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country of a defense article jointly developed; or

(iii) Acquisition by the United States of a defense article or defense service from another member country.

(b) *Other participant* means a cooperative project participant other than the United States.

225.871-3 General.

(a) Cooperative project authority. (1) Departments or agencies, that have authority to do so, may enter into a cooperative project agreement with NATO or with one or more member countries of that organization under DoD Directive 5530.3, International Agreements.

(2) Under laws and regulations governing the negotiation and implementation of cooperative project agreements, departments and agencies may enter into contracts, or incur other obligations, on behalf of other participants without charge to any appropriation or contract authorization.

(3) Agency heads have authority to solicit and award contracts to implement cooperative projects.

(b) Contracts implementing cooperative projects shall comply with all applicable laws relating to Government acquisition, unless a waiver is granted under 225.871-4. A waiver of certain laws and regulations may be obtained if—

(1) Required by the terms of a written cooperative project agreement;

(2) It will significantly further NATO standardization, rationalization, and interoperability; and

(3) It is approved by the appropriate DoD official.

225.871-4 Statutory waivers.

(a) The Deputy Secretary of Defense may waive for contracts or subcontracts placed outside the United States any provision of law that specifically prescribes—

(1) Procedures for the formation of contracts;

(2) Terms and conditions for inclusion in contracts;

(3) Requirements for, or preferences to be given—

(i) To goods grown, produced, or manufactured in the United States or in U.S. Government-owned facilities; or

(ii) For services to be performed in the United States; or

(4) Requirements regulating the performance of contracts.

(b) There is no authority for waiver of—

(1) Any provision of the Arms Export Control Act (22 U.S.C. 2751);

(2) Any provision of 10 U.S.C. 2304;

(3) The cargo preference laws of the United States, including the Military Cargo Preference Act of 1904 (10 U.S.C. 2631) and the Cargo Preference Act of 1954 (46 U.S.C. 1241(b)); or

(4) Any of the financial management responsibilities administered by the Secretary of the Treasury.

(c) If a waiver is contemplated under the terms of a cooperative project agreement, forward a request for the waiver to the Deputy Secretary of Defense, through the Director of Defense Procurement. The waiver request must include a draft Determination and Findings for signature by the Deputy Secretary of Defense establishing that the waiver is necessary to significantly further NATO standardization, rationalization, and interoperability.

(d) The approval of the Deputy Secretary of Defense must be obtained before committing to make waivers in an agreement or an amendment to an agreement or contract.

225.871-5 Directed subcontracting.

(a) The Director of Defense Procurement may authorize the direct placement of subcontracts with particular subcontractors. Directed subcontracting is not authorized unless specifically addressed in the cooperative project agreement.

(b) In some instances, it may not be feasible to name specific subcontractors at the time the agreement is concluded. The general provisions for work sharing at the prime and subcontractor level, however, must be clearly delineated in the agreement. This will provide the authority necessary to implement such arrangements during the acquisition phase.

(c) The agreement is the authority necessary for including a contractual provision requiring the prime contractor to place certain subcontracts

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with particular subcontractors. No separate justification and approval during the acquisition process is required.

225.871-6 Disposal of property.

Dispose of property that is jointly acquired by the members of a cooperative project under the procedures established in the agreement or in a manner consistent with the terms of the agreement.

225.871-7 Congressional notification.

(a) Congress must be notified whenever DoD determines to award a prime contract or subcontract to a particular contractor if the determination was not part of the certification made under Section 27(f) of the Arms Export Control Act before finalizing the cooperative agreement.

(1) Departments and agencies must provide a proposed Congressional notice to the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics), in sufficient time to forward to Congress before the time of contract award.

(2) The proposed notice shall include the reason why the authority to designate a particular contractor or subcontractor should be used.

(b) Congressional notification is also required each time a statutory waiver is exercised under 225.871-4, if such information was not provided in the certification to Congress before finalizing the cooperative agreement. Exercise of the waiver means a contract award or modification which provides for a statutory exception.

[56 FR 36367, July 31, 1991, as amended at 60 FR 61597, Nov. 30, 1995; 65 FR 39705, June 27, 2000]

225.872 Contracting with qualifying country sources.

225.872-1 General.

(a) As a result of memoranda of understanding and other international agreements, the DoD has determined it inconsistent with the public interest to apply restrictions of the Buy American Act/Balance of Payments Program to the acquisition of defense equipment which is mined, produced, or manufactured in any of the following countries

(referred to in this part as “qualifying countries”)—

Australia
Belgium
Canada
Denmark
Egypt
Federal Republic of Germany
France
Greece
Israel
Italy
Luxembourg
Netherlands
Norway
Portugal
Spain
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland

(b) Individual acquisitions for products of the following qualifying countries may, on a purchase-by-purchase basis, be exempted from application of the Buy American Act and Balance of Payments Program as inconsistent with the public interest—

Austria
Finland
Sweden

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

[56 FR 36367, July 31, 1991, as amended at 57 FR 53599, Nov. 12, 1992; 60 FR 61597, Nov. 30, 1995; 62 FR 34122, June 24, 1997; 63 FR 5745, Feb. 4, 1998; 67 FR 4209, Jan. 29, 2002]

225.872-2 Applicability.

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

(1) Provision of U.S. National Disclosure Policy (NDP), DOD Directive 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—