

DFARS Procedures, Guidance, and Information

PGI 209—Contractor Qualifications

(Revised October 26, 2006)

PGI 209.1--RESPONSIBLE PROSPECTIVE CONTRACTORS

PGI 209.105-1 Obtaining Information.

GSA's Excluded Parties List System (EPLS), which is available at <http://www.epls.gov>, identifies entities excluded throughout the U.S. Government (unless otherwise noted) from receiving Federal contracts or certain subcontracts and from certain types of Federal financial and non-financial assistance and benefits.

(1) Multiple agencies have the authority to suspend or debar entities from “doing business” with the Government. Presently, there are approximately 71 separate cause and treatment codes under which entities can be suspended or debarred or excluded.

(2) The cause and treatment codes advise readers of the nature of the exclusion, debarment, or suspension and how those listed on the EPLS should be treated. However, the fact that an entity is listed on the EPLS does not necessarily mean the entity is ineligible for contract award. Review of the cause and treatment code is crucial in ensuring that listed entities are not deprived of their “liberty interest” in conducting business with the Government.

(3) When the Department of Justice Bureau of Justice Assistance debars individuals under 10 U.S.C. 2408, they are placed on the EPLS under cause and treatment code FF (Reciprocal). The individuals currently listed under this treatment code can be found on the EPLS website (<http://www.epls.gov> - Click on the “Cause and Treatment Code” under the “Reports Menu” heading at the top of the right side of the web page; then select “Reciprocal” in the “Exclusion Type” search window and click “OK”; finally, select CT code “FF” in the drop-down list and select MS Excel format, then “OK”, to view the information).

(4) A "Public User's Manual" is available on the EPLS website to assist users in navigating the system. Definitions of Procurement, Nonprocurement, and Reciprocal exclusions can be found in Chapter 4 of the manual.

PGI 209.106 Preaward surveys.

PGI 209.106-1 Conditions for preaward surveys.

(a) If a preaward survey is requested, include the rationale in Block 23 of the SF 1403, Preaward Survey of Prospective Contractor (General).

PGI 209.106-2 Requests for preaward surveys.

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(1) The surveying activity is the cognizant contract administration office as listed in the Federal Directory of Contract Administration Services Components, available at <http://home.dcmamil/casbook/casbook.htm>. When information is required as part of the survey on the adequacy of the contractor's accounting system or its suitability for administration of the proposed type of contract, the surveying activity will obtain the information from the auditor.

(2) Limited information may be requested by telephone.

(3) The contracting officer may request a formal survey by telephone but must confirm immediately with SF 1403, Preaward Survey of Prospective Contractor (General). For a formal survey, send original and three copies of SF 1403, including necessary drawings and specifications.

(i) List additional factors in Item H, Section III of the SF 1403 and explain them in Block 23. For example—

(A) Information needed to determine a prospective contractor's eligibility under the Walsh-Healey Public Contracts Act. (Note that the Walsh-Healey Public Contracts Act, Block 12 of Section I, only indicates what the contractor has represented its classification to be under Walsh-Healey.)

(B) Evaluation of a contractor as a planned producer when the offered item is or may appear on the Industrial Preparedness Planning List (IPPL). When the preaward survey results in a recommendation for award, ask the office responsible for industrial preparedness planning to consider designating the prospective contractor as a planned producer. If the item is already on the IPPL or the prospective contractor is already a planned producer, note the information in Block 23.

(C) Evaluation of the prospective contractor's performance against small business subcontracting plans.

(4) On base level preaward surveys, technical personnel from the requiring installation should participate when there is concern about the ability of a prospective contractor to perform a base level service or construction contract.

(5) Allow more time for—

(i) Complex items;

(ii) New or inexperienced DoD contractors; and

(iii) Surveys with time-consuming requirements, e.g., secondary survey, accounting system review, financial capability analysis, or purchasing office participation.

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(6) Only request those factors essential to the determination of responsibility. See DFARS 253.209-1(a) for an explanation of the factors in Section III, Blocks 19 and 20 of the SF 1403.

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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 Act 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 Act 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 9H, Place of Manufacture, 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 code/description in accordance with the following table:

9H Place of Manufacture

Code	Short Description	Long Description
A	U.S. (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.
B	Foreign (Actions prior to FY 2007 only)	The action is for (i) Any other foreign end product; or (ii) Services performed outside the United States by a foreign concern.
C	Not applicable (Actions prior to FY 2007 only)	Not applicable.
D	Mfg in U.S.	The action is predominantly for acquisition of manufactured end products that are manufactured in the United States.
E	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).
F	Mfg outside U.S. - Resale	The foreign manufactured end products acquired are predominantly for resale (FAR 25.103(d)).
G	Mfg outside U.S. - Trade Agreements	The foreign manufactured end products are predominantly eligible products acquired under Trade Agreements (FAR 25.402(a)(1)).
H	Mfg outside U.S. - Commercial	The foreign manufactured end products are predominantly commercial information technology

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	information technology	items (FAR 25.103(e)).
I	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)).
J	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 synopsized and conducted through full and open competition (FAR 25.103(b)(3)).
K	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).
L	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).

(3) The description for Codes A, B, and C remains unchanged from the prior FPDS. These codes are to be used only for reporting of contracts awarded or orders issued prior to October 1, 2006.

(4) The new codes D through L have been added to facilitate the statutory reporting requirements at FAR 25.004. These codes 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 code.

(i) Enter code D 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 codes E through L, depending on the predominant reason for acquiring end products manufactured outside the United States. These reasons correspond to the exceptions to the Buy American Act (FAR Subpart 25.1 and DFARS Subpart 225.1). Further explanation of these exceptions to the Buy American Act are available at the FAR and DFARS

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references provided in the long description for each code.

(5) Code L is applicable only to acquisitions made by or for DoD.

(6) 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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(Added October 26, 2006)

PGI 222.17—COMBATING TRAFFICKING IN PERSONS

PGI 222.1703 Policy.

(i) The DoD Office of the Deputy Inspector General for Inspections and Policy (DoD OIG(I&P)) assists in implementing DoD Trafficking in Persons (TIP) programs and evaluates DoD's efforts to combat TIP. The DoD OIG(I&P) TIP website is <http://www.dodig.osd.mil/Inspections/IPO/combatinghuman.htm>. The website includes DoD policy memoranda, TIP awareness policy, DoD OIG policy on human trafficking, TIP awareness training, and a link to the Department of State TIP website, <http://www.state.gov/g/tip>.

(ii) Secretary of Defense memorandum of September 16, 2004 (located at http://www.dodig.osd.mil/Inspections/IPO/SECDEF_TIP_Policy.pdf), Subject: Combating Trafficking in Persons, states that "Trafficking includes involuntary servitude and debt bondage. These trafficking practices will not be tolerated in DoD contractor organizations or their subcontractors in supporting DoD operations."

(iii) Deputy Secretary of Defense memorandum of January 30, 2004 (located at http://www.dodig.osd.mil/Inspections/IPO/OSD_HT_Policy.pdf), Subject: Combating Trafficking in Persons in the Department of Defense, requires the incorporation of provisions in overseas contracts that—

(A) Prohibit any activities on the part of contractor employees that support or promote trafficking in persons; and

(B) Impose suitable penalties on contractors who fail to monitor the conduct of their employees.

(iv) DoD Instruction 5525.11, Criminal Jurisdiction Over Civilians Employed By or Accompanying the Armed Forces Outside the United States, Certain Service Members, and Former Service Members, dated March 3, 2005, implements policies and procedures, and assigns responsibilities, under the Military Extraterritorial Jurisdiction Act of 2000, as amended by Section 1088 of the National Defense Authorization Act for Fiscal Year 2005, for exercising extraterritorial criminal jurisdiction over certain current and former members of the U.S. Armed Forces, and over civilians employed by or accompanying the U.S. Armed Forces outside the United States. The instruction is available at the Washington Headquarters Services website, <http://www.dtic.mil/whs/directives/>.

PGI 222.1704 Violations and remedies.

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After determining in writing that the contractor has failed to comply with paragraph (c) or (d) of the clause at FAR 52.222-50, or with paragraphs (c), (d), (e), or (g) of the clause at DFARS 252.222-7006, the contracting officer may—

(1) Withhold contract payments in accordance with the payments clause or other terms and conditions of the contract;

(2) Suspend contract payments in accordance with the procedures at FAR 32.503-6(a)(1); or

(3) Recommend debarment or suspension in accordance with the procedures in FAR Subpart 9.4 and DFARS Subpart 209.4.

PGI 222.1704-70 Notification to Combatant Commander.

The Unified Combatant Command DefenseLINK website, <http://www.defenselink.mil/specials/unifiedcommand/>, identifies each command's area of responsibility and provides contact information for the Combatant Commander.

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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 (Program Acquisition and International Contracting) ((703) 697-9351, DSN 227-9351).

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

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(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
DFAS-CO/North Entitlement Operations
PO Box 182266

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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 Defense, through the Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics). The waiver request

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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 Act 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 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.

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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 Act 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 Act 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 Act 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

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United Kingdom directly to their Ministry of Defence.

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

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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, specialty metals, and hand or measuring tools.

PGI 225.7002-1 Restrictions.

(b) Under Secretary of Defense (Acquisition, Technology, and Logistics) memorandum of June 1, 2006, Subject: Berry Amendment Compliance for Specialty Metals, provides guidance on dealing with specialty metal parts that are noncompliant with the requirements of the Berry Amendment (10 U.S.C. 2533a). Also see the DCMA interim instruction addressing noncompliance with the Preference for Domestic Specialty Metals clause, DFARS 252.225-7014, at <http://guidebook.dcmamil/225/instructions.htm>.

PGI 225.7002-2 Exceptions.

(b) *Domestic nonavailability determination.*

(3) *Defense agencies.*

(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(PAIC)
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) as appropriate.

(C) If the domestic nonavailability determination is for the acquisition of titanium or a product containing titanium, the submission shall also include the associated congressional notification letters required by DFARS 225.7002-2(b)(4), for concurrent signature by the Under Secretary of Defense (Acquisition, Technology, and Logistics). The defense agency does not need to take any further action with regard to DFARS 225.7002-2(b)(4).

(4) *Army, Navy, and Air Force.*

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Send the copy of the congressional notification and the domestic nonavailability determination for the acquisition of titanium or a product containing titanium to—

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

(5) *Related policy memoranda.*

The DoD memoranda regarding domestic nonavailability determinations implemented in DFARS 225.7002-2(b) are as follows:

Deputy Secretary of Defense memorandum of May 1, 2001, Subject: The Berry Amendment, provides policy regarding domestic nonavailability determinations. This memorandum is implemented at DFARS 225.7002-2(b)(1) through (3).

Under Secretary of Defense (Acquisition, Technology, and Logistics) memorandum of October 22, 2004, Subject: Congressional Notification of Determinations Under 10 U.S.C. 2533a (The Berry Amendment) for Procurement of Foreign Titanium, provides policy regarding Congressional notification of domestic nonavailability determinations involving titanium or products containing titanium. This memorandum is implemented at DFARS 225.7002-2(b)(4).

PGI 225.7017 Restriction on Ballistic Missile Defense research, development, test, and evaluation.

PGI 225.7017-3 Exceptions.

(b) Before awarding a contract to a foreign entity for conduct of ballistic missile defense research, development, test, and evaluation (RDT&E), the head of the contracting activity must certify, in writing, that a U.S. firm cannot competently perform a contract for RDT&E at a price equal to or less than the price at which a foreign government or firm would perform the RDT&E. The contracting officer or source selection authority must make a determination that will be the basis for that certification, using the following procedures:

- (i) The determination shall—
 - (A) Describe the contract effort;
 - (B) State the number of proposals solicited and received from both U.S. and foreign firms;

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(C) Identify the proposed awardee and the amount of the contract;

(D) State that selection of the contractor was based on the evaluation factors contained in the solicitation, or the criteria contained in the broad agency announcement; and

(E) State that a U.S. firm cannot competently perform the effort at a price equal to, or less than, the price at which the foreign awardee would perform it.

(ii) When either a broad agency announcement or program research and development announcement is used, or when the determination is otherwise not based on direct competition between foreign and domestic proposals, use one of the following approaches:

(A) The determination shall specifically explain its basis, include a description of the method used to determine the competency of U.S. firms, and describe the cost or price analysis performed.

(B) Alternately, the determination may contain—

(1) A finding, including the basis for such finding, that the proposal was submitted solely in response to the terms of a broad agency announcement, program research and development announcement, or other solicitation document without any technical guidance from the program office; and

(2) A finding, including the basis for such finding, that disclosure of the information in the proposal for the purpose of conducting a competitive acquisition is prohibited.

(iii) Within 30 days after contract award, forward a copy of the certification and supporting documentation to the Missile Defense Agency, ATTN: MDA/DRI, 7100 Defense Pentagon, Washington, DC 20301-7100.

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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 Act, also apply to noncompliance under the Balance of Payments Program.

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PGI 225.76—SECONDARY ARAB BOYCOTT OF ISRAEL

PGI 225.7604 Waivers.

Forward waiver requests to the Director, Defense Procurement and Acquisition Policy,
ATTN: OUSD(AT&L)DPAP(PAIC), 3060 Defense Pentagon, Washington, DC 20301-3060.