Subpart 225.75 - BALANCE OF PAYMENTS PROGRAM

Parent topic: Part 225 - FOREIGN ACQUISITION

225.7500 Scope of subpart.

This subpart provides policies and procedures implementing the Balance of Payments Program. It applies to contracts for the acquisition of—

(a) Supplies for use outside the United States; and

(b) Construction to be performed outside the United States.

225.7501 Policy.

Acquire only domestic end products for use outside the United States, and use only domestic construction material for construction to be performed outside the United States, including end products and construction material for foreign military sales, unless—

(a) Before issuing the solicitation—

(1) The estimated cost of the acquisition or the value of a particular construction material is at or below the simplified acquisition threshold;

(2) The end product or particular construction material is—

(i) Listed in FAR 25.104;

(ii) A petroleum product;

(iii) A spare part for foreign-manufactured vehicles, equipment, machinery, or systems, provided the acquisition is restricted to the original manufacturer or its supplier;

(iv) An industrial gas;

(v) A brand drug specified by the Defense Medical Materiel Board; or

(vi) 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);

(3) The acquisition is covered by the World Trade Organization Government Procurement Agreement;

(4) The acquisition of foreign end products or construction material is required by a treaty or executive agreement between governments;

(5) Use of a procedure specified in 225.7703-1 (a) is authorized for an acquisition in support of operations in Afghanistan;

(6) The end product is acquired for commissary resale; or

(7) The contracting officer determines that a requirement can best be filled by a foreign end product or construction material, including determinations that—

(i) A subsistence product is perishable and delivery from the United States would significantly impair the quality at the point of consumption;

(ii) An end product or construction material, by its nature or as a practical matter, can best be acquired in the geographic area concerned, e.g., ice or books; or bulk material, such as sand, gravel, or other soil material, stone, concrete masonry units, or fired brick;

(iii) A particular domestic construction material is not available;

(iv) The cost of domestic construction material would exceed the cost of foreign construction material by more than 50 percent, calculated on the basis of—

(A) A particular construction material; or

(B) The comparative cost of application of the Balance of Payments Program to the total acquisition; or

(v) Use of a particular domestic construction material is impracticable;

(b) After receipt of offers—

(1) The evaluated low offer (see Subpart 225.5) is an offer of an end product that—

(i) Is a qualifying country end product;

(ii) Is an eligible product;

(iii) If the acquisition is in support of operations in Afghanistan, a South Caucasus/Central and South Asian state end product listed in 225.401-70 (see 225.7704-2); or

(iv) Is a nonqualifying country end product, but application of the Balance of Payments Program evaluation factor would not result in award on a domestic offer; or

(2) The construction material is an eligible product or, if the acquisition is in support of operations in Afghanistan, the construction material is a South Caucasus/Central and South Asian state construction material (see 225.7704-2); or

(c) At any time during the acquisition process, the head of the agency determines that it is not in the public interest to apply the restrictions of the Balance of Payments Program to the end product or construction material.

225.7502 Procedures.

If the Balance of Payments Program applies to the acquisition, follow the procedures at PGI

225.7502 .

225.7503 Contract clauses.

Unless the entire acquisition is exempt from the Balance of Payments Program—

(a) Use the basic or an alternate of the clause at 252.225-7044 Balance of Payments Program—Construction Material., Balance of Payments Program—Construction Material, in solicitations and contracts for construction to be performed outside the United States, including acquisitions of commercial products or commercial components, with an estimated value greater than the simplified acquisition threshold but less than $6,708,000.

(1) Use the basic clause unless the acquisition is in support of operations in Afghanistan.

(2) Use the alternate I clause if the acquisition is in support of operations in Afghanistan.

(3) Use the alternate II clause in lieu of the basic clause if an alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)), unless the acquisition is in support of operations in Afghanistan.

(4) Use the alternate III clause in lieu of the alternate I clause if—

(i) The acquisition is in support of operations in Afghanistan; and

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

(b) Use the basic or an alternate of the clause at 252.225-7045, Balance of Payments Program—Construction Material Under Trade Agreements, in solicitations and contracts for construction to be performed outside the United States with an estimated value of $6,708,000 or more, including acquisitions of commercial products or commercial components.

(1) Use the basic clause in solicitations and contracts with an estimated value of $13,296,489 or more, unless the acquisition is in support of operations in Afghanistan.

(2) Use the alternate I clause in solicitations and contracts with an estimated value of $6,708,000 or more, but less than $13,296,489unless the acquisition is in support of operations in Afghanistan.

(3) Use the alternate II clause in solicitations and contracts with an estimated value of $13,296,489 or more and is in support of operations in Afghanistan.

(4) Use the alternate III clause in solicitations and contracts with an estimated value of $6,708,000or more, but less than $13,296,489, and is in support of operations in Afghanistan.

(5) Use the alternate IV clause in lieu of the basic clause in solicitations and contracts, unless the acquisition is in support of operations in Afghanistan, when—

(i) The estimated value is $13,296,489 or more; and

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

(6) Use the alternate V clause in lieu of the alternate I clause in solicitations and contracts, unless the acquisition is in support of operations in Afghanistan, when—

(i) The estimated value is $6,708,000 or more, but less than $13,296,489; and

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

(7) Use the alternate VI clause in lieu of the alternate II clause in solicitations and contracts when—

(i) The estimated value is $13,296,489 or more;

(ii) The acquisition is in support of operations in Afghanistan; and

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

(8) Use the alternate VII clause in lieu of the alternate III clause in solicitations and contracts when—

(i) The estimated value is $6,708,000 or more but less than $13,296,489;

(ii) The acquisition is in support of operations in Afghanistan; and

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