

25.504-2

48 CFR Ch. 1 (10-1-03 Edition)

States and is set aside for small business concerns. The Buy American Act applies. Since the acquisition value is less than \$25,000 and the acquisition is set aside, none of the trade agreements apply. Perform the steps in 25.502(a). Offer C is evaluated as a foreign end product because it is the product of a small business, but is not a domestic

end product (see 25.502(c)(4)). Since Offer B is a domestic offer, apply the 12 percent factor to Offer C (see 25.105(b)(2)). The resulting evaluated price of \$11,200 remains lower than Offer B. The cost of Offer B is therefore unreasonable (see 25.105(c)). Award on Offer C at \$10,000 (see 25.502(c)(4)(i)).

(b)(1) *Example 2.*

Offer A	\$11,000	Domestic end product, small business
Offer B	\$10,700	Domestic end product, small business
Offer C	\$10,200	U.S.-made end product (not domestic), small business

(2) *Analysis:* This acquisition is for end products for use in the United States and is set aside for small business concerns. The Buy American Act applies. Perform the steps in 25.502(a). Offer C is evaluated as a foreign end product because it is the product of a small business but is not a domestic end product (see 25.502(c)(4)). After applying the 12 percent factor, the evaluated price of Offer C is \$11,424. Award on Offer B at \$10,700 (see 25.502(c)(4)(ii)).

the low remaining offer, Offer C (see 25.502(b)(2)).

[64 FR 72419, Dec. 27, 1999, as amended at 67 FR 21535, Apr. 30, 2002]

25.504-3 NAFTA/Israeli Trade Act.

(a) *Example 1.*

Offer A \$105,000 Domestic end product, small business.
Offer B 100,000 Eligible product.

Analysis: Since the low offer is an eligible offer, award on the low offer (see 25.502(c)(1)).

(b) *Example 2.*

Offer A \$105,000 Eligible product.
Offer B 103,000 Noneligible product.

Analysis: Since the acquisition is not subject to the Trade Agreements Act, the contracting officer can consider the noneligible offer. Since no domestic offer was received, make a nonavailability determination and award on Offer B (see 25.502(c)(2)).

(c) *Example 3.*

Offer A \$105,000 Domestic end product, large business.
Offer B 103,000 Eligible product.
Offer C 100,000 Noneligible product.

Analysis: Since the acquisition is not subject to the Trade Agreements Act, the contracting officer can consider the noneligible offer. Because the eligible offer (Offer B) is lower than the domestic offer (Offer A), no evaluation factor applies to the low offer (Offer C). Award on the low offer (see 25.502(c)(3)).

25.504-2 Trade Agreements Act/Caribbean Basin Trade Initiative/NAFTA.

Example 1.

Offer A \$204,000 U.S.-made end product (not domestic).
Offer B 203,000 U.S.-made end product (domestic), small business.
Offer C 200,000 Eligible product.
Offer D 195,000 Noneligible product (not U.S.-made).

Analysis: Eliminate Offer D because the Trade Agreements Act applies and there is an offer of a U.S.-made or an eligible product (see 25.502(b)(1)). If the agency gives the same consideration given eligible offers to offers of U.S.-made end products that are not domestic offers, it is unnecessary to determine if U.S.-made end products are domestic (large or small business). No further analysis is necessary. Award on

25.504-4 Group award basis.

(a) *Example 1.*

Federal Acquisition Regulation

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Item	Offers		
	A	B	C
1	DO = \$55,000	EL = \$56,000	NEL = \$50,000
2	NEL = 13,000	EL = 10,000	EL = 13,000
3	NEL = 11,500	DO = 12,000	DO = 10,000
4	NEL = 24,000	EL = 28,000	NEL = 22,000
5	DO = 18,000	NEL = 10,000	DO = 14,000
	121,500	116,000	109,000

Key: DO = Domestic end product; EL = Eligible product; NEL = Noneligible product.

Problem: Offeror C specifies all-or-none award. Assume all offerors are large businesses. The Trade Agreements Act does not apply.

Analysis: (see 25.503)

STEP 1: Evaluate Offers A & B before considering Offer C and determine which offer has the lowest evaluated cost for each line item (the tentative award pattern):

Item 1: Low offer A is domestic; select A.

Item 2: Low offer B is eligible; do not apply factor; select B.

Item 3: Low offer A is noneligible and Offer B is a domestic offer. Apply a 6 percent factor to Offer A. The evaluated price of Offer A is higher than Offer B; select B.

Item 4: Low offer A is noneligible. Since neither offer is a domestic offer, no evaluation factor applies; select A.

Item 5: Low offer B is noneligible; apply a 6 percent factor to Offer B. Offer A is still higher than Offer B; select B.

STEP 2: Evaluate Offer C against the tentative award pattern for Offers A and B:

Item	Offers		
	Low offer	Tentative award pattern from A and B	C
1	A	DO=\$55,000	*NEL=\$53,000
2	B	EL=10,000	EL=13,000
3	B	DO=12,000	DO=10,000
4	A	NEL=24,000	NEL=22,000
5	B	*NEL=10,600	DO=14,000
		111,600	112,000

* Offer + 6 percent.

On a line item basis, apply a factor to any noneligible offer if the other offer for that line item is domestic.

For Item 1, apply a factor to Offer C because Offer A is domestic and the acquisition was not subject to the Trade Agreements Act. The evaluated price of Offer C, Item 1, becomes \$53,000 (\$50,000 plus 6 percent). Apply a factor to Offer B, Item 5, because it is a noneligible product and Offer C is domestic. The evaluated price of Offer B is \$10,600

(\$10,000 plus 6 percent). Evaluate the remaining items without applying a factor.

STEP 3: The tentative unrestricted award pattern from Offers A and B is lower than the evaluated price of Offer C. Award the combination of Offers A and B. Note that if Offer C had not specified all-or-none award, award would be made on Offer C for line items 1, 3, and 4, totaling an award of \$82,000.

(b) Example 2.

Item	Offers		
	A	B	C
1	DO=\$50,000	EL=\$50,500	NEL=\$50,000
2	NEL=10,300	NEL=10,000	EL=10,200
3	EL=20,400	EL=21,000	NEL=20,200
4	DO=10,500	DO=10,300	DO=10,400
	91,200	91,800	90,800

Problem: The solicitation specifies award Act applies and the acquisition cannot be set on a group basis. Assume the Buy American

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aside for small business concerns. All offerors are large businesses.

Analysis: (see 25.503(c))

STEP 1: Determine which of the offers are domestic (see 25.503(c)(1)):

	Domestic [percent]	Determination
A	60,500/91,200=66.3%	Domestic
B	10,300/91,800=11.2%	Foreign
C	10,400/90,800=11.5%	Foreign

STEP 2: Determine whether foreign offers are eligible or noneligible offers (see 25.503(c)(2)):

	Domestic + eligible [percent]	Determination
A	N/A	Domestic
B	81,800/91,800=89.1%	Eligible
C	20,600/90,800=22.7%	Noneligible

STEP 3: Determine whether to apply an evaluation factor (see 25.503(c)(3)). The low offer (Offer C) is a foreign offer. There is no eligible offer lower than the domestic offer. Therefore, apply the factor to the low offer. Addition of the 6 percent factor (use 12 percent if Offer A is a small business) to Offer C yields an evaluated price of \$96,248 (\$90,800 + 6 percent). Award on Offer A (see 25.502(c)(4)(ii)). Note that, if Offer A were greater than Offer B, an evaluation factor would not be applied and award would be on Offer C (see 25.502(c)(3)).

[64 FR 72419, Dec. 27, 1999; 65 FR 4633, Jan. 31, 2000]

Subpart 25.6—Trade Sanctions

25.600 Scope of subpart.

This subpart implements sanctions imposed by the President pursuant to Section 305(g)(1) of the Trade Agreements Act of 1979 (19 U.S.C. 2515(g)(1)), on European Union (EU) member states that discriminate against U.S. products or services (sanctioned EU member states). This subpart does not apply to contracts for supplies or services awarded and performed outside the United States, or to the Department of Defense. For thresholds unique to individual agencies, see agency regulations.

25.601 Policy.

(a) Except as provided in 25.602, agencies shall not award contracts for—

(1) Sanctioned EU country end products with an estimated acquisition value less than \$169,000;

(2) Sanctioned EU country construction with an estimated acquisition value less than \$6,481,000; or

(3) Sanctioned EU country services as follows (Federal Service Code or Category from the Federal Procurement Data System Product/Service Code Manual is indicated in parentheses):

(i) Service contracts regardless of acquisition value for—

(A) All transportation services, including launching services (all V codes, J019, J998, J999, and K019);

(B) Dredging (Y216 and Z216);

(C) Management and operation of certain Government or privately owned facilities used for Government purposes, including federally funded research and development centers (all M codes);

(D) Development, production or co-production of program material for broadcasting, such as motion pictures (T006 and T016);

(E) Research and development (all A codes);

(F) Airport concessions (S203);

(G) Legal services (R418);

(H) Hotel and restaurant services (S203);

(I) Placement and supply of personnel services (V241 and V251);

(J) Investigation and security services (S206, S211, and R423);

(K) Education and training services (all U codes and R419);

(L) Health and social services (all O and G codes);

(M) Recreational, cultural, and sporting services (G003); or

(N) Telecommunications services (encompassing only voice telephony, telex, radio telephony, paging, and satellite services) (S1, D304, D305, D316, D317, and D399).

(ii) All other service contracts with an estimated acquisition value less than \$169,000.

(b) Determine the applicability of sanction thresholds in the manner provided at 25.403(b).

[64 FR 72419, Dec. 27, 1999, as amended at 65 FR 36026, June 6, 2000; 67 FR 56124, Aug. 30, 2002]