



DEFENSE LOGISTICS AGENCY  
HEADQUARTERS  
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IN REPLY J-33  
REFER TO PROCLTR 03-10

MAY 27 2003

MEMORANDUM FOR PROCLTR DISTRIBUTION LIST

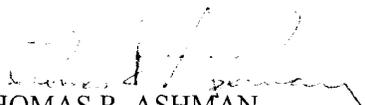
SUBJECT: Foreign Acquisition, Defense Logistics Acquisition Directive (DLAD) 4105.1, Part 25

The purpose of this PROCLTR is to formally update the DLAD to align with the recent Defense Federal Acquisition Regulation Supplement (DFARS) Part 25 rewrite. The DFARS Part 25 rewrite final rule was published March 31, 2003, with an effective date of April 30, 2003.

The changes incorporated by this PROCLTR include the following:

- DLAD section 25.102 renumbered as 25.103, subpart 25.3 renumbered as 25.75, and subpart 25.6 renumbered as 25.9.
- DLAD 25.103(b)(ii)(D) and 25.103-90 coverage deleted. The DFARS grants Head of the Contracting Activity (HCA) determination approval authority, negating need for DLAD delegation from Head of Agency to HCA. The Berry Amendment reference was superceded by PROCLTR 01-06. Additionally, determination coverage was added at 25.103(b)(i)(C) for contracting offices that have J-33 as their HCA.
- DLAD 25.7 coverage has been deleted as redundant; FAR 25.701(a)(2) specifies the Contracting Officer as the approval authority for the identified prohibited sources with no simplified acquisition threshold distinction, and the requirement for file documentation is also specified in FAR.
- DLAD 25.7501 (previous DLAD 25.302) (b)(i) and (b)(ii) deleted. Current DFARS Balance of Payments Program coverage provides for exception coverage and also grants the Contracting Officer additional determination authorities, replacing the superceded DLAD coverage requirements. Coverage was added to address potential need for public interest exceptions.

This PROCLTR is effective immediately and expires upon incorporation of the attached coverage into the DLAD. For clarity, a "conformed" DLAD Part 25 that reflects the changes implemented by this PROCLTR is also attached. Please contact Mr. Frank Pane if you have any questions regarding this matter. He may be reached at either (703) 767-1461 (DSN 427) or Francis.Pane@dla.mil.

  
THOMAS R. ASHMAN  
Colonel, USAF  
Acting Executive Director  
Acquisition, Technical and Supply

Attachments



PART 25

FOREIGN ACQUISITION

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SUBPART 25.1 - BUY AMERICAN ACT - SUPPLIES

25.103 *Exceptions.*

(b)(i) Prepare nonavailability determinations in Determination and Findings form.

*(b)(i)(C) Contracting offices for which the Executive Director, Acquisition, Technical, and Supply Directorate is the HCA, submit waiver requests to HQ DLA, Attn: J-3312.*

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*[Previous 25.102(b)(ii)(D) coverage deleted]*

*[Previous 25.102-90 coverage deleted]*

SUBPART 25.7 – *PROHIBITED SOURCES*

25.701 *Restrictions.*

*[Coverage previously at 25.703(b) deleted].*

SUBPART 25.8 – *OTHER* INTERNATIONAL AGREEMENTS AND COORDINATION

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SUBPART 25.9 - CUSTOMS AND DUTIES

25.903 Exempted supplies.

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SUBPART 25.75 - BALANCE OF PAYMENTS PROGRAM

25.7501 *Policy.*

*(b)(i) [Previous coverage at 25.302 deleted]*

*(b)(ii) [Previous coverage at 25.302 deleted]*

*(c) The public interest determination shall be made by the Executive Director, Acquisition, Technical, and Supply Directorate. Requesting activities shall submit their request in the form of a proposed D&F to HQ DLA, ATTN: J-3312. Include the rationale for the determination as well as all relevant facts.*

CONFORMED

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## SUBPART 25.1 - BUY AMERICAN ACT - SUPPLIES

### 25.103 *Exceptions.*

(b)(i) Prepare nonavailability determinations in Determination and Findings (D&F) form.

***(b)(i)(C) For contracting offices where the Executive Director, Acquisition, Technical, and Supply Directorate is the HCA, submit waiver requests to HQ DLA, Attn: J-3312.***

(b)(ii) For purposes of determining the approval level, do not add option totals to basic award amounts. Prior to exercising an option, however, a new determination of nonavailability (for the option total only) must be made.

## SUBPART 25.8 - INTERNATIONAL AGREEMENTS AND COORDINATION

### 25.870 Contracting with Canadian contractors.

#### 25.870-1 General

(e)(90) See 15.403-3(c)(4)(A)(90)(91) for price analysis and price reasonableness determination requirements for offers from Canadian Commercial Corporation.

## SUBPART 25.9 - CUSTOMS AND DUTIES

### 25.903 Exempted supplies.

(2) The Commander, *DESC*, or designee, is authorized to execute duty-free entry certificates for the *fuels-related* supplies in DFARS 225.903(b)(i)(2).

## SUBPART 25.70 - AUTHORIZATION ACTS, APPROPRIATIONS ACTS, AND OTHER STATUTORY RESTRICTIONS ON FOREIGN PURCHASES

### 25.7002 Restriction on food, clothing, fabrics, and specialty metals.

#### 25.7002-2 Exceptions.

(a) All domestic non-availability determination approval requests made pursuant to *10 U.S.C. §2533a* (also known as the Berry Amendment) shall be forwarded from the Activity Commander to the Agency Director for submission to the Under Secretary of Defense (Acquisition Technology and Logistics). Options not exercised at time of award require a separate non-availability determination.

(b) Each activity that has been granted a domestic non-availability determination (DNAD) is required to annually report 1) results of market research to find domestic sources that would preclude the continuing need for the DNAD; 2) results of specification reviews with requiring activities in order to find acceptable substitute products that would not require a DNAD; and 3)

results of any additional requirements specified in the DNAD approval. The first submission is due to J-3312 on December 31, 2003.

25.7002-3 Contract clauses.

(c) Alternate 1 of the clause at 252.225-7014, preference for Domestic Specialty metals, must be used for weapon-systems-coded items procured for one of the enumerated programs.

#### SUBPART 25.73 - ACQUISITIONS FOR FOREIGN MILITARY SALES

25.7302-90 Foreign Military Sales (FMS) shipping instructions.

(a) In order to reduce misdirected shipments of FMS materiel, do not place shipping addresses on FMS contracts except as provided in paragraphs (b) and (c) below. Instead, place a notice in the contract requiring the contractor to contact the transportation officer (TO) at the contracting activity that awarded the contract or that placed the order, unless contract administration responsibilities were assigned to an office other than the contracting activity that awarded the contract. Orders and contracts assigned to DCMA for administration shall include a notice to require the contractor to submit a DD Form 1659, Application for U.S. Government Shipping Documentation/Instructions, to the transportation officer at the contract administration office for shipping instructions. Use a clause substantially the same as that provided at 52.225-9002, FMS Shipping Instructions (June 1998).

(b) A shipping address may be placed in FMS contracts if complete shipment is anticipated within 120 days of award.

(c) Contracts contemplating using f.o.b. origin shipping terms may include a firm shipping address.

(d) Additional contract provisions may be appropriate to satisfy unique requirements for requisitions that contain a "Z" or "Y" in card column 46. However, do not list the freight forwarder or embassy addresses in the contract.

(e) By memorandum dated August 10, 2000, the Defense Security Cooperation Agency approved the use of DVD with fast payment procedures as a means to improve support to foreign military sales customers. This approval will allow the inclusion of FMS customer requirements in many contract arrangements and eliminate unnecessary Government source inspections. However, the following considerations may affect the decision to include FMS requirements in DVD contracts:

(i) The ability to include FMS requirements in contracts may still be limited by preservation and packing requirements. Marking requirements must comply with MIL-STD-129 and the Security Assistance Management Manual for FMS requirements. Commercial marking practices do not generally contain all information required by those documents. It is particularly important to clearly mark the requisition number on the packaging.

(ii) Under the terms of the Letters of Offer and Acceptance (LOA) negotiated with foreign governments, title transfers to the foreign government at the contractor's loading dock. [Note: The LOA language pertaining to title transfer at the contractor's shipping dock does not require inspection and acceptance at origin or the use of f.o.b. origin shipping terms]. The LOAs also require repair and replacement of items for one year after shipment. Under fast payment procedures, the contractor is responsible for repair and replacement of items for a period of 180 days from the date title to the supplies vests in the Government. For FMS requirements, this would equate to 180 days from the date of shipment. In order to comply with the terms and conditions of the LOA when using fast payment procedures, problems not identified within 180 days of shipment must still be resolved by the Defense Supply Centers.

(iii) Material supplied to fulfill FMS requirements should receive the same level of inspection that is afforded to U.S. Military customers for the same material.

(iv) Direct Vendor Delivery of FMS shipments to freight forwarders may use Fast Payment procedures in accordance with 13.402(90)(2).

#### SUBPART 25.75 - BALANCE OF PAYMENTS PROGRAM

25.7501 Policy.

***(c) The public interest determination shall be made by the Executive Director, Acquisition, Technical, and Supply Directorate. Requesting activities shall submit their request in the form of a proposed D&F to HQ DLA, ATTN: J-3312. Include the rationale for the determination as well as all relevant facts.***