PART 925—FOREIGN ACQUISITION

Authority: 42 U.S.C. 7101 and 50 U.S.C. 2401

Source: 49 FR 12003, Mar. 28, 1984, unless otherwise noted.

Subpart 925.1—Buy American Act—Supplies

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Parent topic: SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

Subpart 925.1—Buy American Act—Supplies

925.103 Exceptions.

(b) *Nonavailabilty*—(2)(i) *Individual determinations.* Contracting officers may make the

determination required by 48 CFR 25.103(b)(2)(i), provided such determination is factually supported in writing. If the contract is estimated to exceed $1 million, the Head of the Contracting Activity must approve the determination.

(ii) Proposals to add an article to the list of nonavailable articles at 48 CFR 25.104, with appropriate justifications, must be submitted for approval by the Senior Procurement Executive and submission to the appropriate council.

Subpart 925.2—Buy American Act—Construction Materials

925.202 Exceptions.

(a)(2) Contracting officers may make the determination required by 48 CFR 25.202(a)(2), if the cost of the materials is not expected to exceed $100,000.

Subpart 925.7—Prohibited Sources

925.701-70 Prohibited sources.

No contract may be awarded to a company owned by an entity controlled by a foreign government if performance of the contract will require access to proscribed information. See subpart 904.71 for additional guidance.

Subpart 925.9 [Reserved]

Subpart 925.10—Additional Foreign Acquisition Regulations

925.1001 Waiver of right to examination of records.

(b) *Determination and findings.* A determination and findings required by FAR 25.1001(b) shall be forwarded to either the Director, Office of Contract Management, Office of Acquisition Management, or for the National Nuclear Security Administration (NNSA), to the Deputy Associate Administrator for the Office of Partnership and Acquisition Services, for coordination of the Secretary's approval.

Subpart 925.70—Acquisition of Nuclear Hot Cell Services

Source: 58 FR 8910, Feb. 18, 1993, unless otherwise noted.

925.7000 Scope of subpart.

This subpart prescribes policies for selection for contract award of nuclear hot cell services when one of the competitors is a foreign company. This subpart does not apply to the acquisition and use of nuclear hot cell facilities on-site at a DOE-owned or -leased facility.

925.7001 Definitions.

Costs related to the decommissioning of nuclear facilities, as used in this subpart, means any cost associated with the compliance with regulatory requirements governing the decommissioning of nuclear facilities licensed by the Nuclear Regulatory Commission. Such costs for foreign facilities and for Department of Energy facilities are costs of decommissioning associated with the compliance with foreign regulatory requirements or the Department's own requirements.

Costs related to the storage and disposal of nuclear waste, as used in this subpart, means any costs, whether required by regulation or incurred as a matter of prudent business practice, associated with the storage or disposal of nuclear waste.

Foreign company, as used in this subpart, means a company which offers to perform nuclear hot cell services at a facility which is not subject to the laws and regulations of the United States, its agencies, and its political subdivisions.

Nuclear hot cell services, as used in this subpart, means services related to the examination of, or performance of various operations on, nuclear fuel rods, control assemblies, or other components that are emitting large quantities of ionizing radiation, after discharge from nuclear reactors, which are performed in specialized facilities located away from commercial nuclear power plants, generally referred to in the industry as “hot cells.”

Nuclear waste, as used in this subpart, means any radioactive waste material subject to regulation by the Nuclear Regulatory Commission or the Department of Energy, or in the case of foreign offers, by comparable foreign organizations.

United States company, as used in this subpart, means a company which offers to perform nuclear hot cell services at a facility subject to the laws and regulations of the United States, its agencies, and its political subdivisions.

925.7002 Policy.

In selecting offer(s) for award of contracts for nuclear hot cell services, costs related to the decommissioning of nuclear facilities and storage and disposal of nuclear waste are to be considered in a way which affords United States and foreign companies an equal competition in accordance with 925.7003. Upon determining that no offer from a foreign firm has a reasonable chance of being selected for award, the requirements of this subpart will not apply.

925.7003 Requirements.

(a) For the acquisition of nuclear hot cell services under the conditions in paragraph (b) of this

section, the selection official in evaluating competitive offers for selection purposes only shall—

(1) Consider neither costs related to the decommissioning of nuclear waste facilities nor costs related to the storage and disposal of nuclear waste; or

(2) Add these costs to offers of foreign companies.

(b) The requirements of this section apply under the following circumstances—

(1) One or more of the offers is submitted by a United States company and includes costs related to the decommissioning of nuclear facilities and costs related to the storage and disposal of nuclear waste because it is subject to such costs; and

(2) One or more of the offers is submitted by a foreign company and does not include these types of costs. (A foreign company might not be subject to such costs or might not have to include these types of costs in its offer if the firm is subsidized in decommissioning activity or storage and disposal of nuclear waste, or a foreign government is performing the activities below the actual cost of the activity.)

925.7004 Contract clause.

The contracting officer shall insert the clause at 952.225-70, Subcontracting for Nuclear Hot Cell Services, in solicitations and contracts involving nuclear hot cell services. This clause does not flow down to second-tier subcontracts.

Subpart 925.71—Export Control

Source: 80 FR 64367, Oct. 23, 2015, unless otherwise noted.

925.7100 Scope of subpart.

This subpart implements Department of Energy (DOE) requirements for contractors concerning compliance with U.S. export control laws and regulations.

925.7101 Policy.

(a) DOE and its contractors must comply with all applicable U.S. export control laws and regulations.

(b) Export control laws and regulations include, but are not limited to, the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*), as amended; the Arms Export Control Act (22 U.S.C. 2751 *et seq.*); the Export Administration Act of 1979 (50 U.S.C. app. 2401 *et seq.*), as continued under the International Emergency Economic Powers Act (Title II of Pub. L. 95-223, 91 Stat. 1626, October 28, 1977; 50 U.S.C. 1701 *et seq.*); Trading with the Enemy Act (50 U.S.C. App. 5(b), as amended by the Foreign Assistance Act of 1961); Assistance to Foreign Atomic Energy Activities (Title 10 of the Code of Federal Regulations (CFR) Part 810); Export Administration Regulations (15 CFR parts 730 through 774); International Traffic in Arms Regulations (22 CFR parts 120 through 130); Export and

Import of Nuclear Equipment and Material (10 CFR part 110); and regulations administered by the Office of Foreign Assets Control of the Department of the Treasury (31 CFR parts 500 through 598).

(c) Contractors seeking guidance on how to comply with export control laws and regulations should review the illustrative list of laws and regulations set forth in Clause 952.225-71. Contractors also may contact the agencies responsible for administration of export laws or regulations applicable to a particular export (*e.g.,* Departments of State, Commerce, Treasury and Energy, or the Nuclear Regulatory Commission).

(d) DOE Contracting Officers will not answer contractor questions regarding how to comply with U.S. export laws and regulations. Contracting Officers should direct contractors to the export laws, regulations, and agencies cited in the Export Clause at section 952.225-71 of this subpart.

(e) It is the contractor's responsibility to comply with all applicable export control laws and regulations. This responsibility exists independent of, and is not established or limited by, this subpart.

925.7102 Contract clause.

The Contracting Officer shall insert the clause at 952.225-71, Compliance with Export Control Laws and Regulations (Export Clause), in all solicitations and contracts.