

(iii) Sales promotions, demonstrations, and related travel for sales to foreign governments. Section 126.8 of the International Traffic in Arms Regulations (22 CFR 126.8) may require Government approval for these costs to be allowable, in which case the appropriate Government approval shall be obtained; and

(iv) Configuration studies and related technical services undertaken as a direct selling effort to a foreign country.

* * * * *

(c) The limitations for major contractors on independent research and development and bid and proposal (IR&D/B&P) costs for projects that are of potential interest to DoD, in 231.205–18(c)(iii), do not apply to FMS contracts, except as provided in 225.7303–5. The allowability of IR&D/B&P costs on contracts for FMS not wholly paid for from funds made available on a nonrepayable basis is limited to the contract's allocable share of the contractor's total IR&D/B&P expenditures. In pricing contracts for such FMS—

* * * * *

■ 29. Section 225.7303–4 is revised to read as follows:

225.7303–4 Contingent fees.

(a) Except as provided in paragraph (b) of this subsection, contingent fees are generally allowable under DoD contracts, provided—

(1) The fees are paid to a bona fide employee or a bona fide established commercial or selling agency maintained by the prospective contractor for the purpose of securing business (see FAR Part 31 and FAR Subpart 3.4); and

(2) The contracting officer determines that the fees are fair and reasonable.

(b)(1) Under DoD 5105.38–M, LOAs for requirements for the governments of Australia, Taiwan, Egypt, Greece, Israel, Japan, Jordan, Republic of Korea, Kuwait, Pakistan, Philippines, Saudi Arabia, Turkey, Thailand, or Venezuela (Air Force) shall provide that all U.S. Government contracts resulting from the LOAs prohibit the reimbursement of contingent fees as an allowable cost under the contract, unless the contractor identifies the payments and the foreign customer approves the payments in writing before contract award (see 225.7308(a)).

(2) For FMS to countries not listed in paragraph (b)(1) of this subsection, contingent fees exceeding \$50,000 per FMS case are unallowable under DoD contracts, unless the contractor identifies the payment and the foreign customer approves the payment in writing before contract award.

■ 30. Section 225.7303–5 is amended by revising paragraphs (a) and (b) to read as follows:

225.7303–5 Acquisitions wholly paid for from nonrepayable funds.

(a) In accordance with 22 U.S.C. 2762(d), price FMS wholly paid for from funds made available on a nonrepayable basis on the same costing basis with regard to profit, overhead, IR&D/B&P, and other costing elements as is applicable to acquisitions of like items purchased by DoD for its own use.

(b) Direct costs associated with meeting a foreign customer's additional or unique requirements are allowable under such contracts. Indirect burden rates applicable to such direct costs are permitted at the same rates applicable to acquisitions of like items purchased by DoD for its own use.

* * * * *

■ 31. Section 225.7305 is amended by revising the first sentence to read as follows:

225.7305 Limitation of liability.

Advise the contractor when the foreign customer will assume the risk for loss or damage under the appropriate limitation of liability clause(s) (see FAR Subpart 46.8). * * *

■ 32. Section 225.7308 is revised to read as follows:

225.7308 Contract clauses.

(a) Use the clause at 252.225–7027, Restriction on Contingent Fees for Foreign Military Sales, in solicitations and contracts for FMS. Insert in paragraph (b)(1) of the clause the name(s) of any foreign country customer(s) listed in 225.7303–4(b).

(b) Use the clause at 252.225–7028, Exclusionary Policies and Practices of Foreign Governments, in solicitations and contracts for the purchase of supplies and services for international military education training and FMS.

■ 33. Section 225.7401 is amended by revising paragraph (d) to read as follows:

225.7401 General.

* * * * *

(d) For Air Force contracts: HQ AFSFC/SFPA; telephone, DSN 945–7035/36 or commercial (210) 925–7035/36.

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PART 242—CONTRACT ADMINISTRATION

242.302 [Amended]

■ 34. Section 242.302 is amended by removing paragraph (a)(19).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 35. Section 252.212–7001 is amended as follows:

■ a. By revising the clause date and paragraph (b); and

■ b. In paragraph (c), in entry “252.225–7014”, by removing “(MAR 1998)” and adding in its place “(APR 2003)”. The revised text reads as follows:

252.212–7001 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items.

* * * * *

Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items (Apr 2003)

* * * * *

(b) The Contractor agrees to comply with any clause that is checked on the following list of Defense FAR Supplement clauses which, if checked, is included in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items or components.

252.205–7000 Provision of Information to Cooperative Agreement Holders (DEC 1991) (10 U.S.C. 2416).

252.219–7003 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts) (APR 1996) (15 U.S.C. 637).

252.219–7004 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (Test Program) (JUN 1997) (15 U.S.C. 637 note).

252.225–7001 Buy American Act and Balance of Payments Program (APR 2003) (41 U.S.C. 10a–10d, E.O. 10582).

252.225–7012 Preference for Certain Domestic Commodities (FEB 2003) (10 U.S.C. 2533a).

252.225–7014 Preference for Domestic Specialty Metals (APR 2003) (10 U.S.C. 2533a).

252.225–7015 Restriction on Acquisition of Hand or Measuring Tools (APR 2003) (10 U.S.C. 2533a).

252.225–7016 Restriction on Acquisition of Ball and Roller Bearings (APR 2003) (____ Alternate I) (APR 2003) (10 U.S.C. 2534 and Section 8099 of Public Law 104–61 and similar sections in subsequent DoD appropriations acts).

252.225–7021 Trade Agreements (APR 2003) (19 U.S.C. 2501–2518 and 19 U.S.C. 3301 note).

252.225–7027 Restriction on Contingent Fees for Foreign Military Sales (APR 2003) (22 U.S.C. 2779).

252.225–7028 Exclusionary Policies and Practices of Foreign Governments (APR 2003) (22 U.S.C. 2755).

252.225–7036 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program (APR 2003) (____ Alternate I) (APR 2003) (41 U.S.C. 10a–10d and 19 U.S.C. 3301 note).