

Department of Defense

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or otherwise eligible for award, the contracting officer shall request an exemption of the Buy American Act/Balance of Payments Program as inconsistent with the public interest, unless another exception such as the Trade Agreements Act applies.

(1) To obtain an exemption, process a Determination and Findings for signature—

(i) At a level above the contracting officer, for acquisitions of \$25,000 or less;

(ii) By the chief of the contracting office, for acquisitions of \$250,000 or less;

(iii) By the head of the contracting activity (HCA), for acquisitions of \$2 million or less; or

(iv) By the head of the agency, or designee at a level no lower than an HCA, for acquisitions over \$2 million.

(2) The Determination and Findings shall be substantially as follows for end items, or modified as necessary for components—

SERVICE OR AGENCY

Exemption of the Buy American Act/Balance of Payments Program

Determination and Findings

Upon the basis of the following findings and determination which I hereby make in accordance with the provisions of FAR 25.102, acquisition of (*qualifying country—identify country*) (*describe item*) may be made as provided below.

Findings

1. The (*contracting activity*) proposes to purchase under contract number, _____, mined, produced, or manufactured in (*country of origin*). The total estimated cost of this acquisition is _____.

2. The United States Government and the Government of _____ have agreed to remove barriers to procurement at the prime and subcontract level for defense equipment produced in each other's countries insofar as laws and regulations permit.

3. The agreement provides that competitive offers of (*qualifying country*) end products will be evaluated by the Department of Defense without imposing any price differential under the Buy American Act or Balance of Payments Program and without taking applicable U.S. customs and duties into consideration so that (*qualifying country*) items may better compete for sales of defense equipment to the Department of Defense. In addition, the Agreement stipulates that acquisitions of (*qualifying country*) items must fully satisfy Department of Defense require-

ments for performance, quality, and delivery and shall cost the Department of Defense no more than would comparable U.S. source or other foreign source defense equipment eligible for award.

4. To achieve the above objectives, the solicitation contained the (*title and number of the Buy American Act clause contained in the contract*). Offers were solicited from other sources and the offer received for (*qualifying country end item*) is found to be otherwise eligible for award.

Determination

Pursuant to the Buy American Act and Balance of Payments Program, I hereby determine that it is inconsistent with the public interest to apply the restrictions of the Buy American Act or the Balance of Payments Program to the proposed offer.

(Date)

[56 FR 36367, July 31, 1991, as amended at 57 FR 42630, Sept. 15, 1992; 63 FR 11534, Mar. 9, 1998; 65 FR 39705, June 27, 2000]

225.872-5 Contract administration.

(a) Arrangements exist with some qualifying countries to provide reciprocal contract administration services. Some arrangements are at no cost to either government. To determine whether such an arrangement has been negotiated and what contract administration functions are covered, contact the Deputy Director of Defense Procurement (Foreign Contracting), ((703) 697-9351, DSN 227-9351).

(b) When contract administration services are required on contracts to be performed in qualifying countries, direct the request to the cognizant activity under DLAH 4105.4, section II, part 2 (DoD Directory of Contract Administration Services Components). Contract administration services for DoD subcontracts placed by qualifying country sources in the United States will be arranged by the cognizant activity under DLAH 4105.4, section II, part 2.

(c) The contract administration activity receiving a delegation or secondary delegation shall review the delegation to determine whether any portion of the delegation are covered by memoranda of understanding annexes, and delegate those functions to the appropriate organization in the qualifying country's government.

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(d) Information on quality assurance delegations to foreign governments is in subpart 246.4, Government Contract Quality Assurance.

[56 FR 36367, July 31, 1991, as amended at 60 FR 29498, June 5, 1995]

225.872-6 Audit.

(a) Memoranda of understanding with some qualifying countries contain annexes that provide for reciprocal "no-cost" audits of contracts and subcontracts (pre- and post-award).

(b) To determine if such an annex is applicable to a particular qualifying country, contact the Deputy Director of Defense Procurement (Foreign Contracting), ((703) 697-9351/2/3, DSN 227-9351/2/3).

(c) Handle requests for audits in qualifying countries under 215.404-2(c).

(1) Except for the United Kingdom (UK), send the request to the administrative contracting officer at the cognizant activity listed in Section 2B of the Federal Directory of Contract Administration Services Components. Send the request for audit from the UK directly to their Ministry of Defence.

(2) Send an advance copy of the request to the focal point identified by the Foreign Contracting Directorate, Office of the Director of Defense Procurement.

[56 FR 36367, July 31, 1991, as amended at 60 FR 29498, June 5, 1995; 63 FR 55052, Oct. 14, 1998; 64 FR 61028, Nov. 9, 1999]

225.872-7 Industrial security for qualifying countries.

The required procedures for safeguarding classified defense information necessary for the performance of contracts awarded to qualifying country sources are in the DoD Industrial Security Regulation DoD 5220.22-R (implemented for the Army by AR 380-49; for the Navy by SECNAV Instruction 5510.1H; for the Air Force by AFI 31-601; for the Defense Information Systems Agency by DCA Instruction 240-110-8; and for the National Imagery and Mapping Agency by NIMA Instruction 5220.22).

[56 FR 36367, July 31, 1991, as amended at 56 FR 67215, Dec. 30, 1991; 64 FR 51076, Sept. 21, 1999; 64 FR 61029, Nov. 9, 1999]

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225.872-8 Subcontracting with qualifying country sources.

In reviewing contractor subcontracting procedures, the contracting officer shall ensure that the prime contract does not preclude qualifying country sources from competing for subcontracts, except when restricted by national security interest reasons, mobilization base considerations, or applicable U.S. laws or regulations. (See the clause at 252.225-7002, Qualifying Country Sources as Subcontractors.)

225.873 Waiver of United Kingdom commercial exploitation levies.

225.873-1 Policy.

DoD and the Government of the United Kingdom (U.K.) have agreed to waive U.K. commercial exploitation levies and U.S. nonrecurring cost recoupment charges on a reciprocal basis. In order for U.K. levies to be waived, they must be identified and a waiver must be requested before award of the contract or subcontract under which the levies are charged.

[57 FR 53599, Nov. 12, 1992]

225.873-2 Procedures.

(a) Waiver of U.K. levies must be approved by the Government of the U.K. When an offeror or contractor identifies a levy included in an offered or contract price, the contracting officer shall provide written notification to the Defense Security Cooperation Agency, Attn: PSD-PMD, 1111 Jefferson Davis Highway, Arlington, VA 22202-4306, telephone (703) 601-3864. The Defense Security Cooperation Agency will request a waiver of the levy from the Government of the U.K. The notification shall include—

(1) Name of the U.K. firm;

(2) Prime contract number;

(3) Description of item for which waiver is being sought;

(4) Quantity being acquired; and

(5) Amount of levy.

(b) Waiver may occur after contract award. Where levies are waived before contract award, the offer will be evaluated without the levy. Where levies are