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IN REPLY REFER TO J-33
PROCLTR 03-21

DEC 08 2003

MEMORANDUM FOR PROCLTR DISTRIBUTION LIST

SUBJECT: Berry Amendment/Buy American Act Market Research Requirements

The purpose of this PROCLTR is to emphasize the use of a thorough approach to market research when contracting for items that have been found to be problematic in terms of domestic availability. The Federal Acquisition Regulation (FAR) 10.001 requires agencies conduct market research, appropriate to the circumstances and on an on-going basis, in order to identify the capabilities of the marketplace to fulfill requirements. This is especially important when dealing with items contained on the FAR 25.104(a) list. These are articles that have been determined not to be available in the domestic marketplace. However, changing market conditions make it prudent to validate the listing and not simply proceed with a procurement relying upon the FAR listing.

The extent and type of market research will vary depending upon the item and the circumstances of the procurement. At a minimum, market research entails contacting suppliers of same or similar items, conducting discussions with industry groups and trade associations, utilizing commercial publications and trade journals, searching on-line data bases, and when conditions permit, using "sources sought" synopses. Particular attention is to be given to articles covered by, or that contain items that are covered by, the Berry Amendment, since Defense Federal Acquisition Regulation Supplement (DFARS) 225.7002-2(c) provides an exception to the Berry Amendment's restriction for items on the FAR 25.104(a) list. The time allotted for the "sources sought" synopsis shall be sufficient for any potential source to respond and follow-up action to be undertaken, but shall be no shorter than 10 days.

Another method of conducting on-going market research that should be considered is to sponsor a "domestic sourcing" conference. This conference gathers together customers, suppliers, industry groups/trade associations, and agency personnel to address the issues that are influencing the domestic nonavailability, and explores ways to resolve these challenges.

Guidance at Defense Logistics Acquisition Directive (DLAD) 4105.1, Section 10.001 is revised to require market research be conducted to identify domestic sourcing capabilities; Section 10.002 describes market research techniques and requirements; Section 25.103 reminds buying activities to seek domestic sources before soliciting offers; Subsection 25.104(b)(90) provides guidance for possible removal of articles from FAR 25.104(a), Nonavailable Articles; and 25.7002-2(90) addresses requirements for acquisitions of articles listed as exceptions at DFARS 225.7002-2(c) and FAR 25.104(a).

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This PROCLTR is effective immediately and expires upon incorporation of the coverage into the DLAD. If you have any questions, please contact Ms. Nancy Heimbaugh, J-3311, at (703) 767-3755, DSN 427-3755 or e-mail: nancy.heimbaugh@dla.mil or Mr. Leonard Gregory, Defense Supply Center Philadelphia, at (215) 737-4025, DSN 444-4025 or e-mail: leonard.gregory@dla.mil.

CLAUDIA S. KNOTT
Senior Procurement Executive

Attachment

PART 10

MARKET RESEARCH

10.001 Policy.

*(a) (2) (91) To gain familiarity and knowledge of the most current capabilities of the domestic marketplace, buying activities shall conduct market research, on an ongoing basis, and to the extent practicable, to identify potential domestic sources for acquisitions to which DFARS 225.7002-2(c) and/or FAR 25.104(a), Nonavailable Articles, apply.*

10.002 Procedures

(b) (1) .....

*(96) Techniques for conducting market research to determine domestic supplier capabilities include the following:*

*(i) When conditions permit, publish a "sources sought" synopsis in the FedBizOpps. The time allotted for the synopsis shall be sufficient for potential sources to respond and the contracting officer to conduct follow-up actions. However, it should be no shorter than 10 days.*

*(ii) Consider Sponsoring a "domestic sourcing" conference, which will bring together customers, suppliers, industry groups/trade associations, and agency personnel to address the issues that are influencing the domestic nonavailability and explore ways to resolve these challenges. Conferences could be held annually, or when needed, depending upon the circumstances. A special effort shall be made to ensure small businesses participate in such conferences.*

(91) Requirements. .....

*(A) Market conditions have a significant impact on those articles that appear on the domestic nonavailability list at FAR 25.104(a). The market conditions that were present at the time of the placement of these articles on the list should not be assumed to be currently present. Therefore, for acquisitions involving items covered by, or containing articles that are covered by the FAR list, market research shall be performed to determine the articles' retention on the list. This is especially important for items covered by the Berry Amendment, since DFARS 225.7002-2(c) provides for an exception to the Berry Amendment for items appearing on the FAR 25.104(a) list.*

# PART 25

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***25.103 Exceptions***

***(b) (1) (90) The fact that an item to be procured is on the list at FAR 25.104(a) does not eliminate the buying activity's responsibility to conduct market research appropriate to the circumstances, to include seeking domestic sources, before soliciting offers. (See 10.001(a)(2)(91)).***

***25.104 Nonavailable Articles***

***(b)(90) If it is determined that an article contained on the list at FAR 25.104(a) is available domestically in sufficient and reasonably available quantities of a satisfactory quality, steps should be taken to propose a revision to the FAR to remove the article from the list. (See FAR 25.104(b)). Document the file with the results of the market research and include a definitive statement concerning the item's domestic availability. (See 1.201-91 for procedures on amending the FAR or the DFARS.)***

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*25.7002-2 (90)* *Domestic NonavailabilityValidation.*

*DFARS 225.7002-2(c) contains an exception to the Berry Amendment domestic source restriction for those articles listed at FAR 25.104(a). Before soliciting offers for items covered by the restriction at DFARS 225.7002 that fall under the exception, the buying activity shall verify, through market research, that the article should remain on the list and thus, still be exempt from the Berry Amendment restriction. The contract file is to be documented accordingly. (See 10.001(a)(2)(91) and 25.104(b)(90)).*