Subpart 225.4 - TRADE AGREEMENTS

Parent topic: Part 225 - FOREIGN ACQUISITION

225.401 Exceptions.

(a)(2)(A) If a department or agency considers an individual acquisition of a product to be indispensable for national security or national defense purposes and appropriate for exclusion from the provisions of FAR subpart 25.4, it may submit a request with supporting rationale to the Principal Director, Defense Pricing, Contracting, and Acquisition Policy (DPCAP), Office of the Under Secretary of Defense (Acquisition and Sustainment) (OUSD(A&S)DPC). Approval by OUSD(A&S)DPCAP is not required if—

(*1*) Purchase from foreign sources is restricted by statute (see Subpart 225.70);

(*2*) Another exception in FAR 25.401 applies to the acquisition; or

(*3*) Competition from foreign sources is restricted under subpart 225.71.

(B) Public interest exceptions for certain countries when acquiring products or services in support of operations in Afghanistan are in 225.7704-1 .

225.401-70 End products subject to trade agreements.

Acquisitions of end products in the following product service groups (PSGs) are covered by trade agreements if the value of the acquisition is at or above the applicable trade agreement threshold and no exception applies. If an end product is not in one of the listed groups, the trade agreements do not apply. The definition of Caribbean Basin country end products in FAR 25.003 excludes those end products that are not eligible for duty-free treatment under 19 U.S.C. 2703(b). Therefore certain watches, watch parts, and luggage from certain Caribbean Basin countries are not eligible products. However, 225.003 expands the definition of Caribbean Basin country end products to include petroleum and any product derived from petroleum, in accordance with Section 8094 of Pub. L. 103-139.

PSG	Category/Description
22	Railway equipment
23	Motor vehicles, trailers, and cycles (except 2305, 2350, and buses under 2310)
24	Tractors

25	Vehicular equipment components
26	Tires and tubes
29	Engine accessories
30	Mechanical power transmission equipment
32	Woodworking machinery and equipment
34	Metalworking machinery
35	Service and trade equipment
36	Special industry machinery (except 3690)
37	Agricultural machinery and equipment
38	Construction, mining, excavating, and highway maintenance equipment
39	Materials handling equipment
40	Rope, cable, chain, and fittings
41	Refrigeration, air conditioning, and air circulating equipment
42	Fire fighting, rescue, and safety equipment; and environmental protection equipment and materials
43	Pumps and compressors
44	Furnace, steam plant, and drying equipment (except 4470)
45	Plumbing, heating, and waste disposal equipment
46	Water purification and sewage treatment equipment
47	Pipe, tubing, hose, and fittings
48	Valves

49	Maintenance and repair shop equipment (except 4920-4927, 4931-4935, 4960, 4970)
53	Hardware and abrasives
54	Prefabricated structures and scaffolding
55	Lumber, millwork, plywood, and veneer
56	Construction and building materials
61	Electric wire, and power and distribution equipment
62	Lighting fixtures and lamps
63	Alarm, signal and security detection systems
65	Medical, dental, and veterinary equipment and supplies
66	Instruments and laboratory equipment (except aircraft clocks under 6645) - See FAR 25.003 exclusion of certain watches and watch parts for certain Caribbean Basin countries
67	Photographic equipment
68	Chemicals and chemical products
69	Training aids and devices
70	Automatic data processing equipment (including firmware), software, supplies and support equipment
71	Furniture
72	Household and commercial furnishings and appliances
73	Food preparation and serving equipment
74	Office machines, text processing systems and visible record equipment
75	Office supplies and devices

76	Books, maps, and other publications
77	Musical instruments, phonographs, and home-type radios
78	Recreational and athletic equipment
79	Cleaning equipment and supplies
80	Brushes, paints, sealers, and adhesives
81	Containers, packaging, and packing supplies (except 8140)
83	Pins, needles, and sewing kits (only part of 8315) and flagstaffs, flagpoles, and flagstaff trucks (only part of 8345)
84	Luggage (only 8460) - See FAR 25.003 for exclusion of luggage for Caribbean Basin countries
85	Toiletries
87	Agricultural supplies
88	Live animals
89	Tobacco products (only 8975)
91	Fuels, lubricants, oils, and waxes
93	Nonmetallic fabricated materials
94	Nonmetallic crude materials
96	Ores, minerals, and their primary products
99	Miscellaneous

225.401-71 Products or services in support of operations in Afghanistan.

When acquiring products or services, other than small arms, in support of operations in Afghanistan

if using a procedure specified in 225.7703-1 (a) (2) or (3), the procedures of subpart 25.4 are not applicable.

225.402 General.

To estimate the value of the acquisition, use the total estimated value of end products covered by trade agreements (see 225.401-70).

225.403 World Trade Organization Government Procurement Agreement and Free Trade Agreements.

(c) For acquisitions of supplies covered by the World Trade Organization Government Procurement Agreement, acquire only U.S.-made, qualifying country, or designated country end products unless—

(i) The contracting officer determines that offers of U.S.-made, qualifying country, or designated country end products from responsive, responsible offerors are either—

(A) Not received; or

(B) Insufficient to fill the Government's requirements. In this case, accept all responsive, responsible offers of U.S.-made, qualifying country, and eligible products before accepting any other offers;

(ii) A national interest waiver under 19 U.S.C. 2512(b)(2) is granted on a case-by-case basis. Except as delegated in paragraphs (c)(i)(A) and (B) of this section, submit any request for a national interest waiver to the Principal Director, Defense Pricing, Contracting, and Acquisition Policy in accordance with department or agency procedures. Include supporting rationale with the request.

(A) The head of the contracting activity may approve a national interest waiver for a purchase by an overseas purchasing activity, if the waiver is supported by a written statement from the requiring activity that the products being acquired are critical for the support of U.S. forces stationed abroad.

(B) The Commander or Director, Defense Energy Support Center, may approve national interest waivers for purchases of fuel for use by U.S. forces overseas; or

(iii) The acquisition is in support of operations in Afghanistan (see 225.7704-1).

225.408 Procedures.

(a)(4) The requirements of FAR 25.408(a)(4), on submission of offers in U.S. dollars, do not apply to overseas acquisitions or to Defense Energy Support Center post, camp, or station overseas requirements.