommendation, or conclusion relating to the investigation except to the extent necessary to obtain required information.

(5) Do not disclose any employee's statement to anyone, except a Government representative working on the case, without the employee's written permission.

(6) Obtain information by mail when personal interviews are impractical.

(7) Use SF 1445, Labor Standards Interview, for employee interviews.

(8) Ask employees to sign their statements and to initial any changes.

(9) Provide an evaluation of each employee's credibility.

(D) Interview of foremen. Interview foremen to obtain information concerning the contractor's compliance with the labor standards provisions with respect to employees under the foreman's supervision and the correctness of the foreman's classification as a supervisory employee. All procedures established for the conduct of employee interviews, and the recording and use of information obtained, apply to foremen interviews.

(E) Interview of the contractor.

(1) Interview the contractor whenever the investigation indicates the possibility of a violation.

(2) Inform the contractor that—

(i) The interview does not mean that a violation has been found or that a requirement for corrective action exists; and

(ii) The purpose of the interview is to obtain only such data as the contractor may desire to present in connection with the investigation.

(3) Do not disclose the identity of any individual who filed a complaint or was interviewed.

(F) Review of contractor and subcontractor records.

(1) Review contractor and subcontractor records such as basic time cards, books, cancelled payroll checks, fringe benefits, and payment records. Compare them with submitted payrolls. When discrepancies are found, include pertinent excerpts or copies of

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the records in the investigation report with a statement of the discrepancy and any explanation the investigator obtains. When wages include contributions or anticipated costs for fringe payments requiring approval of the Secretary of Labor, examine the contractor records to ensure such approval has been obtained and that any requirements specified in the approval have been met. (See FAR 22.406-2(a)(3).)

(2) Review contractor's and subcontractor's weekly payrolls and payroll statements for completeness and accuracy regarding the following:

(i) Identification of employees, payroll amount, the contract, contractor, subcontractor, and payroll period.

(ii) Inclusion of only job classifications and wage rates specified in the contract specifications, or otherwise established for the contract or subcontract.

(iii) Computation of daily and weekly hours.

(iv) Computation of time-and-one half for work in excess of 40 hours per week in accordance with FAR 22.406-2(c).

(v) Gross weekly wages.

(vi) Deductions.

(vii) Computation of net weekly wages paid to each employee.

(viii) Ratio of helpers, apprentices, and trainees to laborers and mechanics.

(ix) Apprenticeship and trainee registration and ratios.

(x) Computation of fringe benefits payments.

(3) Transcribe the contractor's records whenever they contain information at variance with payrolls or other submitted documents.

(i) Make the transcriptions in sufficient detail to permit them to be used to check computations of restitution and to determine amounts to be withheld from the contractor.

(ii) Follow the form used by the contractor.

(iii) Place comments or explanations concerning the transcriptions on separate memoranda or in the narrative report.

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(iv) Determine whether the wage determination, any modifications of the determination, and any additional classifications are posted as required.

(iii) *Submission of the report of investigation.* The investigator shall submit a report of the investigation in accordance with agency procedures. Each report shall include at least—

(A) The basis for the investigation, including the name of the complainant;

(B) Names and addresses of prime contractors and subcontractors involved, and names and titles of their principal officers;

(C) Contract number, date, dollar value of prime contract, and date and number of wage determination included in the contract;

(D) Description of the contract and subcontract work involved;

(E) Summary of the findings with respect to each of the items listed in [PGI 222.406-8\(a\)\(ii\)](#);

(F) Concluding statement concerning—

(1) The types of violations, including the amount of kickbacks under the Copeland Act, underpayments of basic hourly rates and fringe benefits under the Wage Rate Requirements statute, or underpayments and liquidated damages under the Contract Work Hours and Safety Standards statute;

(2) Whether violations are considered to be willful or due to the negligence of the contractor or its agent;

(3) The amount of funds withheld from the contractor; and

(4) Other violations found; and

(G) Exhibits indexed and appropriately tabbed, including copies of the following, when applicable—

(1) Complaint letter;

(2) Contract wage determination;

(3) Preconstruction letter and memorandum of preconstruction conference;

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- (4) Payrolls and statements indicating violations;
 - (5) Transcripts of pertinent records of the contractor, and approvals of fringe benefit payments;
 - (6) Employee interview statements;
 - (7) Foreman interview statements;
 - (8) Statements of others interviewed, including Government personnel;
 - (9) Detailed computations showing kickbacks, underpayments, and liquidated damages;
 - (10) Summary of all payments due to each employee or to a fund plan or program, and liquidated damages; and
 - (11) Receipts and cancelled checks.
- (d) *Contracting officer's report.* This report shall include at least--
- (i) SF 1446, Labor Standards Investigation Summary Sheet;
 - (ii) Contracting officer's findings;
 - (iii) Statement as to the disposition of any contractor rebuttal to the findings;
 - (iv) Statement as to whether the contractor has accepted the findings and has paid any restitution or liquidated damages;
 - (v) Statement as to the disposition of funds available;
 - (vi) Recommendations as to disposition or further handling of the case (when appropriate, include recommendations as to the reduction, waiver, or assessment of liquidated damages, whether the contractor should be debarred, and whether the file should be referred for possible criminal prosecution); and
 - (vii) When applicable, the following exhibits:
 - (A) Investigator's report.
 - (B) Copy of the contractor's written rebuttal or a summary of the contractor's oral rebuttal of the contracting officer's findings.

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(C) Copies of correspondence between the contractor and contracting officer, including a statement of specific violations found, corrective action requested, and the contractor's letter of acceptance or rejection.

(D) Evidence of the contractor's payment of restitution or liquidated damages (copies of receipts, cancelled checks, or supplemental payrolls).

(E) Letter from the contractor requesting relief from the liquidated damage provisions of the Contract Work Hours and Safety Standards statute.

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PGI 225—Foreign Acquisition

(Revised June 15, 2012)

PGI 225.001 General.

Consider the following when evaluating offers of foreign end products:

(1) *Statutory or policy restrictions.*

(i) Determine whether the product is restricted by—

(A) Statute (see DFARS subpart [225.70](#)); or

(B) DoD policy (see DFARS subpart [225.71](#), FAR 6.302-3, and DoD Directive 5230.11, Disclosure of Classified Military Information to Foreign Governments and International Organizations).

(ii) If an exception to or waiver of a restriction in DFARS subpart [225.70](#) or [225.71](#) would result in award of a foreign end product, apply the policies and procedures of the Buy American statute or the Balance of Payments Program, and, if applicable, the trade agreements.

(2) *Memoranda of understanding or other international agreements.* Determine whether the offered product is the product of one of the qualifying countries listed in DFARS [225.872-1](#).

(3) *Trade agreements.* If the product is not an eligible product, a qualifying country end product, or a U.S.-made end product, purchase of the foreign end product may be prohibited (see FAR 25.403(c) and DFARS [225.403\(c\)](#)).

(4) *Other trade sanctions and prohibited sources.*

(i) Determine whether the offeror complies with the secondary Arab boycott of Israel. Award to such offerors may be prohibited (see DFARS subpart [225.76](#)).

(ii) Determine whether the offeror is a prohibited source (see FAR subpart 25.7 and DFARS Subpart [225.7](#)).

(5) *Buy American and Balance of Payments Program.* See the evaluation procedures in DFARS subpart [225.5](#).

PGI 225.004 Reporting of acquisition of end products manufactured outside the United States.

(1) *Definitions.* “Manufactured end product” and “place of manufacture” are defined in

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the provision at FAR 52.225-18, Place of Manufacture.

(2) Use the Federal Procurement Data System data field “Place of Manufacture,” under the section on Product or Service Information, to enter data on the acquisition of end products manufactured outside the United States for contracts awarded and orders issued in fiscal year 2007 and subsequent fiscal years. Select the appropriate description in accordance with the following table:

Place of Manufacture

Short Description as viewed in drop down box	Long Description
Manufactured or performed outside United States (Actions prior to FY 2007 only)	The action is for (i) Any foreign end product manufactured outside the United States; or (ii) Services performed outside the United States by a foreign concern.
Mfg in U.S.	The action is predominantly for acquisition of manufactured end products that are manufactured in the United States.
Mfg outside U.S. - Commercial information technology	The foreign manufactured end products are predominantly commercial information technology items (FAR 25.103(e)).
Mfg outside U.S. - Domestic nonavailability	The foreign manufactured end products were predominantly not domestically available as shown by one of the following: <ul style="list-style-type: none">• The item is listed at FAR 25.104 (FAR 25.103(b)(1)).• The agency did an individual determination (FAR 25.103(b)(2)).• No offer of a domestic end product was received, even though the acquisition was synopsisized and conducted through full and open competition (FAR 25.103(b)(3)).
Mfg outside U.S - Public interest determination	The head of the agency has made a determination that domestic preferences would be inconsistent with the public interest (FAR 25.103(a)).

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Mfg outside U.S. - Qualifying country	For DoD only, the foreign manufactured end products are predominantly qualifying country end products (DFARS 225.003 and 225.872-1).
Mfg outside U.S. - Resale	The foreign manufactured end products acquired are predominantly for resale (FAR 25.103(d)).
Mfg outside U.S. - Trade Agreements	The foreign manufactured end products are predominantly eligible products acquired under Trade Agreements (FAR 25.402(a)(1)).
Mfg outside U.S. - Unreasonable cost	The cost of the offered domestic end products was unreasonable (FAR 25.103(c), 25.105, and Subpart 25.5).
Mfg outside U.S. - Use outside the United States	The foreign manufactured end products acquired are predominantly for use outside the United States (FAR 25.100).
More than 50% of foreign content, but manufactured in United States (Actions prior to FY 2007 only)	The action is for (i) A foreign end product that is manufactured in the United States but still determined to be foreign because 50 percent or more of the cost of the components is not mined, produced, or manufactured inside the United States or qualifying countries; or (ii) Services performed in the United States by a foreign concern.
Not applicable	The action is NOT predominantly for acquisition of manufactured end products.

(3) Note that the first and second from the last options in the drop down box are to be used only for reporting of contracts awarded or orders issued prior to October 1, 2006.

(4) The other options in the drop down box apply only to contracts awarded and orders issued on or after October 1, 2006. If the solicitation for the contract contains the provision at FAR 52.225-18, Place of Manufacture (or the commercial item equivalent at FAR 52.212-3(j)), the contracting officer must review the successful offeror's response to this provision to select the correct option.

(i) Enter "Mfg in U.S." if the offeror has checked the box "In the United States."

(ii) If the offeror has checked the box "Outside the United States," enter one of the other options, depending on the predominant reason for acquiring end products manufactured outside the United States. These reasons correspond to the exceptions to

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the Buy American statute (FAR subpart 25.1 and DFARS subpart [225.1](#)). Further explanation of these exceptions to the Buy American statute are available at the FAR and DFARS references provided in the long description for each option.

(5) For any contract awarded on or after October 1, 2006, when the solicitation did not include the provision at FAR 52.225-18, Place of Manufacture (or FAR 52.212-3(j)), and for any order placed on or after October 1, 2006, under a contract that did not include one of these provisions, the contracting officer shall use best judgment in estimating whether the acquisition is predominantly for manufactured end products and whether the end products were predominantly end products manufactured in the United States or outside the United States, using the place of performance or other information that may be available to the contracting officer to assist in forming this judgment.

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PGI 225.70—AUTHORIZATION ACTS, APPROPRIATIONS ACTS, AND OTHER STATUTORY RESTRICTIONS ON FOREIGN ACQUISITION

PGI 225.7002 Restrictions on food, clothing, fabrics, and hand or measuring tools.

PGI 225.7002-1 Restrictions.

(a)(2)(A) The following are examples, not all-inclusive, of Federal Supply Classes that contain items of clothing:

(1) Clothing apparel (such as outerwear, headwear, underwear, nightwear, footwear, hosiery, or handwear) listed in Federal Supply Class 8405, 8410, 8415, 8420, 8425, 8450, or 8475.

(2) Footwear listed in Federal Supply Class 8430 or 8435.

(3) Hosiery, handwear, or other items of clothing apparel, such as belts and suspenders, listed in Federal Supply Class 8440 or 8445.

(4) Badges or insignia listed in Federal Supply Class 8455.

(B) The Federal Supply Classes listed in paragraph (a)(2)(A) of this subsection also contain items that are not clothing, such as—

(1) Visors;

(2) Kevlar helmets;

(3) Handbags; and

(4) Plastic identification tags.

(C) Each item should be individually analyzed to determine if it is clothing, rather than relying on the Federal Supply Class alone to make that determination.

(D) The fact that an item is excluded from the foreign source restriction of the Berry Amendment applicable to clothing does not preclude application of another Berry Amendment restriction in DFARS [225.7002-1](#) to the components of the item.

(E) Small arms protective inserts (SAPI plates) are an example of items added to, and not normally associated with, clothing. Therefore, SAPI plates are not covered under the Berry Amendment as clothing. However, fabrics used in the SAPI plate are

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still subject to the foreign source restrictions of the Berry Amendment. If the fabric used in the SAPI plate is a synthetic fabric or a coated synthetic fabric, the fibers and yarns used in the fabric are not covered by the Berry Amendment, because the fabric is a component of an end product that is not a textile product (see DFARS [225.7002-2\(m\)](#)).

Example: A SAPI plate is compliant with the Berry Amendment if the synthetic fiber or yarn is obtained from foreign country X and woven into synthetic fabric in the United States, which is then incorporated into a SAPI plate manufactured in foreign country Y.

(b) *Hand or measuring tools.*

(1) As applied to hand or measuring tools, “produced in the United States” means that the hand or measuring tool was assembled in the United States out of components, or otherwise made from raw materials into the finished product that is to be provided to the Government.

(2) If a hand or measuring tool was assembled in a country other than the United States, then disassembled and reassembled in the United States, the hand or measuring tool was not produced in the United States.

(3) The requirement to buy hand or measuring tools produced in the United States does not impose any restriction on the source of the components of the hand or measuring tools. This is unlike the Berry Amendment restriction on clothing (see [225.7002-1\(a\)\(2\)](#)), which explicitly requires domestic source for the materials and components of clothing (other than unusual components such as sensors or electronics), as well as the additional separate restrictions on various types of fibers and fabrics that might be components of the clothing.

(4) If the acquisition of the hand or measuring tools is also subject to the Buy American statute (see FAR subpart 25.1), then in order to qualify as a domestic end product, the cost of the components mined, produced, or manufactured in the United States or a qualifying country, must exceed 50 percent of the cost of all the components of the hand or measuring tool.

PGI 225.7002-2 Exceptions.

(b) *Domestic nonavailability determinations.*

(3) *Defense agencies other than the Defense Logistics Agency.*

(A) A defense agency requesting a domestic nonavailability determination must submit the request, including the proposed determination, to—

Director, Defense Procurement and Acquisition Policy
ATTN: OUSD(AT&L)DPAP(CPIC)

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3060 Defense Pentagon
Washington, DC 20301-3060.

(B) The Director, Defense Procurement and Acquisition Policy, will forward the request to the Under Secretary of Defense (Acquisition, Technology, and Logistics) (USD(AT&L)) as appropriate.

(4) *Reciprocal use of domestic nonavailability determinations (DNADs).*

The military departments and the Defense Logistics Agency should establish approval authority, policies, and procedures for the reciprocal use of DNADs. General requirements for broad application of DNADs are as follows:

(A) A class DNAD approved by the USD(AT&L), the Secretary of a military department, or the Director of the Defense Logistics Agency may be used by USD(AT&L), another military department, or the Defense Logistics Agency, provided the same rationale applies and similar circumstances are involved.

(B) DNADs should clearly establish—

(1) Whether the determination is limited or unlimited in duration; and

(2) If application outside the approving military department is appropriate.

(C) Upon approval of a DNAD, if application outside the approving military department is appropriate, the approving department shall provide a copy of the DNAD, with information about the items covered and the duration of the determination, to—

Director, Defense Procurement and Acquisition Policy
ATTN: OUSD(AT&L)DPAP(CPIC)
3060 Defense Pentagon
Washington, DC 20301-3060.

(D) Before relying on an existing DNAD, contact the approving office for current guidance as follows:

(1) USD(AT&L): DPAP/CPIC, 703-697-9352.

(2) Army: ASA/ALT, 703-604-7006.

(3) Navy: DASN (Acquisition and Logistics Management), 703-614-9600.

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(4) Air Force: AQCK, 571-256-2384.

(5) Defense Logistics Agency: J-71, Acquisition Policy Division, 703-767-1461.

PGI 225.7003 Restrictions on acquisition of specialty metals.

PGI 225.7003-2 Restrictions.

(a)(i) This restriction applies to the item containing the specialty metal, not just the specialty metal, as was true when the restriction was part of 10 U.S.C. 2533a. The previous practice of withholding payment while conditionally accepting noncompliant items is not permissible for—

(A) Contracts entered into on or after November 16, 2006; or

(B) New procurements or out-of-scope changes accomplished on or after November 16, 2006, through the use of bilateral modifications to contracts originally awarded prior to November 16, 2006.

(ii) Consistent with the definition of “component” in the clause at DFARS [252.225-7009](#), a component is any item supplied to the Government as part of an end item or of another component. Items that are not incorporated into any of the items listed in DFARS [225.7003-2\(a\)](#) are not components of those items. For example, test equipment, ground support equipment, or shipping containers are not components of the missile system.

PGI 225.7003-3 Exceptions.

A department or agency requesting a determination or approval from USD(AT&L) in accordance with DFARS [225.7003-3\(b\)\(5\)](#), (c), or (d) shall submit the request, including the proposed determination, to—

Director, Defense Procurement and Acquisition Policy
ATTN: OUSD(AT&L)DPAP(CPIC)
3060 Defense Pentagon
Washington, DC 20301-3060.

The Director, Defense Procurement and Acquisition Policy, will forward the request to USD(AT&L) as appropriate.

(b)(2) *Report of COTS items.*

If a department or agency uses the exception at DFARS [225.7003-3\(b\)\(2\)](#) for an acquisition of COTS end items valued at \$5 million or more per item, the department or

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agency shall address use of the exception in a year-end report, to be prepared and submitted as follows:

(A) Entitle the report “COTS Specialty Metal Exceptions Granted During Fiscal Year ____.”

(B) For each excepted COTS item purchased during the fiscal year, include in the report, at a minimum, the applicable—

(1) Contract number and any applicable delivery order number;

(2) Dollar value; and

(3) Item description.

(C) Submit the report by October 31 of each year to:

Director, Defense Procurement and Acquisition Policy
ATTN: OUSD(AT&L)DPAP(CPIC)
3060 Defense Pentagon
Washington, DC 20301-3060.

(b)(5) *Domestic specialty metals nonavailable as and when needed.*

(A) *Determining availability.*

(1) FAR 15.402 requires that contracting officers purchase supplies and services at fair and reasonable prices. Thus, contracting officers must determine whether any increase in contract price that results from providing compliant specialty metal is fair and reasonable, given the circumstances of the particular situation. In those cases where the contracting officer determines that the price would not be fair and reasonable, the Secretary of the military department concerned may use that information in determining whether the unreasonable price causes the compliant metal to be effectively “nonavailable.” Where these “reasonableness” limits should be drawn is a case-by-case decision.

(2) A similar approach may be used to determine whether delays associated with incorporating compliant specialty metals into items being acquired results in the metals being effectively nonavailable.

(B) *Class domestic nonavailability determinations (DNADS).* Class DNADS approved by USD(AT&L), that are available for reciprocal use in contracts issued before July 26, 2008, can be found at <http://www.dema.mil/dnad/>. These determinations are *not* authorized for use in contracts issued on or after July 26, 2008.

(b)(6) *Application of specialty metals restrictions to magnets.*

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HPM = High performance magnet
 COTS = Commercially available off-the-shelf

Magnet made of specialty metal is:	Commercially available, HPM	NOT Commercially available, HPM	COTS, NOT HPM	NOT COTS, NOT HPM
Incorporated into COTS assembly or COTS end item	NOT restricted	*	NOT restricted	*
NOT incorporated into COTS assembly or COTS end item	Restricted	Restricted	NOT restricted	Restricted
Included in 2 percent minimum content?	Cannot be included in 2 percent minimum content	Cannot be included in 2 percent minimum content	NOT restricted	Can be included in 2 percent minimum content

* By definition, COTS assemblies and COTS end items will not include a HPM that is not commercially available or any other magnet that is not COTS.

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(Revised June 15, 2012)

PGI 225.75—BALANCE OF PAYMENTS PROGRAM

PGI 225.7502 Procedures.

If the Balance of Payments Program applies, use the following procedures:

(1) *Solicitation of offers.* Identify, in the solicitation, supplies and construction material known in advance to be exempt from the Balance of Payments Program.

(2) *Evaluation of offers.*

(i) *Supplies.* Unless the entire acquisition is exempt from the Balance of Payments Program, evaluate offers for supplies that are subject to the Balance of Payments Program using the evaluation procedures in DFARS Subpart [225.5](#). However, 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. Evaluate offers including such duties as offered.

(ii) *Construction.* Because the contracting officer evaluates the estimated cost of foreign and domestic construction material in accordance with DFARS [225.7501\(a\)\(6\)\(iv\)](#) before issuing the solicitation, no special procedures are required for evaluation of construction offers.

(3) *Postaward.* For construction contracts, the procedures at FAR 25.206, for noncompliance under the Buy American statute, also apply to noncompliance under the Balance of Payments Program.

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(Revised June 15, 2012)

PGI 225.8--OTHER INTERNATIONAL AGREEMENTS AND COORDINATION

PGI 225.802 Procedures.

(b) Information on specific memoranda of understanding and other international agreements is available as follows:

(i) Memoranda of understanding and other international agreements between the United States and the countries listed in DFARS [225.872-1](#) are maintained in the Office of the Director of Defense Procurement and Acquisition Policy (Contract Policy and International Contracting) ((703) 697-9351, DSN 227-9351) and are available at http://www.acq.osd.mil/dpap/cpic/ic/reciprocal_procurement_memoranda_of_understanding.html.

(ii) Military Assistance Advisory Groups, Naval Missions, and Joint U.S. Military Aid Groups normally have copies of the agreements applicable to the countries concerned.

(iii) Copies of international agreements covering the United Kingdom of Great Britain and Northern Ireland, Western European countries, North Africa, and the Middle East are filed with the U.S. European Command.

(iv) Agreements with countries in the Pacific and Far East are filed with the U.S. Pacific Command.

PGI 225.802-70 Contracts for performance outside the United States and Canada.

When a contracting office anticipates placement of a contract for performance outside the United States and Canada, and the contracting office is not under the jurisdiction of a command for the country involved, the contracting office shall maintain liaison with the cognizant contract administration office (CAO) during preaward negotiations and postaward administration. The cognizant CAO can be found at <http://home.dcms.mil/cassites/district.htm>. The CAO will provide pertinent information for contract negotiations, effect appropriate coordination, and obtain required approvals for the performance of the contract.

PGI 225.870 Contracting with Canadian contractors.

PGI 225.870-1 General.

(d)(i) The Canadian Commercial Corporation uses provisions in contracts with Canadian or U.S. concerns that give DoD the same production rights, data, and information

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that DoD would obtain in contracts with U.S. concerns.

(ii) The Government of Canada will provide the following services under contracts with the Canadian Commercial Corporation without charge to DoD:

(A) Contract administration services, including—

(1) Cost and price analysis;

(2) Industrial security;

(3) Accountability and disposal of Government property;

(4) Production expediting;

(5) Compliance with Canadian labor laws;

(6) Processing of termination claims and disposal of termination inventory;

(7) Customs documentation;

(8) Processing of disputes and appeals; and

(9) Such other related contract administration functions as may be required with respect to the Canadian Commercial Corporation contract with the Canadian supplier.

(B) Audits. The Public Works and Government Services Canada performs audits when needed. Route requests for audit on non-Canadian Commercial Corporation contracts through the cognizant contract management office of the Defense Contract Management Agency.

(C) Inspection. The Department of National Defence (Canada) provides inspection personnel, services, and facilities, at no charge to DoD departments and agencies (see DFARS [225.870-7](#)).

PGI 225.870-5 Contract administration.

(1) Assign contract administration in accordance with DFARS Part 242. When the Defense Contract Management Agency will perform contract administration in Canada, name in the contract the following payment office for disbursement of DoD funds (DoD Department Code: 17-Navy; 21-Army; 57-Air Force; 97-all other DoD components), whether payment is in Canadian or U.S. dollars:

DFAS Columbus Center

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DFAS-CO/North Entitlement Operations
PO Box 182266
Columbus, OH 43218-2266.

(2) The following procedures apply to cost-reimbursement type contracts:

(i) The Public Works and Government Services Canada (PWGSC) automatically arranges audits on contracts with the Canadian Commercial Corporation.

(A) Consulting and Audit Canada (CAC) furnishes audit reports to PWGSC.

(B) Upon advice from PWGSC, the Canadian Commercial Corporation certifies the invoice and forwards it with Standard Form (SF) 1034, Public Voucher, to the administrative contracting officer for further processing and transmittal to the disbursing office.

(ii) For contracts placed directly with Canadian firms, the administrative contracting officer requests audits from the CAC, Ottawa, Ontario, Canada. The CAC/PWGSC--

(A) Approves invoices on a provisional basis pending completion of the contract and final audit;

(B) Forwards these invoices, accompanied by SF 1034, Public Voucher, to the administrative contracting officer for further processing and transmittal to the disbursing officer; and

(C) Furnishes periodic advisory audit reports directly to the administrative contracting officer.

PGI 225.870-7 Acceptance of Canadian supplies.

(1) For contracts placed in Canada, either with the Canadian Commercial Corporation or directly with Canadian suppliers, the Department of National Defence (Canada) will perform any necessary contract quality assurance and/or acceptance, as applicable.

(2) Signature by the Department of National Defence (Canada) quality assurance representative on the DoD inspection and acceptance form is satisfactory evidence of acceptance for payment purposes.

PGI 225.871 North Atlantic Treaty Organization (NATO) cooperative projects.

PGI 225.871-4 Statutory waivers.

Forward any request for waiver under a cooperative project to the Deputy Secretary of

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Defense, through the Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics). The waiver request shall include a draft Determination and Findings for signature by the Deputy Secretary of Defense establishing that the waiver is necessary to significantly further NATO standardization, rationalization, and interoperability.

PGI 225.871-5 Directed subcontracting.

The cooperative project agreement is the authority for a contractual provision requiring the contractor to place certain subcontracts with particular subcontractors. No separate justification and approval during the acquisition process is required.

PGI 225.872 Contracting with qualifying country sources.

PGI 225.872-4 Individual determinations.

(1) Obtain signature of the determination and findings—

(i) At a level above the contracting officer, for acquisitions valued at or below the simplified acquisition threshold; or

(ii) By the chief of the contracting office, for acquisitions with a value greater than the simplified acquisition threshold.

(2) Prepare the determination and findings substantially as follows:

SERVICE OR AGENCY

Exemption of the Buy American and Balance of Payments Program

Determination and Findings

Upon the basis of the following findings and determination which I hereby make in accordance with the provisions of FAR 25.103(a), the acquisition of a qualifying country end product may be made as follows:

Findings

1.

The (*contracting office*) proposes to purchase under contract number _____, (*describe item*) mined, produced, or manufactured in (*qualifying country of origin*). The total estimated cost of this acquisition is _____.

2.

The United States Government and the Government of _____ have agreed to

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remove barriers to procurement at the prime and subcontract level for defense equipment produced in each other's countries insofar as laws and regulations permit.

3.

The agreement provides that the Department of Defense will evaluate competitive offers of qualifying country end products mined, produced, or manufactured in (*qualifying country*) without imposing any price differential under the Buy American statute or the Balance of Payments Program and without taking applicable U.S. customs and duties into consideration so that such items may better compete for sales of defense equipment to the Department of Defense. In addition, the Agreement stipulates that acquisitions of such items shall fully satisfy Department of Defense requirements for performance, quality, and delivery and shall cost the Department of Defense no more than would comparable U.S. source or other foreign source defense equipment eligible for award.

4.

To achieve the foregoing objectives, the solicitation contained the clause (*title and number of the Buy American clause contained in the contract*). Offers were solicited from other sources and the offer received from (*offeror*) is found to be otherwise eligible for award.

Determination

I hereby determine that it is inconsistent with the public interest to apply the restrictions of the Buy American statute or the Balance of Payments Program to the offer described in this determination and findings.

(Date)

PGI 225.872-5 Contract administration.

(b)(i) When contract administration services are required on contracts to be performed in qualifying countries, direct the request to the cognizant activity listed in the Federal Directory of Contract Administration Services. The cognizant activity also will arrange contract administration services for DoD subcontracts that qualifying country sources place in the United States.

(ii) The contract administration activity receiving a delegation shall determine whether any portions of the delegation are covered by memoranda of understanding annexes and, if so, shall delegate those functions to the appropriate organization in the qualifying country's government.

PGI 225.872-6 Audit.

(c)(i) Except for the United Kingdom, send requests for audits in qualifying countries to the administrative contracting officer at the cognizant activity listed in Section 2B of the Federal Directory of Contract Administration Services. Send a request for audit from the United Kingdom directly to their Ministry of Defence.

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(ii) Send an advance copy of the request to the focal point identified by the Deputy Director of Defense Procurement and Acquisition Policy (Contract Policy and International Contracting).

PGI 225.873 Waiver of United Kingdom commercial exploitation levies.

PGI 225.873-2 Procedures.

(1) The Government of the U.K. shall approve waiver of U.K. levies. When an offeror or contractor identifies a levy included in an offered or contract price, the contracting officer shall provide written notification to the Defense Security Cooperation Agency, ATTN: PSD-PMD, 1111 Jefferson Davis Highway, Arlington, VA 22202-4306, telephone (703) 601-3864. The Defense Security Cooperation Agency will request a waiver of the levy from the Government of the U.K. The notification shall include—

- (i) Name of the U.K. firm;
- (ii) Prime contract number;
- (iii) Description of item for which waiver is being sought;
- (iv) Quantity being acquired; and
- (v) Amount of levy.

(2) Waiver may occur after contract award. If levies are waived before contract award, evaluate the offer without the levy. If levies are identified but not waived before contract award, evaluate the offer inclusive of the levies.