

## Federal Acquisition Regulation

25.702-4

(2) Does not include business operations that the person (as that term is defined in Section 2 of the Sudan Accountability and Divestment Act of 2007) conducting the business can demonstrate—

(i) Are conducted under contract directly and exclusively with the regional government of southern Sudan;

(ii) Are conducted pursuant to specific authorization from the Office of Foreign Assets Control in the Department of the Treasury, or are expressly exempted under Federal law from the requirement to be conducted under such authorization;

(iii) Consist of providing goods or services to marginalized populations of Sudan;

(iv) Consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;

(v) Consist of providing goods or services that are used only to promote health or education; or

(vi) Have been voluntarily suspended.

[64 FR 72419, Dec. 27, 1999, as amended at 74 FR 40465, Aug. 11, 2009]

### 25.702-2 Certification.

As required by the Sudan Accountability and Divestment Act of 2007 (Pub. L. 110-174), each offeror must certify that it does not conduct restricted business operations in Sudan.

### 25.702-3 Remedies.

Upon the determination of a false certification under subsection 25.702-2—

(a) The contracting officer may terminate the contract;

(b) The suspending official may suspend the contractor in accordance with the procedures in Subpart 9.4; and

(c) The debarring official may debar the contractor for a period not to exceed 3 years in accordance with the procedures in Subpart 9.4.

### 25.702-4 Waiver.

(a) The President may waive the requirement of subsection 25.702-2 on a case-by-case basis if the President determines and certifies in writing to the appropriate congressional committees that it is in the national interest to do so.

(b) An agency seeking waiver of the requirement shall submit the request to the Administrator of the Office of Federal Procurement Policy (OFPP), allowing sufficient time for review and approval. Upon receipt of the waiver request, OFPP shall consult with the President's National Security Council, Office of African Affairs, and the Department of State Sudan Office and Sanctions Office to assess foreign policy aspects of making a national interest recommendation.

(c) Agencies may request a waiver on an individual or class basis; however, waivers are not indefinite and can be cancelled if warranted.

(1) A class waiver may be requested only when the class of supplies is not available from any other source and it is in the national interest.

(2) Prior to submitting the waiver request, the request must be reviewed and cleared by the agency head.

(3) All waiver requests must include the following information:

(i) Agency name, complete mailing address, and point of contact name, telephone number, and email address;

(ii) Offeror's name, complete mailing address, and point of contact name, telephone number, and email address;

(iii) Description/nature of product or service;

(iv) The total cost and length of the contract;

(v) Justification, with market research demonstrating that no other offeror can provide the product or service and stating why the product or service must be procured from this offeror, as well as why it is in the national interest for the President to waive the prohibition on contracting with this offeror that conducts restricted business operations in Sudan, including consideration of foreign policy aspects identified in consultation(s) pursuant to 25.702-4(b);

(vi) Documentation regarding the offeror's past performance and integrity (see the Past Performance Information Retrieval System including the Federal Awardee Performance Information and Integrity System at <http://www.ppirs.gov> and any other relevant information);

(vii) Information regarding the offeror's relationship or connection

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with other firms that conduct prohibited business operations in Sudan; and

(viii) Any humanitarian efforts engaged in by the offeror, the human rights impact of doing business with the offeror for which the waiver is requested, and the extent of the offeror's business operations in Sudan.

(d) The consultation in 25.702-4(b) and the information in 25.702-4(c)(3) will be considered in determining whether to recommend that the President waive the requirement of subsection 25.702-2. In accordance with section 6(c) of the Sudan Accountability and Divestment Act of 2007, OFPP will semiannually submit a report to Congress, on April 15th and October 15th, on the waivers granted.

[73 FR 33638, June 12, 2008, as amended at 76 FR 68038, Nov. 2, 2011]

### **25.703 Prohibition on contracting with entities that engage in certain activities relating to Iran.**

#### **25.703-1 Definitions.**

As used in this section—

*Person*—

(1) Means—

(i) A natural person;

(ii) A corporation, business association, partnership, society, trust, financial institution, insurer, underwriter, guarantor, and any other business organization, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise; and

(iii) Any successor to any entity described in paragraph (1)(ii) of this definition; and

(2) Does not include a government or governmental entity that is not operating as a business enterprise.

*Sensitive technology*—

(1) Means hardware, software, telecommunications equipment, or any other technology that is to be used specifically—

(i) To restrict the free flow of unbiased information in Iran; or

(ii) To disrupt, monitor, or otherwise restrict speech of the people of Iran; and

(2) Does not include information or informational materials the export of which the President does not have the authority to regulate or prohibit pur-

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suant to section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)(3)).

[75 FR 60256, Sept. 29, 2010, as amended at 76 FR 68030, Nov. 2, 2011; 77 FR 23368, Apr. 18, 2012]

### **25.703-2 Iran Sanctions Act.**

(a) *Certification.* (1) As required by the Iran Sanctions Act (50 U.S.C. 1701 note), unless an exception applies in accordance with paragraph (c) of this section, or a waiver is granted in accordance with 25.703-4, each offeror must certify that the offeror, and any person owned or controlled by the offeror, does not engage in any activity for which sanctions may be imposed under section 5 of the Iran Sanctions Act.

(2) In general, the following activities, which are described in detail in section 5 of the Iran Sanctions Act, are activities for which sanctions may be imposed on or after July 1, 2010—

(i) Knowingly making an investment of \$20,000,000 or more, or a combination of investments of \$5,000,000 or more that equal or exceed \$20,000,000 in a 12-month period, that directly and significantly contribute to the enhancement of Iran's ability to develop petroleum resources.

(ii) Knowingly selling, leasing or providing to Iran goods, services, technology, information, or support with a fair market value of \$1,000,000 or more, or during a 12-month period with an aggregate fair market value of \$5,000,000 or more, that could directly and significantly facilitate the maintenance or expansion of Iran's domestic production of refined petroleum products, including any direct and significant assistance with respect to the construction, modernization, or repair of petroleum refineries.

(iii) Knowingly selling or providing to Iran refined petroleum products with a fair market value of \$1,000,000 or more, or during a 12-month period with an aggregate fair market value of \$5,000,000 or more.

(iv) Knowingly selling, leasing, or providing to Iran goods, services, technology, information, or support with a fair market value of \$1,000,000 or more, or during a 12-month period with an aggregate fair market value of \$5,000,000