**DFARS Case 2022-D013**

**Assuring Integrity of Overseas Fuel Supplies**

**Final Rule**

**PART 212—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES**

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**SUBPART 212.2—SPECIAL REQUIREMENTS FOR THE ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES**

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**212.203 Procedures for solicitation, evaluation, and award.**

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**[(5) See 215.101-71 and 225.7024 for the acquisition of fuel for overseas contingency operations.]**

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**SUBPART 212.3—SOLICITATION PROVISIONS AND CONTRACT CLAUSES FOR THE ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES**

**212.301 Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services.**

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(f) \* \* \*

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(x) *Part 225—Foreign Acquisition.*

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**[(PP) Use the provision at 252.225-7065, Restriction on Acquisition of Fuel for Overseas Contingency Operations, as prescribed in 225.7024-4,** **to comply with section 843 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117-81).]**

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**PART 215—CONTRACTING BY NEGOTIATION**

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**SUBPART 215.1—SOURCE SELECTION PROCESSES AND TECHNIQUES**

**215.101 Best value continuum.**

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**215.101-70 Best value when acquiring tents or other temporary structures.**

(a) In accordance with section 368 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81), when acquiring tents or other temporary structures for use by the Armed Forces, the contracting officer shall award contracts that provide the best value. Temporary structures covered by this paragraph are nonpermanent buildings, including tactical shelters, nonpermanent modular or pre-fabricated buildings, or portable or relocatable buildings, such as trailers or equipment configured for occupancy (see also 246.270–2). Determination of best value includes consideration of the total life-cycle costs of such tents or structures, including the costs associated with any equipment, fuel, or electricity needed to heat, cool, or light such tents or structures (see FAR 7.105(a)(3)(i) and PGI 207.105(a)(3)(i)).

(b) The requirements of this section apply to any agency or department that acquires tents or other temporary structures on behalf of DoD (see FAR 17.503(d)(2)).

**[215.101-71** **Tradeoff process when acquiring fuel for overseas contingency operations.**

**(a)** **When conducting a source selection for the acquisition of fuel that is for an overseas contingency operation** **and is expected to exceed the simplified acquisition threshold, the contracting officer shall consider using a tradeoff process in accordance with FAR 15.101-1 (section 843 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117-81)). The contracting officer should consider using the following evaluation factors in any such tradeoff process:**

**(1) Past performance.**

**(2) Cost.**

**(3) Anticorruption training.**

**(4) Anticorruption compliance.**

**(b) If a tradeoff process was not considered, prior to the issuance of the solicitation, the contracting officer shall justify in writing why a tradeoff process was not considered and obtain approval by an official one level above the contracting officer. This authority is not delegable. The contracting officer shall include the justification in the contract file.]**

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**PART 225—FOREIGN ACQUISITION**

**SUBPART 225.70**—**AUTHORIZATION ACTS, APPROPRIATIONS ACTS, AND OTHER STATUTORY RESTRICTIONS ON FOREIGN ACQUISITION**

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**[225.70****24** **Restriction on acquisition of fuel for overseas contingency operations.**

**225.7024-1 Scope.**

**This section implements section 843 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117-81), for the acquisition of fuel for overseas contingency operations.**

**225.7024-2 Prohibition.**

**Contracting officers shall not award, for an overseas contingency operation, a contract for fuel, in whole or in part, or derivatives of such fuel, that is sourced from nations or regions prohibited from selling petroleum to the United States. See FAR subpart 25.7 and the Office of Foreign Assets Control website at** [***https://ofac.treasury.gov/sanctions-programs-and-country-information***](https://ofac.treasury.gov/sanctions-programs-and-country-information) **for prohibited sources.**

**225.7024-3 Procedures.**

**(a) For contracts for the acquisition of fuel for overseas contingency operations, including contracts using FAR part 12 procedures, expected to exceed the simplified acquisition threshold, the contracting officer—**

**(1) May request records from the prospective contractor to verify compliance with the following statutes and regulations only when the head of the contracting activity determines in writing that it is necessary:**

**(i) The Foreign Corrupt Practices Act (15 U.S.C. 78dd-1 *et seq*.).**

**(ii) International Traffic in Arms Regulations at 22 CFR 120 through 130 (see PGI 225.7901-2).**

**(iii) Export Administration Regulations at 15 CFR 730 through 774 (see PGI 225.7901-2).**

**(iv) Relevant regulations promulgated by the Office of Foreign Assets Control of the Department of the Treasury. Sanction information for specific countries and programs is available at** [***https://ofac.treasury.gov/sanctions-programs-and-country-information***](https://ofac.treasury.gov/sanctions-programs-and-country-information)**.**

**(2) To the maximum extent practicable, shall not disqualify an otherwise responsible offeror** **on the basis of an unsupported denial of access to a facility or equipment by a host-nation government. The provision at 252.225-7065, Restriction on Acquisition of Fuel for Overseas Contingency Operations, requires offerors to report promptly to the contracting officer, prior to award, any instance of unsupported denial of access to a facility or equipment by a host-nation government that may prevent it from complying with the terms and conditions of the solicitation.**

**(b) See 215.101-71 for the requirement to consider using a tradeoff process.**

**225.7024-4 Solicitation provision.**

**Use the provision at** **252.225-7065, Restriction on Acquisition of Fuel for Overseas Contingency Operations, in** **solicitations, including solicitations using FAR part 12 procedures** **for the acquisition of commercial products and commercial services, that are for the acquisition of fuel for overseas contingency operations and are expected to exceed the simplified acquisition threshold.]**

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**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**\* \* \* \* \***

**[252.225-7065 Restriction on Acquisition of Fuel for Overseas Contingency Operations.**

**As prescribed in 225.7024-4, use the following provision:**

**Restriction on Acquisition of Fuel for Overseas Contingency Operations**

**(OCT 2024)**

**(a)** ***Prohibition*. For an overseas contingency operation, DoD may not** **procure fuel in whole or in part, or derivatives of such fuel, that is sourced from nations or regions prohibited from selling petroleum to the United States. See Federal Acquisition Regulation subpart 25.7 and the Office of Foreign Assets Control website at** [***https://ofac.treasury.gov/sanctions-programs-and-country-information***](https://ofac.treasury.gov/sanctions-programs-and-country-information) **for prohibited sources.**

**(b)** ***Certification.* Offerors shall complete the certification in paragraph (b)(1) of this provision and submit the certification with their offer.**

**(1) The Offeror does [ ] does not [ ] certify that the** **fuel, in whole or in part, or derivatives of such fuel, to be provided under any contract resulting from this solicitation is not sourced from a nation or region prohibited from selling petroleum to the United States.**

**(2) Only Offerors who certify that the fuel to be provided is not sourced from a prohibited nation or region will be eligible for award.**

**(c) *Compliance*.**

**(1) When requested by the Contracting Officer, the prospective Contractor shall submit records necessary to demonstrate compliance with** **applicable laws and regulations regarding export-controlled items and anticorruption statutes and regulations including—**

**(i)** **The Foreign Corrupt Practices Act (15 U.S.C. 78dd-1 *et seq*.);**

**(ii) International Traffic in Arms Regulations (ITAR) at 22 CFR 120 through 130 (also see Defense Federal Acquisition Regulation Supplement (DFARS) clause 252.225-7048, Export-Controlled Items);**

**(iii) Export Administration Regulations (EAR) at 15 CFR 730 through 774 (also see DFARS clause 252.225-7048); and**

**(iv) Relevant regulations promulgated by the Office of Foreign Assets Control of the Department of the Treasury. Sanction information for specific countries and programs is available at *https://ofac.treasury.gov/sanctions-programs-and-country-information*.**

**(2) The Offeror shall contact the Department of State regarding ITAR compliance and the Department of Commerce regarding EAR compliance.**

**(d) *Reporting requirement.* The Offeror shall, prior to contract award, promptly report to the Contracting Officer any instance of unsupported denial of access to a facility or equipment by a host-nation government that may prevent it from complying with the terms and conditions of the solicitation.**

**(End of provision)]**

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