

Reciprocal Defense Procurement Memoranda of Understanding and equivalent agreements with the United States

Overview

Reciprocal Defense Procurement Memoranda of Understandings (RDP MOUs) are bi-lateral international agreements between the United States (U.S.) and another nation. The purpose of an RDP agreement is a mutual commitment not to discriminate against the suppliers of the other country. RDP Agreements are meant to promote rationalization, standardization, interchangeability, and interoperability with allies and partner nations of the U.S. They provide a framework to facilitate market access and procurement that enhance defense cooperation. Typically, each party to the agreement affords the other country certain benefits on a reciprocal basis in accordance with each party's laws and regulations. The U.S. designates a country with which it has an RDP Agreement a "Qualifying Country." The law provides that RDP agreements are agreements that relate to research, development, or production of defense equipment, or the reciprocal procurement of defense items. All DMAG members have an RDP MOU or an equivalent agreement with the U.S.

Implementing Procedures

The Secretary of Defense is responsible for the negotiations for RDP agreements. They are based on the same template, but the RDP agreements are individually negotiated and contain articulations in varying levels of detail. It is therefore necessary to review specific RDP agreements to understand the ambit of their provisions. Detailed implementing procedures within RDP agreements further streamline procurement processes by providing clear guidelines on various aspects, such as purchase notices, solicitation content, feedback mechanisms, and resolution of procurement-related disputes. These procedures, often outlined in annexes, facilitate efficient collaboration.

Legal Framework in the United States

RDP agreements serve as waivers to national procurement regulations, including the Buy American Act (BAA) in the U.S. Enacted in 1933, the BAA mandates preferential treatment for domestically sourced goods in U.S. Government procurement. However, waivers can be granted under certain circumstances. The Defense Federal Acquisition Regulation Supplement (DFARS), list eligible "qualifying countries" and thereby provide a waiver from the BAA. Offers of qualifying country end products are evaluated without applying the price differentials otherwise required by BAA. In instances where a domestic offer does not represent the lowest bid, a price differential is typically implemented. This involves adding a predetermined percentage of the lowest bid's price to the domestic offer, thus facilitating the determination of the lowest priced or best value offer for the procuring agency.

A qualifying country source is considered a domestic source for the purposes of domestic threshold calculations for DoD contracts subject to the BAA regarding the application of price differentials. It is important to note that DoD contracts subject to the BAA require that components from domestic or qualifying countries make up at least 65% of a manufactured end product's cost for the end product to qualify as "domestically" manufactured if delivered during the period of 2024 to 2028. The threshold rises to 75% domestic or qualifying country components for manufactured end products delivered in 2029 and beyond.

While RDP agreements serve as the international agreement fostering defense cooperation, the DFARS provides the regulatory framework and guidelines for implementing the provisions outlined in the RDP agreements within the context of the U.S. defense acquisition process. It ensures that the waivers and exemptions granted under RDP agreements are applied appropriately and in accordance with established procedures.

RDP agreements have binding obligations but no formal enforcement mechanisms. According to the law, in case a participating country refuses to abide by the obligations, the U.S. Secretary of Defense, after consulting with the U.S. Trade Representative, determines that a country violated the terms by discriminating against a covered American product and therefore the waiver of the BAA may be rescinded. Presumably, foreign countries that have entered into RDP agreements with the DoD have similar measures they can take in the case the U.S. government does not live up to its obligations.

Reciprocity

A nation that has signed an RDP agreement with the U.S. must live up to the reciprocity and make sure that the national legal framework supports the agreement. This means that the nation cannot have trade barriers that preclude U.S. industry to bid or become sub-contractors in procurements.

More information

All national RDP MOUs and equivalent agreements can be found at the DoD webpage:
<https://www.acq.osd.mil/asda/dpc/cp/ic/reciprocal-procurement-mou.html>.