Subpart 25.7 - Prohibited Sources

Parent topic: Part 25 - Foreign Acquisition

25.700 Scope of subpart.

This subpart implements-

(a) Economic sanctions administered by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury prohibiting transactions involving certain countries, entities, and individuals;

(b) The Sudan Accountability and Divestment Act of 2007 (Pub. L. 110-174) (50 U.S.C. 1701 note);

(c) The Iran Sanctions Act of 1996 (Iran Sanctions Act) (Pub. L. 104-172; 50 U.S.C. 1701 note), including amendments by the Iran Freedom Support Act (Pub. L. 109-293), section 102 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111-195), and Titles II and III of the Iran Threat Reduction and Syria Human Rights Act of 2012 (Pub. L. 112-158); and

(d) Prohibition against *contracting* with entities that export sensitive technologies to Iran (22 U.S.C. 8515).

25.701 Restrictions administered by the Department of the Treasury on acquisitions of supplies or services from prohibited sources.

(a) Except as authorized by OFAC, agencies and their contractors and subcontractors *must* not acquire any *supplies* or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the *United States*.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea into the *United States* or its *outlying areas*. In addition, lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at https://ofac.treasury.gov/specially-designated-nationals-and-blocked-persons-list-sdn-human-readable-lists. More information about these restrictions, as well as updates, is available in OFAC's regulations at 31 CFR Chapter V and/or on OFAC's website at https://ofac.treasury.gov/.

(c) Refer questions concerning the restrictions in paragraphs (a) or (b) of this section to the-

Department of the Treasury Office of Foreign Assets Control Washington, DC 20220 (Telephone (202) 622-2490).

25.702 Prohibition on contracting with entities that conduct restricted business operations in Sudan.

25.702-1 Definitions.

As used in this section-

Appropriate Congressional committees means-

(1) The Committee on Banking, Housing, and Urban Affairs, The Committee on Foreign Relations, and the Select Committee on Intelligence of the Senate; and

(2) The Committee on Financial Services, the Committee on Foreign Relations, and the Permanent Select Committee on Intelligence of the House of Representatives.

Business operations means engaging in commerce in any form, including by acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, *products*, services, *personal property*, real property, or any other apparatus of business or commerce.

Marginalized populations of Sudan means-

(1) Adversely affected groups in regions authorized to receive assistance under section 8(c) of the Darfur Peace and Accountability Act (Pub. L. 109-344) (50 U.S.C. 1701 note); and

(2) Marginalized areas in Northern Sudan described in section 4(9) of such Act.

Restricted business operations-

(1) Means, except as provided in paragraph (2) of this definition, *business operations* in Sudan that include power production activities, mineral extraction activities, oil-related activities, or the production of military equipment, as those terms are defined in the Sudan Accountability and Divestment Act of 2007 (Pub. L. 110-174).

(2) Does not include *business operations* that the person (as that term is defined in Section 2 of the Sudan Accountability and Divestment Act of 2007) conducting the business can demonstrate-

(i) Are conducted under contract directly and exclusively with the regional government of southern Sudan;

(ii) Are conducted pursuant to specific authorization from the Office of Foreign Assets Control in the Department of the Treasury, or are expressly exempted under Federal law from the requirement to be conducted under such authorization;

(iii) Consist of providing goods or services to *marginalized populations of Sudan*;

(iv) Consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;

(v) Consist of providing goods or services that are used only to promote health or education; or

(vi) Have been voluntarily suspended.

25.702-2 Certification.

As required by the Sudan Accountability and Divestment Act of 2007 (Pub. L. 110-174), each *offeror must* certify that it does not conduct *restricted business operations* in Sudan.

25.702-3 Remedies.

Upon the determination of a false certification under subsection 25.702-2-

(a) The *contracting officer may* terminate the contract;

(b) The *suspending and debarring official may* suspend the contractor in accordance with the procedures in subpart 9.4; and

(c) The suspending and debarring *may* debar the contractor for a period not to exceed 3 years in accordance with the procedures in subpart 9.4.

25.702-4 Waiver.

(a) The President *may* waive the requirement of subsection 25.702-2 on a case-by-case basis if the President determines and certifies *in writing* to the *appropriate congressional committees* that it is in the national interest to do so.

(b) An agency seeking waiver of the requirement *shall* submit the request to the Administrator of the Office of Federal *Procurement* Policy (OFPP), allowing sufficient time for review and approval. Upon receipt of the waiver request, OFPP *shall* consult with the President's National Security Council, Office of African Affairs, and the Department of State Sudan Office and Sanctions Office to assess foreign policy aspects of making a national interest recommendation.

(c) Agencies *may* request a waiver on an individual or class basis; however, waivers are not indefinite and can be cancelled if warranted.

(1) A class waiver *may* be requested only when the class of *supplies* is not available from any other source and it is in the national interest.

(2) Prior to submitting the waiver request, the request *must* be reviewed and cleared by the *agency head*.

(3) All waiver requests *must* include the following information:

(i) Agency name, complete mailing address, and point of contact name, telephone number, and email address;

(ii) *Offeror*'s name, complete mailing address, and point of contact name, telephone number, and email address;

(iii) Description/nature of product or service;

(iv) The total cost and length of the contract;

(v) Justification, with *market research* demonstrating that no other *offeror* can provide the product or service and stating why the product or service *must* be procured from this *offeror*, as well as why it is in the national interest for the President to waive the prohibition on *contracting* with this *offeror* that conducts *restricted business operations* in Sudan, including consideration of foreign policy aspects identified in consultation(s) pursuant to 25.702-4(b);

(vi) Documentation regarding the *offeror*'s *past performance* and integrity (see the Contractor Performance Assessment Reporting System (CPARS) including the Federal Awardee Performance Information and Integrity System at https://www.cpars.gov and any other relevant information);

(vii) Information regarding the *offeror*'s relationship or connection with other firms that conduct prohibited *business operations* in Sudan; and

(viii) Any humanitarian efforts engaged in by the *offeror*, the human rights impact of doing business with the *offeror* for which the waiver is requested, and the extent of the *offeror*'s *business operations* in Sudan.

(d) The consultation in 25.702-4(b) and the information in 25.702-4(c)(3) will be considered in determining whether to recommend that the President waive the requirement of subsection 25.702-2. In accordance with section 6(c) of the Sudan Accountability and Divestment Act of 2007, OFPP will semiannually submit a report to Congress, on April 15 th and October 15 th, on the waivers granted.

25.703 Prohibition on contracting with entities that engage in certain activities or transactions relating to Iran.

25.703-1 Definitions.

As used in this section-

Person-

(1) Means-

(i) A natural *person*;

(ii) A corporation, business association, partnership, society, trust, financial institution, insurer, underwriter, guarantor, and any other business organization, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise; and

(iii) Any successor to any entity described in paragraph (1)(ii) of this definition; and

(2) Does not include a government or governmental entity that is not operating as a business enterprise.

Sensitive technology-

(1) Means hardware, software, telecommunications equipment, or any other technology that is to be

used specifically-

(i) To restrict the free flow of unbiased information in Iran; or

(ii) To disrupt, monitor, or otherwise restrict speech of the people of Iran; and

(2) Does not include information or informational materials the export of which the President does not have the authority to regulate or prohibit pursuant to section 203(b)(3) of the International *Emergency* Economic Powers Act (50 U.S.C. 1702(b)(3)).

25.703-2 Iran Sanctions Act.

(a) *Certification*.

(1) *Certification relating to activities described in section 5 of the Iran Sanctions Act.* As required by section 6(b)(1)(A) of the Iran Sanctions Act (50 U.S.C. 1701 note), unless an exception applies in accordance with paragraph (c) of this subsection, or a waiver is granted in accordance with 25.703-4, each *offeror must* certify that the *offeror*, and any *person* owned or controlled by the *offeror*, does not engage in any activity for which sanctions *may* be imposed under section 5 of the Iran Sanctions Act. Such activities, which are described in detail in section 5 of the Iran Sanctions Act, relate to the energy sector of Iran and development by Iran of weapons of mass destruction or other military capabilities.

(2) *Certification relating to transactions with Iran's Revolutionary Guard Corps.* As required by section 6(b)(1)(B) of the Iran Sanctions Act (50 U.S.C. 1701 note), unless an exception applies in accordance with paragraph (c) of this subsection, or a waiver is granted in accordance with 25.703-4, each *offeror must* certify that the *offeror*, and any *person* owned or controlled by the *offeror*, does not knowingly engage in any significant transaction (*i.e.*, a transaction that exceeds $15,000, with Iran's Revolutionary Guard Corps or any of its officials, agents, or *affiliates*, the property and interests in property of which are blocked pursuant to the International *Emergency* Economic Powers Act (50 U.S.C. 1701 *et seq*.)(see OFAC's Specially Designated Nationals and Blocked *Persons* List at https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx).

(b) *Remedies*. Upon the determination of a false certification under paragraph (a) of this section, the agency *shall* take one or more of the following actions:

(1) The *contracting officer* terminates the contract in accordance with procedures in part 49, or for *commercial products* and *commercial services*, see 12.403.

(2) The *suspending and debarring official* suspends the contractor in accordance with the procedures in subpart 9.4.

(3) The *suspending and debarring official* debars the contractor for a period of at least two years in accordance with the procedures in subpart 9.4.

(c) *Exception for trade agreements*. The certification requirements of paragraph (a) of this subsection do not apply if the *acquisition* is subject to trade agreements and the *offeror* certifies that all the offered *products* are *designated country end products* or *designated country construction material* (see subpart 25.4).

25.703-3 Prohibition on contracting with entities that export sensitive technology to Iran.

(a) The head of an *executive agency may* not enter into or extend a contract for the *procurement* of goods or services with a *person* that exports certain *sensitive technology* to Iran, as determined by the President, and has an active exclusion in the *System for Award Management* at http://www.sam.gov (22 U.S.C. 8515).

(b) Each *offeror must* represent that it does not export any *sensitive technology* to the government of Iran or any entities or individuals owned or controlled by, or acting on behalf or at the direction of, the government of Iran.

(c) *Exception for trade agreements*. The representation requirement of paragraph (b) of this subsection does not apply if the *acquisition* is subject to trade agreements and the *offeror* certifies that all the offered *products* are *designated country end products* or *designated country construction material* (see subpart 25.4).

25.703-4 Waiver.

(a) An agency or contractor seeking a waiver of the requirements of 25.703-2 or 25.703-3, consistent with section 6(b)(5) of the Iran Sanctions Act or 22 U.S.C. 8551(b), respectively, and the Presidential Memorandum of September 23, 2010 (75 FR 67025), *shall* submit the request to the Office of Federal *Procurement* Policy, allowing sufficient time for review and approval.

(b) Agencies *may* request a waiver on an individual or class basis; however, waivers are not indefinite and can be cancelled, if warranted.

(1) A class waiver *may* be requested only when the class of *supplies* or equipment is not available from any other source and it is in the national interest.

(2) Prior to submitting the waiver request, the request *must* be reviewed and cleared by the *agency head*.

(c) In general, all waiver requests *should* include the following information:

(1) Agency name, complete mailing address, and point of contact name, telephone number, and e-mail address.

(2) *Offeror*'s name, complete mailing address, and point of contact name, telephone number, and e-mail address.

(3) Description/nature of product or service.

(4) The total cost and length of the contract.

(5) Justification, with *market research* demonstrating that no other *offeror* can provide the product or service and stating why the product or service *must* be procured from this *offeror*.

(i) If the *offeror* exports *sensitive technology* to the government of Iran or any entities or individuals owned or controlled by, or acting on behalf or at the direction of, the government of Iran, provide rationale why it is in the national interest for the President to waive the prohibition on *contracting*

with this *offeror*, as required by 22 U.S.C. 8551(b).

(ii) If the *offeror* conducts activities for which sanctions *may* be imposed under section 5 of the Iran Sanctions Act or engages in any transaction that exceeds the threshold at 25.703-2(a)(2) with Iran's Revolutionary Guard Corps or any of its officials, agents, or *affiliates*, the property and interests in property of which are blocked pursuant to the International *Emergency* Economic Powers Act, provide rationale why it is essential to the national security interests of the *United States* for the President to waive the prohibition on *contracting* with this *offeror*, as required by section 6(b)(5) of the Iran Sanctions Act.

(6) Documentation regarding the *offeror*'s *past performance* and integrity (see the Contractor Performance Assessment Reporting System (CPARS) and the Federal Awardee Performance Information and Integrity System at https://www.cpars.gov, and any other relevant information).

(7) Information regarding the *offeror*'s relationship or connection with other firms that-

(i) Export *sensitive technology* to the government of Iran or any entities or individuals owned or controlled by, or acting on behalf or at the direction of, the government of Iran;

(ii) Conduct activities for which sanctions *may* be imposed under section 5 of the Iran Sanctions Act; or

(iii) Conduct any transaction that exceeds the threshold at 25.703-2(a)(2) with Iran's Revolutionary Guard Corps or any of its officials, agents, or *affiliates*, the property and interests in property of which are blocked pursuant to the International *Emergency* Economic Powers Act.

(8) Describe-

(i) The *sensitive technology* and the entity or individual to which it was exported (i.e., the government of Iran or an entity or individual owned or controlled by, or acting on behalf or at the direction of, the government of Iran);

(ii) The activities in which the *offeror* is engaged for which sanctions *may* be imposed under section 5 of the Iran Sanctions Act; or

(iii) The transactions that exceed the threshold at 25.703-2(a)(2) with Iran's Revolutionary Guard Corps or any of its officials, agents, or *affiliates*, the property and interests in property of which are blocked pursuant to the International *Emergency* Economic Powers Act.