

**Subpart 225.5—Evaluating Foreign Offers—Supply Contracts**

SOURCE: 65 FR 19853, Apr. 13, 2000, unless otherwise noted.

**§ 225.502 Application.**

Use the following procedures instead of those in FAR 25.502. 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 225.504(4)).

(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 225.504 (1)).

(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 52.225-8, 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 225.504(1)(ii)).

(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 225.504(3)) or when a qualifying country offer is lower than the domestic offer (see 225.504(2)), evaluate nonqualifying country offers without the 50 percent factor.

(i) If duty is to be exempted through inclusion of the clause at FAR 52.225-8,

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 225.504(2)(ii) and (3)(ii)). 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 225.504(2)(i) and (3)(i)).

(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 production” 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

(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 225.504(4)).

**225.504 Evaluation examples.**

(1) Example 1.

(i) Alternate I: Duty Not Exempted for Nonqualifying Country Offers:

Nonqualifying Country Offer	
(including \$100 duty) .....	\$6,000

**225.701**

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.

(ii) 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.

(2) Example 2.

(i) 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).

(ii) Alternate II: Duty Exempted:

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

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.

(3) Example 3.

(i) Alternate I: Duty Not Exempted for Nonqualifying Country Offers:

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

**48 CFR Ch. 2 (10-1-02 Edition)**

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.

(ii) 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.

(4) Example 4.

(i) 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.

(ii) 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.

**Subpart 225.7—Prohibited Sources**

**225.701 Restrictions.**

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