

Questions and Answers regarding the U.S. DoD Procurement System

QUESTIONS	ANSWERS REGARDING THE DoD U.S. PROCUREMENT SYSTEM (current as of Nov. 21, 2008)
COUNTRY PROFILE	
Is the country a North Atlantic Treaty Organization (NATO) ally?	Yes.
Is the country a US-designated Major Non-NATO Ally?	Not applicable to DoD.
Is the country a US-designated "Friendly Foreign Country"?	Not applicable to DoD.
Is the country a "designated country" under the Trade Agreements Act of 1979 (e.g., a signatory of the World Trade Organization's Agreement on Government Procurement)?	Not applicable.
Is the country a "Free Trade Agreement" partner of the US?	Not applicable to DoD.
Is the country a member of a regional organization such that it grants other member countries preferences or advantages in procurements by its DoD?	The US has commitments within the WTO, as well as Regional and individual Country agreements, which provide numerous countries with an advantageous status in competing for procurements for DoD contracts. See FAR subpart 25.4 and DFARS subpart 225.4.
Is an agreement for general security of military information currently in effect between the country's government and the U.S. Department of Defense? If not, what is the status of efforts to establish such an agreement?	Not applicable to DoD.
TRANSPARENCY OF THE PROCUREMENT PROCESS	
Published Material on the Defense Procurement Process	
Identify the statutes, regulations, and policies that govern the conduct of DoD procurements and the award of DoD contracts.	The statutes and policies that affect DoD procurements and the award of contracts are identified and implemented in U.S. procurement regulations, including the Federal Acquisition Regulation (FAR) and the Defense FAR Supplement (DFARS). Rules unique to a particular DoD Component are addressed in that Component's FAR Supplement (e.g., Air Force FAR Supplement). DoD and its Components are required to conduct procurements in accordance with the FAR and DFARS unless a deviation is authorized as required by FAR Subpart 1.4 or DFARS Subpart 201.4.
To what extent are the pertinent statutes, regulations, and policies accessible by the public, including the government and industry representatives of the other country? *	They are fully accessible.
- Via a web site?	Statutes are available via various web sites that provide access to the U.S. Code ¹ (e.g., http://www.gpoaccess.gov/uscode/ or http://www.law.cornell.edu/uscode/) and annual authorization and appropriations acts (e.g., http://www.gpoaccess.gov/plaws/index.html or http://thomas.loc.gov/). The FAR and DFARS are accessible at various web sites. FAR: http://www.arnet.gov/far/loadmainre.html - or - http://farsite.hill.af.mil/ . DFARS: http://www.acq.osd.mil/dpap/dars/dfars/html/current/tochtml.htm Other regulations (e.g., the International Traffic in Arms Regulation (ITAR) governing exports) that are not acquisition regulations, per se, but affect the procurement process, are published in the Code of Federal Regulations (CFR) ² , which is accessible at http://www.gpoaccess.gov/cfr/ . Policies that have not been codified in the regulations are generally available from the issuing office. For example, any policy issued by the Director of Defense Procurement and Acquisition Policy is accessible at: http://www.acq.osd.mil/dpap/ops/policy_vault.htm
- Available in the principal language of the other country?	No. The FAR and DFARS are published only in English. The U.S. Code, Code of Federal Regulations, and policies are also published only in English.
Identify any informational material, such as guidance, on how to do business with the contracting offices that conduct DoD procurements.	"Guide to DoD Contracting Opportunities-A Step-by-Step Approach to the DoD Marketplace" is a two-page narrative that identifies the steps a non-U.S. supplier must take and provides numerous references to useful sources of further information. This detailed set of questions and answers is also a useful resource for this purpose.

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- - How can the industry of the other country obtain this material?	The Step-by-Step Guide is accessible at: http://www.acq.osd.mil/dpap/cpic/ic/doing_business_with_the_department_of_defense_dod_international.htm . Specific questions may be referred to DPAP's Contract Policy and International Contracting office at 703.697.9351 or 9352.
Identify any directory(ies) of DoD contractors that might provide opportunities for contractor teaming arrangements or subcontracting.	DoD publishes listings of the defense contractors receiving the largest dollar volume of contracts each fiscal year. This information is accessible at: https://www.fpds.gov or http://www.usaspending.gov . The U.S. Department of Commerce maintains a web-based system tailored to help non-U.S. companies connect with U.S. suppliers seeking distributors, agents and buyers in their markets. Go to http://www.buyusa.gov , click on "Non-U.S. Companies", and register (free of charge) to use the available information.
Requirements Definition Process	
How are DoD requirements defined and established?	DoD requirements for defense capabilities that involve major investments are developed according to the process described in DoD Instruction 5000.2, Section 3.2, which is accessible at: http://akss.dau.mil/dag/DoD5000.asp?view=document&doc=2 . Rules for writing requirements that will be the basis for procurements are in FAR Part 11, "Describing Agency Needs."
Are requirements defined in a way to maximize competition? (e.g., stated in terms of performance vs. design whenever possible; stated in a way that does not favor any particular supplier)	FAR 11.002(a)(1) requires that needs be specified using market research in a manner designed to (i) promote full and open competition (see FAR Part 6), and (ii) only include restrictive provisions or conditions to the extent necessary to satisfy the needs of the agency or as authorized by law. FAR 11.002(a)(2) requires that, to the maximum extent practicable, acquisition officials state requirements with respect to an acquisition of supplies or services in terms of (A) functions to be performed; (B) performance required; or (C) essential physical characteristics. FAR 11.002(c) provides that requiring agencies should not dictate detailed design solutions prematurely and indicates that industry input should be considered.
Competition	
To what extent and on what basis is full and open competition used for the award of DoD procurements?*	10 U.S.C. 2304 and 41 U.S.C. 253 require, with certain limited exceptions, that contracting officers shall promote and provide for full and open competition in soliciting offers and awarding Government contracts. The law is implemented by FAR Part 6. The limited exceptions are identified in FAR Subparts 6.2 and 6.3.
To what extent and on what basis are competitive procedures, other than full and open competition, used for the award of MOD contracts?	Competitive procedures other than full and open competition are authorized in a limited number of circumstances. FAR Subpart 6.2 authorizes "full and open competition after the exclusion of sources" in order to establish or maintain alternative sources or, in accordance with certain statutes, to limit competition for certain procurements to U.S. small businesses or particular categories of U.S. small businesses. FAR Subpart 6.3 authorizes use of other than full and open competition for seven basic reasons. In most cases, even if one of these exceptions applies, the contracting officer is still required to request offers from as many potential offerors as is practicable under the circumstances. Except for the "set-asides" for U.S. small businesses, all decisions to use competitive procedures other than full and open competition must be justified in writing.
To what extent and on what basis is the award of a DoD contract limited to a sole source* or a limited number of sources?	Each contract awarded without providing for full and open competition shall contain a reference to the specific authority under which it was so awarded. The limited authorities are identified in FAR Subparts 6.2 and 6.3. Before commencing negotiations for a sole source contract, the contracting officer must justify the noncompetitive action in writing, certify the accuracy and completeness of the justification, and obtain approval from an authorized official. The justification and approval procedures, including approval authorities at different dollar thresholds, are in FAR 6.303 and 6.304.

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Procurement Establishment	
Identify the offices authorized to conduct DoD procurements, including the award of DoD contracts.	DoD's procurement is decentralized. FAR 1.601(a) states that authority and responsibility to contract for authorized supplies and services are vested in the agency head (e.g., the Secretary of each Military Department or chief official of any other Defense Component or Agency). The agency head may establish contracting activities and delegate broad authority to manage the agency's contracting functions to heads of such contracting activities. DoD contracting activities are listed in the definition of "contracting activity" in DFARS 202.101. Within a "contracting activity" are individual "contracting offices" that award or execute a contract for supplies or services and perform postaward functions. The most comprehensive single list of organizations in DoD with some level of procurement authority is accessible at http://www.acq.osd.mil/dpap/dars/order_code_assignments.html . To identify major DoD contracting offices that buy specific products or services, go to www.fedbizopps.gov or go to Doing business with the DOD at http://www.acq.osd.mil/dpap/cpic/cp/doing_business_with_the_department_of_defense_dod_us.html .
Identify the procedure for authorizing these offices to conduct DoD procurements and award DoD contracts.	FAR 1.601(a) states that authority and responsibility to contract for authorized supplies and services are vested in the agency head. The agency head may establish contracting activities and delegate broad authority to manage the agency's contracting functions to heads of such contracting activities. For this purpose, "agency head" means the Secretary of Defense, the Secretary of each Military Department (e.g., Secretary of the Army), or chief official of any other Defense Component or Agency.
Identify the government agency(ies) responsible for:	
- Publishing regulations governing DoD procurements.	The development of the FAR System is in accordance with the requirements of the Office of Federal Procurement Policy Act of 1974 (Pub. L. 93-400), as amended by Pub. L. 96-83. The FAR is prepared, issued, and maintained, and the FAR System is prescribed jointly by the Secretary of Defense, the Administrator of General Services, and the Administrator, National Aeronautics and Space Administration, under their several statutory authorities. FAR 1.301 authorizes an agency head to issue or authorize the issuance of agency acquisition regulations that implement or supplement the FAR and incorporate, together with the FAR, agency policies, procedures, contract clauses, solicitation provisions, and forms that govern the contracting process or otherwise control the relationship between the agency, including any of its suborganizations, and contractors or prospective contractors. For DoD, the Director of Defense Procurement and Acquisition Policy represents DoD in the development of the FAR and is responsible for issuing the DFARS. Each DoD Component and Agency has appropriately delegated authority for issuance of any Component-unique regulations to supplement the FAR and DFARS. For example, the AFARS by the Assistant Secretary of the Army (Acquisition Logistics and Technology) (ASA(ALT)) is issued under the authority of FAR 1.301 and DFARS 201.304.
- Overseeing purchasing office compliance with procurement laws, regulations and policies.	The head of each contracting activity (HCA). Each DoD Agency Head that delegates contracting authority to subordinate officials and organizations establishes an appropriate oversight process. For example, the Army FAR Supplement (AFARS) 5101.690 requires Army HCAs to conduct onsite reviews of each of their satellite contracting offices to ensure compliance with laws, policies, regulations, directives, AFARS Appendix CC, etc. once every 24 months, at a minimum. AFARS 5101.690-1 establishes the expectation that each contracting organization will implement appropriate management controls as an element of day-to-day operations. The AFARS provides a Management Control Evaluation Checklist to assist managers at all levels in evaluating compliance with key management controls and to identify and correct weaknesses. The checklist is to be supplemented to include areas specific to each contracting office, as well as Areas of Special Interest issued each fiscal year by the Deputy Assistant Secretary of the Army responsible for Procurement. (The AFARS is accessible at http://farsite.hill.af.mil/VFAFAR1.HTM)

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Identify the procedure for authorizing an individual to act as a contracting officer who can award contracts on behalf of the DoD.	FAR 1.601(a) establishes that "Contracts may be entered into and signed on behalf of the Government only by contracting officers." Contracting officers may bind the Government only to the extent of the authority delegated to them. Contracting officers shall receive from the appointing authority (see FAR 1.603-1) clear instructions in writing regarding the limits of their authority. Information on the limits of the contracting officers' authority shall be readily available to the public and agency personnel. DoD contracting officers must meet the qualifications in DFARS 201.603.
Publicizing Information that Provides Insight into DoD Plans for Future Procurements	
To what extent and how does the government provide the public information that summarizes current major DoD acquisitions?	DoD does not publish such a summary.
To what extent and how are advance plans for DoD procurements identified to the public or otherwise made known to industry? (For example, are there periodic government publications that identify planned major DoD acquisitions for a subsequent period of time?)	DoD does not publish such a forecast. Some DoD Components publish forecasts of their planned procurements, which are likely to be found on the Component's website.
Publicizing Specific Contracting Opportunities	
Are all major public procurements widely advertised to the private sector? *	Yes. Major DoD procurement are publicized on www.fedbizopps.gov , which is the "Government-wide Point of Entry" or GPE, as required by FAR 5.201(b). Limited exceptions to this general rule are listed in FAR 5.202.
What criteria are used to decide which procurements are publicized?	Proposed contract actions expected to exceed \$25,000 must be synopsized at www.fedbizopps.gov , and proposed contract actions expected to exceed \$10,000, but not expected to exceed \$25,000, must be publicized by displaying in a public place, or by any appropriate electronic means, an unclassified notice of the solicitation or a copy of the solicitation. Detailed requirements are in FAR Subpart 5.1. Exceptions to these general rules are in FAR Subpart 5.2.
Does the government publish information on contracting opportunities?	Yes. Vendors can use the single Government Point of Entry at www.fedbizopps.gov to find all synopses (e.g., market research requests for information), advance notifications, and current solicitations. It is possible to search for these by agency (e.g., Department of the Navy; Defense Logistic Agency; etc.) or by the product or service being procured (e.g., Procurement Classification Code 26 for Tires and Tubes or NAICS Code 326211 for Tire manufacturing).
Are there commercial services that publish information on contracting opportunities?	Various industry associations or trade journals may do so for the benefit of their member companies or subscribers. However, the USG and DoD do not rely on any commercial services to perform this function.
In what publications are DoD procurements advertised?	No publications are used on a regular basis to publicize DoD procurements. However, a contracting officer may choose to advertise a specific procurement in a publication known to be read by the kind of vendors that are likely to be capable of satisfying the requirements.
On what web site are DoD procurements advertised?	At the USG single Government-wide Point of Entry, www.fedbizopps.gov .
Are any of the publications of procurement opportunities available in the principal language of the other country?	No.

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To what extent and how does the government provide copies of invitations to tender/solicitations for proposed purchases?	Most solicitations are posted at www.fedbizopps.gov . FAR 5.207 requires advance notices of contract actions to include the proposed solicitation number and the expected date of issuance. If solicitations synopsisized at Fedbizopps will not be made available through that web site, FAR 5.207(c)(16) requires that the synopsis provide information on how to obtain the solicitation. Also, if the solicitation will be made available to interested parties through electronic data interchange, FAR 5.207(c)(17) requires that the synopsis provide any information necessary to obtain and respond to the solicitation electronically. FAR 14.203-1 requires Invitations for Bids to be provided in accordance with FAR 5.102. When a contracting office is located in the United States, any solicitation sent to a prospective bidder located outside the United States shall be sent by electronic data interchange or air mail if security classification permits. FAR 15.203(c) authorizes electronic commerce to be used to issue Requests for Proposals (RFPs) and to receive proposals, modifications, and revisions. In this case, the RFP shall specify the electronic commerce method(s) that offerors may use (see Subpart 4.5). FAR 15.203(d) also authorizes contracting officers to issue RFPs and/or authorize receipt of proposals, modifications, or revisions by facsimile.
Are contract awards publicized, so firms from the other country can identify potential subcontracting opportunities?	Yes, DFARS 205.303 requires contracting offices to report all contractual actions, including modifications, which have face value, excluding unexercised options, of more than \$5.5 million. www.fedbizopps.gov < http://www.fedbizopps.gov/ > has an advanced search option for users wishing to view notices of contract awards online. The notices include the following information: document type, award number, date, place of performance, procurement or NAICS code, and agency.
MARKET ACCESS	
Prerequisites to Participating in DoD Procurements	
What general eligibility criteria must a company meet to be considered qualified or "responsible" and eligible for the award of a DoD contract?	"Responsibility" is described in FAR 9.104-1 and FAR 9.104-2. A contracting officer must determine a contractor is responsible before awarding the contract.
What registrations or other recordations must a company complete in order to (1) compete for a DoD contract and (2) be awarded a DoD contract?	
- Must a supplier identification number be obtained?	Yes. DoD contracting offices use three types of contractor identification codes: Data Universal Numbering System (DUNS) numbers, Taxpayer Identification Numbers (TINs), and CAGE codes. All vendors must have a DUNS Number to register in the Centralized Contractor Registration (CCR) System. A DUNS Number may be obtained at no charge from Dun and Bradstreet (D&B) via its web site (www.dnb.com) within 30 business days. (The D&B D-U-N-S Number is a unique nine-digit identification sequence that has become an international standard for identifying single business entities, and providing links to parents, subsidiaries, headquarters and branches.) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government. An offeror must have a TIN unless the offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States (see solicitation provision at FAR 52.204-3). Government Entity (NCAGE) Code (even if they are from a non-NATO country). The code is needed to register in the CCR. A vendor must contact its country representative to obtain a NCAGE code or can go to http://www.dlis.dla.mil/forms/form_ac135.asp , and fill out the form and submit it. Any country not listed on the form can select "other" from the drop-down list. A partial list of country representatives can be found at http://www.dlis.dla.mil/nato_poc.asp .

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- Must a supplier registration form be completed?	A supplier must be registered in the Centralized Contractor Registration (CCR) System (www.ccr.gov) to be awarded a contract from DoD. CCR is a data base designed to hold information relevant to procurement and financial transactions. (CCR allows for fast electronic payment of invoices.)
- To what extent must a foreign company be affiliated with an indigenous entity or individual as a prerequisite to being considered for the award of a DoD contract? In other words, is local representation or an in-country presence essential in order to compete for or receive DoD contracts?	No, local representation or an in-country presence is not required in order to compete for DoD contracts.
- To what extent is it a practical necessity for a foreign company to be affiliated with an indigenous entity or individual when it wants to be considered for the award of a DoD contract?	It is not essential for a foreign company to be affiliated with an indigenous entity or individual in order to be considered for an award.
- If solicitation mailing lists are maintained by the DoD's purchasing offices, what must a supplier do to be placed on them?	A supplier can call the contracting office/contracting officer and asked to be placed on the solicitation mailing lists if the contracting office uses one.
- Does the DoD require pre-qualification of suppliers before they are eligible to bid on DoD procurements? (E.g., technical screening, plant survey)	See FAR Part Subpart 9.2 regarding Qualifications Requirements. This subpart implements 10 U.S.C. 2319 and 41 U.S.C.253c and prescribes policies and procedures regarding qualification requirements and the acquisitions that are subject to such requirements. As stated in FAR Part 9.201-Definitions, "Qualified Bidders List (QBL)" means a list of bidders who have had their products examined and tested and who have satisfied all applicable qualification requirements for that product or have otherwise satisfied all applicable qualification requirements, and "Qualified Manufacturers List (QML)" means a list of manufacturers who have had their products examined and tested and who have satisfied all applicable qualification requirements for that product.
- - If so, for what categories of procurements?	Agencies must justify the need for a qualification requirement before they establish the qualification requirement (see FAR 9.202(a)). In DoD, qualification requirements apply in the procurement of aviation critical safety items and the modification, repair, and overhaul of those items (see DFARS 209.270). For qualification requirements established by individual DoD Components, refer to the Component's FAR Supplement. Note that notices of proposed procurements published at fedbizopps.gov must specify whether an offeror, its product, or service must meet a qualification requirement in order to be eligible for award, and identification of the office from which additional information about the qualification requirement may be obtained (see FAR Subpart 9.2).
- - Are the qualification requirements published in a medium accessible to the industry of the other country?	Yes, the regulation regarding qualification requirements is published in the FAR, online under Part 9.2--Qualifications Requirements (website: http://www.arnet.gov/far/loadmainre.html). Qualification requirements, if any, applicable to a specific procurement must be identified in the Notice of Contract Action, which is published at Fedbizopps before a solicitation is issued. FAR 5.207(c)(2) requires that each notice of a proposed contract action include a Description, and that the Description include the "Specification and whether an offeror, its product, or service must meet a qualification requirement in order to be eligible for award, and identification of the office from which additional information about the qualification requirement may be obtained (see Subpart 9.2)."
- Is the qualification process open to industry of the other country?	Yes, the qualification process is open to industry of other countries. Eligibility of a non-U.S. product will depend on the particular qualification requirement. FAR 9.202(a)(1)(iii) requires that only those requirements which are the least restrictive to meet the purposes necessitating the establishment of the qualification requirements shall be specified.

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What special requirements must be met when response to a solicitation requires access to classified information, or access to a classified conference is required?	If access to classified information may be required by offerors, FAR 4.403 requires contracting officers to include in the solicitation (i) an appropriate Security Requirements clause (e.g., FAR 52.204-2), and (ii) as appropriate, a requirement for security safeguards in addition to those provided in the clause.
Is there a regulation comparable to DoD's Industrial Security regulation that details procedures designed to safeguard classified information?	The DoD's Industrial Security regulation is referred to in DFAR 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.
Access to Technical Documents	
When specifications are needed to prepare a proposal, are they normally included as part of the solicitation package?	FAR 11.201 and DFARS 211.201 require that solicitations identify all needed documents and indicate how they can be obtained. There are three basic ways the documents are made available: (1) The solicitation identifies the specific documents that are carried in the Federal or DoD Index of Specifications and Standards, and offerors obtain or access those documents through the cited index. (2) The documents are furnished with the solicitation. (3) The solicitation provides specific instructions for obtaining the documents or examining the documents at a specific location. Notes: (A) If a specification document is classified, the company would have to have appropriate security clearances for its facility and for the individuals that would have access to the document. There can be delays in obtaining classified information. (B) Specification documents for military items subject to export controls are subject to the International Traffic in Arms Regulation (ITAR). An export license must be requested and granted by the State Department before the documents can be released. This is a time-consuming process, so it should be initiated as early as possible.
Is there a national repository for specifications, from which a potential offeror from another country may obtain specifications within a short period of time?	Yes. FAR 11.201(d) indicates how the Federal (GSA) Index and DoD Index of Specifications and Standards (DoDISS) may be obtained. The DoDISS is available via the Internet at http://assist.daps.dla.mil . ASSIST-Online accounts are free to all users requiring access to specifications and standards information. Users may apply for an account online, and should allow several business days to receive notification of the new account and password via e-mail. Users with accounts can readily access specific documents.
If a firm from another country wants a copy of a specification apart from a specific contracting action, how may a copy be obtained?	The firm can access specifications and standards in the Federal Index or DoD Index at any time. For documents not in either of those indexes, the firm would have to request a copy or access from the organization able to provide it.
Are there commercial services from which specifications may be obtained?	In some cases nongovernment standards, including voluntary consensus standards, are available from the National Technical Information Service's Fedworld Information Network. Nongovernment standards may also be obtained from the standards developing organization responsible for the preparation, publication, or maintenance of the standard, or from an authorized document reseller. The National Institute of Standards and Technology can provide assistance in identifying sources for, and content of, nongovernment standards.
Barriers to US Industry Participation in DoD Procurements	
Are any DoD procurements restricted to domestic sources?	Yes. Competition for DoD contracts may be limited to domestic sources in a number of circumstances. Examples include: statutory restrictions on buying other than U.S. products (e.g., food, clothing, shipbuilding); national security restrictions (e.g., when it has been determined that a U.S. contractor must perform a particular classified project or that only a U.S. contractor may have access to certain sensitive technology); and socio-economic restrictions (e.g., procurements required to be set aside for U.S. small businesses). A list of such restrictions (and preferences) is accessible at http://www.acq.osd.mil/dpap/cpic/ic/index.html . Detailed information is available in FAR Part 25 and DFARS Part 225.

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Are any DoD procurements restricted such that some offerors are excluded based on where they are established or the place of origin of the offered product?	Yes. Unless an exception applies, DoD is not authorized to buy certain types of items unless they are of U.S. origin. Examples include: food, clothing, tents, tarpaulins, certain textile products, and hand or measuring tools (which must be grown, reprocessed, reused, or produced in the U.S.); specialty metals (which must be melted in the U.S.); armor steel plate (which must be melted and rolled in the U.S.); and buses, chemical weapons antidote, certain components for naval vessels, certain valves and machine tools (which must be manufactured by a manufacturer that is part of the national technology and industrial base). When purchasing items covered by the World Trade Organization Government Procurement Agreement (WTO GPA), DoD may only acquire U.S.-made or designated country end products or U.S. or designated country services, unless offers for such end products or services are either not received or are insufficient to fulfill the requirements. Such restrictions are included in the list at http://www.acq.osd.mil/dpap/cpic/ic/index.html , and are described in detail in FAR Part 25 and/or DFARS Part 225.
What are the rules that govern restricted procurements?	The rules are in FAR Part 25 and/or DFARS Part 225. The list at http://www.acq.osd.mil/dpap/cpic/ic/index.html includes references to the specific FAR and DFARS coverage that addresses individual restrictions.
Other than the specifically restricted procurements, do the country's laws, regulations or policies require or permit the origin (place of manufacture) of a product to be considered as an evaluation factor during source selection?	The place of origin is not an evaluation factor, per se, but the place of origin can affect the evaluation of offers of non-U.S. products. For example, for manufactured end products, the Buy American Act uses a two-part test to define a domestic end product. (1) The article must be manufactured in the United States; and (2) The cost of domestic components must exceed 50 percent of the cost of all the components. The Buy American Act requires offers of foreign products to be evaluated using a 50% mark-up of the price. Qualifying countries identified in DFARS 225.872-1 (a) are exempt from this requirement, however.
Other than specifically restricted procurements, do the country's laws, regulations or policies provide any preference to domestic products?	Yes, preference is given to domestic products by some laws (e.g., the Buy American Act) and policies (e.g., the Balance of Payments Program). Such preferences are included in the list at http://www.acq.osd.mil/dpap/cpic/ic/index.html , and the rules regarding their implementation are in FAR Part 25 and/or DFARS Part 225.
- If so, under what circumstances are preferences provided?	See the FAR and/or DFARS coverage that applies to the specific preference. For the Buy American Act, see FAR Subpart 25.1 and DFARS Subpart 225.1 regarding supplies and FAR Subpart 25.2 and DFARS Subpart 225.2 regarding construction materials. For the Balance of Payments Program, see DFARS Subpart 225.75. The Buy American Act— (1) Restricts the purchase of supplies, that are not domestic end products, for use within the United States. A foreign end product may be purchased if the contracting officer determines that the price of the lowest domestic offer is unreasonable or if another exception applies (see FAR Subpart 25.1); and (2) Requires, with some exceptions, the use of only domestic construction materials in contracts for construction in the United States (see FAR Subpart 25.2). The restrictions in the Buy American Act are not applicable in acquisitions subject to certain trade agreements (see Subpart 25.4). In these acquisitions, end products and construction materials from certain countries receive nondiscriminatory treatment in evaluation with domestic offers. Generally, the dollar value of the acquisition determines which of the trade agreements applies. Exceptions to the applicability of the trade agreements are described in Subpart 25.4.
Under the terms of the MOU, there is to be reciprocal waiver of "Buy National" laws and regulations such that offers of defense items developed and/or produced in the other country will be eligible and will be evaluated without applying price differentials associated such laws. To what extent and how will the government implement such waiver(s)?	The Secretary of Defense or Deputy Secretary of Defense has signed a separate determination and findings, making a blanket exception to the Buy American Act (BAA) for the countries listed at DFARS 225.872-1(a). For the purpose of the BAA, the DFARS coverage informs contracting officers that the waiver exists for those countries, so products of those countries are evaluated as if they were domestic.

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Offsets	
What is the country's policy with regard to offsets?	A Presidential Policy Statement in April 1990 established U.S. policy on offsets in military exports: no agency of the USG shall encourage, enter directly into, or commit U.S. firms to offset arrangements; USG funds shall not be used to finance offsets; and the decision whether to engage in offsets and the responsibility for negotiating and implementing offset arrangements resides with the companies involved. This policy is implemented in the Security Assistance Management Manual (DoD 5105.38M) for those who manage Foreign Military Sales programs, and in DFARS 225.7303 and 225.7307 for those who negotiate FMS contracts.
CUSTOMS AND DUTIES	
Identify any duties, tariffs, or value added taxes applied to non-U.S. offers (submitted in response to DoD solicitations) during evaluation of proposals, that are not applied to offers from U.S. firms.	DoD contracting officers evaluate the proposed contract price. If it includes duty, then duty is evaluated as part of the price. If there is duty-free entry, then no duty is included in the evaluation of contract price. Paragraph (b) of DFARS clause 252.225-7013, "Duty-Free Entry", requires that the price of the contract shall not include any amount for duty on items for which the contractor will claim duty-free entry. This includes qualifying country end products and components (including raw materials and intermediate assemblies) produced or made in qualifying countries that are to be incorporated in U.S.-made end products to be delivered under the contract.
Will the government waive the requirement that such duties, tariffs, or value added taxes be applied to non-U.S. offers (submitted in response to DoD solicitations) during evaluation? If so, how will this waiver be implemented?	DoD contracting officers evaluate the proposed contract price, which should not include duty if there will be duty-free entry for items delivered under the contract. DoD will issue duty-free entry certificates for qualifying country supplies (end products and components) and in certain other cases (see DFARS 225.901). See FAR 25.903 and DFARS 225.903 for more information about supplies for which exemptions from duty may be obtained when the supplies are imported into the customs territory of the United States under a Government contract. The exemptions are implemented through the FAR and DFARS, in combination with the procedures followed by U.S. Customs and Border Protection.
Identify any duties, tariffs, or value added taxes on DoD contracts that non-U.S. firms must pay, but which U.S. firms do not have to pay.	Duties, tariffs, and taxes on imports apply to imports regardless of the nationality of the firm delivering or importing the item to the U.S. The U.S. Customs and Border Protection (CBP) implements U.S. laws regarding duties on imported goods. The CBP home page is at http://www.cbp.gov/ . The Harmonized Tariff System (HTS) provides duty rates for virtually every item that exists. An item must be properly classified in order to determine its correct duty rate. CBP, not the importer, makes the final determination of what the correct rate of duty is. For very specific duty information on a particular item, a contractor may request a Binding Ruling. A contractor may also receive guidance by calling its local CBP port. The U.S. International Trade Commission has an on-line Tariff Information Center at: http://www.usitc.gov/tata/hts/other/dataweb/ . This site makes accessible the Harmonized Tariff Schedule of the United States (HTS) and has an interactive data base that enables a contractor to get an approximate (unofficial and nonbinding!) idea of the duty rate for a particular product.

Questions and Answers regarding the U.S. DoD Procurement System

QUESTIONS	ANSWERS REGARDING THE DoD U.S. PROCUREMENT SYSTEM (current as of Nov. 21, 2008)
Will the government waive the duties, tariffs, or value added taxes on DoD contracts for non-US offerors and contractors? If so, how will this waiver be implemented?	Countries with which DoD has Reciprocal Defense Procurement MOUs benefit from the DoD policy, stated in DFARS 225.901, to issue duty-free entry certificates for (1) qualifying country supplies (end products and components); and (2) eligible products (end products but not components) under contracts covered by the World Trade Organization Government Procurement Agreement or a Free Trade Agreement. To obtain this benefit, however, a contractor must comply with the contract clause entitled "Duty-Free Entry" (DFARS 252.225-7013). Contractors must understand that failure by them or their subcontractors to provide the data required by the clause will result in treatment of the shipment as without benefit of free entry under Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States.
Under the terms of the RDP MOU, there is to be reciprocal waiver of duties.	
- To what agency must a contractor of the other country apply for duty-free entry?	The contractor must comply with instructions in the contract clause entitled "Duty-Free Entry" (DFARS 252.225-7013). (Countries with which DoD has Reciprocal Defense Procurement MOUs are "qualifying countries," as the term is used in this clause and elsewhere in the DFARS.) Other aspects of the process are described in DFARS 225.902.
- What documentation is required? Identify forms, if any, by name and number.	See the instructions in the contract clause entitled "Duty-Free Entry" (DFARS 252.225-7013). Clause paragraph (f) requires the contractor to prepare "any customs forms required for the entry of foreign supplies into the U.S. in connection with this contract." A contractor can determine what documentation and forms are required by going to the CBP website: http://www.cbp.gov . From there click on "Import", then "Textiles and Quotas", then "Informed Compliance Publications". This will bring up information about standard forms. Importers can also get help from CBP or seek assistance from the Port of Entry. Some importers use Customs Brokers to assist them, although it is not a requirement that they do so.
FAIRNESS AND DUE PROCESS	
Do invitations to tender/solicitations of offers include all information required to submit an offer?	FAR 14.101(a) and FAR 15.203(a) require that Invitations for Bids and Requests for Proposals include all information required to submit an offer. DoD solicitations include the nature and quantity of the products or services to be supplied; whether the procurement is by sealed bidding or negotiation; the basis upon which the award is to be made, such as lowest price or otherwise; delivery schedule; the address, time, and date for submitting offers as well as the language or languages in which they must be submitted; the address of the agency that will be awarding the contract and will be responsible for providing any information requested by offerors; any economic requirements, financial guarantees, and related information required by suppliers; any technical requirements, warranties, and related information required from suppliers; the amount and terms of payment, if any, required to be paid for solicitation documentation; and any other conditions for participation in the competition.
Does the government ensure that invitations to tender/solicitations are published in adequate time to enable interested suppliers to indicate their interest and respond consistent with requirements?	Yes, all solicitations are posted in a timely manner to ensure adequate response time. However, when the requirement is considered to be urgent, response time may be reduced.

Questions and Answers regarding the U.S. DoD Procurement System

QUESTIONS	ANSWERS REGARDING THE DoD U.S. PROCUREMENT SYSTEM (current as of Nov. 21, 2008)
Do rules for DoD procurements require source selection to be based on criteria in the solicitation?	<p>Yes. FAR 15.303(b)(4) requires that the source selection authority (SSA) shall ensure that proposals are evaluated based solely on the factors and subfactors contained in the solicitation, and FAR 15.303(b)(6) requires the SSA to select the source or sources whose proposal is, in terms of the criteria in the solicitation, the best value to the Government.</p> <p>FAR 15.305(a) states that proposal evaluation is an assessment of the proposal and the offeror's ability to perform the prospective contract successfully. An agency shall evaluate competitive proposals and then assess their relative qualities solely on the factors and subfactors specified in the solicitation. Evaluations may be conducted using any rating method or combination of methods, including color or adjectival ratings, numerical weights, and ordinal rankings. The relative strengths, deficiencies, significant weaknesses, and risks supporting proposal evaluation shall be documented in the contract file.</p>
Are procurement decisions made public? *	<p>Yes, as stated in FAR 5.302, Preparation and Transmittal of Synopses of Awards, contracting officers shall transmit synopses of contract awards in the same manner as prescribed in FAR 5.207.</p> <p>In accordance with DFARS 205.303, Announcement of Contract Awards:</p> <p>(a) Public announcement. DoD contracting officers shall make information available on awards over \$5.5 million. FAR 5.303 requires that this be done in sufficient time for the agency concerned to announce it by 5:00 p.m. Washington, DC time on the day of award. Contracts excluded from this reporting requirement include (1) those placed with the Small Business Administration under Section 8(a) of the Small Business Act (2) those placed with foreign firms when the place of delivery or performance is outside the United States and its outlying areas, and (3) those for which synopsis was exempted under 5.202(a)(1). Agencies shall not release information on awards before the public release time of 5:00 p.m. Washington, DC time.</p> <p>(b) Local announcement. Agencies may also release information on contract awards to the local press or other media. When local announcements are made for contract awards in excess of the simplified acquisition threshold, they shall include—</p> <p>(1) For awards after sealed bidding, a statement that the contract was awarded after competition by sealed bidding, the number of offers solicited and received, and the basis for selection (e.g., the lowest responsible bidder); or (2) For awards after negotiation, the information prescribed by 15.503(b), and after competitive negotiation (either price or design competition), a statement to this effect, and in general terms the basis for selection.</p>
Are there published rules that establish a procedure for offerors to protest (request review of) procurement decisions?*	<p>Yes, there are published rules in FAR Subpart 33.1, that establish procedures to protest procurement decisions.</p>
Can an unfavorable decision regarding a bid protest be reviewed by a third party or in a court of law? *	<p>Yes. An unfavorable decision regarding a bid protest can be reviewed by a third party or in a court of law. See FAR Subpart 33.1. Contractors can protest to the agency or to the Government Accountability Office (GAO). FAR 33.106 requires contracting officers to include the provision at 52.233-2, Service of Protest, in solicitations for contracts expected to exceed the simplified acquisition threshold, and the clause at 52.233-3, Protest After Award, in all solicitations and contracts.</p>

Questions and Answers regarding the U.S. DoD Procurement System

QUESTIONS	ANSWERS REGARDING THE DoD U.S. PROCUREMENT SYSTEM (current as of Nov. 21, 2008)
Are notices sent to unsuccessful offerors as a matter of course?	Yes. FAR 15.503 addresses notifications to unsuccessful offerors. FAR 15.503(a) requires contracting officers to notify offerors promptly in writing when their proposals are excluded from the competitive range or otherwise eliminated from the competition. The notice shall state the basis for the determination and that a proposal revision will not be considered. FAR 15.503(b) requires that within 3 days after the date of contract award, the contracting officer shall provide written notification to each offeror whose proposal was in the competitive range but was not selected for award, or had not been previously notified. The notice shall include (i) the number of offerors solicited; (ii) the number of proposals received; (iii) the name and address of each offeror receiving an award; (iv) the items, quantities, and any stated unit prices of each award. If the number of items or other factors makes listing any stated unit prices impracticable at that time, only the total contract price need be furnished in the notice. However, the items, quantities, and any stated unit prices of each award shall be made publicly available, upon request; and (v) in general terms, the reason(s) the offeror's proposal was not accepted, unless the price information readily reveals the reason. In no event shall an offeror's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other offeror.
Are there published rules that establish a procedure for unsuccessful offerors to protest (request review of) contract award decisions?	Yes. The policies and procedures for filing protests are prescribed in FAR Subpart 33.1.
What is the appropriate avenue of appeal to protest a contract award? Are there any administrative fora, judicial avenues, or the like?	FAR Subpart 33.1 describes the different avenues available, including protests to the agency conducting the procurement and protests to the Government Accountability Office.
Are there established procedures for delaying contract award if a pre-award protest is lodged by an offeror?	Yes, there are established procedures for delaying contract award if a preaward protest is lodged by an offeror. See FAR Subpart 33.1.
What are the procedures for the resolution of contractual disputes that arise during performance of a contract?	FAR Subpart 33.2 establishes procedures and requirements for asserting and resolving claims subject to the Contract Disputes Act.
Is there any third party adjudication of disputes that cannot be resolved between the DoD and its contractors?	FAR 33.201 defines "alternative dispute resolution (ADR)" as any type of procedure or combination of procedures voluntarily used to resolve issues in controversy. These procedures may include, but are not limited to, conciliation, facilitation, mediation, fact-finding, minitrials, arbitration, and use of ombudsmen. FAR 33.214 provides that ADR procedures may be used at any time that the contracting officer has authority to resolve the issue in controversy. If a claim has been submitted, ADR procedures may be applied to all or a portion of the claim. When appropriate, a neutral person may be used to facilitate resolution of the issue in controversy using the procedures chosen by the parties.
INTEGRITY OF PROCUREMENT PROCESS	
How does DoD ensure that it deals with responsible contractors?	FAR 9.103(b) requires that contracting officers make an affirmative determination that a prospective contractor is "responsible" before awarding a contract to that contractor. To be "responsible", a prospective contractor must meet the standards in FAR 9.104. The standards include having a satisfactory record of integrity and business ethics.

Questions and Answers regarding the U.S. DoD Procurement System

QUESTIONS	ANSWERS REGARDING THE DoD U.S. PROCUREMENT SYSTEM (current as of Nov. 21, 2008)
How does DoD ensure that it does not award contracts to contractors that do not meet appropriate standards of integrity and business ethics?	FAR 9.402 requires that agencies solicit offers from, award contracts to, and consent to subcontracts with responsible contractors only. Debarment and suspension are discretionary actions that, taken in accordance with FAR Subpart 9.4, are appropriate means to effectuate this policy. Agencies impose debarment or suspension to protect the Government's interest and only for the causes and in accordance with the procedures set forth in FAR Subpart 9.4. "Debarment" is an action taken under FAR 9.406 to exclude a contractor from Government contracting and Government-approved subcontracting for a reasonable, specified period; a contractor that is excluded is "debarred." "Suspension" is an action taken under FAR 9.407 to disqualify a contractor temporarily from Government contracting and Government-approved subcontracting; a contractor that is disqualified is "suspended." The names and addresses of all contractors debarred or suspended are included in the web-based Excluded Parties List System (EPLS) operated by the General Services Administration. FAR 9.405(d) requires contracting officers to review the EPLS at certain points in the procurement process, including immediately prior to award of a contract. DoD contracting officers may not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the agency head determines that there is a compelling reason for such action. Contractors debarred, suspended, or proposed for debarment are also excluded from conducting business with the Government as agents or representatives of other contractors. See FAR 9.405 for details.
Are there requirements that offerors must agree in writing that they will not engage in behavior (e.g., bribery) that would undermine or distort competition? ***	Yes. Gratuities are prohibited. See FAR 3.202, Contractor Gratuities to Government Personnel.
Are there provisions for making companies that have been proved to have bribed in a procurement process ineligible for future procurements? *	When the agency head or designee determines that a violation has occurred, FAR 3.204(c) authorizes the Government to (1) Terminate the contractor's right to proceed; (2) Initiate debarment or suspension measures as set forth in FAR Subpart 9.4; and (3) Assess exemplary damages, if the contract uses money appropriated to the Department of Defense.
Are procurement officials and contracting officers appointed based on merit? (i.e., competence based education, training, and experience)	Yes, DoD contracting officers are appointed based on merit. FAR 1.603-1 requires agency heads to establish and maintain a procurement career management program and a system for the selection, appointment, and termination of appointment of contracting officers. Agency heads or their designees may select and appoint contracting officers and terminate their appointments. These selections and appointments shall be consistent with Office of Federal Procurement Policy's (OFPP) standards for skill-based training in performing contracting and purchasing duties as published in OFPP Policy Letter No. 92-3, Procurement Professionalism Program Policy—Training for Contracting Personnel, June 24, 1992. FAR 1.603-2 requires that in selecting contracting officers, the appointing official shall consider the complexity and dollar value of the acquisitions to be assigned and the candidate's experience, training, education, business acumen, judgment, character, and reputation.
Does the procurement system include checks and balances to ensure unbiased selection of contractors for award, and to ensure that procurements are conducted and contracts are managed with integrity (e.g., checks and balances that preclude inappropriate actions being taken by government officials for personal gain)?	Yes. The general policy of the U.S. Government is stated in FAR 3.101, Standards of Conduct. FAR Part 3 prescribes policies and procedures for avoiding improper business practices and personal conflicts of interest and for dealing with their apparent or actual occurrence.
Is the appointee protected from removal without relevant justification? **	FAR 1.603-4 provides that termination of a contracting officer appointment will be by letter, unless the Certificate of Appointment contains other provisions for automatic termination, and that terminations may be for reasons such as reassignment, termination of employment, or unsatisfactory performance. No termination shall operate retroactively.
Are there rules and procedures to prevent nepotism and conflict of interest in public procurement? *	Yes, conflicts of interest are addressed in FAR Part 3—Improper Business Practices and Personal Conflicts of Interest.

Questions and Answers regarding the U.S. DoD Procurement System

QUESTIONS	ANSWERS REGARDING THE DoD U.S. PROCUREMENT SYSTEM (current as of Nov. 21, 2008)
Are assets, incomes and life styles of public procurement officers monitored? *	Procurement officials are required to submit a financial disclosure report on a regular basis to identify and avoid potential conflicts of interest. Also, in accordance with FAR Subpart 3.6, "Contracts with Government Employees or Organizations Owned or Controlled by Them", a contracting officer shall not knowingly award a contract to a Government employee or to a business concern or other organization owned or substantially owned or controlled by one or more Government employees. This policy is intended to avoid any conflict of interest that might arise between the employees' interests and their Government duties, and to avoid the appearance of favoritism or preferential treatment by the Government toward its employees.
Is there an ombudsman or its equivalent (i.e., an independent body to which potential offerors, offerors, or contractors may make complaints about maladministration)? **	DoD has an Ombudsman whose role is to help companies interested in performing contracts to satisfy DoD requirements. If a company from a country outside the US has difficulty fully understanding contracting rules and regulations, or if it thinks it was unfairly excluded from a defense procurement, the company may contact the DoD Ombudsman. Contact information for the Ombudsman is: Deputy Director, Contract Policy and International Contracting, Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology and Logistics), telephone 703-697-9351 or 9352.
Is the ombudsman independent? **	Yes
Has an ombudsman been removed without relevant justification in the last five years? **	No
Can petitioners complain anonymously if they fear possible reprisals? **	Yes
Footnotes:	
* This criterion is one used by Transparency International as an indicator of transparency in public procurement.	
** This criterion is one used by Transparency International as an indicator of transparency in government.	
*** This criterion is consistent with Transparency International's Integrity Pact initiative.	
Notes:	
1 The United States Code is the codification by subject matter of the general and permanent laws of the United States. It is divided by broad subjects into 50 titles and published by the Office of the Law Revision Counsel of the U.S. House of Representatives. Since 1926, the United States Code has been published every six years. In between editions, annual cumulative supplements are published in order to present the most current information.	
2 The Code of Federal Regulations (CFR) is the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government. It is divided into 50 titles that represent broad areas subject to Federal regulation. Each volume of the CFR is updated once each calendar year and is issued on a quarterly basis.	