Subpart 225.8 - OTHER INTERNATIONAL AGREEMENTS AND COORDINATION

Parent topic: Part 225 - FOREIGN ACQUISITION

225.802 Procedures.

(b) Information on memoranda of understanding and other international agreements is available at PGI 225.802 (b).

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

Follow the procedures at PGI 225.802-70 when placing a contract requiring performance outside the United States and Canada. Also see subpart 225.3, Contracts Performed Outside the United States.

225.802-71 End use certificates.

Contracting officers considering the purchase of an item from a foreign source may encounter a request for the signing of a certificate to indicate that the Armed Forces of the United States is the end user of the item, and that the U.S. Government will not transfer the item to third parties without authorization from the Government of the country selling the item. When encountering this situation, refer to DoD Instruction 2040.03, End Use Certificates, for guidance.

225.870 Contracting with Canadian contractors.

225.870-1 General.

(a) The Canadian government guarantees to the U.S. Government all commitments, obligations, and covenants of the Canadian Commercial Corporation under any contract or order issued to the Corporation by any contracting office of the U.S. Government. The Canadian government has waived notice of any change or modification that may be made, from time to time, in these commitments, obligations, or covenants.

(b) For production planning purposes, Canada is part of the defense industrial base (see 225.870-2 (b)).

(c) The Canadian Commercial Corporation will award and administer contracts with contractors located in Canada, except for—

(1) Negotiated acquisitions for experimental, developmental, or research work under projects other than the Defense Development Sharing Program;

(2) Acquisitions of unusual or compelling urgency;

(3) Acquisitions at or below the simplified acquisition threshold; or

(4) Acquisitions made by DoD activities located in Canada.

(d) For additional information on production rights, data, and information; services provided by Canadian Commercial Corporation; audit; and inspection, see PGI 225.870-1 (d).

225.870-2 Solicitation of Canadian contractors.

(a) If requested, furnish a solicitation to the Canadian Commercial Corporation even if no Canadian firm is solicited.

(b) Handle acquisitions at or below the simplified acquisition threshold directly with Canadian firms and not through the Canadian Commercial Corporation.

225.870-3 Submission of offers.

(a) As indicated in 225.870-4 , the Canadian Commercial Corporation is the prime contractor. To indicate acceptance of offers by individual Canadian companies, the Canadian Commercial Corporation issues a letter supporting the Canadian offer and containing the following information:

(1) Name of the Canadian offeror.

(2) Confirmation and endorsement of the offer in the name of the Canadian Commercial Corporation.

(3) A statement that the Corporation shall subcontract 100 percent with the offeror.

(b) When a Canadian offer cannot be processed through the Canadian Commercial Corporation in time to meet the date for receipt of offers, the Corporation may permit Canadian firms to submit offers directly. However, the contracting officer shall receive the Canadian Commercial Corporation's endorsement before contract award.

(c) The Canadian Commercial Corporation will submit all sealed bids in terms of U.S. currency. Do not adjust contracts awarded under sealed bidding for losses or gains from fluctuation in exchange rates.

(d) Except for sealed bids, the Canadian Commercial Corporation normally will submit offers and quotations in terms of Canadian currency. The Corporation may, at the time of submitting an offer, elect to quote and receive payment in terms of U.S. currency, in which case the contract—

(1) Shall provide for payment in U.S. currency; and

(2) Shall not be adjusted for losses or gains from fluctuation in exchange rates.

225.870-4 Contracting procedures.

(a) Except for contracts described in 225.870-1(c)(1) through (4), award individual contracts covering purchases from suppliers located in Canada to the Canadian Commercial Corporation, 350 Albert Street, Suite 700, Ottawa, ON K1R 1A4.

(b) Direct communication with the Canadian supplier is authorized and encouraged in connection with all technical aspects of the contract, provided the Corporation's approval is obtained on any matters involving changes to the contract.

(c) *Requirement for data other than certified cost or pricing data.* (1) DoD has waived the requirement for submission of certified cost or pricing data for the Canadian Commercial Corporation and its subcontractors (see 215.403-1(c)(4)(C)).

(2) The Canadian Commercial Corporation is not exempt from the requirement to submit data other than certified cost or pricing data, as defined in FAR 2.101. In accordance with FAR 15.403-3(a)(1)(ii), the contracting officer shall require submission of data other than certified cost or pricing data from the offeror, to the extent necessary to determine a fair and reasonable price.

(i) No further approval is required to request data other than certified cost or pricing data from the Canadian Commercial Corporation in the following circumstances:

(A) In a solicitation for a sole source acquisition that is -

(*1*) Cost-reimbursement, if the contract value is expected to exceed $700,000; or

(*2*) Fixed-price, if the contract value is expected to exceed $500 million.

(B) If the Canadian Commercial Corporation submits the only offer in response to a competitive solicitation that meets the thresholds specified in paragraph (c)(2)(i)(A) of this section.

(C) For modifications that exceed $150,000 in contracts that meet the criteria in paragraph (c)(2)(i)(A) or (B) of this section.

(D) In competitive solicitations in which data other than certified cost or pricing data are required from all offerors.

(ii) In any circumstances other than those specified in paragraph (c)(2)(i) of this section, the contracting officer shall only require data other than certified cost or pricing data from the Canadian Commercial Corporation if the head of the contracting activity, or designee no lower than two levels above the contracting officer, determines that data other than certified cost or pricing data are needed (or in the case of modifications that it is reasonably certain that data other than certified cost or pricing data will be needed) in order to determine that the price is fair and reasonable) (see FAR 15.403-3(a).

(3) The contracting officer shall use the provision at 252.215-7003, Requirement for Submission of Data Other Than Certified Cost or Pricing Data - Canadian Commercial Corporation, and the clause at 252.215-7004, Requirement for Submission of Data Other Than Certified Cost or Pricing Data - Modifications - Canadian Commercial Corporation, as prescribed at 215.408(2)(i) and (ii), respectively.

(4) Except for contracts described in 225.870-1(c)(1) through (4), Canadian suppliers will provide required data other than certified cost or pricing data exclusively through the Canadian Commercial Corporation.

(5) As specified in FAR 15.403-3(a)(4), an offeror who does not comply with a requirement to submit data that the contracting officer has deemed necessary to determine price reasonableness or cost realism is ineligible for award, unless the head of the contracting activity determines that it is in the best interest of the Government to make the award to that offeror, based on consideration of the

following:

(i) The effort made to obtain the data.

(ii) The need for the item or service.

(iii) Increased cost or significant harm to the Government if award is not made.

(d) Identify in the contract, the type of currency, *i.e.,* U.S. or Canadian. Contracts that provide for payment in Canadian currency shall -

(1) Quote the contract price in terms of Canadian dollars and identify the amount by the initials "CN", *e.g.,* $1,647.23CN; and

(2) Clearly indicate on the face of the contract the U.S./Canadian conversion rate at the time of award and the U.S. dollar equivalent of the Canadian dollar contract amount.

225.870-5 Contract administration.

Follow the contract administration procedures at PGI 225.870-5 .

225.870-6 Termination procedures.

When contract termination is necessary, follow the procedures at 249.7000 .

225.870-7 Acceptance of Canadian supplies.

For information on the acceptance of Canadian supplies, see PGI 225.870-7 .

225.870-8 Industrial security.

Industrial security for Canada shall be in accordance with the U.S.-Canada Industrial Security Agreement of March 31, 1952, as amended.

225.871 North Atlantic Treaty Organization (NATO) cooperative projects.

225.871-1 Scope.

This section implements 22 U.S.C. 2767 and 10 U.S.C. 2350b.

225.871-2 Definitions.

As used in this section—

(a) “Cooperative project” means a jointly managed arrangement—

(1) Described in a written agreement between the parties;

(2) Undertaken to further the objectives of standardization, rationalization, and interoperability of the armed forces of NATO member countries; and

(3) Providing for—

(i) One or more of the other participants to share with the United States the cost of research and development, testing, evaluation, or joint production (including follow-on support) of certain defense articles;

(ii) Concurrent production in the United States and in another member country of a defense article jointly developed; or

(iii) Acquisition by the United States of a defense article or defense service from another member country.

(b) “Other participant” means a cooperative project participant other than the United States.

225.871-3 General.

(a) *Cooperative project authority.*

(1) Departments and agencies, that have authority to do so, may enter into cooperative project agreements with NATO or with one or more member countries of NATO under DoDD 5530.3, International Agreements.

(2) Under laws and regulations governing the negotiation and implementation of cooperative project agreements, departments and agencies may enter into contracts, or incur other obligations, on behalf of other participants without charge to any appropriation or contract authorization.

(3) Agency heads are authorized to solicit and award contracts to implement cooperative projects.

(b) Contracts implementing cooperative projects shall comply with all applicable laws relating to Government acquisition, unless a waiver is granted under 225.871-4 . A waiver of certain laws and regulations may be obtained if the waiver—

(1) Is required by the terms of a written cooperative project agreement;

(2) Will significantly further NATO standardization, rationalization, and interoperability; and

(3) Is approved by the appropriate DoD official.

225.871-4 Statutory waivers.

(a) For contracts or subcontracts placed outside the United States, the Deputy Secretary of Defense may waive any provision of law that specifically prescribes—

(1) Procedures for the formation of contracts;

(2) Terms and conditions for inclusion in contracts;

(3) Requirements or preferences for—

(i) Goods grown, produced, or manufactured in the United States or in U.S. Government-owned facilities; or

(ii) Services to be performed in the United States; or

(4) Requirements regulating the performance of contracts.

(b) There is no authority for waiver of—

(1) Any provision of the Arms Export Control Act (22 U.S.C. 2751);

(2) Any provision of 10 U.S.C. 3201-3205;

(3) The cargo preference laws of the United States, including the Military Cargo Preference Act of 1904 (10 U.S.C. 2631) and the Cargo Preference Act of 1954 (46 U.S.C. 1241(b)); or

(4) Any of the financial management responsibilities administered by the Secretary of the Treasury.

(c) To request a waiver under a cooperative project, follow the procedures at PGI 225.871-4 .

(d) Obtain the approval of the Deputy Secretary of Defense before committing to make a waiver in an agreement or a contract.

225.871-5 Directed subcontracting.

(a) The Principal Director, Defense Pricing, Contracting, and Acquisition Policy may authorize the direct placement of subcontracts with particular subcontractors. Directed subcontracting is not authorized unless specifically addressed in the cooperative project agreement.

(b) In some instances, it may not be feasible to name specific subcontractors at the time the agreement is concluded. However, the agreement shall clearly state the general provisions for work sharing at the prime and subcontract level. For additional information on cooperative project agreements, see PGI 225.871-5 .

225.871-6 Disposal of property.

Dispose of property that is jointly acquired by the members of a cooperative project under the procedures established in the agreement or in a manner consistent with the terms of the agreement, without regard to any laws of the United States applicable to the disposal of property owned by the

United States.

225.871-7 Congressional notification.

(a) Congressional notification is required when DoD makes a determination to award a contract or subcontract to a particular entity, if the determination was not part of the certification made under 22 U.S.C. 2767(f) before finalizing the cooperative agreement.

(1) Departments and agencies shall provide a proposed Congressional notice to the Principal Director, Defense Pricing, Contracting, and Acquisition Policy in sufficient time to forward to Congress before the time of contract award.

(2) The proposed notice shall include the reason it is necessary to use the authority to designate a particular contractor or subcontractor.

(b) Congressional notification is also required each time a statutory waiver under 225.871-4 is incorporated in a contract or a contract modification, if such information was not provided in the certification to Congress before finalizing the cooperative agreement.

225.872 Contracting with qualifying country sources.

225.872-1 General.

(a) As a result of memoranda of understanding and other international agreements, DoD has determined it inconsistent with the public interest to apply restrictions of the Buy American statute or the Balance of Payments Program to the acquisition of qualifying country end products from the following qualifying countries:

Australia

Belgium

Canada

Czech Republic

Denmark

Egypt

Estonia

Federal Republic of Germany

Finland

France

Greece

Israel

Italy

Japan

Latvia

Lithuania

Luxembourg

Netherlands

Norway

Poland

Portugal

Slovenia

Spain

Sweden

Switzerland

Turkey

United Kingdom of Great Britain and Northern Ireland

(b) Individual acquisitions of qualifying country end products from the following qualifying country may, on a purchase-by-purchase basis (see 225.872-4), be exempted from application of the Buy American statute and the Balance of Payments Program as inconsistent with the public interest:

Austria

(c) The determination in paragraph (a) of this subsection does not limit the authority of the Secretary concerned to restrict acquisitions to domestic sources or reject an otherwise acceptable offer from a qualifying country source when considered necessary for national defense reasons.

225.872-2 Applicability.

(a) This section applies to all acquisitions of supplies except those restricted by—

(1) U.S. National Disclosure Policy, DoDD 5230.11, Disclosure of Classified Military Information to Foreign Governments and International Organizations;

(2) U.S. defense mobilization base requirements purchased under the authority of FAR

6.302-3(a)(2)(i), except for quantities in excess of that required to maintain the defense mobilization base. This restriction does not apply to Canadian planned producers.

(i) Review individual solicitations to determine whether this restriction applies.

(ii) Information concerning restricted items may be obtained from the Deputy Assistant Secretary of Defense for(Industrial Base Policy);

(3) Other U.S. laws or regulations (e.g., the annual DoD appropriations act); and

(4) U.S. industrial security requirements.

(b) This section does not apply to construction contracts.

225.872-3 Solicitation procedures.

(a) Except for items developed under the U.S./Canadian Development Sharing Program, use the criteria for soliciting and awarding contracts to small business concerns under FAR Part 19 without regard to whether there are potential qualifying country sources for the end product. Do not consider an offer of a qualifying country end product if the solicitation is identified for the exclusive participation of small business concerns.

(b) Send solicitations directly to qualifying country sources. Solicit Canadian sources through the Canadian Commercial Corporation in accordance with 225.870 .

(c) Use international air mail if solicitation destinations are outside the United States and security classification permits such use.

(d) If unusual technical or security requirements preclude the acquisition of otherwise acceptable defense equipment from qualifying country sources, review the need for such requirements. Do not impose unusual technical or security requirements solely for the purpose of precluding the acquisition of defense equipment from qualifying countries.

(e) Do not automatically exclude qualifying country sources from submitting offers because their supplies have not been tested and evaluated by the department or agency.

(1) Consider the adequacy of qualifying country service testing on a case-by-case basis. Departments or agencies that must limit solicitations to sources whose items have been tested and evaluated by the department or agency shall consider supplies from qualifying country sources that have been tested and accepted by the qualifying country for service use.

(2) The department or agency may perform a confirmatory test, if necessary.

(3) Apply U.S. test and evaluation standards, policies, and procedures when the department or agency decides that confirmatory tests of qualifying country end products are necessary.

(4) If it appears that these provisions might adversely delay service programs, obtain the concurrence of the Under Secretary of Defense (Acquisition and Sustainment), before excluding the qualifying country source from consideration.

(f) Permit industry representatives from a qualifying country to attend symposia, program briefings, prebid conferences (see FAR 14.207 and 15.201(c)), and similar meetings that address U.S. defense

equipment needs and requirements. When practical, structure these meetings to allow attendance by representatives of qualifying country concerns.

225.872-4 Individual determinations.

If the offer of an end product from a qualifying country source listed in 225.872-1 (b), as evaluated, is low or otherwise eligible for award, prepare a determination and findings exempting the acquisition from the Buy American statute and the Balance of Payments Program as inconsistent with the public interest, unless another exception such as the Trade Agreements Act applies. Follow the procedures at PGI 225.872-4 .

225.872-5 Contract administration.

(a) Arrangements exist with some qualifying countries to provide reciprocal contract administration services. Some arrangements are at no cost to either government. To determine whether such an arrangement has been negotiated and what contract administration functions are covered, contact the Office of the Principal Director, Defense Pricing, Contracting, and Acquisition Policy (Contract Policy) via email at osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil.

(b) Follow the contract administration procedures at PGI 225.872-5 (b).

(c) Information on quality assurance delegations to foreign governments is in Subpart 246.4, Government Contract Quality Assurance.

225.872-6 Request for audit services.

Handle requests for audit services in France, Germany, the Netherlands, or the United Kingdom in accordance with PGI 215.404-2 (c), but follow the additional procedures at PGI 225.872-6 .

225.872-7 Industrial security for qualifying countries.

The required procedures for safeguarding classified defense information necessary for the performance of contracts awarded to qualifying country sources are in the National Industrial Security Program Operating Manual, 32 CFR part 117 (implemented for the Army by AR 380-49; for the Navy by SECNAV Instruction 5510.1H; for the Air Force by AFI 31-601; for the Defense Information Systems Agency by DCA Instruction 240-110-8; and for the National Imagery and Mapping Agency by NIMA Instruction 5220.22).

225.872-8 Subcontracting with qualifying country sources.

In reviewing contractor subcontracting procedures, the contracting officer shall ensure that the contract does not preclude qualifying country sources from competing for subcontracts, except when restricted by national security interest reasons, mobilization base considerations, or applicable U.S. laws or regulations (see the clause at 252.225-7002 , Qualifying Country Sources as Subcontractors).

225.873 Waiver of United Kingdom commercial exploitation levies.

225.873-1 Policy.

DoD and the Government of the United Kingdom (U.K.) have agreed to waive U.K. commercial exploitation levies and U.S. nonrecurring cost recoupment charges on a reciprocal basis. For U.K. levies to be waived, the offeror or contractor shall identify the levies and the contracting officer shall request a waiver before award of the contract or subcontract under which the levies are charged.

225.873-2 Procedures.

When an offeror or a contractor identifies a levy included in an offered or contract price, follow the procedures at PGI 225.873-2 .