

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.

(b) Obtain signature of the determination and findings—

(1) At a level above the contracting officer, for acquisitions valued at or below the simplified acquisition threshold; or

(2) By the chief of the contracting office, for acquisitions with a value greater than the simplified acquisition threshold.

(c) Prepare the determination and findings substantially as follows:

Service or Agency

Exemption of the Buy American Act and 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 25.103(a), the acquisition of a qualifying country end product may be made as follows:

Findings

1. The (*contracting office*) proposes to purchase under contract number _____, (*describe item*) mined, produced, or manufactured in (*qualifying 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 the Department of Defense will evaluate competitive offers of qualifying country end products mined, produced, or manufactured in (*qualifying country*) without imposing any price differential under the Buy American Act or the Balance of Payments Program and without taking applicable U.S. customs and duties into consideration so that such items may better compete for sales of defense equipment to the Department of Defense. In addition, the Agreement stipulates that acquisitions of such items shall fully satisfy Department of Defense requirements 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 foregoing objectives, the solicitation contained the clause (*title and number of the Buy American Act clause contained in the contract*). Offers were solicited from other sources and the offer received from (*offeror*) is found to be otherwise eligible for award.

Determination

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 offer described in this determination and findings.

(Date)

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) When contract administration services are required on contracts to be performed in qualifying countries, direct the request to the cognizant activity listed in the Federal Directory of Contract Administration Services. The cognizant activity also will arrange contract administration services for DoD subcontracts that qualifying country sources place in the United States.

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

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

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).

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

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

(2) Send an advance copy of the request to the focal point identified by

the Deputy Director of Defense Procurement and Acquisition Policy (Program Acquisition and International Contracting).

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.

(a) The Government of the U.K. shall approve waiver of U.K. levies. 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;