Part 5125 - Foreign Acquisition

The official AFARS regulation resides on the Army's Knowledge Management Portal PAM. If you do not have CAC access to PAM, please visit the Army Contracting Enterprise's public facing website "Army Connect" at https://www.army.mil/armycontracting#org-afars. The AFARS will return to Acquisition.gov upon completion of the RFO.

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5125.070 Reporting of acquisition of end products manufactured outside the United States.

This subpart implements the Army monthly reporting requirements on Made In America Laws, in accordance with Executive Order 14005, “Ensuring the Future is Made in All of America by All of America’s Workers” and Office of Management and Budget Memorandum M-21-26, “Increasing Opportunities for Domestic Sourcing and Reducing the Need for Waivers from Made in America Laws”. Follow procedures at AFARS PGI 5125.070-1.

Subpart 5125.1 - Buy American - Supplies

5125.103 Exceptions.

(a)(ii)(B)(1) The position one level above the Contracting officer, without further delegation, shall make the determination at DFARS 225.103(a)(ii)(B)(1).

(2) The HCA shall make the determination at DFARS 225.103(a)(ii)(B)(2). See Appendix GG for

further delegation.

(3) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall make the determination at DFARS 225.103(a)(ii)(B)(3). See Appendix GG for further delegation.

(b)(ii)(A) The position one level above the Contracting officer, without further delegation, may make the determination at DFARS 225.103(b)(ii)(A).

(B) The chief of the contracting office, without further delegation, may make the determination at DFARS 225.103(b)(ii)(B).

(C) The HCA may make the determination at DFARS 225.103(b)(ii)(C). See Appendix GG for further delegation.

5125.105 Determining reasonableness of cost.

(a)(1) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall make the determination as described at FAR 25.105(a)(1). See Appendix GG for further delegation.

Subpart 5125.2 - Buy American - Construction Materials

5125.202 Exceptions.

(a)(1) *Impracticable or inconsistent with public interest.* The Assistant Secretary of the Army (Acquisition, Logistics and Technology) has delegated to the Deputy Assistant Secretary of the Army (Procurement) and the Head of the Contracting Activity (HCA), United States Army Corps of Engineers (USACE), without power to delegate further, authority to determine that the use of a particular domestic construction material is impracticable. Determinations that application of the act would be inconsistent with the public interest are reserved for the Assistant Secretary of the Army (Acquisition, Logistics and Technology). See Appendix GG .

(2) *Nonavailability.* For other materials, a nonavailability determination shall be approved at the levels specified in AFARS 5125.103(b)(ii).

5125.204 Evaluating offers of foreign construction material.

(b) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) has the authority to specify a higher percentage to the offered price as described in FAR 25.204(b). See Appendix GG for further delegation.

Subpart 5125.4- - Trade Agreements

5125.403 World Trade Organization government procurement agreement and

free trade agreements.

(c)(ii)(A) The HCA may approve the waiver as stated in DFARS 225.403(c)(ii)(A). See Appendix GG for further delegation.

Subpart 5125.6 - American Recovery and Reinvestment Act--Buy American Statute--Construction Materials

5125.603 Exceptions.

(a)(1)(i) The HCA may make the determination as described in FAR 25.603(a)(1)(i). See Appendix GG for further delegation.

(iii) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall make the determination as described in FAR 25.603(a)(1)(iii). See Appendix GG for further delegation.

(a)(2) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall make the determination as described in FAR 25.603(a)(2). See Appendix GG for further delegation.

Subpart 5125.8 - Other International Agreements and Coordination

5125.802 Procedures.

5125.802-71 End use certificates.

The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall sign end user certificates (EUCs). See Appendix GG for further delegation.

5125.870 Contracting with Canadian contractors.

5125.870-4 Contracting procedures.

(c)(2)(ii) The HCA shall make the determination at DFARS 225.870-4(c)(2)(ii). See Appendix GG for further delegation.

(5) The HCA shall make the determination at DFARS 225.870-4(c)(5). See Appendix GG for further delegation.

5125.871 North Atlantic Treaty Organization (NATO) cooperative projects.

5125.871-7 Congressional notification.

(a) Send the notification at least 30 days prior to award directly to the following address:

Deputy Assistant Secretary of the Army for Defense Exports and Cooperation

Attn: SAAL-ZN

2530 Crystal Drive, Suite 11104

Arlington, VA 22202.

(b) See paragraph (a) in this section.

Subpart 5125.9 - Customs and Duties

5125.903 Exempted supplies.

(b)(ii) The procuring Contracting officer must execute duty-free entry certificates when no administrative Contracting officer is assigned.

Subpart 5125.10 - Additional Foreign Acquisition Regulations

5125.1001 Waiver of right to examination of records.

(a)(2)(iii) The Assistant Secretary of the Army (Acquisition, Logistics and Technology), on a nondelegable basis, shall execute the determination and findings as set forth in FAR 25.1001(a)(2)(iii).

Subpart 5125.70 - Authorization Acts, Appropriations Acts, and Other Statutory Restrictions on Foreign Acquisitions

5125.7000 Scope of subpart.

5125.7000-90 Applicability to utilize a non-Army contracting activity.

Army program executive offices, program management offices and other requiring activities that utilize a non-Army contracting activity to fulfill a requirement for a covered item are responsible for ensuring compliance with DFARS PGI 225.70.

5125.7002 Restrictions on food, clothing, fabrics, and hand or measuring tools.

5125.7002-2 Exceptions.

(b)(1)(ii)(*1*) The Secretary of the Army, on a nondelegable basis, is responsible for approving all domestic nonavailability determinations under 10 U.S.C. 2533a (Berry Amendment). (See DFARS 225.7002-2(b)(1)). The Contracting officer shall not release the solicitation until the Secretary approves the determination.

(*2*) Submit all requests for an exception under this provision through procurement channels to the Deputy Assistant Secretary of the Army (Procurement) at the address located in AFARS 5101.290(b)(2)(ii)(C). Submit requests no later than 60 business days prior to the planned release of the solicitation. All requests shall fully explain why the item(s) in question cannot be procured as and when needed in a satisfactory quality and sufficient quantity at U.S. market prices. The request shall include information on whether item(s) in question are managed by the Defense Logistics Agency (DLA) and written confirmation from the DLA that said item(s) are not available from the DLA in the time needed to meet Army requirements. In addition, all requests shall include a written certification signed by the General Officer/Senior Executive Service-level head of the requiring activity that addresses, with specificity, why alternatives that would not require an exception from the Berry Amendment are unacceptable.

5125.7003 Restrictions on acquisition of specialty metals.

5125.7003-3 Exceptions.

(b)(5)(i)(*l*) The Secretary of the Army, on a nondelegable basis, is responsible for approving all domestic nonavailability determinations under 10 U.S.C. 2533b that apply to only one contract. (See DFARS 225.7003-3(b)(5)(i).) The Under Secretary of Defense (Acquisition, Technology and Logistics) (USD(AT&L)), on a nondelegable basis, is responsible for approving determinations that apply to more than one contract, see DFARS 225.7003-3(b)(5)(ii). The USD(AT&L), on a nondelegable basis, is responsible for approving national security waivers under DFARS 225.7003-3(d). In all cases, the Contracting officer shall not release the solicitation until the Secretary approves the determination.

(*2*) Follow the procedures at AFARS 5125.7002-2 when submitting a request for an exception to restrictions on acquisition of specialty metals.

5125.7008 Waiver of restrictions of 10 U.S.C. 2534.

(a)(2) The HCA may waive a restriction as stated in DFARS 225.7008(a)(2). See Appendix GG for further delegation.

Subpart 5125.73 - Acquisitions for Foreign Military Sales

5125.7301 General.

5125.7301-1 Requirement to use firm-fixed-price contracts.

D efense P ricing and C ontracting Class Deviation 2020-O0003— Use of Fixed-Price Contracts for Foreign Military Sales valid through December 31, 2020.

(b) The chief of the contracting office shall waive the requirement as described in DFARS 225.7301-1(a). See Appendix GG .

Subpart 5125.77 - Acquisitions in Support of Operations in Afghanistan

5125.7703 Enhanced authority to acquire products or services from Afghanistan.

5125.7703-2 Determination requirements.

(b)(2)(i) The HCA is authorized to make the determination at DFARS 225.7703-2(b)(2)(i). See Appendix GG for further delegation.