225.103 Exceptions.

(a)(i)(A) Public interest exceptions for certain countries are in 225.872 .

(B) For procurements covered by the World Trade Organization Government Procurement Agreement, the Under Secretary of Defense (Acquisition and Sustainment) has determined that it is inconsistent with the public interest to apply the Buy American statute to end products that are substantially transformed in the United States.

(ii)(A) Normally, use the evaluation procedures in subpart 225.5, but consider recommending a public interest exception if the purposes of the Buy American statute are not served, or in order to meet a need set forth in 10 U.S.C. 4861. For example, a public interest exception may be appropriate—

(1) If accepting the low domestic offer will involve substantial foreign expenditures, or accepting the low foreign offer will involve substantial domestic expenditures;

(*2*) By the head of the contracting activity for acquisitions with a value greater than the simplified acquisition threshold but less than $2 million; or

(*3*) By the agency head for acquisitions valued at $2 million or more.

(i) For an end item that qualifies as a domestic end product; or

(ii) In order not to impair integration of the military and commercial industrial base.

(B) Except as provided in PGI 225.872-4 , process a determination for a public interest exception after consideration of the factors in 10 U.S.C. 4861—

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

(2) By the head of the contracting activity for acquisitions with a value greater than the simplified acquisition threshold but less than $1.5 million; or

(3) By the agency head for acquisitions valued at $1.5 million or more.

(b)(i) A determination that an article, material, or supply is not reasonably available is required when domestic offers are insufficient to meet the requirement and award is to be made on other than a qualifying country or eligible end product.

(ii) A determination is not required before January 1, 2030, if there is an offer for a foreign end product that exceeds 55 percent domestic content. Except as provided in FAR 25.103(b)(3), the determination shall be approved—

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

(B) By the chief of the contracting office for acquisitions with a value greater than the simplified acquisition threshold but less than $2 million; or

(C) By the head of the contracting activity or immediate deputy for acquisitions valued at $2 million or more.

(iii) A separate determination as to whether an article is reasonably available is not required for the following articles. DoD has already determined that these articles are not reasonably available from domestic sources:

(A) Spare or replacement parts that must be acquired from the original foreign manufacturer or supplier.

(B) Foreign drugs acquired by the Defense Supply Center, Philadelphia, when the Director, Pharmaceuticals Group, Directorate of Medical Materiel, determines that only the requested foreign drug will fulfill the requirements.

(iv) Under coordinated acquisition (see Subpart 208.70), the determination is the responsibility of the requiring department when the requiring department specifies acquisition of a foreign end product.

(c) The cost of a domestic end product is unreasonable if it is not the low evaluated offer when evaluated under subpart 225.5.

Parent topic: Subpart 225.1 - BUY AMERICAN—SUPPLIES