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AUTHORITY: 40 U.S.C. 486(c); Article VIII of the Panama Canal Treaty of 1977 and Articles IX, XI, and XVI of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

SOURCE: 55 FR 7654, Mar. 2, 1990, unless otherwise noted.

3525.000 Scope of part.

This part provides policies and procedures related to the application of the Buy American Act, the Balance of Payments Act, and purchases under the Trade Agreements Act of 1979 to Commission acquisitions. This part also provides policies and procedures for the application of international agreements to Commission acquisitions.

Subpart 3525.1—Buy American Act—Supplies

3525.102 Policy.

The Buy American Act does not apply to purchases of supplies, or services that involve the furnishing of supplies, for use in the Republic of Panama because such use is outside the United States, as provided in FAR 25.102(a)(1).

[55 FR 7654, Mar. 2, 1990; 55 FR 38331, Sept. 18, 1990]

Subpart 3525.2—Buy American Act—Construction Materials

3525.202 Policy.

The Buy American Act does not apply to contracts for the construction, alteration, or repair of any public building or public work in the Republic of Panama. The Act applies only to acquisitions for use inside the United States, as provided in FAR 25.202.

Subpart 3525.3—Balance of Payments Program

3525.300-70 Applicability.

In accordance with Article IX of the Agreement in Implementation of Article III of the Panama Canal Treaty, the Balance of Payments provisions limiting purchase of foreign products or services shall not apply to purchases for use by the Commission of—

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(a) Articles, materials, or supplies that are produced in Panama (mined, produced, or manufactured);

(b) End products, the largest percentage of which are components of Panamanian origin; and

(c) Services which are available in Panama.

3525.302 Policy.

(a) The cognizant HCA is the official designated to make the determination required by FAR 25.302(b)(3) that a requirement can only be filled by a foreign end product or service, and that it is not feasible to forego filling it or to provide a domestic substitute.

(b)(6) The Procurement Executive is the official designated to make the determination, with the assistance of legal counsel, that the acquisition of foreign end products or services is required by a treaty or executive agreement between governments.

Subpart 3525.4—Purchases Under the Trade Agreements Act of 1979

3525.402 Policy.

(c) Pursuant to a delegation from the United States Trade Representative under the authority provided by section 302(b)(2) of the Trade Agreements Act, the Administrator of the Panama Canal Commission is authorized to waive, on a case-by-case basis, the purchasing prohibition of section 302(a)(1) of the Act. The Administrator has delegated this waiver authority to the Procurement Executive.

Subpart 3525.670—Customs and Duties, Republic of Panama

3525.670-1 Policy.

(a) Article XVI of the Agreement in Implementation of Article III of the Panama Canal Treaty provides that all property imported into the Republic of Panama for the official use or benefit of the Commission, including that imported by its contractors or subcontractors in connection with the various activities authorized under said Agreement, shall be exempt from the payment of all customs duties or other import taxes and charges and from all license requirements.

(b) All property imported into the Republic of Panama free of customs duties and other taxes may be exported free of customs duties, export permits, export taxes, and other assessments. All property acquired in the Republic of Panama by, or in the name of, the Commission may be exported free of customs duties, export licenses, and other export taxes or charges.

3525.670-2 Procedures.

When requested by the contractor or its representative, the contracting officer will initiate a cargo certification document stating that the property being imported is for the official use or benefit of the Commission. The cargo certification document is then processed by the Cargo Documentation Section of the Commission's Administrative Services Division for presentation by the contractor or representative to the appropriate authorities in the Republic of Panama.

Subpart 3525.8—International Agreements and Coordination

3525.801 International agreements.

The Panama Canal Treaty and the Agreement in Implementation of Article III of the Treaty affect the contracting activities of the Commission. Contracting officers shall give particular attention to the provisions in these agreements that pertain to acquisition procedures, contractors' taxes, facilities, and other matters relating to contracting.

3525.801-70 Language.

(a) Solicitations and contracts shall be issued in the English language.

(b) All offers, correspondence and documents related to solicitations and contracts shall be submitted in the English language.

(c) Where inconsistencies between the terms of solicitations or contracts and any translation into another language occur, the English language meaning shall control.

3525.801-71 Choice of law.

All matters relating to the validity, construction, interpretation, performance, and enforcement of any contract

awarded by the Commission shall be determined in accordance with the applicable Federal law of the United States.

3525.801-72 Immunity.

Under Article VIII of the Treaty, agencies and instrumentalities of the Government of the United States of America operating in the Republic of Panama pursuant to the Treaty and related agreements shall be immune from the jurisdiction of the Republic of Panama, and their installations, official archives and documents, shall be inviolable.

3525.801-73 Designated contractors.

(a) Definition.

Designated contractors means:

(1)(i) Natural persons who are nationals or permanent residents of the United States, or

(ii) Corporations or other legal entities organized under the laws of the United States, any state thereof, or the District of Columbia, and which are under the effective control of such natural persons—

(A) To whom contracts are awarded by the Commission, and

(B) Who are so designated in writing by the Commission.

(2) The term also includes subcontractors of designated contractors:

(i) Who are nationals or permanent residents of the United States, or

(ii) Which are corporations or other legal entities organized under the laws of the United States, any state thereof, or the District of Columbia, and which are under the effective control of United States nationals or permanent residents.

(3) Because Article XI of the Treaty's Implementing Agreement (see paragraph (b) of this subsection and 3502.101) imposes certain obligations and confers certain benefits on designated contractors, all of which are dependent upon their or their employees' physical presence in Panama, the term is understood to mean only those contractors and/or subcontractors that will perform all or a portion of the contract work in the Republic of Panama. Such contractors are normally designated at the time of contract award.