

- 30 TAC Section 116.730 adopted November 16, 1994, and repealed and readopted June 17, 1998.

- 30 TAC Section 116.740(b), adopted June 17, 1998, and amended September 2, 1999, withdrawn October 21, 2013. 30 TAC Section 116.803, adopted August 21, 2002, withdrawn October 21, 2013.

If the conditional approval of the Texas Flexible Permit Program is finalized following EPA's review of comments received and the TCEQ satisfies the terms of the commitment letter, the TCEQ will then submit a SIP revision to the EPA for review which must contain all the terms of the commitment letter. If the EPA determines that the TCEQ has met all the conditions, we will make such a finding in the **Federal Register**.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. See, 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National

Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds and Incorporation by reference.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 29, 2014.

Ron Curry,

Regional Administrator, Region 6.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 225, and 252

RIN 0750-AH94

Defense Federal Acquisition Regulation Supplement: Clauses With Alternates—Foreign Acquisition (DFARS Case 2013-D005)

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

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to create separate prescriptions for the basic clause as well as each alternate in each set of foreign acquisition-related provisions/clauses with one or more alternates. In addition, the proposed rule would include the full text of each provision or clause alternate.

DATES: *Comment Date:* Comments on the proposed rule should be submitted

in writing to the address shown below on or before April 14, 2014, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2013-D005, using any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering "DFARS Case 2013-D005" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2013-D005." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2013-D005" on your attached document.
- *Email:* dfars@mail.mil. Include DFARS Case 2013-D005 in the subject line of the message.
- *Fax:* 571-372-6094.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy 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, 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: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060. Telephone 571-372-6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to amend the DFARS to add a separate prescription for the basic clause as well as each alternate. In addition, the proposed rule would include the full text of each provision/clause alternate. For clarity, the preface of the alternate will continue to explain what portions of that alternate are different from the basic provision/clause. Separate prescriptions for the basic and alternates of DFARS provisions and clauses will facilitate the use of automated contract writing systems. The proposed rule will not revise the prescriptions in any substantive way or change the applicability of the provisions/clauses or their alternates.

The inclusion of the full text of each provision/clause alternate aims to make the terms of a provision/clause alternate clearer to offerors and to DoD contracting officers. The current convention for alternates is to show only the changed paragraphs from the basic provision or clause. This proposed rule would include the full text of each provision/clause and each alternate, which will assist in making solicitation and contract terms and conditions easier to read and understand. By placing alternates in full text, all paragraph substitutions from the basic provision/clause will have already been made. Inapplicable paragraphs from the basic provision/clause that are superseded by the alternate will not be included in the solicitation or contract in order to prevent confusion.

Although this rule proposes to include each alternate in full text, it retains the language that precedes the alternate, which includes the location of the alternate's prescription and a statement that identifies which paragraphs were changed from the basic provision/clause. Further, alternates are proposed to have individual titles that tie them to the basic clause, *e.g.*, "Trade Agreements—Alternate I" in lieu of "Alternate I."

This rule proposes to revise the naming convention for provisions/clauses with alternates to indicate that there is at least one alternate by revising the title of the basic clause to read "Title—Basic." Thus, if adopted as final, the naming convention will differentiate at the provision/clause title whether there are any alternates associated with that provision/clause.

II. Discussion

Although DFARS part 225 contains eight solicitation provisions and clauses that have, or are, alternates, this proposed rule will only address six. The other two are currently being revised in another DFARS case. The remaining prescriptions in DFARS part 225 are not proposed to be changed in any way by this proposed rule.

The six DFARS foreign acquisition-related provisions/clauses that would be affected by this rule are as follows:

- 252.225–7000, Buy American—Balance of Payments Program Certificate, one alternate;
- 252.225–7001, Buy American and Balance of Payments Program, one alternate;
- 252.225–7020, Trade Agreements Certificate, one alternate.
- 252.225–7021, Trade Agreements, two alternates;
- 252.225–7035, Buy American—Free Trade Agreements—Balance of

Payments Program Certificate, five alternates; and

- 252.225–7036, Buy American—Free Trade Agreements—Balance of Payments Program, five alternates.

III. 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 not a significant regulatory action and, therefore, was not 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.

IV. Regulatory Flexibility Act

DoD does not expect this rule to 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 it merely revises the format, not the substance, of prescriptions for provisions and clauses with alternates, as well as includes the full text of each provision or clause in each alternate. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The purpose of this case is to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to create an overarching prescription for each set of provisions/clauses with one or more alternates. The overarching prescription is intended to include the common requirements for the use of that provision/clause set.

The use of automated contract writing systems will be facilitated by revising the prescription format for DFARS provisions/clauses that have one or more alternates. This rule proposes to revise the prescription format so that there is an overarching prescription that covers the elements that the basic provision/clause and all its alternates have in common. Then, there will be a separate prescription for use of the basic prescription/clause and each alternate. In addition, each alternate provision/clause will be presented in full text, not just the paragraph or section that is different from the basic provision/clause. This will make the terms of a provision or clause alternate clearer to

offerors, as well as to DoD contracting officers, because all paragraph substitutions will have already been made. Inapplicable paragraphs from the basic provision/clause that are superseded by the alternate will not be included in the solicitation or contract to prevent confusion.

Potential offerors, including small businesses, initially may be affected by this rule by seeing an unfamiliar format for provision/clause alternates in solicitations and contracts issued by DoD contracting activities. DoD awarded an average of 270,000 contract actions (excluding modifications and orders) in Fiscal Year 2012, of which an average of 180,000 (67%) were awarded to about 35,000 unique small business entities. It is unknown as to how many of these contracts were awarded that included an alternate to a DFARS provision or clause. Nothing substantive will change in solicitations or contracts for potential offerors, and only the appearance of how provision/clause alternates are presented in solicitations and contracts will be changed. This rule may result in potential offerors, including small businesses, expending more time to become familiar with and to understand the new format of provision/clause alternates in full text contained in contracts issued by any DoD contracting activity. The rule also anticipates saving contractors' time by making all paragraph substitutions from the basic clause and by not requiring offerors to read inapplicable paragraphs contained in the basic provisions/clauses where alternates are also included in the solicitations and contracts. The overall burden caused by this rule is expected to be negligible and will not be any greater on small businesses than it is on large businesses.

This rule does not add any new information collection requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules. No alternatives were determined that will accomplish the objectives of the rule.

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 2013–D005), in correspondence.

V. Paperwork Reduction Act

The rule does not contain any new information collection requirements that require the approval of the Office of

Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

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

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

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

■ 1. The authority citation for 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 by revising paragraphs (f)(xix), (xx), and (xxxix) to read as follows:

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

(f) * * *

(xix) Use the provision at 252.225–7000, Buy American—Balance of Payments Program Certificate, to comply with 41 U.S.C. chapter 83 and Executive Order 10582 of December 17, 1954, Prescribing Uniform Procedures for Certain Determinations Under the Buy-American Act.

(A) Use the basic provision as prescribed in 225.1101(1)(i).

(B) Use the provision with its Alternate I as prescribed in 225.1101(1)(ii).

(xx) Use the clause at 252.225–7001, Buy American and Balance of Payments Program to comply with 41 U.S.C. chapter 83 and Executive Order 10582 of December 17, 1954, Prescribing Uniform Procedures for Certain Determinations Under the Buy-American Act.

(A) Use the basic clause as prescribed in 225.1101(2)(ii).

(B) Use the clause with its Alternate I as prescribed in 225.1101(2)(iii).

* * * * *

(xxxix) Use the clause at 252.225–7036, Buy American—Free Trade Agreements—Balance of Payments Program to comply with 41 U.S.C. chapter 83 and 19 U.S.C. 3301 note. Alternates II, III, and V also implement section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181).

(A) Use the basic clause as prescribed in 225.1101(10)(i)(A).

(B) Use the clause with its Alternate I as prescribed in 225.1101(10)(i)(B).

(C) Use the clause with its Alternate II as prescribed in 225.1101(10)(i)(C).

(D) Use the clause with its Alternate III as prescribed in 225.1101(10)(i)(D).

(E) Use the clause with its Alternate IV as prescribed in 225.1101(10)(i)(E).

(F) Use the clause with its Alternate V as prescribed in 225.1101(10)(i)(F).

* * * * *

PART 225—FOREIGN ACQUISITION

■ 3. Amend section 225.1101 by—

■ a. Revising paragraph (1);

■ b. In paragraph (2)(i), removing the phrase “Use the clause” and adding in its place “Use the basic or the alternate of the clause”;

■ c. In paragraph (2)(i)(B), removing “Subpart” in two places and adding in its place “subpart”, and by removing “may still be” and adding in its place “is still”;

■ d. In paragraph (2)(i)(D), removing “One or both of the following clauses” and adding in its place “One or both of the basic or the alternates of the following clauses”;

■ e. Redesignating paragraph (2)(ii) as paragraph (2)(iii), adding a new paragraph (2)(ii), and revising the newly redesignated paragraph (2)(iii).

■ f. In paragraph (3) introductory text, removing the phrase “one of the following clauses:” and adding in its place “one of the basic or the alternates of the following clauses:”;

■ g. Redesignating paragraph (5)(i) as paragraph (5) introductory text and amending the newly redesignated paragraph (5) introductory text by removing “Use the provision” and adding in its place “Use the basic or the alternate of the provision”, and adding a new paragraph (5)(i);

■ h. Revising paragraph (5)(ii);

■ i. Redesignating paragraph (6)(i) as paragraph (6) introductory text and amending the newly redesignated paragraph (6) introductory text by removing “Use the clause” and adding in its place “Except as provided in paragraph (6)(iv) of this section, use the basic or an alternate of the clause”, removing “World Trade Organization Government Procurement Agreement applies” and adding in its place “World Trade Organization Government Procurement Agreement applies, i.e. the acquisition is of end products listed at 225.401–70, the value of the acquisition equals or exceeds \$204,000, and none of the exceptions at 25.401(a) applies”, and adding a new paragraph (6)(i);

■ j. In paragraph (6)(ii), by removing “Use the clause with its Alternate II,” and adding its place “Use the clause Trade Agreements—Alternate II”, and removing “acquisition of commercial

items, when” and adding in its place “acquisition of commercial items, that do not include the clause at 252.225–7024, Requirement for Products or Services from Afghanistan, when”;

■ k. In paragraph (6)(iii), revising the introductory text;

■ l. Redesignating paragraph (9)(i) as paragraph (9) introductory text and amending the newly redesignated paragraph (9) introductory text by removing “Use the provision” and adding in its place “Use the basic or an alternate of the provision”, removing “that include the clause at 252.225–7036,” and adding in its place “that include the basic or an alternate of the clause at 252.225–7036”, and adding a new paragraph (9)(i);

■ m. In paragraph (9)(ii), removing “Use the provision with its Alternate I” and adding its place “Use the provision Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate I”;

■ n. In paragraph (9)(iii), removing “Use the provision with its Alternate II” and adding its place “Use the provision Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate II”;

■ o. In (9)(iv), removing “Use the provision with its Alternate III” and adding its place “Use the provision Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate III”;

■ p. In paragraph (9)(v), removing “Use the provision with its Alternate IV” and adding its place “Use the provision Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate IV”;

■ q. In paragraph (9)(vi), removing “Use the provision with its Alternate V” and adding its place “Use the provision Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate V”;

■ r. In paragraph (10)(i) introductory text, removing “, use the clause at 252.225–7036,” and adding in its place “, use the basic or an alternate of the clause at 252.225–7036,” and removing “\$204,000, and a Free Trade Agreement applies to the acquisition.” and adding in its place “\$204,000, unless an exception at 25.401 applies.”

■ s. In paragraph (10)(i)(A), removing “Use the basic clause” and adding its place “Use the clause Buy American—Free Trade Agreements—Balance of Payments Program—Basic,”;

■ t. In paragraph (10)(i)(B), removing “Use the clause with its Alternate I” and adding its place “Use the clause Buy American—Free Trade Agreements—Balance of Payments Program—Alternate I,”;

- u. Redesignating paragraph (10)(i)(C) as paragraph (10)(i)(E) and in newly redesignated paragraph (10)(i)(E), removing “Use the clause with its Alternate IV” and adding its place “Use the clause Buy American—Free Trade Agreements—Balance of Payments Program—Alternate IV,” and removing “in support of operations in Afghanistan, use with its Alternate V.” and adding in its place “in support of operations in Afghanistan.”;
- v. Adding new paragraphs (10)(i)(C), (10)(i)(D), and (10)(i)(F); and
- w. In paragraph (10)(ii), revising the introductory text.

The revisions and additions read as follows:

225.1101 Acquisition of supplies.

(1) Use the basic or the alternate of the provision at 252.225–7000, Buy American—Balance of Payments Program Certificate, instead of the provision at FAR 52.225–2, Buy American Certificate, in any solicitation, including solicitations using FAR part 12 procedures for the acquisition of commercial items, that includes the basic or the alternate of the clause at 252.225–7001, Buy American and Balance of Payments Program. If the solicitation includes the provision at FAR 52.204–7, do not separately list the provision 252.225–7000 in the solicitation.

(i) Use the provision Buy American—Balance of Payments Program Certificate—Basic, when the solicitation, including solicitations using FAR part 12 procedures for the acquisition of commercial items, includes the basic clause at 252.225–7001.

(ii) Use the provision Buy American—Balance of Payments Program Certificate—Alternate I in solicitations, including solicitations using FAR part 12 procedures, when the solicitation includes Alternate I of the clause at 252.225–7001.

(2) * * *

(i) Use the clause Buy American and Balance of Payments Program—Basic, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, if the acquisition is not of end products listed in 225.401–70 in support of operations in Afghanistan.

(iii) Use the clause Buy American and Balance of Payments Program—Alternate I, in solicitations and contracts including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when the acquisition is of end products

listed in 225.401–70 in support of operations in Afghanistan.

* * * * *

(5) * * *

(i) Use the provision Trade Agreements Certificate—Basic, if the solicitation, including solicitations using FAR part 12 procedures for the acquisition of commercial items, includes the basic clause at 252.225–7021.

(ii) Use the provision Trade Agreements Certificate—Alternate I, if the solicitation, including solicitations using FAR part 12 procedures for the acquisition of commercial items, includes the Alternate II of the clause at 252.225–7021.

(6) * * *

(i) Use the clause Trade Agreements—Basic, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that are not of end products in support of operations in Afghanistan, or that include the clause at 252.225–7024, Requirement for Products or Services from Iraq or Afghanistan.

* * * * *

(iii) Do not use the basic or an alternate of the clause if—

* * * * *

(9) * * *

(i) Use the provision Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Basic in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, when the basic of the clause at 252.225–7036 is used.

* * * * *

(10) * * *

(i) * * *

(C) Use the clause Buy American—Free Trade Agreements—Balance of Payments Program—Alternate II, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when the estimated value equals or exceeds \$100,000 and the acquisition is of end products in support of operations in Afghanistan.

(D) Use the clause Buy American—Free Trade Agreements—Balance of Payments Program—Alternate III, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when the estimated value is less than \$79,507 and the acquisition is of end products in support of operations in Afghanistan.

* * * * *

(F) Use the clause Buy American—Free Trade Agreements—Balance of

Payments Program—Alternate V, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when the estimated value equals or exceeds \$79,507 but is less than \$100,000 and the acquisition is of end products in support of operations in Afghanistan.

(ii) Do not use the basic or an alternate of the clause in paragraph (10)(i) of this section if—

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Amend section 252.225–7000 by—

■ a. Revising the introductory text, provision title and date, and paragraph (a); and

■ b. Revising Alternate I.

The revisions read as follows:

252.225–7000 Buy American—Balance of Payments Program Certificate.

As prescribed in 225.1101(1), use one of the following provisions:

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

BUY AMERICAN—BALANCE OF PAYMENTS PROGRAM CERTIFICATE—BASIC (DATE)

(a) *Definitions.* Commercially available off-the-shelf (COTS) item, component, domestic end product, foreign end product, qualifying country, 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 United States, as used in this provision, have the meanings given in the Buy American and Balance of Payments Program clause of this solicitation.

* * * * *

Alternate I. As prescribed in 225.1101(1)(ii), use the following provision, which adds “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 replaces “qualifying country end products” in paragraphs (b)(2) and (c)(2) with “qualifying country end products or SC/CASA state end products.”

BUY AMERICAN—BALANCE OF PAYMENTS PROGRAM CERTIFICATE—ALTERNATE I (DATE)

(a) *Definitions.* Commercially available off-the-shelf (COTS) item, component, domestic end product, foreign end product, qualifying country, 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 United States, as used in this provision, have the meanings given in the Buy American and Balance of Payments Program clause of this solicitation.

(b) *Evaluation.* The Government—

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.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

■ 6. Amend section 252.225–7013 by—

■ a. Removing the clause date “(OCT 2013)” and adding in its place “(DATE)”; and

■ b. In paragraph (a), revising the definition for “Eligible product”.

The revision reads as follows:

252.225–7013 Duty-Free Entry.

* * * * *

(a) * * *

Eligible product means—

(i) *Designated country end product*, as defined in the Trade Agreements (basic or alternate) clause of this contract;

(ii) *Free Trade Agreement country end product*, other than a *Bahrainian end product*, a *Moroccan end product*, a *Panamanian end product*, or a *Peruvian end product*, as defined in the Buy American—Free Trade Agreements—Balance of Payments Program—Basic or the Buy American—Free Trade Agreements—Balance of Payments Program—Alternate II clause of this contract;

(iii) *Canadian end product*, as defined in the Buy American—Free Trade Agreements—Balance of Payments Program—Alternate I or Buy American—Free Trade Agreements—Balance of Payments Program—Alternate III clause of this contract; or

(iv) *Free Trade Agreement country end product* other than a *Bahrainian end product*, *Korean end product*, *Moroccan end product*, *Panamanian end product*, or *Peruvian end product*, as defined in the Buy American—Free Trade Agreements—Balance of Payments Program—Alternate IV or the Buy American—Free Trade Agreements—Balance of Payments Program—Alternate V clause of this contract.

* * * * *

■ 7. Amend section 252.225–7020 by—

■ a. Revising the introductory text, provision title and date, and paragraph (a); and

■ b. Revising Alternate I.

The revisions read as follows:

252.225–7020 Trade Agreements Certificate.

As prescribed in 225.1101(5), use one of the following provisions:

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

Trade Agreements Certificate—Basic (Date)

(a) *Definitions.* *Designated country end product*, *nondesignated country end product*, *qualifying country end product*, and *U.S.-made end product*, as used in this provision, have the meanings given in the Trade Agreements clause of this solicitation.

* * * * *

Alternate I. As prescribed in 225.1101(5)(ii), use the following provision, which adds “South Caucasus/Central and South Asian (SC/CASA) state” and “South Caucasus/Central and South Asian (SC/CASA) state end product” to paragraph (a) and uses different paragraphs b)(2), and (c) than the basic clause.

Trade Agreements Certificate—Alternate I (Date)

(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*, as used in this provision, have the meanings given in the Trade Agreements clause of this solicitation.

(b) *Evaluation.* The Government—

(1) Will evaluate offers in accordance with the policies and procedures of part 225 of the Defense Federal Acquisition Regulation Supplement; and

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

(i) There are no offers of such end products;

(ii) The offers of such end products are insufficient to fulfill the Government's requirements; or

(iii) A national interest waiver has been granted.

(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)

(End of provision)

■ 8. Amend section 252.225–7021 by—

■ a. Revising the introductory text, clause title and date; and

■ b. Revising Alternate II.

The revisions read as follows:

252.225–7021 Trade Agreements.

As prescribed in 225.1101(6), use one of the following clauses:

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

Trade Agreements—Basic (Date)

* * * * *

Alternate II. As prescribed in 225.1101(6)(ii), use the following clause, which adds “South Caucasus/Central and South Asian (SC/CASA) state” and “South Caucasus/Central and South Asian (SC/CASA) state end product” to paragraph (a); (ii) uses a different paragraph (c) than the basic clause; (iii) adds a new paragraph (d); and (iv) includes paragraphs (e) and (f) which are the same paragraphs (d) and (e) of the basic clause.

Trade Agreements—Alternate II (Date)

(a) *Definitions.* As used in this clause—
Caribbean Basin country end product—

(i) Means an article that—

(A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(B) 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. 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; and

(ii) Excludes products, other than petroleum and any product derived from petroleum, that are not granted duty-free treatment under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)). These exclusions presently consist of—

(A) Textiles, apparel articles, footwear, handbags, luggage, flat goods, work gloves, leather wearing apparel, and handloomed, handmade, or folklore articles that are not granted duty-free status in the Harmonized Tariff Schedule of the United States (HTSUS);

(B) Tuna, prepared or preserved in any manner in airtight containers; and

(C) Watches and watch parts (including cases, bracelets, and straps) of whatever type, including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the HTSUS column 2 rates of duty (HTSUS General Note 3(b)) apply.

Commercially available off-the-shelf (COTS) item—

(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of “commercial item” in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

Component means an article, material, or supply incorporated directly into an end product.

Designated country means—

(i) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, 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, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), 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 end product means a WTO GPA country end product, a Free Trade Agreement country end product, a least developed country end product, or a Caribbean Basin country end product.

End product means those articles, materials, and supplies to be acquired under this contract for public use.

Free Trade Agreement country end product means an article that—

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

Least developed country end product means an article that—

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

Nondesignated country end product means any end product that is not a U.S.-made end product or a designated country end product.

Qualifying country means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Finland
France
Germany
Greece
Israel
Italy
Luxembourg
Netherlands
Norway
Poland
Portugal
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

Qualifying country end product means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if—

(A) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(1) Components mined, produced, or manufactured in a qualifying country.

(2) Components mined, produced, or manufactured in the United States.

(3) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) The end product is a COTS item.

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

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

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.

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

U.S.-made end product means an article that—

(i) Is mined, produced, or 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 end product means an article that—

(i) Is wholly the growth, product, or manufacture of 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. 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) Unless otherwise specified, this clause applies to all items in the Schedule.

(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.

(e) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(f) The HTSUS is available on the Internet at <http://www.usitc.gov/tata/hts/bychapter/index.htm>. The following sections of the HTSUS provide information regarding duty-free status of articles specified in paragraph (a)(2)(ii)(A) of this clause:

(1) General Note 3(c), Products Eligible for Special Tariff Treatment.

(2) General Note 17, Products of Countries Designated as Beneficiary Countries Under the United States—Caribbean Basin Trade Partnership Act of 2000.

(3) Section XXII, Chapter 98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note 7(b).

(4) Section XXII, Chapter 98, Subchapter XX, Goods Eligible for Special Tariff Benefits Under the United States—Caribbean Basin Trade Partnership Act.

(End of clause)

- 9. Amend section 252.225–7035 by—
- a. Revising the introductory text, provision title and date; and
- b. Revising Alternates I, II, III, IV, and V.

The revisions read as follows:

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

As prescribed in 225.1101(9), use one of the following provisions:

Basic. As prescribed in 225.1101(9)(i), use the following provision.

Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Basic (Date)

* * * * *

Alternate I. As prescribed in 225.1101(9)(ii), use the following provision, which uses “Canadian end product” in paragraph (a), rather than “Bahrainian end product,” “Free Trade Agreement country,” “Free Trade Agreement country end product,” “Moroccan end product,” “Panamanian end product,” and “Peruvian end products” in paragraph (a) of the basic provision; uses “Canadian end products” in paragraphs (b)(2) and (c)(2)(i), rather than “Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, Panamanian end products, or Peruvian end products” in paragraphs (b)(2) and (c)(2)(ii) of the basic provision; and does not use “Australian or” in paragraph (c)(2)(i).

Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate I (Date)

(a) *Definitions.* Canadian end product, commercially available off-the-shelf (COTS) item, component, domestic end product, foreign end product, qualifying country end product, and United States, as used in this provision, have the meanings given in the Buy American—Free Trade Agreements—

Balance of Payments Program clause of this solicitation.

(b) *Evaluation.* The Government—

(1) Will evaluate offers in accordance with the policies and procedures of part 225 of the Defense Federal Acquisition Regulation Supplement; and

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

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

(1) For all line items subject to the Buy American—Free Trade Agreements—Balance of Payments Program clause of this solicitation, the offeror certifies that—

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product; and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The offeror shall identify all end products that are not domestic end products.

(i) The offeror certifies that the following supplies are qualifying country (except Canadian) 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)

(iii) The following supplies are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (ii) of the definition of *domestic end product*:

(Line Item Number) (Country of Origin (If known))

(End of provision)

Alternate II. As prescribed in 225.1101(9)(iii), use the following provision, which adds “South Caucasus/Central and South Asian (SC/CASA) state” and “South Caucasus/Central and South Asian (SC/CASA) state end product” to paragraph (a), and uses different paragraphs (b)(2) and (c)(2)(i) than the basic clause.

Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate II (Date)

(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,

Panamanian end product, Peruvian 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 United States, as used in this provision, have the meanings given in the Buy American—Free Trade Agreements—Balance of Payments Program clause of this solicitation.

(b) *Evaluation.* The Government—

(1) Will evaluate offers in accordance with the policies and procedures of part 225 of the Defense Federal Acquisition Regulation Supplement; and

(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, Panamanian end products, or Peruvian end products without regard to the restrictions of the Buy American or the Balance of Payments Program.

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

(1) For all line items subject to the Buy American—Free Trade Agreements—Balance of Payments Program clause of this solicitation, the offeror certifies that—

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product; and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The offeror shall identify all end products that are not domestic end products.

(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)

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

(Line Item Number) (Country of Origin)

(iii) The following supplies are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (ii) of the definition of *domestic end product*:

(Line Item Number) (Country of Origin (If known))

(End of provision)

Alternate III. As prescribed in 225.1101(9)(iv), use the following provision, which uses different paragraphs (a), (b)(2), (c)(2)(i), and (c)(2)(ii) than the basic clause.

Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate III (Date)

(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, as used in this provision have the meanings given in the Buy American—Free Trade Agreements—Balance of Payments Program clause of this solicitation.

(b) *Evaluation.* The Government—

(1) Will evaluate offers in accordance with the policies and procedures of part 225 of the

Defense Federal Acquisition Regulation Supplement; and

(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 or the Balance of Payments Program.

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

(1) For all line items subject to the Buy American—Free Trade Agreements—Balance of Payments Program clause of this solicitation, the offeror certifies that—

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product; and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The offeror shall identify all end products that are not domestic end products.

(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 Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, Panamanian end products, or Peruvian end products:

(Line Item Number) (Country of Origin)

(iii) The following supplies are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (ii) of the definition of *domestic end product*: (Line Item Number) (Country of Origin (If known))

(End of provision)

Alternate IV. As prescribed in 225.1101(9)(v), use the following provision, which adds “Korean end product” to paragraph (a) and uses “Free Trade Agreement country end products other than Bahrainian end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products” in paragraphs (b)(2) and (c)(2)(ii), rather than “Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, Panamanian end products, or Peruvian end products” in paragraphs (b)(2) and (c)(2)(ii) of the basic provision.

Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate IV (Date)

(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, Korean end product, Moroccan end product, Panamanian 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—Free Trade Agreements—Balance of Payments Program clause of this solicitation.

(b) *Evaluation.* The Government—

(1) Will evaluate offers in accordance with the policies and procedures of part 225 of the Defense Federal Acquisition Regulation Supplement; and

(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, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products without regard to the restrictions of the Buy American or the Balance of Payments Program.

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

(1) For all line items subject to the Buy American—Free Trade Agreements—Balance of Payments Program clause of this solicitation, the offeror certifies that—

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product; and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The offeror shall identify all end products that are not domestic end products.

(i) The offeror certifies that the following supplies are qualifying country (except Australian or Canadian) end products:

(Line Item Number) (Country of Origin)

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

(Line Item Number) (Country of Origin)

(iii) The following supplies are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (ii) of the definition of *domestic end product*:

(Line Item Number) (Country of Origin (If known))

(End of provision)

Alternate V. As prescribed in 225.1101(9)(vi), use the following provision, which uses different paragraphs (a), (b)(2), (c)(2)(i), and (c)(2)(ii) than the basic clause.

Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate V (Date)

(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, Korean end product, Moroccan end product, Panamanian end product, Peruvian end product, qualifying country end product,

South Caucasus/Central and South Asian (SC/CASA) state 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) *Evaluation.* The Government—

(1) Will evaluate offers in accordance with the policies and procedures of part 225 of the Defense Federal Acquisition Regulation Supplement; and

(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 end products other than Bahrainian end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products without regard to the restrictions of the Buy American statute or the Balance of Payments Program.

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

(1) For all line items subject to the Buy American—Free Trade Agreements—Balance of Payments Program clause of this solicitation, the offeror certifies that—

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product; and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The offeror shall identify all end products that are not domestic end products.

(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)

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

(Line Item Number) (Country of Origin)

(iii) The following supplies are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (ii) of the definition of *domestic end product*:

(Line Item Number) (Country of Origin (If known))

(End of provision)

■ 10. Amend section 252.225–7036 by—

■ a. Revising the introductory text, clause title and date; and

■ b. Revising Alternates I, II, III, IV, and V.

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

As prescribed in 225.1101(11)(i), use one of the following clauses:

Basic. As prescribed in 225.1101(10)(i)(A), use the following clause.

**Buy American—Free Trade Agreements—
Balance of Payments Program—Basic (Date)**

* * * * *

Alternate I. As prescribed in 225.1101(10)(i)(B), use the following clause, which adds “Canadian end product” to paragraph (a) and uses a different paragraph (c) than the basic clause.

**Buy American—Free Trade Agreements—
Balance of Payments Program—Alternate I
(Date)**

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

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

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.

Commercially available off-the-shelf (COTS) item—

(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of “commercial item” in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

Component means an article, material, or supply incorporated directly into an end product.

Domestic end product means—

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item.

End product means those articles, materials, and supplies to be acquired under this contract for public use.

Foreign end product means an end product other than a domestic end product.

Free Trade Agreement country means Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore;

Free Trade Agreement country end product means an article that—

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

Moroccan end product means an article that—

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

Panamanian end product means an article that—

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

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.

Qualifying country means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Finland
France
Germany
Greece
Israel
Italy
Luxembourg
Netherlands
Norway
Poland
Portugal
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

Qualifying country component means a component mined, produced, or manufactured in a qualifying country.

Qualifying country end product means—

(i) An unmanufactured end product mined or produced in a qualifying country; or
(ii) An end product manufactured in a qualifying country if—

(A) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(1) Components mined, produced, or manufactured in a qualifying country.

(2) Components mined, produced, or manufactured in the United States.

(3) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) The end product is a COTS item.

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

(b) Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country, Canadian, or other foreign end products in the Buy American—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 or a Canadian end product, the Contractor shall deliver a qualifying country end product, a Canadian end product, or, at the Contractor's option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

Alternate II. As prescribed in 225.1101(10)(i)(C), use the following clause, which adds “South Caucasus/Central and South Asian (SC/CASA) state” and “South Caucasus/Central and South Asian (SC/CASA) state end product” to paragraph (a), and uses a different paragraph (c) than the basic clause.

Buy American—Free Trade Agreements—Balance of Payments Program—Alternate II (Date)

(a) *Definitions.* As used in this clause—

Bahrainian end product means an article that—

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

Commercially available off-the-shelf (COTS) item—

(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of “commercial item” in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

Component means an article, material, or supply incorporated directly into an end product.

Domestic end product means—

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item.

End product means those articles, materials, and supplies to be acquired under this contract for public use.

Foreign end product means an end product other than a domestic end product.

Free Trade Agreement country means Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore;

Free Trade Agreement country end product means an article that—

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

Moroccan end product means an article that—

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

Panamanian end product means an article that—

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

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.

Qualifying country means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country,

and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Finland
France
Germany
Greece
Israel
Italy
Luxembourg
Netherlands
Norway
Poland
Portugal
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

Qualifying country component means a component mined, produced, or manufactured in a qualifying country.

Qualifying country end product means—
(i) An unmanufactured end product mined or produced in a qualifying country; or
(ii) An end product manufactured in a qualifying country if—

(A) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(1) Components mined, produced, or manufactured in a qualifying country.

(2) Components mined, produced, or manufactured in the United States.

(3) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or
(B) The end product is a COTS item.

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

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.

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

(b) Unless otherwise specified, this clause applies to all items in the Schedule.

(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, Panamanian end products, or Peruvian end products, or other foreign end products in the Buy American—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, a Panamanian 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, a Panamanian end product, or a Peruvian end product or, at the Contractor's option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

Alternate III. As prescribed in 225.1101(10)(i)(D), use the following clause, which adds “Canadian end product”, “South Caucasus/Central and South Asian (SC/CASA) state”, and “South Caucasus/Central and South Asian (SC/CASA) state end product” to paragraph (a) and uses a different paragraph (c) than the basic clause.

Buy American—Free Trade Agreements—Balance of Payments Program—Alternate III (Date)

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

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

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.

Commercially available off-the-shelf (COTS) item—

(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of “commercial item” in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

Component means an article, material, or supply incorporated directly into an end product.

Domestic end product means—

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item.

End product means those articles, materials, and supplies to be acquired under this contract for public use.

Foreign end product means an end product other than a domestic end product.

Free Trade Agreement country means Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore;

Free Trade Agreement country end product means an article that—

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

Moroccan end product means an article that—

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

Panamanian end product means an article that—

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

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.

Qualifying country means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Finland
France
Germany
Greece
Israel
Italy
Luxembourg
Netherlands
Norway
Poland
Portugal
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

Qualifying country component means a component mined, produced, or manufactured in a qualifying country.

Qualifying country end product means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if—

(A) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(1) Components mined, produced, or manufactured in a qualifying country.

(2) Components mined, produced, or manufactured in the United States.

(3) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) The end product is a COTS item.

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

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.

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

(b) Unless otherwise specified, this clause applies to all items in the Schedule.

(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—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.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

Alternate IV. As prescribed in 225.1101(10)(i)(E), use the following clause, which adds “Korean end product” to paragraph (a), and uses a different paragraph (c) than the basic clause.

Buy American—Free Trade Agreements—Balance of Payments Program—Alternate IV (Date)

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

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

Commercially available off-the-shelf (COTS) item—

(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of “commercial item” in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without

modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

Component means an article, material, or supply incorporated directly into an end product.

Domestic end product means—

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item.

End product means those articles, materials, and supplies to be acquired under this contract for public use.

Foreign end product means an end product other than a domestic end product.

Free Trade Agreement country means Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore;

Free Trade Agreement country end product means an article that—

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

Korean end product means an article that—

(i) Is wholly the growth, product, or manufacture of Korea; 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 Korea (Republic of) 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.

Moroccan end product means an article that—

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

Panamanian end product means an article that—

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

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.

Qualifying country means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies

produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Finland
France
Germany
Greece
Israel
Italy
Luxembourg
Netherlands
Norway
Poland
Portugal
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

Qualifying country component means a component mined, produced, or manufactured in a qualifying country.

Qualifying country end product means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if—

(A) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(1) Components mined, produced, or manufactured in a qualifying country.

(2) Components mined, produced, or manufactured in the United States.

(3) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) The end product is a COTS item.

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

(b) Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, Free Trade Agreement country end products other than Bahrainian end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products, or other foreign end products in the Buy American—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 or a Free Trade Agreement country end product other than a Bahrainian end product, a Korean end product, a Moroccan end product, a Panamanian end product, or a Peruvian end

product, the Contractor shall deliver a qualifying country end product, a Free Trade Agreement country end product other than a Bahrainian end product, a Korean end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product, or, at the Contractor's option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

Alternate V. As prescribed in 225.1101(10)(i)(F), use the following clause, which adds "Korean end product", "South Caucasus/Central and South Asian (SC/CASA) state", and "South Caucasus/Central and South Asian (SC/CASA) state end product" to paragraph (a), and uses a different paragraph (c) than the basic clause.

Buy American—Free Trade Agreements—Balance of Payments Program—Alternate V (Date)

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

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

Commercially available off-the-shelf (COTS) item—

(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of "commercial item" in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

Component means an article, material, or supply incorporated directly into an end product.

Domestic end product means—

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are

mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item.

End product means those articles, materials, and supplies to be acquired under this contract for public use.

Foreign end product means an end product other than a domestic end product.

Free Trade Agreement country means Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore;

Free Trade Agreement country end product means an article that—

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

Korean end product means an article that—

(i) Is wholly the growth, product, or manufacture of Korea; 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 Korea (Republic of) 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.

Moroccan end product means an article that—

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

Panamanian end product means an article that—

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

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.

Qualifying country means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt

Finland
 France
 Germany
 Greece
 Israel
 Italy
 Luxembourg
 Netherlands
 Norway
 Poland
 Portugal
 Spain
 Sweden
 Switzerland
 Turkey
 United Kingdom of Great Britain and Northern Ireland.

Qualifying country component means a component mined, produced, or manufactured in a qualifying country.

Qualifying country end product means—

(i) An unmanufactured end product mined or produced in a qualifying country; or
 (ii) An end product manufactured in a qualifying country if—

(A) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(1) Components mined, produced, or manufactured in a qualifying country.

(2) Components mined, produced, or manufactured in the United States.

(3) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) The end product is a COTS item.

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

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.

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

(b) Unless otherwise specified, this clause applies to all items in the Schedule.

(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, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products, or other foreign end

products in the Buy American—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 Korean end product, a Moroccan end product, a Panamanian 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 Korean end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product or, at the Contractor's option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Chapter 2

[Docket No. DARS-2014-0012]

Review of Statutory and Regulatory Requirements

AGENCY: Department of Defense.

ACTION: Request for public comments.

SUMMARY: The Director of Defense Procurement and Acquisition Policy (DPAP) is currently conducting an assessment to identify impacts experienced by industry resulting from contracting statutes.

DATES: Submit written comments to the address shown below on or before March 14, 2014. Comments received will be considered by DoD in the formation of a recommendation to the Secretary of Defense if a revision to the definition is necessary and appropriate.

ADDRESSES: Submit comments to: Mr. Michael Canales, Room 5E621, 3060 Defense Pentagon, Washington, DC 20301-3060. Comments may also be submitted by fax at (703) 614-1254, or by email at michael.j.canales4.civ@mail.mil.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Canales, DPAP/CPIC, by telephone at (703) 695-8571, or by email at michael.j.canales4.civ@mail.mil.

SUPPLEMENTARY INFORMATION: The purpose of the assessment is to support an internal Department of Defense (DoD)

effort to reduce compliance impacts that do not achieve the benefits intended by contracting statutes. As part of this assessment, DPAP would like to receive the views of interested parties identifying particular impacts associated with specific contracting statutes. There is an extensive body of law and regulation that govern the Department's business. We are seeking to better understand the impact experienced by industry resulting from requirements based on statute. Our initial review identified approximately 400 DFARS requirements based solely on statute. The Director, DPAP, is soliciting public input to identify particular impacts associated with specific contracting statutes, with reference to—

- Particular impacts associated with specific contracting statutes;
- Why the identified impact does not achieve the intended benefit of the identified legislation, or why the intended benefit is not helpful to the Department; and
- Any recommendations for alternative approaches to achieve the intended benefit of the identified legislation.

We are also interested in candidate DFARS and component supplements requirements that, although not based in statute, warrant similar consideration.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R1-ES-2010-0071; 4500030114]

RIN 1018-AX16

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Lepidium papilliferum*

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Revised proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are amending our proposal to designate critical habitat for *Lepidium papilliferum* (slickspot peppergrass) under the Endangered Species Act (Act). In total, approximately 24,808 hectares (61,301 acres) in Ada, Payette, Elmore, and