

225.872-4), be exempted from application of the Buy American Act and the Balance of Payments Program as inconsistent with the public interest:

Austria  
Finland

(c) The determination in paragraph (a) of this subsection does not limit the authority of the Secretary concerned to restrict acquisitions to domestic sources or reject an otherwise acceptable offer from a qualifying country source when considered necessary for national defense reasons.

[68 FR 15621, Mar. 31, 2003, as amended at 69 FR 8116, Feb. 23, 2004]

**225.872-2 Applicability.**

(a) This section applies to all acquisitions of supplies except those restricted by—

(1) U.S. National Disclosure Policy, DoDD 5230.11, Disclosure of Classified Military Information to Foreign Governments and International Organizations;

(2) U.S. defense mobilization base requirements purchased under the authority of FAR 6.302-3(a)(2)(i), except for quantities in excess of that required to maintain the defense mobilization base. This restriction does not apply to Canadian planned producers.

(i) Review individual solicitations to determine whether this restriction applies.

(ii) Information concerning restricted items may be obtained from the Deputy Under Secretary of Defense (Industrial Affairs);

(3) Other U.S. laws or regulations (*e.g.*, the annual DoD appropriations act); and

(4) U.S. industrial security requirements.

(b) This section does not apply to construction contracts.

**225.872-3 Solicitation procedures.**

(a) Include qualifying country sources on solicitation mailing lists upon their request (see FAR 14.205).

(b) Except for items developed under the U.S./Canadian Development Sharing Program, use the criteria for soliciting and awarding contracts to small business concerns under FAR Part 19 without regard to whether there are

potential qualifying country sources for the end product. Do not consider an offer of a qualifying country end product if the solicitation is identified for the exclusive participation of small business concerns.

(c) Send solicitations directly to qualifying country sources. Solicit Canadian sources through the Canadian Commercial Corporation in accordance with 225.870.

(d) Use international air mail if solicitation destinations are outside the United States and security classification permits such use.

(e) If unusual technical or security requirements preclude the acquisition of otherwise acceptable defense equipment from qualifying country sources, review the need for such requirements. Do not impose unusual technical or security requirements solely for the purpose of precluding the acquisition of defense equipment from qualifying countries.

(f) Do not automatically exclude qualifying country sources from submitting offers because their supplies have not been tested and evaluated by the department or agency.

(1) Consider the adequacy of qualifying country service testing on a case-by-case basis. Departments or agencies that must limit solicitations to sources whose items have been tested and evaluated by the department or agency shall consider supplies from qualifying country sources that have been tested and accepted by the qualifying country for service use.

(2) The department or agency may perform a confirmatory test, if necessary.

(3) Apply U.S. test and evaluation standards, policies, and procedures when the department or agency decides that confirmatory tests of qualifying country end products are necessary.

(4) If it appears that these provisions might adversely delay service programs, obtain the concurrence of the Under Secretary of Defense (Acquisition, Technology, and Logistics), before excluding the qualifying country source from consideration.

(g) Permit industry representatives from a qualifying country to attend symposia, program briefings, prebid conferences (see FAR 14.207 and

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15.201(c)), and similar meetings that address U.S. defense equipment needs and requirements. When practical, structure these meetings to allow attendance by representatives of qualifying country concerns.

#### **225.872-4 Individual determinations.**

If the offer of an end product from a qualifying country source listed in 225.872-1(b), as evaluated, is low or otherwise eligible for award, prepare a determination and findings exempting the acquisition from the Buy American Act and the Balance of Payments Program as inconsistent with the public interest, unless another exception such as the Trade Agreements Act applies. Follow the procedures at PGI 225.872-4.

[70 FR 73155, Dec. 9, 2005]

#### **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 and Acquisition Policy (Program Acquisition and International Contracting), ((703) 697-9351, DSN 227-9351).

(b) Follow the contract administration procedures at PGI 225.872-5(b).

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

[68 FR 15621, Mar. 31, 2003, as amended at 70 FR 73155, Dec. 9, 2005]

#### **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 and Acquisition Policy (Program Acquisition and International Contracting), ((703) 697-9351, DSN 227-9351).

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(c) Handle requests for audits in qualifying countries in accordance with 215.404-2(c), but follow the additional procedures at PGI 225.872-6(c).

[68 FR 15621, Mar. 31, 2003, as amended at 70 FR 73155, Dec. 9, 2005]

#### **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).

#### **225.872-8 Subcontracting with qualifying country sources.**

In reviewing contractor subcontracting procedures, the contracting officer shall ensure that the 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. For U.K. levies to be waived, the offeror or contractor shall identify the levies and the contracting officer shall request a waiver before award of the contract or subcontract under which the levies are charged.

##### **225.873-2 Procedures.**

When an offeror or a contractor identifies a levy included in an offered or