

SUBSTITUTES THAT ARE ACCEPTABLE SUBJECT TO USE CONDITIONS—Continued

End-use	Substitute	Decision	Use conditions	Further information
			The refrigerator or freezer must have red, Pantone® Matching System (PMS) #185 marked pipes, hoses, and other devices through which the refrigerant is serviced, typically known as the service port, to indicate the use of a flammable refrigerant. This color must be present at all service ports and where service puncturing or otherwise creating an opening from the refrigerant circuit to the atmosphere might be expected (e.g., process tubes). The color mark must extend at least 2.5 centimeters (1 inch) from the compressor and must be replaced if removed.	

**Note:** In accordance with the limitations provided in section 310(a) of the Clean Air Act (42 U.S.C. 7610(a)), nothing in this table shall affect the Occupational Safety and Health Administrations' authority to promulgate and enforce standards and other requirements under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*).

**Note:** The use conditions in this appendix contain references to certain standards from Underwriters Laboratories Inc. (UL). The standards are incorporated by reference, and the referenced sections are made part of the regulations in part 82:

1. UL 250: Household Refrigerators and Freezers. 10th edition. Supplement SA: Requirements for Refrigerators and Freezers Employing a Flammable Refrigerant in the Refrigerating System. Underwriters Laboratories, Inc. August 25, 2000.

2. UL 471. Commercial Refrigerators and Freezers. 10th edition. Supplement SB: Requirements for Refrigerators and Freezers Employing a Flammable Refrigerant in the Refrigerating System. Underwriters Laboratories, Inc. November 24, 2010.

The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of UL Standards 250 and 471 may be purchased by mail at: COMM 2000; 151 Eastern Avenue, Bensenville, IL 60106; Email: [orders@comm-2000.com](mailto:orders@comm-2000.com); Telephone: 1 (888) 853-3503 in the U.S. or Canada (other countries dial +1 (415) 352-2168); Internet address: <http://ulstandardsinfo.net> or [www.comm-2000.com](http://www.comm-2000.com).

You may inspect a copy at U.S. EPA's Air and Radiation Docket; EPA West Building, Room 3334, 1301 Constitution Ave. NW., Washington DC or at the National Archives and Records Administration (NARA). For questions regarding access to these standards, the telephone number of EPA's Air and Radiation Docket is (202) 566-1742. For information on the availability of this material at NARA, call (202) 741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

[FR Doc. 2011-32175 Filed 12-19-11; 8:45 am]

BILLING CODE 6560-50-P

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 212, 225, and 252**

**RIN 0750-AH43**

**Defense Federal Acquisition Regulation Supplement; Utilization of Domestic Photovoltaic Devices (DFARS Case 2011-D046)**

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

**ACTION:** Interim rule.

**SUMMARY:** DoD is issuing an interim rule to implement a section of the National Defense Authorization Act for Fiscal Year 2011. The section provides that photovoltaic devices to be utilized in performance of any covered contract shall comply with the Buy American statute, subject to the exceptions provided in the Trade Agreements Act of 1979 or otherwise provided by law.

**DATES:** *Effective date:* December 20, 2011.

*Comment date:* Comments on the interim rule should be submitted in writing to the address shown below on or before February 21, 2012, to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2011-D046, using any of the following methods:

○ *Regulations.gov:* <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by inserting "DFARS Case 2011-D046" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2011-D046." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2011-D046" on your attached document.

○ *Email:* [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2011-D046 in the subject line of the message.

○ *Fax:* 703-602-0350.

○ *Mail:* Defense Acquisition Regulations System, Attn: Amy G. Williams, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov) approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Amy G. 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."

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In order to implement section 846 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111-383), this interim rule amends DFARS subpart 225.70 by adding a new section 225.7017, Utilization of domestic photovoltaic devices, as well as an associated provision and clause in DFARS part 252 and conforming changes to DFARS part 212.

Photovoltaic devices produce direct current electricity from sunlight, which can be used to provide power to things such as DoD-owned facilities or private housing.

As specified in section 846, a "covered contract" is defined in this interim rule as an energy savings performance contract, a utility service contract, or a private housing contract, if such contract will result in DoD ownership of photovoltaic devices, by means other than DoD purchase as end products. DoD is deemed to own a photovoltaic device if the device is—

(1) Installed on DoD property or in a facility owned by DoD; and

(2) Reserved for the exclusive use of DoD for the full economic life of the device.

Prior to this definition, ownership would have required transfer of title for the equipment to the Government. Under section 846, exclusive use of the

power for the full economic life of the equipment equates to ownership and would then require compliance with 41 U.S.C. chapter 83, Buy American, unless DoD does not have exclusive rights to the power generated from the device (could be under any of the scenarios identified in (1) or (2) above) or the contract term is less than the full economic life of the photovoltaic device.

Land leases are not included in the DFARS definition of “covered contract,” because the DFARS does not cover land leases. Contracts that include purchase of photovoltaic devices as end products are covered under the standard DFARS Buy American—trade agreements provisions and clauses.

Photovoltaic devices provided under any covered contract shall comply with the Buy American statute, subject to the exceptions to that statute provided in the Trade Agreements Act of 1979 (19 U.S.C. 2501 *et seq.*) or otherwise provided by law.

Exceptions are provided for qualifying country photovoltaic devices, Free Trade Agreement or designated country photovoltaic devices (depending on the estimated value of the photovoltaic devices), and other foreign photovoltaic devices, if covered by the Buy American statute and the cost of a domestic photovoltaic device would be unreasonable (*i.e.*, 50 percent more than the cost of the foreign photovoltaic device).

## II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

## III. Determination of Applicability

DoD has not made a determination to apply the requirement of section 846 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2011 to contracts at or below the simplified acquisition threshold (SAT), but has determined to apply the rule to

contracts for the acquisition of commercial items.

### A. Applicability to Contracts at or Below the Simplified Acquisition Threshold

41 U.S.C. 1905 governs the applicability of laws to contracts or subcontracts in amounts not greater than the simplified acquisition threshold. It is intended to limit the applicability of laws to such contracts or subcontracts. 41 U.S.C. 1905 provides that if a provision of law contains criminal or civil penalties, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the SAT, the law will apply to them. DoD has not made that determination. Therefore, this rule does not apply below the simplified acquisition threshold.

### B. Applicability to Contracts for the Acquisition of Commercial Items

41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial items, and is intended to limit the applicability of laws to contracts for the acquisition of commercial items. 41 U.S.C. 1906 provides that if a provision of law contains criminal or civil penalties, or if DoD makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for the acquisition of commercial items.

Therefore, given that the requirements of section 846 of the NDAA for FY 2011 were enacted to promote utilization of domestic photovoltaic devices, DoD has determined that it is in the best interest of the Federal Government to apply the rule to contracts for the acquisition of commercial items, as defined at FAR 2.101. An exception for contracts for the acquisition of commercial items would exclude a significant portion of contracts intended to be covered by the law, thereby undermining the overarching public policy purpose of the law.

## IV. Regulatory Flexibility Act

DoD expects that this interim rule may 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.* Therefore, an initial regulatory flexibility analysis has been prepared and is summarized as follows:

This interim rule implements section 846 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111–383), by providing regulatory coverage on utilization of

domestic photovoltaic devices under certain covered contracts.

The objective of the rule is to promote utilization of domestic photovoltaic devices under an energy savings contract, a utility service contract, or a private housing contract, if such contract does not include DoD purchase of photovoltaic devices as end products, but will nevertheless result in DoD ownership of photovoltaic devices. According to the statute, DoD is deemed to own a photovoltaic device if the device is—

(1) Installed on DoD property or in a facility owned by DoD; and

(2) Reserved for the exclusive use of DoD for the full economic life of the device.

The legal basis for the rule is section 846 of the National Defense Authorization Act for Fiscal Year 2011.

This rule generally applies to other than small entities. When purchasing renewable power generated via on-site photovoltaic devices, DoD can either purchase the photovoltaic devices and thereby own, operate, and maintain the devices for their full economic life (already covered in DFARS part 225) or can do variations of the following:

a. Enter into an energy savings performance contract, which is a contracting method in which the contractor provides capital to facilitate energy savings projects and maintains them in exchange for a portion of the energy savings generated. Under this arrangement, the Government would take title to the devices during contract performance or at the conclusion of the contract. For example, the Defense Logistics Agency-Energy uses the master Department of Energy indefinite delivery-indefinite quantity contract and awards task orders off that contract. Of the 16 contractors, all are large businesses. There are subcontracting goals that each contractor has to meet, but the ultimate task order award is made to a large business.

b. Enter into a power purchase agreement, also referred to as a utility service contract, for the purchase of the power output of photovoltaic devices that are installed on DoD land or buildings, but owned, operated, and maintained by the contractor. At the conclusion of the contract, DoD would either require the contractor to dismantle and remove the photovoltaic equipment, abandon the equipment in place, or would re-compete the requirement and if the incumbent contractor is the successful offeror, the follow-on contract would allow for continued power purchase from the existing devices. If the incumbent contractor is not the successful offeror,

the contractor would be required to dismantle and remove the devices. Prime contractors for this type of contract would generally be large businesses, based on the capital costs involved in these projects. However, many developers tend to subcontract out the majority of work to smaller companies.

We do not currently have data available on whether any of the manufacturers of photovoltaic devices are small entities. This rule will promote utilization of domestic photovoltaic devices, even when the Government does not take title to the devices.

The requirements of the rule will not apply below the simplified acquisition threshold.

Since the prime contractors subject to this rule are large businesses, the reporting requirements will not impact small entities. Since the photovoltaic devices are commercially available off-the-shelf items, there will be no requirement to track to the origin of the components, but just to inform the prime contractor of the place of manufacture.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

DoD did not identify any significant alternatives that would accomplish the objectives of the statute.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2011-D046), in correspondence.

#### V. Paperwork Reduction Act

The rule imposes an information collection requirement that requires the approval of the Office of Management and Budget under 44 U.S.C. chapter 35. However, the new DFARS provision at 252.225-7018, Photovoltaic Devices—Certificate, does not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 0704-0229, entitled “Defense Federal Acquisition Regulation Supplement Part 225, Foreign Acquisition, and related clauses,” currently approved through November 30, 2013, in the amount of 147,944 hours. The proposed provision is a variant of the Buy American-trade agreements provisions that are already cleared.

#### VI. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense, that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements section 846 of the National Defense Authorization Act for Fiscal Year 2011. This requirement became effective upon enactment, January 7, 2011. This action is necessary in order to enable contracting officers to prevent violations of the Anti-Deficiency Act by inadvertent award of a covered contract that does not contain the appropriate restrictions with regard to country of origin of photovoltaic devices to be utilized in performance of the contract. Failure to implement this requirement promptly can also have adverse effects on the U.S. photovoltaic industry, which this statute was designed to protect. However, pursuant to 41 U.S.C. 1707 and FAR 1.501-3(b), DoD will consider public comments received in response to this interim rule in the formation of the final rule.

#### List of Subjects in 48 CFR Parts 212, 225, and 252

Government procurement.

**Ynette R. Shelkin,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 212, 225, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 212, 225, and 252 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

#### PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Amend section 212.301 in paragraph by redesignating paragraphs (f)(iv)(F) through (L) as paragraphs (f)(iv)(G) through (M), and adding new paragraph (f)(iv)(F) to read as follows:

#### 212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) \* \* \*

(iv) \* \* \*

(F) Use the provision at 252.225-7018, Photovoltaic Devices—Certificate, as prescribed in 225.7017-4(b).

\* \* \* \* \*

#### PART 225—FOREIGN ACQUISITION

■ 3. Add sections 225.7017 through 225.7017-4 to subpart 225.70 to read as follows:

#### Subpart 225.70—Authorization Acts, Appropriations Acts, and Other Statutory Restrictions on Foreign Acquisition

Sec.

\* \* \* \* \*

225.7017 Utilization of domestic photovoltaic devices.

225.7017-1 Definitions.

225.7017-2 Restriction.

225.7017-3 Exceptions.

225.7017-4 Solicitation provisions and contract clauses.

#### 225.7017 Utilization of domestic photovoltaic devices.

##### 225.7017-1 Definitions.

As used in this section—  
*Covered contract* means an energy savings performance contract, a utility service contract, or a private housing contract awarded by DoD, if such contract results in DoD ownership of photovoltaic devices, by means other than DoD purchase as end products. DoD is deemed to own a photovoltaic device if the device is—

(1) Installed on DoD property or in a facility owned by DoD; and

(2) Reserved for the exclusive use of DoD for the full economic life of the device.

*Designated country photovoltaic device, domestic photovoltaic device, foreign photovoltaic device, Free Trade Agreement country photovoltaic device, photovoltaic device, qualifying country photovoltaic device, and U.S.-made photovoltaic device* are defined in the clause at 252.225-7017, Photovoltaic Devices.

##### 225.7017-2 Restriction.

In accordance with section 846 of the National Defense Authorization Act for Fiscal Year 2011, photovoltaic devices provided under any covered contract shall comply with 41 U.S.C. chapter 83, Buy American, subject to the exceptions to that statute provided in the Trade Agreements Act of 1979 (19 U.S.C. 2501 *et seq.*) or otherwise provided by law.

##### 225.7017-3 Exceptions.

DoD requires the contractor to utilize domestic photovoltaic devices in covered contracts, with the following exceptions:

(a) *Qualifying country.* Qualifying country photovoltaic devices may be utilized in any covered contract, because 225.103(a)(i)(A) provides an exception to the Buy American Act for products of qualifying countries, as defined in 225.003.

(b) *Buy American-unreasonable cost.* For a covered contract that utilizes photovoltaic devices valued at less than \$203,000, the exception for

unreasonable cost may apply (see FAR 25.103(c)). If the cost of a foreign photovoltaic device plus 50 percent is less than the cost of a domestic photovoltaic device, then the foreign photovoltaic device may be utilized.

(c) *Trade agreements.* (1) *Free Trade Agreements.* For a covered contract that utilizes photovoltaic devices valued at \$25,000 or more, photovoltaic devices may be utilized from a country covered under the acquisition by a Free Trade Agreement, depending upon dollar threshold (see FAR 25.4).

(2) *World Trade Organization—Government Procurement Agreement.* For covered contracts that utilize photovoltaic devices that are valued at \$203,000 or more, only U.S.-made photovoltaic devices, designated country photovoltaic devices, or qualifying country photovoltaic devices may be utilized.

#### 225.7017-4 Solicitation provisions and contract clauses.

(a)(1) Use the clause at 252.225-7017, Photovoltaic Devices, in solicitations for a contract that—

(i) Is expected to exceed the simplified acquisition threshold; and  
(ii) May be a covered contract, *i.e.*, an energy savings performance contract, a utility service contract, or a private housing contract awarded by DoD, if such contract results in DoD ownership of photovoltaic devices, by means other than DoD purchase as end products.

(2) Use the clause in the resultant contract if it is a covered contract (*i.e.*, will result in DoD ownership of photovoltaic devices, by means other than DoD purchase as end products).

(b) Use the provision at 252.225-7018, Photovoltaic Devices—Certificate, in solicitations containing the clause at 252.225-7017.

### PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Amend section 252.212-7001 by redesignating paragraphs (b)(12) through (30) as paragraphs (b)(13) through (31), and adding new paragraph (b)(12) 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) \* \* \*  
(12) 252.225-7017, Photovoltaic Devices (DEC 2011) (Section 846 of Pub. L. 111-383).

\* \* \* \* \*

■ 5. Add sections 252.225-7017 and 252.225-7018 to read as follows:

#### 252.225-7017 Photovoltaic Devices.

As prescribed in 225.7017-4(a), use the following clause:

##### Photovoltaic Devices (DEC 2011)

(a) *Definitions.* As used in this clause—  
*Bahrainian photovoltaic device* means an article that—

(i) Is wholly manufactured in Bahrain; 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 Bahrain 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.

*Canadian photovoltaic device* means an article that 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.

*Caribbean Basin country photovoltaic device* means an article that—

(i) Is wholly manufactured in a Caribbean Basin country; 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 a Caribbean Basin country 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.

*Designated country* means—

(i) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as “the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu” (Chinese Taipei)), or the United Kingdom);

(ii) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, Peru, or Singapore);

(iii) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(iv) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and

Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

*Designated country photovoltaic device* means a WTO GPA country photovoltaic device, a Free Trade Agreement country photovoltaic device, a least developed country photovoltaic device, or a Caribbean Basin country photovoltaic device.

*Domestic photovoltaic device* means a photovoltaic device manufactured in the United States.

*Foreign photovoltaic device* means a photovoltaic device other than a domestic photovoltaic device.

*Free Trade Agreement country* means Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, Peru, or Singapore.

*Free Trade Agreement country photovoltaic device* means an article that—

(i) Is wholly manufactured in a Free Trade Agreement country; 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 a Free Trade Agreement country 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.

*Least developed country photovoltaic device* means an article that—

(i) Is wholly manufactured in a least developed country; 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 a least developed country 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.

*Moroccan photovoltaic device* means an article that—

(i) Is wholly manufactured in Morocco; 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 Morocco 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.

*Peruvian photovoltaic device* means an article that—

(i) Is wholly manufactured in 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.

*Photovoltaic device* means a device that converts light directly into electricity through a solid-state, semiconductor process.

*Qualifying country* means any country listed in the definition of “qualifying country” at 225.003 of the Defense Federal Acquisition Regulation Supplement (DFARS).

*Qualifying country photovoltaic device* means a photovoltaic device manufactured in a qualifying country.

*United States* means the 50 States, the District of Columbia, and outlying areas.

*U.S.-made photovoltaic device* means a photovoltaic device that—

(i) Is manufactured in the United States; or  
(ii) Is substantially transformed in the United States 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.

*WTO GPA country photovoltaic device* means an article that—

(i) Is wholly manufactured in a WTO GPA country; 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 a WTO GPA country 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.

(b) This clause implements section 846 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111–383).

(c) *Restriction.* If the Contractor specified in its offer in the Photovoltaic Devices—Certificate provision of the solicitation that the estimated value of the photovoltaic devices to be utilized in performance of this contract would be—

(1) More than \$3,000 but less than \$25,000, then the Contractor shall utilize only domestic or qualifying country photovoltaic devices unless, in its offer, it specified utilization of other foreign photovoltaic devices in paragraph (c)(2)(ii) of the Photovoltaic Devices—Certificate provision of the solicitation;

(2) \$25,000 or more but less than \$70,079, then the Contractor shall utilize in the performance of this contract only domestic or qualifying country photovoltaic devices unless, in its offer, it specified utilization of Canadian or other foreign photovoltaic devices in paragraph (c)(3)(ii) of the Photovoltaic Devices—Certificate provision of the solicitation. If the Contractor certified in its offer that it will utilize a qualifying country photovoltaic device or a Canadian photovoltaic device, the Contractor shall utilize a qualifying country photovoltaic device, a Canadian photovoltaic device, or, at the Contractor's option, a domestic photovoltaic device;

(3) \$70,079 or more but less than \$203,000, then the Contractor shall utilize under this contract only domestic photovoltaic devices, qualifying country photovoltaic devices, or Free Trade Agreement country photovoltaic devices (other than Bahrainian, Moroccan, or Peruvian photovoltaic devices), unless, in its offer, it specified utilization of other foreign photovoltaic devices in paragraph (c)(4)(ii) of the Photovoltaic Devices—Certificate provision of the solicitation. If the Contractor certified in its offer that it will utilize a qualifying country photovoltaic device or a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Moroccan,

or Peruvian photovoltaic device), the Contractor shall utilize a qualifying country photovoltaic device; a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Moroccan, or Peruvian photovoltaic device), or, at the Contractor's option, a domestic photovoltaic device; or

(4) \$203,000 or more, then the Contractor shall utilize under this contract only U.S.-made, qualifying country, or designated country photovoltaic devices.

(End of clause)

#### **252.225–7018 Photovoltaic Devices—Certificate.**

As prescribed in 225.7017–4(b), use the following provision:

#### **Photovoltaic Devices—Certificate (DEC 2011)**

(a) *Definitions.* *Bahrainian photovoltaic device, Canadian photovoltaic device, Caribbean Basin photovoltaic device, designated country, domestic photovoltaic device, foreign photovoltaic device, Free Trade Agreement country, Free Trade Agreement photovoltaic device, least developed country photovoltaic device, Moroccan photovoltaic device, Peruvian photovoltaic device, photovoltaic device, qualifying country, qualifying country photovoltaic device, United States, U.S.-made photovoltaic device, and WTO GPA country photovoltaic device* have the meanings given in the Photovoltaic Devices clause of this solicitation.

(b) *Restrictions.* The following restrictions apply, depending on the estimated value of any photovoltaic devices to be utilized under a resultant contract:

(1) If more than \$3,000 but less than \$203,000, then the Government will not accept an offer specifying the use of other foreign photovoltaic devices in paragraph (c)(2)(ii), (c)(3)(ii), or (c)(4)(ii) of this provision, unless the offeror documents to the satisfaction of the Contracting Officer that the price of the foreign photovoltaic device plus 50 percent is less than the price of a comparable domestic photovoltaic device.

(2) If \$203,000 or more, then the Government will consider only offers that utilize photovoltaic devices that are U.S.-made, qualifying country, or designated country photovoltaic devices.

(c) *Certification and identification of country of origin.* *(The offeror shall check the block and fill in the blank for one of the following paragraphs, based on the estimated value and the country of origin of photovoltaic devices to be utilized in performance of the contract:)*

\_\_\_ (1) No photovoltaic devices will be utilized in performance of the contract, or such photovoltaic devices have an estimated value of \$3,000 or less.

(2) If more than \$3,000 but less than \$25,000—

\_\_\_ (i) The offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device or a qualifying country photovoltaic device [*Offeror to specify country of origin* \_\_\_\_\_]; or

\_\_\_ (ii) The foreign (other than qualifying country) photovoltaic devices to be utilized in performance of the contract are the product of \_\_\_\_\_. [*Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device.*]

(3) If \$25,000 or more but less than \$70,079—

\_\_\_ (i) The offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device; a qualifying country photovoltaic device; or a Canadian photovoltaic device [*Offeror to specify country of origin* \_\_\_\_\_]; or

\_\_\_ (ii) The foreign (other than qualifying country or Canadian) photovoltaic devices to be utilized in performance of the contract are the product of \_\_\_\_\_. [*Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device.*]

(4) If \$70,079 or more but less than \$203,000—

\_\_\_ (i) The offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device; a qualifying country (except Australian or Canadian) photovoltaic device; a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Moroccan, or Peruvian photovoltaic device) [*Offeror to specify country of origin* \_\_\_\_\_]; or

\_\_\_ (ii) The offered foreign photovoltaic devices (other than those from countries listed in paragraph (c)(4)(i) of this provision) are the product of \_\_\_\_\_. [*Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device.*]

(5) If \$203,000 or more—

\_\_\_ The offeror certifies that each photovoltaic device to be utilized in performance of the contract is a U.S.-made, qualifying country, or designated country photovoltaic device. [*Offeror to specify country of origin* \_\_\_\_\_.]

(End of provision)

[FR Doc. 2011–32396 Filed 12–19–11; 8:45 am]

BILLING CODE 5001–06–P