

SUBPART 225.1--BUY AMERICAN ACT--SUPPLIES

(Revised January 15, 1999)

225.102 Policy.

(a)(2) The cost of a domestic end product is unreasonable if it is not the low evaluated offer when evaluated under 225.105.

(3)(A) Specific public interest exceptions for DoD for certain countries are in 225.872.

(B) The Under Secretary of Defense (Acquisition and Technology) has determined that, for procurements subject to the Trade Agreements Act, it is inconsistent with the public interest to apply the Buy American Act to information technology products in Federal Supply Group 70 or 74 that are substantially transformed in the United States.

(C) Normally, use the evaluation procedures in 225.105, but consider recommending a public interest exception where the purposes of the Buy American Act are not served, or in order to meet a need set forth in 10 U.S.C. 2533. For example, a public interest exception may be appropriate—

(1) If accepting the low domestic offer will involve substantial foreign expenditures, or accepting the low foreign offer will involve substantial domestic expenditures;

(2) To ensure access to advanced state-of-the-art commercial technology; or

(3) To maintain the same source of supply for spare and replacement parts (also see paragraph (b)(iii)(B) of this section)—

(i) For an end item that qualifies as an American good; or

(ii) In order not to impair integration of the military and commercial industrial base.

(D) A determination whether to grant a public interest exception shall be made after consideration of the factors in 10 U.S.C. 2533—

(1) At a level above the contracting officer for acquisitions valued at less than \$100,000;

(2) By the head of the contracting activity for acquisitions valued at \$100,000 or more but less than \$1,000,000; or

(3) By the agency head for acquisitions valued at \$1,000,000 or more.

(b)(i) A determination that an article, material, or supply is not reasonably available is required where no domestic offer is received or when domestic offers are

Defense Federal Acquisition Regulation Supplement

Part 225—Foreign Acquisition

insufficient to meet the requirement and award is to be made on a nonqualifying country end product.

(ii) Except as provided in FAR 25.102(b)(1), the determination must be approved—

(A) At a level above the contracting officer, if the acquisition is estimated not to exceed \$25,000;

(B) By the chief of the contracting office if the acquisition is estimated not to exceed \$250,000;

(C) By the head of the contracting activity (HCA) or immediate deputy if the acquisition is estimated not to exceed \$2 million; or

(D) By the head of the agency, or designee at a level no lower than an HCA, if the acquisition is estimated to exceed \$2 million.

(iii) A determination as to whether an article, material, or supply is reasonably available is not required for—

(A) End products or components listed in 225.108(d)(1) or FAR 25.108(d)(1);

(B) Acquisitions for spare/replacement parts when the acquisition is restricted to the original manufacturer or supplier; or

(C) Acquisition of foreign drugs by the Defense Personnel Support Center when the Chief of the Technical Operations Division, Directorate of Medical Materiel, determines that only the requested foreign drug will fulfill the requirements.

(iv) Under coordinated acquisition (see 208.70), the determination is the responsibility of the requiring department when the requiring department specifies acquisition of a foreign end product.

225.103 Agreements with certain foreign governments.

See 225.872.

225.105 Evaluating offers.

Use the following procedures instead of those in FAR 25.105. These procedures do not apply to acquisitions of information technology end products in Federal Supply Group 70 or 74 that are subject to the Trade Agreements Act.

(1) Treat offers of eligible end products under acquisitions subject to the Trade Agreements Act or NAFTA as if they were qualifying country offers. As used in this section, the term “nonqualifying country offer” may also apply to an offer that is not an eligible offer under a trade agreement (see Example 4 in Table 25-1, Evaluation).

(2) Except as provided in paragraph (3) of this section, evaluate offers by adding a 50 percent factor to the price (including duty) of each nonqualifying country offer (see Example 1 in Table 25-1, Evaluation).

Defense Federal Acquisition Regulation Supplement

Part 225—Foreign Acquisition

(i) Nonqualifying country offers include duty in the offered price. When applying the factor, evaluate based on the inclusion of duty, whether or not duty is to be exempted. If award is made on the nonqualifying country offer and duty is to be exempted through inclusion of the clause at FAR 52.225-10, Duty-Free Entry, award at the offered price minus the amount of duty identified in the provision at 252.225-7003, Information for Duty-Free Entry Evaluation. See Example 1, Alternate II, in Table 25-1, Evaluation.

(ii) When a nonqualifying country offer includes more than one line item, apply the 50 percent factor—

(A) On an item-by-item basis; or

(B) On a group of items, if the solicitation specifically provides for award on a group basis.

(3) When application of the factor would not result in the award of a domestic end product, i.e., when no domestic offers are received (see Example 3 of Table 25-1, Evaluation) or when a qualifying country offer is lower than the domestic offer (see Example 2 of Table 25-1, Evaluation), evaluate nonqualifying country offers without the 50 percent factor.

(i) If duty is to be exempted through inclusion of the clause at FAR 52.225-10, Duty-Free Entry, evaluate the nonqualifying country offer exclusive of duty by reducing the offered price by the amount of duty identified in the clause at 252.225-7003, Information for Duty-Free Entry Evaluation (see Examples 2 and 3, Alternate II, of Table 25-1, Evaluation). If award is made on the nonqualifying country offer, award at the offered price minus duty.

(ii) If duty is not to be exempted, evaluate the nonqualifying country offer inclusive of duty. (See Examples 2 and 3, Alternate I, of Table 25-1, Evaluation.)

(4) If these evaluation procedures result in a tie between a nonqualifying country offer and a domestic offer, make award on the domestic offer.

(5)(i) There are two tests that must be met to determine whether a manufactured item is a domestic end product—

(A) The end product must have been manufactured in the United States; and

(B) The cost of its U.S. and qualifying country components must exceed 50 percent of the cost of all of its components. This test is applied to end products only, and not to individual components.

(ii) Because of the component test, the definition of “domestic end product” is more restrictive than the definition for—

(A) “U.S. made end product” under trade agreements;

(B) “Domestically produced or manufactured products” under small business set-asides or small business reservations; and

Defense Federal Acquisition Regulation Supplement

Part 225—Foreign Acquisition

(C) Products of small businesses under FAR Part 19.

(iii) If an offer is for a “U.S. made end product,” “domestically produced end product,” or the product of a small business, but is not a “domestic end product” as defined in the clause at 252.225-7001, Buy American Act and Balance of Payments Program, treat the offer as a nonqualifying country offer. (See Example 4 of Table 25-1, Evaluation.)

TABLE 25-1, EVALUATION

Example 1

Alternate I: Duty Not Exempted for Nonqualifying Country Offers:

Nonqualifying Country Offer (including \$100 duty)	\$ 6,000
Domestic Offer	8,900
Qualifying Country Offer	9,100

Award on Domestic Offer. The 50% evaluation factor is added to the nonqualifying country offer, inclusive of duty, yielding an evaluated price of \$9,000.

Alternate II: Duty Exempted:

Nonqualifying Country Offer (including \$1,000 duty)	\$ 600,000
Domestic Offer	910,000
Qualifying Country Offer	920,000

Award on Nonqualifying Country Offer. The addition of the evaluation factor yields an evaluated price of \$900,000. Since duty is being exempted for nonqualifying country offers, the duty is subtracted from the offered price which is awarded at \$599,000.

Example 2

Alternate I: Duty Not Exempted for Nonqualifying Country Offers:

Nonqualifying Country Offer (including \$100 duty)	\$ 6,000
Domestic Offer	8,500
Qualifying Country Offer	7,800

Award on Nonqualifying Country Offer. Since the qualifying country offer is lower than the domestic offer, the nonqualifying country offer is evaluated without the factor. Since duty is not being exempted for nonqualifying country offers, the offer is evaluated and award is made at the price inclusive of duty (\$6,000).

Alternate II: Duty Exempted:

Nonqualifying Country Offer (including \$1,000 duty)	\$ 880,500
Domestic Offer	950,000
Qualifying Country Offer	880,000

Defense Federal Acquisition Regulation Supplement

Part 225—Foreign Acquisition

Award on Nonqualifying Country Offer. Again, the qualifying country offer is lower than the domestic offer. The nonqualifying country offer is, therefore, evaluated without the factor. Since duty is being exempted for nonqualifying country offers, the duty identified by the offeror is subtracted from the offered price, which is evaluated and awarded at \$879,500.

Example 3

Alternate I: Duty Not Exempted for Nonqualifying Country Offers:

Nonqualifying Country Offer (including \$150 duty)	\$ 9,600
Qualifying Country Offer	9,500

Award on Qualifying Country Offer. Since no domestic offers are received, the nonqualifying country offer is evaluated without the evaluation factor. Since duty is not being exempted and would be paid by the Government, the nonqualifying country offer is evaluated inclusive of duty.

Alternate II: Duty Exempted:

Nonqualifying Country Offer (including \$1,000 duty)	\$ 880,500
Qualifying Country Offer	880,000

Award on Nonqualifying Country Offer. Since no domestic offers are received, the nonqualifying country offer is evaluated without the evaluation factor. Since duty is being exempted, duty is subtracted from the nonqualifying country offer, which is evaluated and awarded at \$879,500.

Example 4

Alternate I:

Offer of U.S. Made End Product which is not a Domestic Offer	\$ 800,000
Domestic Offer	820,000
Eligible Product	830,000

Award on Domestic End Product. U.S. made end products which are not also domestic end products are evaluated the same as nonqualifying country end products. Adding the 50% evaluation factor yields an evaluated price of \$1,200,000.

Alternate II:

Offer of U.S. Made End Product which is not a Domestic Offer	\$ 800,000
Eligible Product	820,000
Domestic Offer	830,000

Award on U.S. Made End Product. Adding the 50% evaluation factor to the U.S. made end product would not result in the award of a domestic end product since the eligible product, which is evaluated the same as a qualifying country offer, is lower. All offers are evaluated without the factor.

Part 225—Foreign Acquisition

225.107 Acquisition from or through other Government agencies.

Contracting activities must apply the evaluation procedures in 225.105 when using Federal supply schedules.

225.108 Excepted articles, materials, and supplies.

(a)(i) DoD has determined that the articles, materials, and supplies listed in FAR 25.108(d)(1) and in paragraph (d)(1) of this section, when purchased as end items or components, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. Regard these items or components as being of domestic origin when incorporated in—

(A) An end product or construction material manufactured in the United States; or

(B) A qualifying country end product or construction material. (For construction material, see FAR 25.2.)

(ii) Scrap is domestic in origin if generated in, collected in, and prepared for processing in the United States.

(d)(1) Aluminum clad steel wire.
Sperm oil.

225.109 Solicitation provisions and contract clauses.

(a) Use the provision at 252.225-7000, Buy American Act--Balance of Payments Program Certificate, instead of the provisions at FAR 52.225-1, Buy American Certificate, and FAR 52.225-6, Balance of Payments Program Certificate. Use the provision in any solicitation that includes the clause at 252.225-7001, Buy American Act and Balance of Payments Program.

(b) For oral solicitations inform prospective vendors that only domestic and qualifying country end products are acceptable, except nonqualifying country end products are acceptable if—

(i) The items are excepted either on a blanket or an individual basis; or

(ii) The price of the nonqualifying country end product is the low offer under the evaluation procedures in 225.105.

(d) Use the clause at 252.225-7001, Buy American Act and Balance of Payments Program, instead of the clauses at FAR 52.225-3, Buy American Act--Supplies, and FAR 52.225-7, Balance of Payments Program, in solicitations and contracts for supplies or services that require the furnishing of supplies.

(i) Do not use the clause if an exception to the Buy American Act or Balance of Payments Program is known to apply or if using the clause at 252.225-7007, Buy American Act--Trade Agreements--Balance of Payments Program; 252.225-7021, Trade Agreements; or 252.225-7036, Buy American Act--North American Free Trade Agreement Implementation Act--Balance of Payments Program.

Defense Federal Acquisition Regulation Supplement

Part 225—Foreign Acquisition

(ii) The clause need not be used if nonqualifying country end products are ineligible for award, including—

(A) End products restricted to domestic or domestic and qualifying country sources under Appropriations and Authorization Act restrictions (see 225.70);

(B) End products restricted to domestic or domestic and Canadian sources (see 225.71); and

(C) End products restricted under the authority of FAR 6.302-3.

(iii) The clause may be used if the contracting officer anticipates a waiver of the restrictions in paragraphs (d)(ii)(A) or (B) of this section.

225.109-70 Additional provisions and clauses.

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

(1) 252.225-7001, Buy American Act and Balance of Payments Program.

(2) 252.225-7007, Buy American Act--Trade Agreements--Balance of Payments Program.

(3) 252.225-7021, Trade Agreements.

(4) 252.225-7036, Buy American Act--North American Free Trade Agreement Implementation Act--Balance of Payments Program.

(b) When only domestic end products are acceptable, the solicitation must make a statement to that effect.