

(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.

(b) *Obligations and benefits.* Designated contractors are subject to the laws and regulations of the Republic of Panama except for certain obligations and benefits established in Article XI of the Agreement in Implementation of Article III of the Treaty. These obligations and benefits are cited below.

(1) The contractor must engage exclusively in activities related to the execution of the work for which the contractor has been contracted by the Commission or related to other works or activities authorized by the Republic of Panama.

(2) The contractor must refrain from carrying out practices which may constitute violations of the laws of the Republic of Panama.

(3) The contractor shall enter and depart from the territory of the Republic of Panama in accordance with procedures prescribed for United States citizen employees in Article XII of the Implementing Agreement.

(4) The contractor must obtain a document indicating his/her identity as a contractor, which the proper authorities of the United States shall issue when they are satisfied that the contractor is duly qualified. This certificate shall be sufficient to permit the contractor to operate under Panamanian law as a contractor of the United States. Nevertheless, the authorities of the Republic of Panama may require the registration of the appropriate documents to establish juridical presence in the Republic of Panama.

(5) The contractor shall not be obliged to pay any tax or other assessment to the Republic of Panama on income derived under a contract with the Commission, so long as the contractor is taxed in the United States at a rate substantially equivalent to the corresponding taxes and assessments of the Republic of Panama.

(6) The contractor may move freely within the Republic of Panama, and shall have exemptions from customs duties and other charges, as provided for United States citizen employees in the Implementing Agreement.

(7) The contractor may use public services and installations in accordance with the terms and conditions of Article XIII of the Implementing

Agreement and, on a non-discriminatory basis, shall pay the Republic of Panama highway tolls and taxes on plates for private vehicles.

(8) The contractor shall be exempt from any taxes imposed on depreciable assets belonging to the contractor, other than real estate, which are used exclusively for the execution of contracts with the United States.

(9) The contractor may use the services and facilities provided for in Articles X and XVIII of the Agreement in Implementation of Article IV of the Panama Canal Treaty, to the extent such use is authorized by the United States; provided, however, that after five years from the entry into force of the Implementing Agreement, the use of military postal services by such contractors shall be limited to that related to the execution of contracts with the United States.

(c) *Notification of designation.* The contracting officer shall, through the Director, Office of Executive Administration, advise contractors that they are "designated contractors" within the meaning of Article XI of the Implementing Agreement and advise them to review their obligations thereunder. Such designations shall be communicated to the authorities of the Republic of Panama by the authorities of the United States. Contracting officers shall maintain current lists of "designated contractors" at all times.

(d) *Withdrawal of designation.* The Commission shall withdraw the designation of a contractor when any of the following circumstances occur:

(1) Completion or termination of the contract with the Commission.

(2) Proof that during the life of the contract such contractors have engaged in the Republic of Panama in business activities not related to their contracts with the United States nor authorized by the Republic of Panama.

(3) Proof that such contractors are engaged in practices which in the view of the Republic of Panama constitute serious violations of the laws of the Republic of Panama.

## Panama Canal Commission

## 3525.801-76

The authorities of the United States shall notify the authorities of the Republic of Panama whenever the designation of a contractor has been withdrawn. If, within sixty days after notification of the withdrawal of the designation of a contractor who entered the territory of the Republic of Panama in the capacity of a contractor, the authorities of the Republic of Panama require such contractor to leave its territory, the United States shall ensure that the Republic of Panama shall not incur any expense due to the cost of transportation.

(e) *Impact on subcontractors, employees, and dependents.* The provisions of this 3525.801-73 shall similarly apply to the subcontractors and to the employees of the contractors and subcontractors and their dependents who are nationals or residents of the United States. These employees and dependents shall not be subject to the Panamanian Social Security system.

### 3525.801-74 Panamanian preference.

(a) Article IX of the Agreement in Implementation of Article III of the Treaty provides that:

In procuring supplies and services, the Commission shall give preference to those obtainable in the Republic of Panama. Such preference shall apply to the maximum extent possible when such supplies and services are available as required, and are comparable in quality and price to those which may be obtained from other sources. For the comparison of prices there shall be taken into account the cost of transport to the Republic of Panama, including freight, insurance and handling, of the supplies and services which compete with Panamanian supplies and services. In the acquisition of goods in the Republic of Panama, preference shall be given to goods having a larger percentage of components of Panamanian origin.

(b) Part 3570 provides guidance on the implementation of the Panamanian

preference provisions of the Treaty's Implementing Agreement.

### 3525.801-75 Customary local business usage.

In acquisitions conducted in the Republic of Panama, customary local business usage, where not inconsistent with the applicable Federal law of the United States, may be followed. When conflicts develop between local business usage and the requirements of the Federal Acquisition Regulation, the matter shall be referred to the Procurement Executive, who shall seek the opinion of legal counsel, as a deviation for processing as required by 3501.405 and FAR 1.405.

### 3525.801-76 Contract clauses.

As used in this subsection, the term "foreign" means any country other than the United States. The contracting officer shall insert the following clauses in solicitations and contracts, as indicated below:

(a) In lieu of FAR clause 52.225-14, Inconsistency Between English Version and Translation of Contract, the clause at 3552.225-70, Language, whenever foreign offers are anticipated or contracts are awarded to foreign contractors.

(b) The clause at 3552.225-71, Notice of Applicability of United States Federal Law, whenever foreign offers are anticipated or contracts are awarded to foreign contractors.

(c) The clause at 3552.225-72, Designated Contractors, whenever the contract work is to be performed in whole or in part in the Republic of Panama and offers are anticipated from, or contracts are awarded to, U.S. contractors.

(d) The clause at 3552.225-73, Responsibility for Observance of Laws, Orders, and Regulations, whenever the contract work is to be performed in whole or in part in the Republic of Panama.