

DEPARTMENT OF DEFENSE

48 CFR Part 225

Balance of Payments Program in Defense Supply Contracts

AGENCY: Department of Defense (DoD).**ACTION:** Request for public comments.

SUMMARY: The Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) is seeking information that will assist it in evaluating a proposal to eliminate the application of the Balance of Payments Program (BOPP) to DoD procurements of supplies to be used overseas. An earlier document published in the **Federal Register** at 66 FR 47155 on September 11, 2001, requested public comments on eliminating the application of the BOPP to construction contracts. Those comments are now being evaluated. Interested parties are invited to submit written comments or recommendations relative to eliminating the application of the BOPP to supply contracts. It is requested that the comments submitted provide specific examples of the benefits to be achieved by the elimination of BOPP or identify specific harm that would accrue as a result of the elimination of the BOPP preference in DoD supply contracts.

DATES: Comments must be received no later than June 14, 2002.

ADDRESSEES: Send all comments to Charles A. Zuckerman, Deputy Director, Defense Procurement, Foreign Contracting, OUSD(AT&L), 3060 Defense Pentagon, Washington, DC 20301-3060.

FOR FURTHER INFORMATION CONTACT: Susan M. Hildner, Procurement Analyst, Defense Procurement, Defense Systems Procurement Strategies, OUSD(AT&L), 3060 Defense Pentagon, Washington, DC 20301-3060, telephone (703) 695-4258, or e-mail to Susan.Hildner@osd.mil.

SUPPLEMENTARY INFORMATION: The BOPP was established by Secretary of Defense Robert S. McNamara in July 1962, when he directed the Secretaries of the Military Departments to hold each of their respective department's expenditures of appropriated funds outside the United States, its possessions, and Puerto Rico, to an

absolute minimum. The BOPP coverage was incorporated in the Armed Services Procurement Regulation (ASPR), the predecessor to the Defense Federal Acquisition Regulation Supplement (DFARS) in July 1964. There is no statutory authority for the BOPP.

The BOPP, as implemented, restricts the purchase of supplies that are not domestic end products, for use outside the United States, in procurements where the estimated cost is expected to exceed the simplified acquisition threshold. Its restrictions are similar to those of the Buy American Act (BAA). It uses the same definitions and evaluation procedures, including the application of a 50 percent factor to determine unreasonable cost. The BOPP was established as an interim measure to be used until the U.S. balance of payments deficit was corrected. However, 40 years later, the deficit continues even with the BOPP in place.

The BOPP is waived for the 21 countries with which DoD has a reciprocal procurement Memorandum of Understanding (MOU). The countries include Australia, Austria, Belgium, Canada, Denmark, Egypt, Finland, France, Germany, Greece, Israel, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, and the United Kingdom. The BOPP is also waived for some foreign supplies and construction materials from 60 designated countries when the value of those procurements meets the threshold for application of the Trade Agreements Act (TAA). The Federal Acquisition Regulation (FAR) contains a listing of those countries in section 25.003. Additionally, under the Caribbean Basin Initiative, the United States Trade Representative has determined that, for acquisitions subject to the TAA, Caribbean Basin country end products must be treated as eligible products. An additional 23 countries are covered by the Caribbean Basin Initiative. These countries are also identified in FAR section 25.003. Under the provisions of the North American Free Trade Agreement, the BOPP is waived for Canada (who is already a designated country under the TAA) and Mexico. As a result, defense equipment procured under reciprocal procurement MOUs and eligible products in

procurements subject to the TAA, receive equal consideration with domestic offers as a result of both the BAA and the BOPP being waived for these procurements. Given the extent to which these international agreements impact the application of the BOPP, few DoD supply procurements are subject to BOPP procedures.

In addition to the implications of the waivers described above, the proposal to eliminate the application of the BOPP to DoD procurements is a recognition that the marketplace has changed considerably since the enactment of the BOPP. In today's market, U.S. manufacturers rely heavily on global sources, particularly in the commercial arena. DoD encourages its acquisition managers to buy commercially produced items rather than entering into long and expensive development projects. Just as in the BAA, contractors must certify that end products offered for public use are domestic end products that have been manufactured in the United States and cost of the domestic or qualifying country components exceeds 50 percent of the cost of all components. To do this, suppliers to DoD must determine, control, and track the source of components. In today's global economy, this has become an extremely difficult task and creates a disincentive for commercial companies to sell to DoD. Commercial vendors do not track the cost of items manufactured in a foreign country. Elimination of the application of the BOPP to DoD procurements for use outside the United States would allow DoD to procure more commercial items if the items were lower in cost and expand access to state-of-the-art commercial technology.

The proposal to eliminate the application of the BOPP to DoD procurements of supplies to be used overseas recognizes both the limited usefulness of the BOPP and the international nature of today's marketplace.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

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