



(Billing Code 5001-06)

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket No. DARS-2015-0071]

Negotiation of a Reciprocal Defense Procurement Memorandum of Understanding with the Ministry of Defense of Japan

AGENCY: Department of Defense (DoD).

ACTION: Request for public comments.

SUMMARY: On behalf of the U.S. Government, DoD is contemplating negotiating and concluding a Reciprocal Defense Procurement Memorandum of Understanding with the Ministry of Defense of Japan. DoD is requesting industry feedback regarding its experience in public defense procurements conducted by or on behalf of the Japanese Ministry of Defense or Armed Forces.

DATES: Submit written comments to the address shown below on or [Insert date 30 days after date of publication in the Federal Register].

ADDRESSES: Submit comments to Defense Procurement and Acquisition Policy, Attn: Ms. Patricia Foley, 3060 Defense Pentagon, Room 5E621, Washington, DC 20301-3060; or by e-mail to patricia.g.foley.civ@mail.mil.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Foley, Senior Analyst, Office of the Under Secretary of Defense for Acquisition, Technology and Logistics (OUSD(AT&L)), Defense

Procurement and Acquisition Policy, Contract Policy and International Contracting; Room 5E621, 3060 Defense Pentagon, Washington, DC 20301-3060; telephone (703) 693-1145.

SUPPLEMENTAL INFORMATION:

DoD has concluded Reciprocal Defense Procurement (RDP) Memorandums of Understanding (MOUs) with 23 "qualifying countries" at the level of the Secretary of Defense and his counterpart. The purpose of RDP MOUs is to promote rationalization, standardization, and interoperability of conventional defense equipment with allies and other friendly governments. These MOUs provide a framework for ongoing communication regarding market access and procurement matters that enhance effective defense cooperation.

RDP MOUs generally include language by which the Parties agree that their defense procurements will be conducted in accordance with certain implementing procedures. These procedures relate to—

- Publication of notices of proposed purchases;
- The content and availability of solicitations for proposed purchases;
- Notification to each unsuccessful offeror;

- Feedback, upon request, to unsuccessful offerors concerning the reasons they were not allowed to participate in a procurement or were not awarded a contract; and
- Provision for the hearing and review of complaints arising in connection with any phase of the procurement process to ensure that, to the extent possible, complaints are equitably and expeditiously resolved.

Based on the MOU, each country affords the other country certain benefits on a reciprocal basis consistent with national laws and regulations. The benefits that the United States accords to the products of qualifying countries include—

- Offers of qualifying country end products are evaluated without applying the price differentials otherwise required by the Buy American statute and the Balance of Payments Program;
- The chemical warfare protection clothing restrictions in 10 U.S.C. 2533a and the specialty metals restriction in 10 U.S.C. 2533b(a)(1) do not apply to products manufactured in a qualifying country; and
- Customs, taxes, and duties are waived for qualifying country end products and components of defense procurements.

If DoD (for the U.S. Government) concludes an RDP MOU with the Ministry of Defense of Japan, then Japan would be listed as one of the “qualifying countries” in the definition of “qualifying

country" at DFARS 225.003, and offers of products of Japan or that contain components from Japan would be afforded the benefits available to all qualifying countries. This also means that U.S. products would be exempt from any analogous "Buy Japan" laws or policies applicable to procurements by the Japan Ministry of Defense or Armed Forces.

While DoD is evaluating Japan's laws and regulations in this area, DoD would benefit from U.S. industry's experience in participating in Japan's public defense procurements. DoD is, therefore, asking U.S. firms that have participated or attempted to participate in procurements by or on behalf of Japan's Ministry of Defense or Armed Forces to let us know if the procurements were conducted with transparency, integrity, fairness, and due process in accordance with published procedures, and if not, the nature of the problems encountered.

DoD is also interested in comments relating to the degree of reciprocity that exists between the United States and Japan when it comes to the openness of defense procurements to offers of products from the other country.

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