MP5325 - Foreign Acquisitions

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DAF Contracting Compass Part 25

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MP5325.1 — BUY AMERICAN - SUPPLIES

MP5325.103 Exceptions

(a) When a determination of nonavailability is required by FAR 25.103(b) and DFARS 225.103(b)(i), the contracting officer must prepare a request for nonavailability determination for approval. See MP5301.601(a)(i) for approval authority. Each request should identify the proposed acquisition by applicable purchase request or contract number and include:

(1) A description of the articles intended to be acquired, manufacturer's name and address, model number, and specific information pertaining to special features, performance, versatility, etc.;

(2) A statement of the efforts made to secure either the article required or suitable substitutes from domestic sources. List all domestic sources contacted or provide reasons why domestic sources were not contacted. Additionally, list reasons, if known, why domestic sources contacted could not or would not furnish required articles or suitable substitutes;

(3) The name and address of the proposed source (if other than the manufacturer, state reason(s) why direct purchase or purchase through an overseas contract activity is not feasible);

(4) The reason why purchase of foreign material or from a foreign source is necessary. Identify and explain the specific portion of the mission or requirement, which is of such magnitude as to override consideration to procure a domestic source end product;

(5) A description of the end use of item to be purchased and a brief description of the special function to be accomplished, such as performance of special tests or research work;

(6) The identity of the purchaser;

(7) The citation of the applicable appropriation;

(8) When the proposed purchaser of the articles intended to be acquired is not a Government agency but is a Department of the Air Force contractor, provide the contract number, the contract type, and indicate what the disposition of the articles will be at contract completion;

(9) Whether or not payment is intended to be made before delivery is accomplished; and

(10) The estimated foreign, domestic, and total cost of the proposed acquisition.

(b) In the case of inter-command acquisitions, compliance with the Buy American Statute and Balance of Payments evaluation procedures (DFARS 225.5) is the responsibility of the contracting command, except when the requiring command specifies a foreign end product, in which case, the determination is the responsibility of the requiring command.

(c) When overseas contracting support is needed, CONUS contracting activities should contact the following:

(1) In Japan (excluding Okinawa):

374 CONS/CC

Unit 5228

APO AP 96328-5228

DSN 315-225-7099

(2) In Okinawa:

18 CONS/CC

Unit 5199

APO AP 96368-5199

DSN 315-634-1828

(3) In Europe:

AFICA/KU (OLAFE)

Unit 3103

APO AE 09094-3103

DSN 314-480-5910

(d) CONUS contracting activities requesting contracting support should provide, as a minimum, the information specified below to the appropriate overseas contracting activity. Contracting activities will treat all requests for contracting support on a priority basis. The requesting activity will provide:

(1) A purchase request with description of the requirement including definitive specifications free of any defects that would otherwise preclude immediate contracting action;

(2) Instructions for packaging, packing, and preservation, and special instructions dictated by the nature of the commodity to be purchased, if necessary;

(3) An executed Buy American Statute Determination (DFARS 225.103(b)(i)) if the item is not exempted;

(4) A specification or purchase description suitable for obtaining full and open competition, or necessary information, certified as complete and accurate in accordance with FAR 6.303 to support any recommendation for use of other than full and open competition;

(5) The obligation authority;

(6) The mailing address and telephone number of a single point of contact;

(7) Transportation, routing, or shipping instructions. If the foreign contractor will be required to ship requirements to multiple CONUS-based consignees, detailed shipping instructions concerning each consignee will be provided to the overseas procuring activity; and

(8) Any special distribution requirements for the contractual documents required beyond the normal distribution.

(e) Overseas contracting activities providing courtesy contracting support to CONUS-based requiring activities will, after determining all submitted documentation to be adequate, proceed with the acquisition using the certificate of conformance when appropriate. The AFO supporting the overseas contracting activity should make payments on all transactions. The CONUS requiring base should respond expeditiously to any requests of the overseas contracting activity.

MP5325.70 — AUTHORIZATION ACTS, APPROPRIATIONS ACTS, AND OTHER STATUTORY RESTRICTIONS ON FOREIGN ACQUISITION

MP5325.7002-2 - Exceptions

MP5325.7002-2-1. Domestic Non-Availability Determinations (DNAD) Under DFARS 225.7002

MP5325.7002-2-2. DNAD Exception

MP5325.7002-2-1. Domestic Non-Availability Determinations (DNAD) Under DFARS

225.7002

Follow these mandatory procedures when requesting approval to purchase restricted items under DFARS 225.7002; for example, food, clothing, tents, tarpaulins, covers, cotton, and hand or measuring tools. The requirement to comply with these statutory and regulatory restrictions applies to procurements in excess of $150,000. This MP provides assistance in determining the applicability of restrictions when drafting a DNAD. A DNAD must be tailored to your acquisition. In some cases, it may not be possible to obtain all of the data specified in the DNAD template; however, contracting officers should make every effort to do so. See DFARS 225.7002 for the entire list.

MP5325.7002-2-2. DNAD Exception

a. Individual DNADs

When a contractor asserts that a domestic item identified at DFARS 225.7002-1 cannot be acquired as and when needed in a satisfactory quality and sufficient quantity at U.S. market prices, a DNAD is required. The SecAF may approve the DNAD if compliant items, identified at DFARS 225.7002-1, of satisfactory quality and sufficient quantity, and in the required form, cannot be procured at U.S. market prices as and when needed. This approval authority is not delegable. This exception should not be read to require that the compliant material/item must be totally unavailable (i.e., cannot be obtained at any cost). There is some cost limit that should be recognizable by a contracting officer, and that a reasonable person would agree, makes the material/item effectively “unavailable.”

b. Class DNADs

Contracting officers may continue to use OUSD (A&S)-approved class DNADs that cover food, clothing, fabrics, and hand or measuring tools for new contracts if the DNAD was signed by the Undersecretary of Defense (OUSD) (A&S) bya Service Secretary, or by the Director of Defense Logistics Agency. The OUSD (A&S) DNADs currently available for reciprocal use are posted on the DCMA website. If a class DNAD is used, the contracting officer must prepare a Determination and Finding (D&F) approved by the SCO. This approval may not be further delegated. The contracting officer must obtain legal review to support the determination.

MP5325.7003-3 - Exceptions

MP5325_7003_3_1 Domestic Non-Availability Determinations (DNAD) Under DFARS 225.7003

MP5325_7003_3_2 Applicability of Commercial Derivative Military Articles (CDMA) to Specialty Metals

MP5325_7003_3_3 DNAD Exception

MP5325_7003_3_1 Domestic Non-Availability Determinations (DNAD) Under DFARS 225.7003

Follow these mandatory procedures (MP) when requesting approval to purchase restricted specialty metals under DFARS 225.7003. The requirement to comply with these statutory and regulatory

restrictions applies to procurements in excess of the simplified acquisition threshold. This MP provides guidance for drafting DNAD and Commercial Derivative Military Article (CDMA) Determination and Finding (D&F) documents. The DNAD or CDMA D&Fs should be tailored to the particular acquisition. In some cases, the contracting officer may not be able to obtain all of the data specified in the templates referenced below; however, the contracting officer should make every effort to do so.

MP5325_7003_3_2 Applicability of Commercial Derivative Military Articles (CDMA) to Specialty Metals

When a program office concludes that an item to be delivered under a prime contract is a commercial derivative military article (as defined at DFARS 252.225-7009) and the prime contractor provides the certification required at DFARS 252.225-7010, the contracting officer must prepare a CDMA D&F.

MP5325_7003_3_3 DNAD Exception

When a program office concludes that domestically melted or produced specialty metal cannot be procured (as described in DFARS 225.7003-3(b)(5)) to support the production of a particular end item or component, the contracting officer must prepare a DNAD D&F for specialty metals. The SecAF may approve a DNAD for an individual contract if a compliant specialty metal of satisfactory quality and sufficient quantity, and in the required form, cannot be procured as and when needed at a fair and reasonable price. This approval authority is not delegable. A Class DNAD requires the approval of the USD(A&S).