Subpart 25.5 - Evaluating Foreign Offers-Supply Contracts

Parent topic: Part 25 - Foreign Acquisition

25.501 General.

The *contracting officer*-

(a) *Must* apply the evaluation procedures of this subpart to each *line item* of an *offer* unless either the *offer* or the *solicitation* specifies evaluation on a group basis (see 25.503);

(b) *May* rely on the *offeror*'s certification of *end product* origin when evaluating a *foreign offer*;

(c) *Must* identify and reject *offers* of *end products* that are prohibited in accordance with subpart 25.7; and

(d) When trade agreements are involved, *must* not use the Buy American statute evaluation factors prescribed in this subpart to provide a preference for one *foreign offer* over another *foreign offer*.

25.502 Application.

(a) Unless otherwise specified in agency regulations, perform the following steps in the order presented:

(1) Eliminate all *offers* or *offerors* that are unacceptable for reasons other than price; *e.g.,* nonresponsive, debarred or suspended, or a prohibited source (see subpart 25.7).

(2) Rank the remaining *offers* by price.

(3) If the *solicitation* specifies award on the basis of factors in addition to cost or price, apply the evaluation factors as specified in this section and use the evaluated cost or price in determining the *offer* that represents the *best value* to the Government.

(b) For *acquisitions* covered by the *WTO GPA* (see subpart 25.4)-

(1) Consider only *offers* of U.S.-made or *designated country end products*, unless no *offers* of such *end products* were received;

(2) If the agency gives the same consideration given *eligible offers* to *offers* of *U.S.-made end products* that are not *domestic end products*, award on the low *offer*. Otherwise, evaluate in accordance with agency procedures; and

(3) If there were no *offers* of U.S.-made or *designated country end products*, make a nonavailability determination (see 25.103(b)(2)) and award on the low *offer* (see 25.403(c)).

(c) For *acquisitions* not covered by the *WTO GPA*, but subject to the Buy American statute (an FTA or the Israeli Trade Act also *may* apply), the following applies:

(1) If the low *offer* is a *domestic offer* or an *eligible offer* under an FTA or the Israeli Trade Act, award on that *offer*.

(2) If the low *offer* is a *noneligible offer* and there were no *domestic offers* (see 25.103(b)(3)), award on the low *offer*. The procedures at 25.106(b)(2) and 25.106(c)(2) do not apply.

(3) If the low *offer* is a *noneligible offer* and there is an *eligible offer* that is lower than the lowest *domestic offer*, award on the low *offer*. The procedures at 25.106(b)(2) and 25.106(c)(2) do not apply.

(4) Otherwise, apply the appropriate evaluation factor provided in 25.106 to the low *offer*. The procedures at 25.106(b)(2) and 25.106(c)(2) do not apply.

(i) If the evaluated price of the low *offer* remains less than the lowest *domestic offer*, award on the low *offer*.

(ii) If the price of the lowest *domestic offer* is less than the evaluated price of the low *offer*, award on the lowest *domestic offer*.

(d) *Ties.*

(1) If application of an evaluation factor results in a tie between a *domestic offer* and a *foreign offer*, award on the *domestic offer*.

(2) If no evaluation preference was applied (*i.e., offers* afforded nondiscriminatory treatment under the Buy American statute), resolve ties between domestic and *foreign offers* by a witnessed drawing of lots by an impartial individual.

(3) Resolve ties between *foreign offers* from small business concerns (under the Buy American statute, a small business offering a manufactured article that does not meet the definition of "*domestic end product*" is a *foreign offer*) or *foreign offers* from a small business concern and a large business concern in accordance with 14.408-6(a).

25.503 Group offers.

(a) If the *solicitation* or an *offer* specifies that award can be made only on a group of *line items* or on all *line items* contained in the *solicitation* or *offer*, reject the *offer*-

(1) If any part of the award would consist of prohibited *end products* (see subpart 25.7); or

(2) If the *acquisition* is covered by the *WTO GPA* and any part of the *offer* consists of items restricted in accordance with 25.403(c).

(b) If an *offer* restricts award to a group of *line items* or to all *line items* contained in the *offer*, determine for each *line item* whether to apply an evaluation factor (see 25.504-4, Example 1).

(1) First, evaluate *offers* that do not specify an award restriction on a *line item* basis in accordance with 25.502, determining a tentative award pattern by selecting for each *line item* the *offer* with the lowest evaluated price.

(2) Evaluate an *offer* that specifies an award restriction against the offered prices of the tentative award pattern, applying the appropriate evaluation factor on a *line item* basis.

(3) Compute the total evaluated price for the tentative award pattern and the *offer* that specified an award restriction.

(4) Unless the total evaluated price of the *offer* that specified an award restriction is less than the total evaluated price of the tentative award pattern, award based on the tentative award pattern.

(c) If the *solicitation* specifies that award will be made only on a group of *line items* or all *line items* contained in the *solicitation*, determine the category of *end products* on the basis of each *line item*, but determine whether to apply an evaluation factor on the basis of the group of items (see 25.504-4, Example 2).

(1) If the proposed price of *domestic end products* exceeds 50 percent of the total proposed price of the group, evaluate the entire group as a *domestic offer*. Evaluate all other groups as *foreign offers*.

(2) For *foreign offers*, if the proposed price of *domestic end products* and *eligible products* exceeds 50 percent of the total proposed price of the group, evaluate the entire group as an *eligible offer*.

(3) Apply the evaluation factor to the entire group in accordance with 25.502.

(d) If no trade agreement applies to a *solicitation* and the *solicitation* specifies that award will be made only on a group of *line items* or all *line items* contained in the *solicitation*, determine the category of *end products* (*i.e.,* domestic or foreign) on the basis of each *line item*, but determine whether to apply an evaluation factor on the basis of the group of items (*see* 25.504-4(c), Example 3).

(1) If the proposed price of domestic end *products* exceeds 50 percent of the total proposed price of the group, evaluate the entire group as a *domestic offer*. Evaluate all other groups as *foreign offers*.

(2) Apply the evaluation factor to the entire group in accordance with 25.502, except where 25.502(c)(4) applies and the evaluated price of the low *offer* remains less than the lowest *domestic offer*. Where the evaluated price of the low *offer* remains less than the lowest *domestic offer*, treat as a *domestic offer* any group where the proposed price of *end products* with a domestic content of at least 55 percent exceeds 50 percent of the total proposed price of the group.

(3) Apply the evaluation factor to the entire group in accordance with 25.502(c)(4).

25.504 Evaluation examples.

The following examples illustrate the application of the evaluation procedures in 25.502 and 25.503. The examples assume that the *contracting officer* has eliminated all *offers* that are unacceptable for reasons other than price or a trade agreement (see 25.502(a)(1)). The evaluation factor *may* change as provided in agency regulations.

25.504-1 Buy American statute.

(a)

(1) *Example 1*.

Offer A	$16,000	*Domestic end product*, small business
Offer B	$15,700	*Domestic end product*, small business
Offer C	$10,100	U.S.-made *end product* (not domestic), small business

(2) *Analysis:* This *acquisition* is for *end products* for use in the *United States* and is set aside for small business concerns. The Buy American statute applies. Since the *acquisition* value is less than $50,000 and the *acquisition* is set aside, none of the trade agreements apply. Perform the steps in 25.502(a). *Offer* C is of 50 percent domestic content, therefore *Offer* C is evaluated as a *foreign end product*, because it is the product of a small business but is not a *domestic end product* (*see* 25.502(c)(4)). Since *Offer* B is a *domestic offer*, apply the 30 percent factor to *Offer* C (*see* 25.106(b)(2)). The resulting evaluated price of $13,130 remains lower than *Offer* B. The cost of *Offer* B is therefore unreasonable (*see* 25.106(b)(1)(ii)). The 25.106(b)(2) procedures do not apply. Award on *Offer* C at $10,100 (*see* 25.502(c)(4)(i)).

(b)

(1) *Example 2*.

Offer A	$11,000	*Domestic end product*, small business
Offer B	$10,700	*Domestic end product*, small business
Offer C	$10,200	*U.S.-made end product* (not domestic), small business

(2) *Analysis*: This *acquisition* is for *end products* for use in the *United States* and is set aside for small business concerns. The Buy American statute applies. Perform the steps in 25.502(a). *Offer* C is evaluated as a *foreign end product* because it is the product of a small business but is not a *domestic end product* (see 25.502(c)(4)). After applying the 30 percent factor, the evaluated price of *Offer* C is $13,260. Award on *Offer* B at $10,700 (see 25.502(c)(4)(ii)).

(c)

(1) *Example 3*.

Offer A	$14,000	*Domestic end product* (complies with the required domestic content), small business.

Offer B	12,500	*U.S.-made end product* (not domestic, exceeds 55% domestic content), small business.
Offer C	10,100	*U.S.-made end product* (not domestic, with less than 55% domestic content), small business.

(2) *Analysis*. This *acquisition* is for *end products* for use in the *United States* and is set aside for small business concerns. The Buy American statute applies. Since the *acquisition* value is less than $50,000 and the *acquisition* is set aside, none of the trade agreements apply. Perform the steps in 25.502(a). *Offers* B and C are initially evaluated as *foreign end products*, because they are the *products* of small businesses but are not *domestic end products* (*see* 25.502(c)(4)). *Offer* C is the low *offer*. After applying the 30 percent factor, the evaluated price of *Offer* C is $13,130. The resulting evaluated price of $13,130 remains lower than *Offer* A. The cost of *Offer* A is therefore unreasonable. *Offer* B is then treated as a *domestic offer*, because it is for a *U.S.-made end product* that exceeds 55 percent domestic content (*see* 25.106(b)(2)). *Offer* B is determined reasonable because it is lower than the $13,130 evaluated price of *Offer* C. Award on *Offer* B at $12,500.

25.504-2 WTO GPA/Caribbean Basin Trade Initiative/FTAs.

Example 1.

Offer A	$304,000	*U.S.-made end product* (not domestic)
Offer B	$303,000	*U.S.-made end product* (domestic), small business
Offer C	$300,000	*Eligible product*
Offer D	$295,000	*Noneligible product* (not U.S.-made)

Analysis: Eliminate *Offer* D because the *acquisition* is covered by the *WTO GPA* and there is an *offer* of a U.S.-made or an *eligible product* (see 25.502(b)(1)). If the agency gives the same consideration given *eligible offers* to *offers* of *U.S.-made end products* that are not *domestic offers*, it is unnecessary to determine if *U.S.-made end products* are domestic (large or small business). No further analysis is necessary. Award on the low remaining *offer*, *Offer* C (see 25.502(b)(2)).

25.504-3 FTA/Israeli Trade Act.

(a) *Example 1*.

Offer A	$105,000	*Domestic end product*, small business

Offer B	$100,000	*Eligible product*

Analysis: Since the low *offer* is an *eligible offer*, award on the low *offer* (see 25.502(c)(1)).

(b) *Example 2*.

Offer A	$105,000	*Eligible product*
Offer B	$103,000	*Noneligible product*

Analysis: Since the *acquisition* is not covered by the *WTO GPA*, the *contracting officer* can consider the *noneligible offer*. Since no *domestic offer* was received, make a nonavailability determination and award on *Offer* B (see 25.502(c)(2)).

(c) *Example 3*.

Offer A	$105,000	*Domestic end product*, large business
Offer B	$103,000	*Eligible product*
Offer C	$100,000	*Noneligible product*

Analysis: Since the *acquisition* is not covered by the *WTO GPA*, the *contracting officer* can consider the *noneligible offer*. Because the *eligible offer* (*Offer* B) is lower than the *domestic offer* (*Offer* A), no evaluation factor applies to the low *offer* (*Offer* C). Award on the low *offer* (see 25.502(c)(3)).

25.504-4 Group award basis.

(a) *Example 1*.

OFFERS

Item	**A**			**B**			**C**		
1	DO	=	$55,000	EL	=	$56,000	NEL	=	$50,000
2	NEL	=	$13,000	EL	=	$10,000	EL	=	$13,000
3	NEL	=	$11,500	DO	=	$12,000	DO	=	$10,000

OFFERS

Item	**A**			**B**			**C**		
4	NEL	=	$24,000	EL	=	$28,000	NEL	=	$22,000
5	DO	=	<u>$18,000</u>	NEL	=	<u>$10,000</u>	DO	=	<u>$14,000</u>
	$121,500			$116,000			$109,000		

Key:

DO	=	*Domestic end product*
EL	=	*Eligible product*
NEL	=	*Noneligible product*

Problem: *Offeror* C specifies all-or-none award. Assume all *offerors* are large businesses. The *acquisition* is not covered by the *WTO GPA*.

Analysis: (see 25.503)

STEP 1: Evaluate *Offers* A & B before considering *Offer* C and determine which *offer* has the lowest evaluated cost for each *line item* (the tentative award pattern):

Item 1: Low *offer* A is domestic; select A.

Item 2: Low *offer* B is eligible; do not apply factor; select B.

Item 3: Low *offer* A is noneligible and *Offer* B is a *domestic offer*. Apply a 20 percent factor to *Offer* A. The evaluated price of *Offer* A is higher than *Offer* B; select B.

Item 4: Low *offer* A is noneligible. Since neither *offer* is a *domestic offer*, no evaluation factor applies; select A.

Item 5: Low *offer* B is noneligible; apply a 20 percent factor to *Offer* B. *Offer* A is still higher than *Offer* B; select B.

STEP 2: Evaluate *Offer* C against the tentative award pattern for *Offers* A and B:

OFFERS

Item	**Low *Offer***	**Tentative Award Pattern from A and B**			**C**		
1	A	DO	=	$ 55,000	*NEL	=	$60,000
2	B	EL	=	$10,000	EL	=	$13,000
3	B	DO	=	$12,000	DO	=	$10,000
4	A	NEL	=	$24,000	NEL	=	$22,000
5	B	*NEL	=	$12,000	DO	=	$14,000
TOTAL		$113,000			$119,000		

**Offer* + 20 percent.

On a *line item* basis, apply a factor to any *noneligible offer* if the other *offer* for that *line item* is domestic.

For Item 1, apply a factor to *Offer* C because *Offer* A is domestic and the *acquisition* was not covered by the *WTO GPA*. The evaluated price of *Offer* C, Item 1, becomes $60,000 ($50,000 plus 20 percent). Apply a factor to *Offer* B, Item 5, because it is a *noneligible product* and *Offer* C is domestic. The evaluated price of *Offer* B is $12,000 ($10,000 plus 20 percent). Evaluate the remaining items without applying a factor.

STEP 3: The tentative unrestricted award pattern from *Offers* A and B is lower than the evaluated price of *Offer* C. Award the combination of *Offers* A and B. Note that if *Offer* C had not specified all-or-none award, award would be made on *Offer* C for *line items* 3 and 4, totaling an award of $32,000.

(b) *Example 2*.

OFFERS

Item	**A**			**B**			**C**		
1	DO	=	$50,000	EL	=	$50,500	NEL	=	$50,000
2	NEL	=	$10,300	NEL	=	$10,000	EL	=	$10,200

OFFERS

Item	**A**			**B**			**C**		
3	EL	=	$20,400	EL	=	$21,000	NEL	=	$20,200
4	DO	=	$10,500	DO	=	$10,300	DO	=	$10,400
TOTAL	$91,200			$91,800			$90,800		

Problem: The *solicitation* specifies award on a group basis. Assume the Buy American statute applies and the *acquisition* cannot be set aside for small business concerns. All *offerors* are large businesses.

Analysis: (see 25.503(c))

STEP 1: Determine which of the *offers* are domestic (see 25.503(c)(1)):

	Domestic [percent]	Determination
A	$50,000 (*Offer* A1) + $10,500 (*Offer* A4) = $60,500 $60,500/$91,200 (*Offer* A Total) = 66.3%	Domestic
B	$10,300 (*Offer* B4) /$91,800 (*Offer* B Total) $ = 11.2%	Foreign
C	$10,400 (*Offer* C4) /$90,800 (*Offer* C Total) = 11.5%	Foreign

STEP 2: Determine whether *foreign offers* are eligible or *noneligible offers* (see 25.503(c)(2)):

	Domestic + Eligible [percent]	Determination
A	N/A (Both Domestic)	Domestic
B	$50,500 (*Offer* B1) + $21,000 (*Offer* B3) + $10,300 (*Offer* B4)= $81,800. $81,800 /$91,800 (*Offer* B Total) = 89.1%	Eligible
C	$10,200 (*Offer* C2) + $10,400 (*Offer* C4) = $20,600. $20,600/$90,800 (*Offer* C Total) = 22.7%	Noneligible

STEP 3: Determine whether to apply an evaluation factor (see 25.503(c)(3)). The low *offer* (*Offer* C) is a *foreign offer*. There is no *eligible offer* lower than the *domestic offer*. Therefore, apply the factor

to the low *offer*. Addition of the 20 percent factor (use 30 percent if *Offer* A is a small business) to *Offer* C yields an evaluated price of $108,960 ($90,800 + 20 percent). Award on *Offer* A (see 25.502(c)(4)(ii)). Note that, if *Offer* A were greater than *Offer* B, an evaluation factor would not be applied, and award would be on *Offer* C (see 25.502(c)(3)).

(c) *Example 3*.

OFFERS

Item	**A**			**B**			**C**		
1	DO	=	$17,800	FO (>55%)	=	$16,000	FO (>55%)	=	$11,200
2	FO (>55%)	=	$9,000	FO (>55%)	=	$8,500	DO	=	$10,200
3	FO (>55%)	=	$11,200	FO (>55%)	=	$12,000	FO (>55%)	=	$11,000
4	DO	=	$10,000	DO	=	$9,000	FO (>55%)	=	$6,400
Total	$48,000			$45,500			$38,800.		

Key:

DO = *Domestic end product* (complies with the required domestic content).

FO > 55% = *Foreign end product* with domestic content exceeding 55%.

FO < 55% = *Foreign end product* with domestic content of 55% or less.

Problem: The *solicitation* specifies award on a group basis. Assume only the Buy American statute applies (*i.e.,* no trade agreements apply) and the *acquisition* cannot be set aside for small business concerns. All *offerors* are large businesses.

Analysis: (see 25.503(d))

STEP 1: Determine which of the *offers* are domestic (see 25.503(d)(1)).

	Domestic [percent]	Determination
A	$17,800 (*Offer* A1) + $10,000 (*Offer* A4) = $27,800 $27,800/$48,000 (*Offer* A Total) = 58%	Domestic

B	$9,000 (*Offer* B4)/$45,500 (*Offer* B Total) = 19.8%	Foreign
C	$10,200 (*Offer* C2)/$38,800 (*Offer* C Total) = 26.3%	Foreign

STEP 2: Determine which *offer*, domestic or foreign, is the low *offer*. If the low *offer* is a *foreign offer*, apply the evaluation factor (see 25.503(d)(2)). The low *offer* (*Offer* C) is a *foreign offer*. Therefore, apply the factor to the low *offer*. Addition of the 20 percent factor (use 30 percent if *Offer* A is a small business) to *Offer* C yields an evaluated price of $46,560 ($38,800 + 20 percent). *Offer* C remains the low *offer*.

STEP 3: Determine if there is a foreign *offer* that could be treated as a *domestic offer* (see 25.106(b)(2) and 25.503(d)(2)).

	Amount of domestic content (percent)	Determination
A	N/A	N/A
B	$9,000 (*Offer* B4)/$45,500 (*Offer* B Total) $ = 19.8% is domestic AND $16,000 (*Offer* B1) + $8,500 (*Offer* B2) + $12,000 (*Offer* B3) = $36,500 $36,500/$45,500 (*Offer* B Total) = 80.2% can be treated as domestic 19.8% + 80.2% = 100% is domestic or can be treated as domestic	Can be treated as domestic.
C	$10,200 (*Offer* C2)/$38,800 (*Offer* C Total) = 26.3% is domestic	Noneligible

STEP 4: If there is a *foreign offer* that could be treated as a *domestic offer*, compare the evaluated price of the low *offer* to the price of the *offer* treated as domestic (*see* 25.503(d)(3)). *Offer* B can be treated as a *domestic offer* ($45,500). The evaluated price of the low *offer* (*Offer* C) is $46,560. Award on *Offer* B.