

**SUBPART 225.77—ACQUISITIONS IN SUPPORT OF OPERATIONS IN IRAQ
OR AFGHANISTAN**
(Added September 15, 2008)

225.7700 Scope.

This subpart implements Section 886 and Section 892 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

225.7701 Definitions.

As used in this subpart—

“Product from Iraq or Afghanistan” means a product that is mined, produced, or manufactured in Iraq or Afghanistan.

“Service from Iraq or Afghanistan” means a service that is performed in Iraq or Afghanistan predominantly by citizens or permanent resident aliens of Iraq or Afghanistan.

“Small arms” means pistols and other weapons less than 0.50 caliber.

“Source from Iraq or Afghanistan” means a source that—

- (1) Is located in Iraq or Afghanistan; and
- (2) Offers products or services from Iraq or Afghanistan.

225.7702 Acquisition of small arms.

(a) Except as provided in paragraph (b) of this section, when acquiring small arms for assistance to the Army of Iraq, the Army of Afghanistan, the Iraqi Police Forces, the Afghani Police Forces, or other Iraqi or Afghani security organizations—

(1) Use full and open competition to the maximum extent practicable, consistent with the provisions of 10 U.S.C. 2304;

(2) If use of other than full and open competition is justified in accordance with FAR Subpart 6.3, ensure that—

(i) No responsible U.S. manufacturer is excluded from competing for the acquisition; and

(ii) Products manufactured in the United States are not excluded from the competition; and

(3) If the exception at FAR 6.302-2 (unusual and compelling urgency) applies, do not exclude responsible U.S. manufacturers or products manufactured in the United States from the competition for the purpose of administrative expediency. However, such an offer may be rejected if it does not meet delivery schedule requirements.

(b) Paragraph (a)(2) of this section does not apply when—

(1) The exception at FAR 6.302-1 (only one or a limited number of responsible sources) applies, and the only responsible source or sources are not U.S. manufacturers or are not offering products manufactured in the United States; or

(2) The exception at FAR 6.302-4 (international agreement) applies, and United States manufacturers or products manufactured in the United States are not the source(s) specified in the written directions of the foreign government reimbursing the agency for the cost of the acquisition of the property or services for such government.

225.7703 Acquisition of products or services other than small arms.

225.7703-1 Acquisition procedures.

(a) Subject to the requirements of 225.7703-2, a product or service (including construction), other than small arms, in support of operations in Iraq or Afghanistan, may be acquired by—

(1) Providing a preference for products or services from Iraq or Afghanistan in accordance with the evaluation procedures at 225.7703-3;

(2) Limiting competition to products or services from Iraq or Afghanistan; or

(3) Using procedures other than competitive procedures to award a contract to a particular source or sources from Iraq or Afghanistan. When other than competitive procedures are used, the contracting officer shall document the contract file with the rationale for selecting the particular source(s).

(b) For acquisitions conducted using a procedure specified in paragraph (a) of this subsection, the justification and approval addressed in FAR Subpart 6.3 is not required.

225.7703-2 Determination requirements.

Before use of a procedure specified in 225.7703-1(a), a written determination must be prepared and executed as follows:

(a) For products or services to be used only by the military forces, police, or other security personnel of Iraq or Afghanistan, the contracting officer shall—

(1) Determine in writing that the product or service is to be used only by the military forces, police, or other security personnel of Iraq or Afghanistan; and

(2) Include the written determination in the contract file.

(b) For products or services not limited to use by the military forces, police, or other security personnel of Iraq or Afghanistan, the following requirements apply:

(1) The appropriate official specified in paragraph (b)(2) of this subsection must determine in writing that it is in the national security interest of the United States to use a procedure specified in 225.7703-1(a), because—

(i) The procedure is necessary to provide a stable source of jobs in Iraq or Afghanistan; and

(ii) Use of the procedure will not adversely affect—

(A) Operations in Iraq or Afghanistan (including security, transition, reconstruction, and humanitarian relief activities); or

(B) The U.S. industrial base. The authorizing official generally may presume that there will not be an adverse effect on the U.S. industrial base. However, when in doubt, the authorizing official should coordinate with the applicable subject matter expert specified in PGI 225.7703-2(b).

(2) Determinations may be made for an individual acquisition or a class of acquisitions meeting the criteria in paragraph (b)(1) of this subsection as follows:

(i) The head of the contacting activity is authorized to make a determination that applies to an individual acquisition with a value of less than \$78.5 million.

(ii) The Director, Defense Procurement, Acquisition Policy, and Strategic Sourcing, and the following officials, without power of redelegation, are authorized to make a determination that applies to an individual acquisition with a value of \$78.5 million or more or to a class of acquisitions:

(A) Defense Logistics Agency Component Acquisition Executive.

(B) Army Acquisition Executive.

(C) Navy Acquisition Executive.

(D) Air Force Acquisition Executive.

(3) The contracting officer—

(i) Shall include the applicable written determination in the contract file;
and

(ii) Shall ensure that each contract action taken pursuant to the authority of a class determination is within the scope of the class determination, and shall document the contract file for each action accordingly.

(c) See PGI 225.7703-2(c) for formats for use in preparation of the determinations required by this subsection.

225.7703-3 Evaluating offers.

(a) Evaluate offers submitted in response to solicitations that include the provision at 252.225-7023, Preference for Products or Services from Iraq or Afghanistan, as follows:

(1) If the low offer is an offer of a product or service from Iraq or Afghanistan, award on that offer.

(2) If there are no offers of a product or service from Iraq or Afghanistan, award on the low offer.

(3) Otherwise, apply the evaluation factor specified in the solicitation to the low offer.

(i) If the price of the low offer of a product or service from Iraq or Afghanistan is less than the evaluated price of the low offer, award on the low offer of a product or service from Iraq or Afghanistan.

(ii) If the evaluated price of the low offer remains less than the low offer of a product or service from Iraq or Afghanistan, award on the low offer.

(b) If the provision at 252.225-7023 is modified to provide a preference exclusively for products or services from Iraq or Afghanistan, also modify the evaluation procedures in paragraph (a) of this subsection to remove “or Afghanistan” or “Iraq or”, respectively, wherever the phrase appears.

225.7703-4 Reporting requirement.

The following organizations shall submit periodic reports to the Deputy Director, Program Acquisition and Contingency Contracting, Defense Procurement, Acquisition Policy, and Strategic Sourcing, in accordance with PGI 225.7703-4, to address the organization’s use of the procedures authorized by this section:

(a) The Joint Contracting Command (Iraq/Afghanistan).

(b) The Department of the Army, except for contract actions reported by the Joint Contracting Command.

(c) The Department of the Navy.

(d) The Department of the Air Force.

(e) The Defense Logistics Agency.

(f) The other defense agencies and other DoD components that execute reportable contract actions.

225.7703-5 Solicitation provisions and contract clauses.

(a) Use the provision at 252.225-7023, Preference for Products or Services from Iraq or Afghanistan, in solicitations that provide a preference for products or services from Iraq or Afghanistan in accordance with 225.7703-1(a)(1). The contracting officer—

(1) May modify the provision to provide a preference exclusively for products or services from Iraq or exclusively for products or services from Afghanistan by removing “or Afghanistan” or “Iraq or”, respectively, wherever the phrase appears in the provision. If this provision is so modified, the clause at 252.225-7024 shall be modified accordingly; and

(2) May modify the 50 percent evaluation factor in accordance with contracting office procedures.

(b) Use the clause at 252.225-7024, Requirement for Products or Services from Iraq

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or Afghanistan, in solicitations that include the provision at 252.225-7023, Preference for Products or Services from Iraq or Afghanistan, and in the resulting contract. If the provision at 252.225-7023 has been modified to provide a preference exclusively for Iraq or exclusively for Afghanistan, in accordance with paragraph (a)(1) of this subsection, the clause at 252.225-7024 shall be modified accordingly.

(c)(1) Use the clause at 252.225-7026, Acquisition Restricted to Products or Services from Iraq or Afghanistan, in solicitations and contracts that—

(i) Are restricted to the acquisition of products or services from Iraq or Afghanistan in accordance with 225.7703-1(a)(2); or

(ii) Will be directed to a particular source or sources from Iraq or Afghanistan in accordance with 225.7703-1(a)(3).

(2) The contracting officer may modify the clause to restrict the acquisition to products or services from Iraq, or to restrict the acquisition to products or services from Afghanistan, by removing “or Afghanistan” or “Iraq or”, respectively, wherever the phrase appears in the clause.

(d) When the Trade Agreements Act applies to the acquisition, use the appropriate clause and provision as prescribed at 225.1101(6) and (7).

(e) Do not use any of the following provisions or clauses in solicitations or contracts that include the provision at 252.225-7023, the clause at 252.225-7024, or the clause at 252.225-7026:

(1) 252.225-7000, Buy American Act--Balance of Payments Program Certificate.

(2) 252.225-7001, Buy American Act and Balance of Payments Program.

(3) 252.225-7002, Qualifying Country Sources as Subcontractors.

(4) 252.225-7020, Trade Agreements Certificate.

(5) 252.225-7035, Buy American Act--Free Trade Agreements--Balance of Payments Program Certificate.

(6) 252.225-7036, Buy American Act--Free Trade Agreements--Balance of Payments Program.

(7) 252.225-7044, Balance of Payments Program--Construction Material.

(8) 252.225-7045, Balance of Payments Program--Construction Material Under Trade Agreements.