

225.408

(B) The Commander or Director, Defense Energy Support Center, may approve national interest waivers for purchases of fuel for use by U.S. forces overseas; or

(iii) The acquisition is in support of operations in Afghanistan (see 225.7704-1).

[68 FR 15619, Mar. 31, 2003, as amended at 70 FR 2363, Jan. 13, 2005; 75 FR 81916, Dec. 29, 2010; 76 FR 76320, Dec. 7, 2011]

225.408 Procedures.

(a)(4) The requirements of FAR 25.408(a)(4), on submission of offers in U.S. dollars, do not apply to overseas acquisitions or to Defense Energy Support Center post, camp, or station overseas requirements.

[70 FR 73154, Dec. 9, 2005]

Subpart 225.5—Evaluating Foreign Offers—Supply Contracts

SOURCE: 68 FR 15620, Mar. 31, 2003, unless otherwise noted.

225.502 Application.

(a) Whenever the acquisition is in support of operations in Afghanistan, treat the offers of end products from South Caucasus or Central and South Asian states listed in 225.401-70 the same as qualifying country offers.

(b) Use the following procedures instead of the procedures in FAR 25.502(b) for acquisitions subject to the World Trade Organization Government Procurement Agreement:

(i) Consider only offers of U.S.-made, qualifying country, or designated country end products, except as permitted by 225.403 or 225.7703-1.

(ii) If price is the determining factor, award on the low offer.

(c) Use the following procedures instead of those in FAR 25.502(c) for acquisitions subject to the Buy American statute or the Balance of Payments Program:

(i)(A) If the acquisition is subject only to the Buy American or Balance of Payments Program, then only qualifying country end products are exempt from application of the Buy American or Balance of Payments Program evaluation factor.

48 CFR Ch. 2 (10-1-12 Edition)

(B) If the acquisition is also subject to a Free Trade Agreement, then eligible products of the applicable Free Trade Agreement country are also exempt from application of the Buy American or Balance of Payments Program evaluation factor.

(ii) If price is the determining factor, use the following procedures:

(A) If the low offer is a domestic offer, award on that offer.

(B) If there are no domestic offers, award on the low offer (see example in 225.504(1)).

(C) If the low offer is a foreign offer that is exempt from application of the Buy American or Balance of Payments Program evaluation factor, award on that offer. (If the low offer is a qualifying country offer from a country listed at 225.872-1(b), execute a determination in accordance with 225.872-4.)

(D) If the low offer is a foreign offer that is not exempt from application of the Buy American or Balance of Payments Program evaluation factor, and there is another foreign offer that is exempt and is lower than the lowest domestic offer, award on the low foreign offer (see example in 225.504(2)).

(E) Otherwise, apply the 50 percent evaluation factor to the low foreign offer.

(1) If the price of the low domestic offer is less than the evaluated price of the low foreign offer, award on the low domestic offer (see example in 225.504(3)).

(2) If the evaluated price of the low foreign offer remains less than the low domestic offer, award on the low foreign offer (see example in 225.504(4)).

(iii) If price is not the determining factor, use the following procedures:

(A) If there are domestic offers, apply the 50 percent Buy American or Balance of Payments Program evaluation factor to all foreign offers unless an exemption applies.

(B) Evaluate in accordance with the criteria of the solicitation.

(C) If these procedures will not result in award on a domestic offer, reevaluate offers without the 50 percent factor. If this will result in award on an offer to which the Buy American statute or Balance of Payments Program applies, but evaluation in accordance with paragraph (c)(ii) of this section

would result in award on a domestic offer, proceed with award only after execution of a determination in accordance with 225.103(a)(ii)(B), that domestic preference would be inconsistent with the public interest.

(iv) If the solicitation includes the provision at 252.225-7023, Preference for Products or Services from Iraq or Afghanistan, use the evaluation procedures at 225.7703-3.

[68 FR 15620, Mar. 31, 2003, as amended at 69 FR 1928, Jan. 13, 2004; 69 FR 74992, Dec. 15, 2004; 70 FR 2363, Jan. 13, 2005; 73 FR 53152, Sept. 15, 2008; 75 FR 81916, Dec. 29, 2010; 77 FR 35881, June 15, 2012]

225.503 Group offers.

Evaluate group offers in accordance with FAR 25.503, but apply the evaluation procedures of 225.502.

225.504 Evaluation examples.

For examples that illustrate the evaluation procedures in 225.502(c)(ii), see PGI 225.504.

[70 FR 73154, Dec. 9, 2005]

Subpart 225.7—Prohibited Sources

225.701 Restrictions.

See 209.104-1(g) for restrictions on contracting with firms owned or controlled by foreign governments.

[70 FR 73154, Dec. 9, 2005]

225.701-70 Exception.

DoD personnel are authorized to make emergency acquisitions in direct support of U.S. or allied forces deployed in military contingency, humanitarian, or peacekeeping operations in a country or region subject to economic sanctions administered by the Department of the Treasury, Office of Foreign Assets Control.

[68 FR 7441, Feb. 14, 2003]

225.770 Prohibition on acquisition of United States Munitions List items from Communist Chinese military companies.

This section implements section 1211 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109-163) and section 1243 of the National Defense Authorization Act for Fiscal

Year 2012 (Pub. L. 112-81). See PGI 225.770 for additional information relating to this statute, the terms used in this section, and the United States Munitions List.

[71 FR 53046, Sept. 8, 2006, as amended at 77 FR 30366, May 22, 2012]

225.770-1 Definitions.

As used in this section—

(a) *Communist Chinese military company* and *United States Munitions List* are defined in the clause at 252.225-7007, Prohibition on Acquisition of United States Munitions List Items from Communist Chinese Military Companies.

(b) *Component* means an item that is useful only when used in conjunction with an end item (22 CFR 121.8).

(c) *Part* means any single unassembled element of a major or minor component, accessory, or attachment, that is not normally subject to disassembly without the destruction or impairment of design use (22 CFR 121.8).

[71 FR 53046, Sept. 8, 2006]

225.770-2 Prohibition.

Do not acquire supplies or services covered by the United States Munitions List (USML) (22 CFR part 121), through a contract or subcontract at any tier, from any Communist Chinese military company. This prohibition does not apply to components and parts of covered items unless the components and parts are themselves covered by the USML.

[71 FR 53046, Sept. 8, 2006]

225.770-3 Exceptions.

The prohibition in 225.770-2 does not apply to supplies or services acquired—

(a) In connection with a visit to the People's Republic of China by a vessel or an aircraft of the U.S. armed forces;

(b) For testing purposes; or

(c) For the purpose of gathering intelligence.

[71 FR 53046, Sept. 8, 2006]

225.770-4 Identifying USML items.

(a) Before issuance of a solicitation, the requiring activity shall notify the contracting officer in writing whether the items to be acquired are covered by