

225.7704

(5) 252.225-7036, Buy American—Free Trade Agreements—Balance of Payments Program.

(6) 252.225-7044, Balance of Payments Program—Construction Material.

(7) 252.225-7045, Balance of Payments Program—Construction Material Under Trade Agreements.

(g) Do not use the following clause or provision in solicitations or contracts that include the clause at 252.225-7026:

(1) 252.225-7020, Trade Agreements Certificate.

(2) 252.225-7021, Trade Agreements.

[78 FR 59858, Sept. 30, 2013, as amended at 84 FR 12140, Apr. 1, 2019]

225.7704 Acquisitions of products and services from South Caucasus/Central and South Asian (SC/CASA) state in support of operations in Afghanistan.

225.7704-1 Applicability of trade agreements.

As authorized by the United States Trade Representative, the Secretary of Defense has waived the prohibition in section 302(a) of the Trade Agreements Act (see subpart 225.4) for acquisitions by DoD, and by GSA on behalf of DoD, of products and services from SC/CASA states in direct support of operations in Afghanistan.

[75 FR 81918, Dec. 29, 2010]

225.7704-2 Applicability of Balance of Payments Program.

The Deputy Secretary of Defense has determined, because of importance to national security, that it would be inconsistent with the public interest to apply the provisions of the Balance of Payments Program (see subpart 225.75) to offers of end products other than arms, ammunition, and war materials (i.e., end products listed in 225.401-70) and construction materials from the SC/CASA states that are being acquired by or on behalf of DoD in direct support of operations in Afghanistan.

[75 FR 81918, Dec. 29, 2010]

225.7704-3 Solicitation provisions and contract clauses.

Appropriate solicitation provisions and contract clauses are prescribed as alternates to the Buy American-Trade Agreements-Balance of Payments Pro-

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gram solicitation provisions and contract clauses prescribed at 225.1101 and 225.7503.

[75 FR 81918, Dec. 29, 2010]

225.7705 Prohibition on use of funds for contracts of certain programs and projects in Afghanistan that cannot be safely accessed.

SOURCE: 83 FR 16004, Apr. 13, 2018, unless otherwise noted.

This section implements section 1216 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328).

225.7705-1 Prohibition.

The contracting officer shall not obligate or expend funds for a construction or other infrastructure program or project of the Department in Afghanistan if military or civilian personnel of the United States Government or their representatives, with authority to conduct oversight of such program or project, cannot safely access such program or project. In limited circumstances, this prohibition may be waived in accordance with section 225.7705-2.

225.7705-2 Waiver of prohibition.

(a) The prohibition in 225.7705-1 may be waived upon issuance of a determination, approved in accordance with paragraph (b) of this section, that—

(1) The program or project clearly contributes to United States national interests or strategic objectives;

(2) The Government of Afghanistan has requested or expressed a need for the program or project;

(3) The program or project has been coordinated with the Government of Afghanistan, and with any other implementing agencies or international donors;

(4) Security conditions permit effective implementation and oversight of the program or project;

(5) Safeguards to detect, deter, and mitigate corruption and waste, fraud, and abuse of funds are in place;

(6) Adequate arrangements have been made for the sustainment of the program or project following its completion, including arrangements with respect to funding and technical capacity for sustainment; and

(7) Meaningful metrics have been established to measure the progress and effectiveness of the program or project in meeting its objectives.

(b) The following officials are authorized to approve the determination described in paragraph (a) of this section:

(1) In the case of a program or project with an estimated lifecycle cost of less than \$1 million, by the contracting officer.

(2) In the case of a program or project with an estimated lifecycle cost of \$1 million or more, but less than \$20 million, by the senior U.S. officer in the Combined Security Transition Command-Afghanistan.

(3) In the case of a program or project with an estimated lifecycle cost of \$20 million or more, but less than \$40 million, by the Commander of United States Forces-Afghanistan.

(4) In the case of a program or project with an estimated lifecycle cost of \$40 million or more, by the Secretary of Defense.

(c) Congressional notification is required within 15 days of issuance of a determination to waive the prohibition for programs or projects valued at \$40 million or more in accordance with paragraph (b)(4) of this section.

225.7705-3 Procedures.

(a) The contracting officer shall not obligate or expend funds for contracts for a construction or other infrastructure program or project in Afghanistan, awarded after December 23, 2016, unless the requiring activity provides the following documentation:

(1) Written affirmation that military or civilian personnel of the United States Government or their representatives, with authority to conduct oversight of such program or project, can safely access such program or project; or

(2)(i) For programs or projects valued at less than \$1 million, sufficient information upon which to base the determination described in 225.7705-2(a); or

(ii)(A) For programs or projects valued at \$1 million or more, a copy of the approved determination described in 225.7705-2(a) and (b); and

(B) For programs or projects valued at \$40 million or more, a copy of the Congressional notification described in 225.7705-2(c).

(b) After contract award, the contracting officer shall review the requiring activity's progress reports (*e.g.*, contracting officer's representative reports) that addresses whether access continues to be safe or security conditions continue to permit effective implementation and oversight of the contract. If the requiring activity does not affirm continued safe access or, if a determination to waive the prohibition has been approved, that security conditions continue to permit effective implementation and oversight of the contract, then the contracting officer shall consult with the requiring activity to take any appropriate actions.

Subpart 225.78—Acquisitions in Support of Geographic Combatant Command's Theater Security Cooperation Efforts

§ 225.7801 Policy.

For guidance on procurement support of the geographic combatant command's theater security cooperation efforts, see PGI 225.78.

[76 FR 27274, May 11, 2011]

Subpart 225.79—EXPORT CONTROL

SOURCE: 78 FR 36110, June 17, 2013, unless otherwise noted.

225.7900 Scope of subpart.

This subpart implements—

(a) Section 890(a) of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181); and

(b) The requirements regarding export control of Title I of the Security Cooperation Act of 2010 (Pub. L. 111-266); the Treaty Between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation (the U.S.-Australia DTC Treaty); and the Treaty Between the Government of the United States of America and the