

Defense Acquisition Regulations System, DoD

225.003

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AUTHORITY: 41 U.S.C. 1303 and 48 CFR chapter 1.

SOURCE: 56 FR 36367, July 31, 1991, unless otherwise noted.

225.001 General.

For guidance on evaluating offers of foreign end products, see PGI 225.001.

[70 FR 73154, Dec. 9, 2005]

225.003 Definitions.

As used in this part—

(1) *Caribbean Basin country end product* includes petroleum or any product derived from petroleum.

(2) *Defense equipment* means any equipment, item of supply, component, or end product purchased by DoD.

(3) *Domestic concern* means—

(i) A concern incorporated in the United States (including a subsidiary that is incorporated in the United States, even if the parent corporation is a foreign concern; or

(ii) An unincorporated concern having its principal place of business in the United States.

(4) *Domestic end product* has the meaning given in the clauses at 252.225-7001, Buy American and Balance of Payments Program; and 252.225-7036, Buy American—Free Trade Agreements—Balance of Payments Program, instead of the meaning in FAR 25.003.

(5) *Eligible product* means, instead of the definition in FAR 25.003—

- (i) A foreign end product that—
- (A) Is in a category listed in 225.401-70; and
- (B) Is not subject to discriminatory treatment, due to the applicability of a trade agreement to a particular acquisition;
- (ii) A foreign construction material that is not subject to discriminatory treatment, due to the applicability of a trade agreement to a particular acquisition; or
- (iii) A foreign service that is not subject to discriminatory treatment, due to the applicability of a trade agreement to a particular acquisition.
- (6) *Foreign concern* means any concern other than a domestic concern.
- (7) *Free Trade Agreement country* does not include Oman.
- (8) *Nonqualifying country* means a country other than the United States or a qualifying country.
- (9) *Nonqualifying country component* means a component mined, produced, or manufactured in a nonqualifying country.
- (10) *Qualifying country* means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia	Luxembourg
Austria	Netherlands
Belgium	Norway
Canada	Poland
Czech Republic	Portugal
Denmark	Spain
Egypt	Sweden
Finland	Switzerland
France	Turkey
Germany	United Kingdom of
Greece	Great Britain and
Israel	Northern Ireland.
Italy	

(11) *Qualifying country component* and *qualifying country end product* are defined in the clauses at 252.225-7001, Buy American and Balance of Payments Program; and 252.225-7036, Buy Amer-

ican —Free Trade Agreements—Balance of Payments Program. *Qualifying country end product* is also defined in the clause at 252.225-7021, Trade Agreements.

(12) *Qualifying country offer* means an offer of a qualifying country end product, including the price of transportation to destination.

(13) *Source*, when restricted by words such as foreign, domestic, or qualifying country, means the actual manufacturer or producer of the end product or component.

(14) *South Caucasus/Central and South Asian (SC/CASA) state* means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

(15) *South Caucasus/Central and South Asian (SC/CASA) state construction material* means construction material that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different construction material distinct from the material from which it was transformed.

(16) *South Caucasus/Central and South Asian (SC/CASA) state end product* means an article that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product, includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does

not exceed the value of the product itself.

[68 FR 15618, Mar. 31, 2003, as amended at 69 FR 1927, Jan. 13, 2004; 70 FR 73153, Dec. 9, 2005; 73 FR 76971, Dec. 18, 2008; 74 FR 37651, July 29, 2009; 75 FR 34945, June 21, 2010; 75 FR 81916, Dec. 29, 2010; 77 FR 35880, June 15, 2012; 77 FR 38737, June 29, 2012; 77 FR 76942, Dec. 31, 2012]

225.004 Reporting of acquisition of end products manufactured outside the United States.

Follow the procedures at PGI 225.004 for entering the data upon which the report required by FAR 25.004 will be based.

[71 FR 62559, Oct. 26, 2006]

Subpart 225.1—Supplies

SOURCE: 68 FR 15618, Mar. 31, 2003, unless otherwise noted.

225.101 General.

(a) For DoD, the following two-part test determines whether a manufactured end product is a domestic end product:

(i) The end product is manufactured in the United States; and

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

(c) Additional exceptions that allow the purchase of foreign end products are listed at 225.103.

225.103 Exceptions.

(a)(i)(A) Public interest exceptions for certain countries are in 225.872.

(B) For procurements covered by the World Trade Organization Government Procurement Agreement, the Under Secretary of Defense (Acquisition, Technology, and Logistics) has determined that it is inconsistent with the public interest to apply the Buy American statute to end products that are substantially transformed in the United States.

(ii)(A) Normally, use the evaluation procedures in subpart 225.5, but consider recommending a public interest exception if the purposes of the Buy American statute 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 a domestic end product; or

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

(B) Except as provided in PGI 225.872–4, process a determination for a public interest exception after consideration of the factors in 10 U.S.C. 2533—

(1) At a level above the contracting officer for acquisitions valued at or below the simplified acquisition threshold;

(2) By the head of the contracting activity for acquisitions with a value greater than the simplified acquisition threshold but less than \$1.5 million; or

(3) By the agency head for acquisitions valued at \$1.5 million or more.

(b)(i) A determination that an article, material, or supply is not reasonably available is required when domestic offers are insufficient to meet the requirement and award is to be made on other than a qualifying country or eligible end product.

(ii) Except as provided in FAR 25.103(b)(3), the determination shall be approved—

(A) At a level above the contracting officer for acquisitions valued at or below the simplified acquisition threshold;

(B) By the chief of the contracting office for acquisitions with a value greater than the simplified acquisition threshold but less than \$1.5 million; or

(C) By the head of the contracting activity or immediate deputy for acquisitions valued at \$1.5 million or more.

(iii) A separate determination as to whether an article is reasonably available is not required for the following articles. DoD has already determined