

**252.209–7008 Notice of Prohibition Relating to Organizational Conflict of Interest—Major Defense Acquisition Program.**

As prescribed in 209.571–8(a), use the following provision:

**NOTICE OF PROHIBITION RELATING TO ORGANIZATIONAL CONFLICT OF INTEREST—MAJOR DEFENSE ACQUISITION PROGRAM (DEC 2010)**

(a) *Definitions.* “Major subcontractor” is defined in the clause at 252.209–7009, Organizational Conflict of Interest—Major Defense Acquisition Program.

(b) This solicitation is for the performance of systems engineering and technical assistance for a major defense acquisition program or a pre-major defense acquisition program.

(c) *Prohibition.* As required by paragraph (b)(3) of section 207 of the Weapons System Acquisition Reform Act of 2009 (Pub. L. 111–23), if awarded the contract, the contractor or any affiliate of the contractor is prohibited from participating as a prime contractor or a major subcontractor in the development or production of a weapon system under the major defense acquisition program or pre-major defense acquisition program, unless the offeror submits, and the Government approves, an Organizational Conflict of Interest Mitigation Plan.

(d) *Request for an exception.* If the offeror requests an exception to the prohibition of paragraph (c) of this provision, then the offeror shall submit an Organizational Conflict of Interest Mitigation Plan with its offer for evaluation.

(e) *Incorporation of Organizational Conflict of Interest Mitigation Plan in contract.* If the apparently successful offeror submitted an acceptable Organizational Conflict of Interest Mitigation Plan, and the head of the contracting activity determines that DoD needs the domain experience and expertise of the highly qualified, apparently successful offeror in accordance with FAR 209.571–7(c), then the Contracting Officer will incorporate the Organizational Conflict of Interest Mitigation Plan into the resultant contract, and paragraph (d) of the clause at 252.209–7009 will become applicable.

(End of provision)

**252.209–7009 Organizational Conflict of Interest—Major Defense Acquisition Program.**

As prescribed in 209.571–8(b), use the following clause:

**ORGANIZATIONAL CONFLICT OF INTEREST—MAJOR DEFENSE ACQUISITION PROGRAM (DEC 2010)**

(a) *Definition.*

“Major subcontractor,” as used in this clause, means a subcontractor that is awarded a subcontract that equals or exceeds

(1) Both the cost or pricing data threshold and 10 percent of the value of the contract under which the subcontracts are awarded; or

(2) \$50 million.

(b) This contract is for the performance of systems engineering and technical assistance

for a major defense acquisition program or a pre-major defense acquisition program.

(c) *Prohibition.* Except as provided in paragraph (d) of this clause, as required by paragraph (b)(3) of section 207 of the Weapons System Acquisition Reform Act of 2009 (Pub. L. 111–23), the Contractor or any affiliate of the Contractor is prohibited from participating as a prime contractor or major subcontractor in the development or production of a weapon system under the major defense acquisition program or pre-major defense acquisition program.

(d) *Organizational Conflict of Interest Mitigation Plan.* If the Contractor submitted an acceptable Organizational Conflict of Interest Mitigation Plan that has been incorporated into this contract, then the prohibition in paragraph (c) of this clause does not apply. The Contractor shall comply with the Organizational Conflict of Interest Mitigation Plan. Compliance with the Organizational Conflict of Interest Mitigation Plan is a material requirement of the contract. Failure to comply may result in the Contractor or any affiliate of the Contractor being prohibited from participating as a contractor or major subcontractor in the development or production of a weapon system under the program, in addition to any other remedies available to the Government for noncompliance with a material requirement of a contract.

(End of clause)

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**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 225 and 252**

**RIN 0750–AG80**

**Defense Federal Acquisition Regulation Supplement; Foreign Participation in Acquisitions in Support of Operations in Afghanistan (DFARS Case 2009–D012)**

**AGENCY:** Defense Acquisition Regulations System; Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement—

- Waiver of section 302(a) of the Trade Agreements Act of 1979, as amended, which prohibits acquisitions of products or services from nondesignated countries, in order to allow acquisition from the nine South Caucasus/Central and South Asian (SC/CASA) states; and
- Determination of inapplicability of the Balance of Payments Program evaluation factor to offers of products

(other than arms, ammunition, or war materials) from the SC/CASA states to support operations in Afghanistan.

**DATES:** *Effective Date:* December 29, 2010.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP/DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 703–602–0328; facsimile 703–602–0350. Please cite DFARS Case 2009–D012.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD published a proposed rule on January 6, 2010 (75 FR 832) to implement—

- A waiver of the procurement prohibition of section 302(a) of the Trade Agreements Act of 1979 with regard to acquisitions by DoD or GSA, on behalf of DoD, in support of operations in Afghanistan from the following nine South Caucasus/Central and South Asian (SC/CASA) states: Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, and Uzbekistan; and

- A determination by the Deputy Secretary of Defense that it would be inconsistent with the public interest to apply the provisions of the Balance of Payments Program to offers of products (other than arms, ammunition, or war materials) and construction materials from these SC/CASA states acquired in direct support of operations in Afghanistan.

In addition, the proposed rule made corrections to—

- Alternate I of 252.225–7035, to delete the phrase “Australian or” from paragraph (c)(2)(i); and
- Alternate I of 252.225–7045, to add in paragraph (b), line 4, that the Bahrain Free Trade Agreement does not apply.

DoD did not receive any comments on the proposed rule.

Therefore, DoD is finalizing the proposed rule with no substantive change. The final rule does incorporate the following editorial and technical corrections:

- Incorporates the current DFARS baseline.
- Amends various clause prefaces to reference the correct clause prescriptions.
- Amends 225.1101(6)(i) to reference the World Trade Organization (WTO) Government Procurement Agreement (GPA) rather than the Trade Agreements Act, in conformance with FAR 225.1101(c)(1).
- Amends paragraph (d), added by Alternate II to the clause at 252.225–

7021, to limit applicability. Only contractors from an SC/CASA state are required to notify the government of the SC/CASA state with regard to the benefit of providing reciprocal procurement opportunities to U.S. products and services, in conformance with the requirement imposed by the United States Trade Representative.

- Corrects the provision and clause at 252.225–7035 and 252.225–7036, so that Peruvian end products are not erroneously treated as eligible products in acquisitions that do not exceed the WTO GPA threshold (see DFARS Case 2008–D046, published at 74 FR 37650 and 75 FR 3179 for initial implementation of the Peruvian Free Trade Agreement). The threshold for end products for the Peruvian Free Trade Agreement, like the Free Trade Agreements of Bahrain and Morocco, is equal to the threshold of the WTO GPA. Therefore, these trade agreements are only in effect for acquisitions that exceed the WTO GPA threshold (covered by DFARS provision and clause 252.225–7020 and 252.225–7021). This is a technical amendment to this DFARS provision and clause in order to conform to the trade threshold for the Peruvian Free Trade Agreement that is at FAR 25.402(b) and to be consistent with the corresponding FAR provision and clause at 52.225–3 and 52.225–4.

## II. Executive Order 12866

This is not a significant regulatory action and, therefore, was not subject to review by the Office of Management and Budget under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

## III. Regulatory Flexibility Act

DoD certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule only impacts acquisitions that are in support of operations in Afghanistan, allowing acquisition of products and services from the SC/CASA states. The minimal information collection requirement applies only to contractors that are from an SC/CASA state, and does not apply to U.S. small business concerns. DoD did not receive any comments from small businesses or other interested parties.

## IV. Paperwork Reduction Act

The Paperwork Reduction Act applies because the rule modifies information collection requirements that have been approved by the Office of Management

and Budget under 44 U.S.C. 3501, *et seq.* However, the impact on existing approved information collection requirements (OMB clearance 0704–0229) is expected to be negligible.

In addition, this final rule contains a new information collection requirement that has received approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* (OMB Clearance Number 0704–0475). DoD did not receive any comments on the proposed information collection requirement.

## List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

**Ynette R. Shelkin,**

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR parts 225 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR chapter 1.

## PART 225—FOREIGN ACQUISITION

■ 2. Amend section 225.003 by adding paragraphs (14) through (16) to read as follows:

### 225.003 Definitions.

\* \* \* \* \*

(14) *South Caucasus/Central and South Asian (SC/CASA) state* means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

(15) *South Caucasus/Central and South Asian (SC/CASA) state construction material* means construction material that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different construction material distinct from the material from which it was transformed.

(16) *South Caucasus/Central and South Asian (SC/CASA) state end product* means an article that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was

transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product, includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

■ 3. Section 225.401 is revised to read as follows:

### 225.401 Exceptions.

(a)(2)(A) If a department or agency considers an individual acquisition of a product to be indispensable for national security or national defense purposes and appropriate for exclusion from the provisions of FAR subpart 25.4, it may submit a request with supporting rationale to the Director of Defense Procurement and Acquisition Policy (OUSD(AT&L)DPAP). Approval by OUSD(AT&L)DPAP is not required if—

(1) Purchase from foreign sources is restricted by statute (see subpart 225.70);

(2) Another exception in FAR 25.401 applies to the acquisition; or

(3) Competition from foreign sources is restricted under subpart 225.71.

(B) Public interest exceptions for certain countries when acquiring products or services in support of operations in Afghanistan are in 225.7704–1.

■ 3. Amend section 225.403 by adding paragraph (c)(iii) to read as follows:

### 225.403 World Trade Organization Government Procurement Agreement and Free Trade Agreements.

(c) \* \* \*

(iii) The acquisition is in support of operations in Afghanistan (see 225.7704–1).

■ 4. Amend section 225.502 by adding paragraph (a) to read as follows:

### 225.502 Application.

(a) Whenever the acquisition is in support of operations in Afghanistan, treat the offers of end products from South Caucasus or Central and South Asian states listed in 225.401–70 the same as qualifying country offers.

\* \* \* \* \*

■ 5. Revise section 225.1101 to read as follows:

### 225.1101 Acquisition of supplies.

(1)(i) Use the provision at 252.225–7000, Buy American Act—Balance of Payments Program Certificate, instead of the provision at FAR 52.225–2, Buy American Act Certificate. Use the provision in any solicitation that includes the clause at 252.225–7001,

Buy American Act and Balance of Payments Program.

(ii) Use the provision with its Alternate I when the acquisition is of end products listed in 225.401–70 in support of operations in Afghanistan.

(2)(i) Use the clause at 252.225–7001, Buy American Act and Balance of Payments Program, instead of the clause at FAR 52.225–1, Buy American Act—Supplies, in solicitations and contracts unless—

(A) All line items will be acquired from a particular source or sources under the authority of FAR 6.302–3;

(B) All line items must be domestic or qualifying country end products in accordance with Subpart 225.70. (However, the clause may still be required if Subpart 225.70 requires manufacture of the end product in the United States or in the United States or Canada, without a corresponding requirement for use of domestic components);

(C) An exception to the Buy American Act or Balance of Payments Program applies (see FAR 25.103, 225.103, and 225.7501);

(D) One or both of the following clauses will apply to all line items in the contract:

(1) 252.225–7021, Trade Agreements.

(2) 252.225–7036, Buy American Act—Free Trade Agreements—Balance of Payments Program; or

(E) All line items will be acquired using a procedure specified in 225.7703–1(a).

(ii) Use the clause with its Alternate I when the acquisition is of end products listed in 225.401–70 in support of operations in Afghanistan.

(3) Use the clause at 252.225–7002, Qualifying Country Sources as Subcontractors, in solicitations and contracts that include one of the following clauses:

(i) 252.225–7001, Buy American Act and Balance of Payments Program.

(ii) 252.225–7021, Trade Agreements.

(iii) 252.225–7036, Buy American Act—Free Trade Agreements—Balance of Payments Program.

(4) Use the clause at 252.225–7013, Duty-Free Entry, instead of the clause at FAR 52.225–8. Do not use the clause for acquisitions of supplies that will not enter the customs territory of the United States.

(5)(i) Except as provided in paragraph (7) of this section, use the provision at 252.225–7020, Trade Agreements Certificate, instead of the provision at FAR 52.225–6, Trade Agreements Certificate, in solicitations that include the clause at 252.225–7021, Trade Agreements.

(ii) Use the provision with its Alternate I when the acquisition is of

end products in support of operations in Afghanistan.

(6)(i) Use the clause at 252.225–7021, Trade Agreements, instead of the clause at FAR 52.225–5, Trade Agreements, if the World Trade Organization Government Procurement Agreement applies.

(ii) Use the clause with its Alternate I in solicitations and contracts that include the clause at 252.225–7024, Requirement for Products or Services from Iraq or Afghanistan, unless the clause at 252.225–7024 has been modified to provide a preference only for the products of Afghanistan.

(iii) Use the clause with its Alternate II when the acquisition is of end products in support of operations in Afghanistan and Alternate I is not applicable.

(iv) Do not use the clause if—

(A) Purchase from foreign sources is restricted, unless the contracting officer anticipates a waiver of the restriction; or

(B) The clause at 252.225–7026, Acquisition Restricted to Products or Services from Iraq or Afghanistan, is included in the solicitation and contract.

(v) The acquisition of eligible and noneligible products under the same contract may result in the application of trade agreements to only some of the items acquired. In such case, indicate in the Schedule those items covered by the Trade Agreements clause.

(7) Use the provision at 252.225–7022, Trade Agreements Certificate—Inclusion of Iraqi End Products, instead of the provision at FAR 52.225–6, Trade Agreements Certificate, in solicitations that include the clause at 252.225–7021, Trade Agreements, with its Alternate I.

(8) Use the provision at 252.225–7032, Waiver of United Kingdom Levies—Evaluation of Offers, in solicitations if a U.K. firm is expected to—

(i) Submit an offer; or

(ii) Receive a subcontract exceeding \$1 million.

(9) Use the clause at 252.225–7033, Waiver of United Kingdom Levies, in solicitations and contracts if a U.K. firm is expected to—

(i) Submit an offer; or

(ii) Receive a subcontract exceeding \$1 million.

(10)(i) Use the provision at 252.225–7035, Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate, instead of the provision at FAR 52.225–4, Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, in solicitations that include the clause at 252.225–7036, Buy American Act—Free Trade

Agreements—Balance of Payments Program.

(ii) Use the provision with its Alternate I when the clause at 252.225–7036 is used with its Alternate I.

(iii) Use the provision with its alternate II when the clause at 252.225–7036 is used with its Alternate II.

(iv) Use the provision with its Alternate III when the clause at 252.225–7036 is used with its Alternate III.

(11)(i) Except as provided in paragraph (11)(ii) of this section, use the clause at 252.225–7036, Buy American Act—Free Trade Agreements—Balance of Payments Program, instead of the clause at FAR 52.225–3, Buy American Act—Free Trade Agreements—Israeli Trade Act, in solicitations and contracts for the items listed at 225.401–70, when the estimated value equals or exceeds \$25,000, but is less than \$203,000, and a Free Trade Agreement applies to the acquisition.

(A) Use the basic clause when the estimated value equals or exceeds \$70,079, except if the acquisition is of end products in support of operations in Afghanistan, use with its Alternate II.

(B) Use the clause with its Alternate I when the estimated value equals or exceeds \$25,000 but is less than \$70,079, except if the acquisition is of end products in support of operations in Afghanistan, use with its Alternate III.

(ii) Do not use the clause if—

(A) Purchase from foreign sources is restricted (see 225.401(a)(2)), unless the contracting officer anticipates a waiver of the restriction;

(B) Acquiring information technology that is a commercial item, using fiscal year 2004 or subsequent funds (Section 535 of Division F of the Consolidated Appropriations Act, 2004 (Pub. L. 108–199), and the same provision in subsequent appropriations acts); or

(C) Using a procedure specified in 225.7703–1(a).

(iii) The acquisition of eligible and noneligible products under the same contract may result in the application of a Free Trade Agreement to only some of the items acquired. In such case, indicate in the Schedule those items covered by the Buy American Act—Free Trade Agreements—Balance of Payments Program clause.

■ 6. Amend section 225.7501 by:

■ a. Redesignating paragraph (b)(1)(iii) as (b)(1)(iv);

■ b. Adding new paragraph (b)(1)(iii); and

■ c. Revising paragraph (b)(2) to read as follows:

**225.7501 Policy.**

\* \* \* \* \*

(b) \* \* \*  
(1) \* \* \*

(iii) If the acquisition is in support of operations in Afghanistan, a South Caucasus/Central and South Asian state end product listed in 225.401-70 (see 225.7704-2); or

\* \* \* \* \*

(2) The construction material is an eligible product or, if the acquisition is in support of operations in Afghanistan, the construction material is a South Caucasus/Central and South Asian state construction material (see 225.7704-2); or

\* \* \* \* \*

■ 7. Revise section 225.7503 to read as follows:

**225.7503 Contract clauses.**

Unless the entire acquisition is exempt from the Balance of Payments Program—

(a)(1) Use the clause at 252.225-7044, Balance of Payments Program—Construction Material, in solicitations and contracts for construction to be performed outside the United States with a value greater than the simplified acquisition threshold but less than \$7,804,000.

(2) Use the clause with its Alternate I if the acquisition is in support of operations in Afghanistan.

(b)(1) Use the clause at 252.225-7045, Balance of Payments Program—Construction Material Under Trade Agreements, in solicitations and contracts for construction to be performed outside the United States with a value of \$7,804,000 or more, except as provided in 225.7503(b)(4).

(2) For acquisitions with a value of \$7,804,000 or more, but less than \$9,110,318, use the clause with its Alternate I, unless the acquisition is in support of operations in Afghanistan, use the clause with its Alternate III.

(3) If the acquisition is for construction with a value of more than \$8,817,449 or more and is in support of operations in Afghanistan, use the clause with its Alternate II.

(4) If the acquisition is for construction with a value of \$7,443,000 or more, but less than \$8,817,449, and is in support of operations in Afghanistan, use the clause with its Alternate III.

■ 8. Revise section 225.7700 to read as follows:

**225.7700 Scope.**

This subpart implements—

(a) Section 886 and section 892 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181); and

(b) The determinations by the Deputy Secretary of Defense regarding

participation of the countries of the South Caucasus or Central and South Asia in acquisitions in support of operations in Afghanistan.

■ 9. Add sections 225.7704, 225.7704-1, 225.7704-2, and 225.7704-3 to read as follows:

**225.7704 Acquisitions of products and services from South Caucasus/Central and South Asian (SC/CASA) state in support of operations in Afghanistan.**

**225.7704-1 Applicability of trade agreements.**

As authorized by the United States Trade Representative, the Secretary of Defense has waived the prohibition in section 302(a) of the Trade Agreements Act (see subpart 225.4) for acquisitions by DoD, and by GSA on behalf of DoD, of products and services from SC/CASA states in direct support of operations in Afghanistan.

**225.7704-2 Applicability of Balance of Payments Program.**

The Deputy Secretary of Defense has determined, because of importance to national security, that it would be inconsistent with the public interest to apply the provisions of the Balance of Payments Program (see subpart 225.75) to offers of end products other than arms, ammunition, and war materials (i.e., end products listed in 225.401-70) and construction materials from the SC/CASA states that are being acquired by or on behalf of DoD in direct support of operations in Afghanistan.

**225.7704-3 Solicitation provisions and contract clauses.**

Appropriate solicitation provisions and contract clauses are prescribed as alternates to the Buy American-Trade Agreements-Balance of Payments Program solicitation provisions and contract clauses prescribed at 225.1101 and 225.7503.

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

■ 10. Amend section 252.212-7001 as follows:

- a. Redesignate paragraph (b)(5) as paragraph (b)(5)(i);
- b. Add paragraph (b)(5)(ii);
- c. Amend the clause date in paragraph (11)(i) by removing “(NOV 2009)” and adding in its place “(DEC 2010)”;
- d. Revise paragraph (11)(ii);
- e. Amend the clause date in paragraph (14)(ii) by removing “(JUL 2009)” and adding in its place “(DEC 2010)”;
- f. Add paragraphs (14)(iii) and (iv) to read as follows:

**252.212-7001 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items.**

\* \* \* \* \*

(b) \* \* \*

(5) \* \* \*

(ii) \_\_\_ Alternate I (DEC 2010) of 252.225-7001.

\* \* \* \* \*

(11) \* \* \*

(ii) \_\_\_ Alternate I (DEC 2010) of 252.225-7021.

\* \* \* \* \*

(14) \* \* \*

(iii) \_\_\_ Alternate II (DEC 2010) of 252.225-7036.

(iv) \_\_\_ Alternate III (DEC 2010) of 252.225-7036.

\* \* \* \* \*

■ 11. Amend section 252.225-7000 by revising the introductory text and adding Alternate I at the end of the section to read as follows:

**252.225-7000 Buy American Act—Balance of Payments Program Certificate.**

As prescribed in 225.1101(1)(i), use the following provision:

\* \* \* \* \*

**ALTERNATE I (DEC 2010)**

As prescribed in 225.1101(1)(ii), add the terms “South Caucasus/Central and South Asian (SC/CASA) state” and “South Caucasus/Central and South Asian (SC/CASA) state end product” in paragraph (a) and replace the phrase “qualifying country end products” in paragraphs (b)(2) and (c)(2) with the phrase “qualifying country end products or SC/CASA state end products.”

■ 12. Amend section 252.225-7001 by revising the introductory text and adding ALTERNATE I to read as follows:

**252.225-7001 Buy American Act and Balance of Payments Program.**

As prescribed in 225.1101(2)(i), use the following clause:

\* \* \* \* \*

**ALTERNATE I (DEC 2010)**

As prescribed in 225.1101(2)(ii), add the following definitions to paragraph (a) and substitute the following paragraphs (b) and (c) for paragraphs (b) and (c) of the basic clause:

(a)(10) “South Caucasus/Central and South Asian (SC/CASA) state” means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

(11) “South Caucasus/Central and South Asian (SC/CASA) state end product” means an article that—

- (i) Is wholly the growth, product, or manufacture of an SC/CASA state; or
- (ii) In the case of an article that consists in whole or in part of materials from another

country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(b) This clause implements the Balance of Payments Program. Unless otherwise specified, this clause applies to all line items in the contract.

(c) The Contractor shall deliver only domestic end products unless, in its offer, it specified delivery of other end products in the Buy American Act Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product or an SC/CASA state end product, the Contractor shall deliver a qualifying country end product an SC/CASA state end product, or, at the Contractor's option, a domestic end product.

■ 13. Amend section 252.225–7020 by revising the introductory text and adding Alternate I at the end of the section to read as follows:

**252.225–7020 Trade Agreements Certificate.**

As prescribed in 225.1101(5)(i), use the following provision:

\* \* \* \* \*

**ALTERNATE I (DEC 2010)**

As prescribed in 225.1101(5)(ii), substitute the following paragraphs (a), (b)(2), and (c) for paragraph (a), (b)(2), and (c) of the basic clause:

(a) *Definitions.* “Designated country end product,” “nondesignated country end product,” “qualifying country end product,” “South Caucasus/Central and South Asian (SC/CASA) state,” “South Caucasus/Central and South Asian (SC/CASA) state end product,” and “U.S.-made end product” have the meanings given in the Trade Agreements clause of this solicitation.

(b)(2) Will consider only offers of end products that are U.S.-made, qualifying country, SC/CASA state, or designated country end products unless—

(c) *Certification and identification of country of origin.*

(1) For all line items subject to the Trade Agreement clause of this solicitation, the offeror certifies that each end product to be delivered under this contract, except those listed in paragraph (c)(2)(ii) of this provision, is a U.S.-made, qualifying country, SC/CASA state, or designated country end product.

(2)(i) The following supplies are SC/CASA state end products:

(Line Item Number) \_\_\_\_\_  
(Country of Origin) \_\_\_\_\_

(ii) The following are other nondesignated country end products:

(Line Item Number) \_\_\_\_\_

(Country of Origin) \_\_\_\_\_

■ 14. Amend section 252.225–7021 by revising the introductory text and adding Alternate II at the end of the section to read as follows:

**252.225–7021 Trade Agreements.**

As prescribed in 225.1101(6)(i), use the following clause:

\* \* \* \* \*

**ALTERNATE II (DEC 2010)**

As prescribed in 225.1101(6)(iii), add the following new definitions to paragraph (a), substitute the following paragraph (c) for paragraph (c) of the basic clause, and add the following paragraph (d):

(a)(14) “South Caucasus/Central and South Asian (SC/CASA) state” means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

(15) “South Caucasus/Central and South Asian (SC/CASA) state end product” means an article that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(c) The Contractor shall deliver under this contract only U.S.-made, qualifying country, SC/CASA state, or designated country end products unless—

(1) In its offer, the Contractor specified delivery of other nondesignated country end products in the Trade Agreements Certificate provision of the solicitation; and

(2)(i) Offers of U.S.-made, qualifying country, SC/CASA state, or designated country end products from responsive, responsible offerors are either not received or are insufficient to fill the Government's requirements; or

(ii) A national interest waiver has been granted.

(d) If the Contractor is from an SC/CASA state, the Contractor shall inform its government of its participation in this acquisition and that it generally will not have such opportunity in the future unless its government provides reciprocal procurement opportunities to U.S. products and services and suppliers of such products and services.

■ 15. Amend section 252.225–7035 as follows:

■ a. Revise the introductory text;

■ b. Revise the clause date;

■ c. Revise paragraph (a);

■ d. Revise paragraph (b)(2);

■ e. Revise paragraph (c)(2)(ii);

■ f. Revise Alternate I; and

■ g. Add Alternates II and III at the end of the section to read as follows:

**252.225–7035 Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate.**

As prescribed in 225.1101(10)(i), use the following provision:

**BUY AMERICAN ACT—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM CERTIFICATE (DEC 2010)**

(a) *Definitions.* *Bahrainian end product, commercially available off-the-shelf (COTS) item, component, domestic end product, Free Trade Agreement country, Free Trade Agreement country end product, foreign end product, Moroccan end product, Peruvian end product, qualifying country end product, and United States*, as used in this provision, have the meanings given in the Buy American Act—Free Trade Agreements—Balance of Payments Program clause of this solicitation.

(b) \* \* \*

(2) For line items subject to Free Trade Agreements, will evaluate offers of qualifying country end products or Free Trade Agreement country end products other than Bahrainian end products or Moroccan end products, or Peruvian end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program.

(c) \* \* \*

(2) \* \* \*

(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, or Peruvian end products:

(Line Item Number) \_\_\_\_\_  
(Country of Origin) \_\_\_\_\_

\* \* \* \* \*

**ALTERNATE I (DEC 2010)**

As prescribed in 225.1101(10)(ii), substitute the phrase “Canadian end product” for the phrases “Bahrainian end product,” “Free Trade Agreement country,” “Free Trade Agreement country end product,” “Moroccan end product, and “Peruvian end products” in paragraph (a) of the basic provision; and substitute the phrase “Canadian end products” for the phrase “Free Trade Agreement country end products other than Bahrainian end products or Moroccan end products” in paragraphs (b)(2) and (c)(2)(ii) of the basic provision, and delete the phrase “Australian or” from paragraph (c)(2)(i) of the basic provision.

**ALTERNATE II (DEC 2010)**

As prescribed in 225.1101(10)(iii), add the terms “South Caucasus/Central and South Asian (SC/CASA) state” and “South Caucasus/Central and South Asian (SC/CASA) state end product” in paragraph (a) and substitute the following paragraphs (b)(2) and (c)(2)(i) for paragraphs (b)(2) and (c)(2)(i) of the basic clause.

(b)(2) For line items subject to Free Trade Agreements, will evaluate offers of qualifying

country end products, SC/CASA state end products, or Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, or Peruvian end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program.

(c)(2)(i) The offeror certifies that the following supplies are qualifying country (except Australian or Canadian) or SC/CASA state end products:  
 (Line Item Number) \_\_\_\_\_  
 (Country of Origin) \_\_\_\_\_

(End of provision)

**ALTERNATE III (DEC 2010)**

As prescribed in 225.1101(10)(iv), substitute the following paragraphs (a), (b)(2), (c)(2)(i), and (c)(2)(ii) for paragraphs (a), (b)(2), (c)(2)(i), and (c)(2)(ii) of the basic clause:

(a) *Definitions. Canadian end product, commercially available off-the-shelf (COTS) item, domestic end product, foreign end product, qualifying country end product, South Caucasus/Central and South Asian (SC/CASA) state end product, and United States* have the meanings given in the Buy American Act—Free Trade Agreements—Balance of Payments Program clause of this solicitation.

(b)(2) For line items subject to Free Trade Agreements, will evaluate offers of qualifying country end products, SC/CASA state end products, or Canadian end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program.

(c)(2)(i) The offeror certifies that the following supplies are qualifying country (except Canadian) or SC/CASA state end products:

(Line Item Number) \_\_\_\_\_  
 (Country of Origin) \_\_\_\_\_

(ii) The offeror certifies that the following supplies are Canadian end products:

(Line Item Number) \_\_\_\_\_  
 (Country of Origin) \_\_\_\_\_

■ 16. Amend section 252.225–7036 as follows:

- a. Revise the introductory text;
- b. Revise the clause date;
- c. Redesignate paragraph (a)(10) as paragraph (a)(11);
- d. Add new paragraph (a)(10);
- e. Redesignate paragraphs (a)(11) through (a)(13) as paragraphs (a)(12) through (a)(14); and
- f. Add Alternates II and III at the end of the section to read as follows:

**252.225–7036 Buy American Act—Free Trade Agreements—Balance of Payments Program.**

As prescribed in 225.1101(11)(i)(A), use the following clause:

**BUY AMERICAN ACT—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM (DEC 2010)**

(a) \* \* \*  
 (10) *Peruvian end product* means an article that—

(i) Is wholly the growth, product, or manufacture of Peru; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Peru into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(11) *Qualifying country* means any country set forth in the definition of “qualifying country” in Defense FAR Supplement 225.003.

\* \* \* \* \*

**ALTERNATE II (DEC 2010)**

As prescribed in 225.1101(11)(i)(A), add the following new definitions to paragraph (a) and substitute the following paragraph (c) for paragraph (c) of the basic clause:

(a)(14) *South Caucasus/Central and South Asian (SC/CASA) state* means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

(15) *South Caucasus/Central and South Asian (SC/CASA) state end product* means an article that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, SC/CASA state end products, Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, or Peruvian end products, or other foreign end products in the Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, SC/CASA state end products, or a Free Trade Agreement country end product other than a Bahrainian end product, a Moroccan end product, or a Peruvian end product, the Contractor shall deliver a qualifying country end product, an SC/CASA state end product, a Free Trade Agreement country end product other than a Bahrainian end product, a Moroccan end product, or a Peruvian end

product or, at the Contractor’s option, a domestic end product.

**ALTERNATE III (DEC 2010)**

As prescribed in 225.1101(11)(i)(B), add the following definitions to paragraph (a) and substitute the following paragraph (c) for paragraph (c) of the basic clause,

(a)(14) *Canadian end product*, means an article that—

(i) Is wholly the growth, product, or manufacture of Canada; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(15) *South Caucasus/Central and South Asian (SC/CASA) state* means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

(16) *South Caucasus/Central and South Asian (SC/CASA) state end product* means an article that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, SC/CASA state end products, Canadian end products, or other foreign end products in the Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, SC/CASA state end products, or a Canadian end product, the Contractor shall deliver a qualifying country end product, an SC/CASA state end product, a Canadian end product or, at the Contractor’s option, a domestic end product.

■ 17. Amend section 252.225–7044 by revising the introductory text; revising the clause date and adding Alternate I at the end of the section to read as follows:

**252.225-7044 Balance of Payments Program—Construction Material.**

As prescribed in 225.7503(a)(1), use the following clause:

\* \* \* \* \*

**ALTERNATE I (DEC 2010)**

As prescribed in 225.7503(a)(2), add the following definitions to paragraph (a) and replace the phrase “domestic construction material” in the second sentence of paragraph (b) with the phrase “domestic construction material or SC/CASA state construction material.”

“South Caucasus/Central and South Asian (SC/CASA) state” means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

“SC/CASA state construction material” means construction material that—

- (i) Is wholly the growth, product, or manufacture of an SC/CASA state; or
- (ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different construction material distinct from the material from which it was transformed.

■ 18. Amend section 252.225-7045 by revising the introductory text; revising Alternate I; and adding Alternate II and Alternate III at the end of the section to read as follows:

**252.225-7045 Balance of Payments Program—Construction Material Under Trade Agreements.**

As prescribed in 225.7503(b)(1), use the following clause:

\* \* \* \* \*

**ALTERNATE I (DEC 2010)**

As prescribed in 225.7503(b)(2), add the following definition of “Bahrainian or Mexican construction material” to paragraph (a) of the basic clause, and substitute the following paragraphs (b) and (c) for paragraphs (b) and (c) of the basic clause:

*Bahrainian or Mexican construction material* means a construction material that—

- (1) Is wholly the growth, product, or manufacture of Bahrain or Mexico; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain or Mexico into a new and different construction material distinct from the materials from which it was transformed.

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and all Free Trade Agreements except NAFTA and the Bahrain Free Trade Agreement apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for designated country construction material other than Bahrainian or Mexican construction material.

(c) The Contractor shall use only domestic or designated country construction material other than Bahrainian or Mexican construction material in performing this contract, except for—

- (1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation; or
- (2) Information technology that is a commercial item; or
- (3) The construction material or components listed by the Government as follows:

*[Contracting Officer to list applicable excepted materials or indicate “none”].*

**ALTERNATE II (DEC 2010)**

As prescribed in 225.7503(b)(3), add the following definitions to paragraph (a); substitute the following paragraph (b) and the introductory text of paragraph (c) for paragraph (b) and the introductory text of paragraph (c) of the basic clause; and add the following paragraph (d):

*South Caucasus/Central and South Asian (SC/CASA) state* means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

*SC/CASA state construction material* means construction material that—

- (i) Is wholly the growth, product, or manufacture of an SC/CASA state; or
- (ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different construction material distinct from the material from which it was transformed.

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA, Free Trade Agreements, and other waivers relating to acquisitions in support of operations in Afghanistan apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for SC/CASA state and designated country construction materials.

(c) The Contractor shall use only domestic, SC/CASA state, or designated country construction material in performing this contract, except for—

- (d) The Contractor shall inform its government of its participation in this acquisition and that it generally will not have such opportunity in the future unless its government provides reciprocal procurement opportunities to U.S. products and services and suppliers of such products and services.

**ALTERNATE III (DEC 2010)**

As prescribed in 225.7503(b)(4), add the following definitions to paragraph (a); substitute the following paragraph (b) and the introductory text of paragraph (c) for paragraph (b) and the introductory text of paragraph (c) of the basic clause; and add the following paragraph (d):

*South Caucasus/Central and South Asian (SC/CASA) state* means Armenia, Azerbaijan,

Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

*SC/CASA state construction material* means construction material that—

- (i) Is wholly the growth, product, or manufacture of an SC/CASA state; or
- (ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different construction material distinct from the material from which it was transformed.

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA, all Free Trade Agreements except NAFTA and the Bahrain Free Trade Agreement, and other waivers relating to acquisitions in support of operations in Afghanistan apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for SC/CASA state and designated country construction material other than Bahrainian or Mexican construction material.

(c) The Contractor shall use only domestic, SC/CASA state, or designated country construction material other than Bahrainian or Mexican construction material in performing this contract, except for—

- (d) The Contractor shall inform its Government of its participation in this acquisition and that it generally will not have such opportunity in the future unless its Government provides reciprocal procurement opportunities to U.S. products and services and suppliers of such products and services.

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 101006495-0498-01]

RIN 0648-BA31

**Fisheries of the Exclusive Economic Zone Off Alaska; Steller Sea Lion Protection Measures for the Bering Sea and Aleutian Islands Groundfish Fisheries Off Alaska; Correction**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Correction to interim final rule.

**SUMMARY:** This document contains corrections to the interim final rule pertaining to Fisheries of the Exclusive Economic Zone Off Alaska; Steller Sea Lion Protection Measures for the Bering Sea and Aleutian Islands Groundfish Fisheries Off Alaska published on December 13, 2010. These corrections