Subpart 225.11 - SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Parent topic: Part 225 - FOREIGN ACQUISITION

225.1100 Scope of subpart.

This subpart prescribes the clauses that implement subparts 225.1 through 225.10.

The clauses that implement subparts 225.70 through 225.75 are prescribed within those subparts.

225.1101 Acquisition of supplies.

(1) Use the basic or the alternate of the provision at 252.225-7000, Buy American—Balance of Payments Program Certificate, instead of the provision at FAR 52.225-2, Buy American Certificate, in any solicitation, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services, that includes the basic or the alternate of the clause at 252.225-7001, Buy American and Balance of Payments Program.

(i) Use the basic provision when the solicitation includes the basic clause or alternate II of the clause at 252.225-7001.

(ii) Use the alternate I provision when the solicitation includes alternate I or alternate III of the clause at 252.225-7001.

(2)(i) Use the basic or an alternate of the clause at 252.225-7001, Buy American and Balance of Payments Program, instead of the clause at FAR 52.225-1, Buy American—Supplies, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, unless—

(A) All line items will be acquired from a particular source or sources under the authority of FAR 6.302-3;

(B) All line items require domestic or qualifying country end products in accordance with subpart 225.70, but note that this exception does not apply if subpart 225.70 only requires manufacture of the end product in the United States or in the United States or Canada, without a corresponding requirement for use of domestic components;

(C) The acquisition is for supplies for use within the United States and an exception to the Buy American statute applies, *e.g.,* nonavailability or public interest (see FAR 25.103 and 225.103);

(D) The acquisition is for supplies for use outside the United States and an exception to the Balance of Payments Program applies (see 225.7501);

(E) One or more of the basic or the alternates of the following clauses will apply to all line items in the contract:

(*1*) 252.225-7021, Trade Agreements.

(*2*) 252.225-7036, Buy American - Free Trade Agreements - Balance of Payments Program; or

(F) All line items will be acquired using a procedure specified in 225.7703-1(a).

(ii) Use the basic clause if the acquisition is not of end products listed in 225.401-70 in support of operations in Afghanistan.

(iii) Use the alternate I clause when the acquisition is of end products listed in 225.401-70 in support of operations in Afghanistan.

(iv) Use alternate II of the clause in lieu of the basic clause in solicitations and contracts if—

(A) The acquisition is not of end products listed in 225.401-70 in support of operations in Afghanistan; and

(B) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

(v) Use alternate III of the clause in lieu of Alternate I of the clause in solicitations and contracts if—

(A) The acquisition is of end products listed in 225.401-70 in support of operations in Afghanistan; and

(B) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

(3) Use the clause at 252.225-7002, Qualifying Country Sources as Subcontractors, in solicitations and contracts that include the basic or one of the alternates of the following clauses:

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

(ii) 252.225-7021, Trade Agreements.

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

(4) Use the clause at 252.225-7013, Duty-Free Entry, instead of the clause at FAR 52.225-8. Do not use the clause for acquisitions of supplies that will not enter the customs territory of the United States.

(5) Use the basic or the alternate of the provision at 252.225-7020, Trade Agreements Certificate, instead of the provision at FAR 52.225-6, Trade Agreements Certificate, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services, that include the basic or alternate II of the clause at 252.225-7021, Trade Agreements. If the solicitation includes the provision at FAR 52.204-7, do not separately list the provision 252.225-7020 in the solicitation.

(i) Use the basic provision if the solicitation includes the basic clause at 252.225-7021.

(ii) Use the alternate I provision if the solicitation includes alternate II of the clause at 252.225-7021.

(6) Except as provided in paragraph (6)(iv) of this section, use the basic or an alternate of the clause at 252.225-7021, Trade Agreements, instead of the clause at FAR 52.225-5, Trade Agreements, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, if the World Trade Organization

Government Procurement Agreement applies, i.e., the acquisition is of end products listed at 225.401-70, the value of the acquisition equals or exceeds $174,000, and none of the exceptions at 25.401(a) applies.

(i) Use the basic clause in solicitations and contracts that are not of end products in support of operations in Afghanistan, or that include the clause at 252.225-7024, Requirement for Products or Services from Afghanistan.

(ii) Use the alternate II clause in solicitations and contracts that do not include the clause at 252.225-7024, Requirement for Products or Services from Afghanistan, when the acquisition is of end products in support of operations in Afghanistan.

(iii) Use the alternate III clause in lieu of the basic clause in solicitations and contracts that are not of end products in support of operations in Afghanistan or that include the clause at 252.225-7024, Requirement for Products or Services from Afghanistan , when n alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)

(iv) Use the alternate IV clause in lieu of the alternate II clause in solicitations and contracts that do not include the clause at 252.225-7024, Requirement for Products or Services from Afghanistan when—

(A) The acquisition is of end products in support of operations in Afghanistan; and

(B) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

(v) Do not use the basic or an alternate of the clause if -

(A) Purchase from foreign sources is restricted, unless the contracting officer anticipates a waiver of the restriction; or

(B) The clause at 252.225-7026, Acquisition Restricted to Products or Services from Afghanistan, is included in the solicitation and contract.

(vi) The acquisition of eligible and noneligible products under the same contract may result in the application of trade agreements to only some of the items acquired. In such case, indicate in the Schedule those items covered by the Trade Agreements clause.

(7) Use the provision at 252.225-7032, Waiver of United Kingdom Levies - Evaluation of Offers, in solicitations if a U.K. firm is expected to -

(i) Submit an offer; or

(ii) Receive a subcontract exceeding $1 million.

(8) Use the clause at 252.225-7033, Waiver of United Kingdom Levies, in solicitations and contracts if a U.K. firm is expected to -

(i) Submit an offer; or

(ii) Receive a subcontract exceeding $1 million.

(9) Use the basic or an alternate of the provision at 252.225-7035, Buy American—Free Trade

Agreements—Balance of Payments Program Certificate, instead of the provision at FAR 52.225-4, Buy American—Free Trade Agreements—Israeli Trade Act Certificate, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services,that include the basic or an alternate of the clause at 252.225-7036, Buy American—Free Trade Agreements—Balance of Payments Program.

(i) Use the basic provision in solicitations when the basic or alternate VI of the clause at 252.225-7036 is used.

(ii) Use the alternate I provision when the solicitation includes alternate I or alternate VII of the clause at 252.225-7036.

(iii) Use the alternate II provision when the solicitation includes alternate II or alternate VIII of the clause at 252.225-7036.

(iv) Use the alternate III provision when the solicitation includes alternate III or alternate IX of the clause at 252.225-7036.

(v) Use the alternate IV provision when the solicitation includes alternate IV or alternate X of the clause at 252.225-7036.

(vi) Use the alternate V provision when the solicitation includes alternate V or alternate XI of the clause at 252.225-7036.

(10)(i) Except as provided in paragraph (10)(ii) of this section, use the basic or an alternate of the clause at 252.225-7036, Buy American—Free Trade Agreements—Balance of Payments Program, instead of the clause at FAR 52.225-3, Buy American—Free Trade Agreements–Israeli Trade Act, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services,for the items listed at 225.401-70, when the estimated value is less than $174,000, unless an exception at FAR 25.401 or 225.401 applies.

(A) Use the basic clause in solicitations and contracts when the estimated value equals or exceeds $100,000, but is less than $174,000, except if the acquisition is of end products in support of operations in Afghanistan.

(B) Use the alternate I clause in solicitations and contracts when the estimated value is less than $102,280, except if the acquisition is of end products in support of operations in Afghanistan.

(C) Use the alternate II clause in solicitations and contracts when the estimated value equals or exceeds $ 100,000 but is less than $174,000, and the acquisition is of end products in support of operations in Afghanistan.

(D) Use the alternate III clause in solicitations and contracts when the estimated value is less than $102,280, and the acquisition is of end products in support of operations in Afghanistan.

(E) Use the alternate IV clause in solicitations and contracts when the estimated value equals or exceeds $102,280 but is less than 174,000, except if the acquisition is of end products in support of operations in Afghanistan.

(F) Use the alternate V clause in solicitations and contracts when the estimated value equals or exceeds $102,280but is less than $174,000 and the acquisition is of end products in support of operations in Afghanistan.

(G) Use the alternate VI clause in lieu of the basic clause in solicitations and contracts, except if the acquisition is of end products in support of operations in Afghanistan, when—

(*1*) The estimated value equals or exceeds $100,000 but is less than $174,000; and

(*2*) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

(H) Use the alternate VII clause in lieu of the alternate I clause in solicitations and contracts, except if the acquisition is of end products in support of operations in Afghanistan, when—

(*1*) The estimated value is less than $102,280; and

(*2*) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

(I) Use the alternate VIII clause in lieu of the alternate II clause in solicitations and contracts when—

(*1*) The estimated value equals or exceeds $100,000, but is less than $174,000;

(*2*) The acquisition is of end products in support of operations in Afghanistan; and

(*3*) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

(J) Use the alternate IX clause in lieu of the alternate III clause in solicitations and contracts when—

(*1*) The estimated value is less than $102,280;

(*2*) The acquisition is of end products in support of operations in Afghanistan; and

(*3*) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive in accordance with FAR 25.101(d).

(K) Use the alternate X clause in lieu of the alternate IV clause in solicitations and contracts, except if the acquisition is of end products in support of operations in Afghanistan, when—

(*1*) The estimated value equals or exceeds $102,280 but is less than $174,000; and

(*2*) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

(L) Use the alternate XI clause in lieu of the alternate V clause in solicitations and contracts when—

(*1*) The estimated value equals or exceeds $102,280 but is less than $174,000;

(*2*) The acquisition is of end products in support of operations in Afghanistan; and

(*3*) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

(ii) Do not use the basic or an alternate of the clause in paragraph (10)(i) of this section if -

(A) Purchase from foreign sources is restricted (see 225.401(a)(2)), unless the contracting officer

anticipates a waiver of the restriction;

(B) Acquiring information technology that is a commercial product, using fiscal year 2004 or subsequent funds (section 535 of Division F of the Consolidated Appropriations Act, 2004 (Pub. L. 108-199), and the same provision in subsequent appropriations acts); or

(C) Using a procedure specified in 225.7703-1(a).

(iii) The acquisition of eligible and noneligible products under the same contract may result in the application of a Free Trade Agreement to only some of the items acquired. In such case, indicate in the Schedule those items covered by the Buy American - Free Trade Agreements - Balance of Payments Program clause.

225.1103 Other provisions and clauses.

(1) Unless the contracting officer knows that the prospective contractor is not a domestic concern, use the clause at 252.225-7005 , Identification of Expenditures in the United States, in solicitations and contracts that—

(i) Exceed the simplified acquisition threshold; and

(ii) Are for the acquisition of—

(A) Supplies for use outside the United States;

(B) Construction to be performed outside the United States; or

(C) Services to be performed primarily outside the United States.

(2) Use the clause at 252.225-7041 , Correspondence in English, in solicitations and contracts when contract performance will be wholly or in part in a foreign country.

(3) Use the provision at 252.225-7042 , Authorization to Perform, in solicitations when contract performance will be wholly or in part in a foreign country. If the solicitation includes the provision at FAR 52.204-7, do not separately list the provision 252.225-7042 in the solicitation.

(4) Unless an exception in 225.770-3 applies, use the clause at 252.225-7007 , Prohibition on Acquisition of Certain Items from Communist Chinese Military Companies, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, involving the delivery of items covered by the United States Munitions List or the 600 series of the Commerce Control List.