

(1) The contract includes requirements for more than one FMS customer;

(2) The contract includes unique U.S. requirements; or

(3) Contractor proprietary data is a subject of negotiations.

(e) Do not allow representatives of the FMS customer to—

(1) Direct the exclusion of certain firms from the solicitation process (they may suggest the inclusion of certain firms);

(2) Interfere with a contractor's placement of subcontracts; or

(3) Observe or participate in negotiations between the U.S. Government and the contractor involving certified cost or pricing data, unless a deviation is granted in accordance with subpart 201.4.

(f) Do not accept directions from the FMS customer on source selection decisions or contract terms (except that, upon timely notice, the contracting officer may attempt to obtain any special contract provisions, warranties, or other unique requirements requested by the FMS customer).

(g) Do not honor any requests by the FMS customer to reject any bid or proposal.

(h) If an FMS customer requests additional data concerning FMS contract prices, the contracting officer shall, after consultation with the contractor, provide sufficient data to demonstrate the reasonableness of the price and reasonable responses to relevant questions concerning contract price. This data—

(1) May include tailored responses, top-level pricing summaries, historical prices, or an explanation of any significant differences between the actual contract price and the estimated contract price included in the initial LOA; and

(2) May be provided orally, in writing, or by any other method acceptable to the contracting officer.

[67 FR 70325, Nov. 22, 2002, as amended at 77 FR 76940, Dec. 31, 2012]

225.7305 Limitation of liability.

Advise the contractor when the foreign customer will assume the risk for loss or damage under the appropriate limitation of liability clause(s) (see FAR Subpart 46.8). Consider the costs

of necessary insurance, if any, obtained by the contractor to cover the risk of loss or damage in establishing the FMS contract price.

[56 FR 36367, July 31, 1991, as amended at 68 FR 15633, Mar. 31, 2003]

225.7306 Offset arrangements.

In accordance with the Presidential policy statement of April 16, 1990, DoD does not encourage, enter into, or commit U.S. firms to FMS offset arrangements. The decision whether to engage in offsets, and the responsibility for negotiating and implementing offset arrangements, resides with the companies involved. (Also see 225.7303-2(a)(3).)

[70 FR 73155, Dec. 9, 2005]

225.7307 Contract clauses.

(a) Use the clause at 252.225-7027, Restriction on Contingent Fees for Foreign Military Sales, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that are for FMS. Insert in paragraph (b)(1) of the clause the name(s) of any foreign country customer(s) listed in 225.7303-4(b).

(b) Use the clause at 252.225-7028, Exclusionary Policies and Practices of Foreign Governments, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that are for the purchase of supplies and services for international military education training and FMS.

[68 FR 15633, Mar. 31, 2003. Redesignated at 70 FR 73155, Dec. 9, 2005. Amended at 78 FR 37988, June 25, 2013]

Subpart 225.74—Defense Contractors Outside the United States

SOURCE: 70 FR 23801, May 5, 2005, unless otherwise noted.

225.7401 Contracts requiring performance or delivery in a foreign country.

(a) If an acquisition requires performance of work in a foreign country by contractor personnel other than host country personnel, or delivery of