

(ii) An unincorporated concern having its principal place of business in the United States.

(4) “Domestic end product” has the meaning given in the clauses at 252.225-7001, Buy American Act and Balance of Payments Program; 252.225-7007, Buy American Act—Trade Agreements—Balance of Payments Program; and 252.225-7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program, instead of the meaning in FAR 25.003.

(5) “Eligible product” means, instead of the definition at FAR 25.003, a designated, NAFTA, or Caribbean Basin country end product in the categories listed in 225.401-70.

(6) “Foreign concern” means any concern other than a domestic concern.

(7) “Nondesignated country end product” means any end product which is not a U.S. made end product or a designated country end product.

(8) “Nonqualifying country” means a country other than the United States or a qualifying country.

(9) “Nonqualifying country end product” means an end product which is neither a domestic nor qualifying country end product.

(10) “Nonqualifying country offer” means an offer of a nonqualifying country end products, including the price of transportation to destination.

(11) “Qualifying country” is a term used to describe certain countries with memoranda of understanding or international agreements with the United States. These countries are listed in 225.872-1.

(12) “Qualifying country component” and “qualifying country end product” are defined in the clauses at 252.225-7001, Buy American Act and Balance of Payments Program; 252.225-7007, Buy American Act—Trade Agreements—Balance of Payments Program; and 252.225-7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program. “Qualifying country end product” is also defined in the clause at 252.225-7021, Trade Agreements.

(13) “Qualifying country offer” means an offer of a qualifying country

end product, including the price of transportation to destination.

(14) “Source” when restricted by such words as foreign, domestic, qualifying country, etc., refers to the actual manufacturer or producer of the end product or component.

[65 FR 19850, Apr. 13, 2000, as amended at 67 FR 20694, Apr. 26, 2002]

### Subpart 225.1—Buy American Act—Supplies

SOURCE: 65 FR 19850, Apr. 13, 2000, unless otherwise noted.

#### 225.103 Exceptions.

(a)(1)(A) Specific public interest exceptions for DoD for certain countries are in 225.872.

(B) The Under Secretary of Defense (Acquisition, Technology, and Logistics) has determined that, for procurements subject to the Trade Agreements Act, it is inconsistent with the public interest to apply the Buy American Act to information technology products in Federal Supply Group 70 or 74 that are substantially transformed in the United States.

(ii)(A) Normally, use the evaluation procedures in subpart 225.5, but consider recommending a public interest exception where the purposes of the Buy American Act are not served, or in order to meet a need set forth in 10 U.S.C. 2533. For example, a public interest exception may be appropriate—

(1) If accepting the low domestic offer will involve substantial foreign expenditures, or accepting the low foreign offer will involve substantial domestic expenditures;

(2) To ensure access to advanced state-of-the-art commercial technology; or

(3) To maintain the same source of supply for spare and replacement parts (also see paragraph (b)(iii)(B) of this section)—

(i) For an end item that qualifies as an American good; or

(ii) In order not to impair intergration of the military and commercial industrial base.

(B) A determination whether to grant a public interest exception shall be

## 225.104

made after consideration of the factors in 10 U.S.C. 2533—

(1) At a level above the contracting officer for acquisitions valued at less than \$100,000;

(2) By the head of the contracting activity for acquisitions valued at \$100,000 or more but less than \$1,000,000; or

(3) By the agency head for acquisitions valued at \$1,000,000 or more.

(b)(i) A determination that an article, material, or supply is not reasonably available is required where no domestic offer is received or when domestic offers are insufficient to meet the requirement and award is to be made on a nonqualifying country end product.

(ii) Except as provided in FAR 25.103(b)(3), the determination must be approved—

(A) At a level above the contracting officer, if the acquisition is estimated not to exceed \$25,000;

(B) By the chief of the contracting officer if the acquisition is estimated not to exceed \$250,000;

(C) By the head of the contracting activity (HCA) or immediate deputy if the acquisition is estimated not to exceed \$2 million; or

(D) By the head of the agency, or designee at a level no lower than an HCA, if the acquisition is estimated to exceed \$2 million.

(iii) A determination as to whether an article, material, or supply is reasonably available is not required for—

(A) End products or components listed in 225.104(a)(iii) or FAR 25.104(a);

(B) Acquisitions for spare/replacement parts when the acquisition is restricted to the original manufacturer or supplier; or

(C) Acquisition of foreign drugs by the Defense Supply Center, Philadelphia, when the Director, Pharmaceuticals Group, Directorate of Medical Materiel, determines that only the requested foreign drug will fulfill the requirements.

(iv) Under coordinated acquisition (see Subpart 208.70), the determination is the responsibility of the requiring department when the requiring department specifies acquisition of a foreign end product.

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(c) The cost of a domestic end product is unreasonable if it is not the low evaluated offer when evaluated under Subpart 225.5.

[65 FR 19850, Apr. 13, 2000, as amended at 65 FR 39705, June 27, 2000; 67 FR 49252, July 30, 2002]

### 225.104 Nonavailable articles.

(a)(i) DoD has determined that the articles, materials, and supplies listed in FAR 25.104(a) and in paragraph (a)(iii) of this section, when purchased as end items or components, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. Regard these items or components as being of domestic origin when incorporated in—

(A) An end product or construction material manufactured in the United States; or

(B) A qualifying country end product or construction material. (For construction material, see FAR Subpart 25.2.)

(ii) Scrap is domestic in origin if generated in, collected in, and prepared for processing in the United States.

(iii)(A) Aluminum clad steel wire.

(B) Sperm oil.

### 225.170 Acquisition from or through other Government agencies.

Contracting activities must apply the evaluation procedures in subpart 225.5 when using Federal supply schedules.

### 225.171 Solicitations.

(a) For oral solicitations, inform prospective vendors that only domestic and qualifying country end products are acceptable, except nonqualifying country end products are acceptable if—

(1) The items are excepted either on a blanket or an individual basis; or

(2) The price of the nonqualifying country end product is the low offer under the evaluation procedures in subpart 225.5.

(b) When only domestic end products are acceptable, the solicitation must make a statement to that effect.