

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: Final rule.

SUMMARY: DoD is issuing a final rule amending 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 rule includes the full text of each provision or clause alternate.

DATES: Effective November 5, 2014.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, telephone 571-372-6106.

SUPPLEMENTARY INFORMATION:**I. Background**

DoD published a proposed rule in the **Federal Register** at 79 FR 8387 on February 12, 2014, to revise the presentation of the DFARS part 225 clauses with alternates and their prescriptions. An umbrella prescription is provided for the elements common to the basic clause and the alternate. The specific prescriptions for the basic clause and the alternate address the requirements for their use that enable the selection of the basic or the alternate clause. The full text of each provision and clause alternate is also included in the regulation.

II. Discussion and Analysis

No public comments were submitted in response to the proposed rule. Although DFARS part 225 contains eight solicitation provisions and clauses that have, or are, alternates, the proposed rule only addressed six. The other two were to have been revised in another DFARS case; however, that case was cancelled before publication. This final rule includes these two clauses, 252.225-7044 and 252.225-7045, to reformat them to conform to the new structure paradigm for clauses with alternates. Additionally, some other minor wording changes are made for clarity and consistency in presentation of the clauses and provisions.

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

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, and is summarized as follows:

This final rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) to revise the format, not the substance, of prescriptions for provisions and clauses with alternates, and include the full text of each provision or clause in each alternate. The rule creates 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.

This rule facilitates use of automated contract writing systems by revising the prescription format for DFARS provisions/clauses that have one or more alternates. This rule revises 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. A separate prescription is provided for use of the basic prescription/clause and each alternate. In addition, each alternate provision/clause is presented in full text, not just the paragraph or section that is different from the basic provision/clause. This makes 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.

No comments were received from the public in response to the initial regulatory flexibility analysis.

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 the 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, reporting, or recording keeping requirements. No alternatives were determined that will accomplish the objectives of the rule.

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 amended as follows:

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

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

PART 212—ACQUISITION OF COMMERCIAL ITEMS

- 2. Amend section 212.301 by—
- a. Revising paragraphs (f)(xxiii) and (xxiv);
- b. In paragraph (f)(xxxiii)(A), removing the comma and adding a period in its place;
- c. In paragraph (f)(xxxiii)(B), removing “Use the provision with its Alternate I” and adding “Use the alternate I provision” in its place;
- d. In paragraph (f)(xxiv), introductory text, adding a comma after “Trade Agreements”;
- e. In paragraph (f)(xxxiv)(B), removing “Use the clause with its Alternate II” and adding “Use the alternate II clause” in its place, and removing “225.1101(6)(iii)” and adding “225.1101(6)(ii)” in its place;
- f. Revising paragraphs (f)(xlii)(B) through (F);
- g. Revising paragraphs (f)(xliii)(B) through (F).

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

- (f) * * *
- (xxiii) 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 alternate I provision as prescribed in 225.1101(1)(ii).
- (xxiv) 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 alternate I clause as prescribed in 225.1101(2)(iii).
- * * * *
- (xlii) * * *
- (B) Use the alternate I provision as prescribed in 225.1101(9)(ii).
- (C) Use the alternate II provision as prescribed in 225.1101(9)(iii).
- (D) Use the alternate III provision as prescribed in 225.1101(9)(iv).
- (E) Use the alternate IV provision as prescribed in 225.1101(9)(v).
- (F) Use the alternate V provision as prescribed in 225.1101(9)(vi).
- (xliii) * * *
- (B) Use the alternate I clause as prescribed in 225.1101(10)(i)(B).

(C) Use the alternate II clause as prescribed in 225.1101(10)(i)(C).

(D) Use the alternate III clause as prescribed in 225.1101(10)(i)(D).

(E) Use the alternate IV clause as prescribed in 225.1101(10)(i)(E).

(F) Use the alternate V clause 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) introductory text, removing the phrase “Use the clause” and adding “Use the basic or the alternate of the clause” in its place;
- c. Revising paragraph (2)(i)(B);
- d. In paragraph (2)(i)(D) introductory text, removing “One or both of the following clauses” and adding “One or more of the basic or the alternates of the following clauses” in its place;
- e. Redesignating paragraph (2)(ii) as paragraph (2)(iii), and adding a new paragraph (2)(ii);
- f. Revising the newly redesignated paragraph (2)(iii);
- g. In paragraph (3) introductory text, removing the phrase “that include one of the following clauses:” and adding “that include the basic or one of the alternates of the following clauses:” in its place;
- h. Revising paragraph (5);
- i. Redesignating paragraph (6)(i) as paragraph (6) introductory text, revising the newly redesignated paragraph (6) introductory text, and adding a new paragraph (6)(i);
- j. Revising paragraph (6)(ii);
- k. Revising paragraph (6)(iii) introductory text;
- l. Revising paragraph (9);
- m. Revising paragraph (10)(i); and
- n. Revising paragraph (10)(ii) 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 basic provision when the solicitation includes the basic clause at 252.225–7001.

(ii) Use the alternate I provision when the solicitation includes alternate I of the clause at 252.225–7001.

(2)(i) * * *

(B) All line items require domestic or qualifying country end products in accordance with subpart 225.70, but note that this exception does not apply if subpart 225.70 only requires manufacture of the end product in the United States or in the United States or Canada, without a corresponding requirement for use of domestic components;

* * * *

(ii) Use the basic clause if the acquisition is not of end products listed in 225.401–70 in support of operations in Afghanistan.

(iii) Use the alternate I clause when the acquisition is of end products listed in 225.401–70 in support of operations in Afghanistan.

* * * *

(5) Use the basic or the alternate of the provision at 252.225–7020, Trade Agreements Certificate, instead of the provision at FAR 52.225–6, Trade Agreements Certificate, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, that include the basic or alternate II of the clause at 252.225–7021, Trade Agreements. If the solicitation includes the provision at FAR 52.204–7, do not separately list the provision 252.225–7020 in the solicitation.

(i) Use the basic provision if the solicitation includes the basic clause at 252.225–7021.

(ii) Use the alternate I provision if the solicitation includes alternate II of the clause at 252.225–7021.

(6) Except as provided in paragraph (6)(iv) of this section, use the basic or an alternate of the clause at 252.225–7021, Trade Agreements, instead of the clause at FAR 52.225–5, Trade Agreements, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, if the 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.

(i) Use the basic clause in solicitations and contracts 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 Afghanistan.

(ii) Use the alternate II clause in solicitations and contracts that do not include the clause at 252.225–7024, Requirement for Products or Services from Afghanistan, when the acquisition is of end products in support of operations in Afghanistan.

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

* * * * *

(9) Use the basic or an alternate of the provision at 252.225–7035, Buy American—Free Trade Agreements—Balance of Payments Program Certificate, instead of the provision at FAR 52.225–4, Buy American—Free Trade Agreements—Israeli Trade Act Certificate, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, that include the basic or an alternate of the clause at 252.225–7036, Buy American—Free Trade Agreements—Balance of Payments Program. If the solicitation includes the provision at FAR 52.204–7, do not separately list the provision 252.225–7035 in the solicitation.

(i) Use the basic provision in solicitations when the basic of the clause at 252.225–7036 is used.

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

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

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

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

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

(10)(i) Except as provided in paragraph (10)(ii) of this section, use the basic or an alternate of the clause at 252.225–7036, Buy American—Free Trade Agreements—Balance of Payments Program, instead of the clause at FAR 52.225–3, Buy American—Free Trade Agreements—Israeli Trade Act, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, for the items listed at 225.401–70, when the estimated value equals or exceeds \$25,000, but is less than \$204,000, unless an exception at 25.401 applies.

(A) Use the basic clause in solicitations and contracts when the estimated value equals or exceeds \$79,507, except if the acquisition is of end products in support of operations in Afghanistan.

(B) Use the alternate I clause in solicitations and contracts when the estimated value is less than \$79,507, except if the acquisition is of end products in support of operations in Afghanistan.

(C) Use the alternate II clause in solicitations and contracts 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 alternate III clause in solicitations and contracts when the estimated value is less than \$79,507 and the acquisition is of end products in support of operations in Afghanistan.

(E) Use the alternate IV clause in solicitations and contracts when the estimated value equals or exceeds \$79,507 but is less than \$100,000, except if the acquisition is of end products in support of operations in Afghanistan.

(F) Use the alternate V clause in solicitations and contracts 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—

* * * * *

■ 4. Revise section 225.7503 to read as follows:

225.7503 Contract clauses.

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

(a) Use the basic or an alternate of the clause at 252.225–7044, Balance of Payments Program—Construction Material, in solicitations and contracts for construction to be performed outside the United States, including acquisitions of commercial items or components, with an estimated value greater than the simplified acquisition threshold but less than \$7,864,000.

(1) Use the basic clause unless the acquisition is in support of operations in Afghanistan.

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

(b) Use the basic or an alternate of the clause at 252.225–7045, Balance of Payments Program—Construction Material Under Trade Agreements, in solicitations and contracts for construction to be performed outside the United States with an estimated value of \$7,864,000 or more, including acquisitions of commercial items or components.

(1) Use the basic clause in solicitations and contracts with an

estimated value of \$10,335,931 or more, unless the acquisition is in support of operations in Afghanistan.

(2) Use the alternate I clause in solicitations and contracts with an estimated value of \$7,864,000 or more, but less than \$10,335,931 unless the acquisition is in support of operations in Afghanistan.

(3) Use the alternate II clause in solicitations and contracts with an estimated value of \$10,335,931 or more and is in support of operations in Afghanistan.

(4) Use the alternate III clause in solicitations and contracts with an estimated value of \$7,864,000 or more, but less than \$10,335,931, and is in support of operations in Afghanistan.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Amend section 252.225–7000 by—

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

■ b. In paragraph (c)(1), removing “Buy American and Balance of Payments Program” and adding “Buy American and Balance of Payments Program—Basic” in its place; and

■ c. 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 (Nov 2014)

(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—Basic 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 (Nov 2014)

(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—Alternate I 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 evaluate offers of qualifying country end products or SC/CASA state 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 and Balance of Payments Program—Alternate I clause of this solicitation, the offeror certifies that—

(i) Each end product, except those listed in paragraphs (c)(2) or (3) of this provision, is a domestic end product; and

(ii) For end products other than COTS items, components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

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

Line Item Number

Country of Origin

(3) The following end products 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)

■ 6. Amend section 252.225–7001 by—

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

■ b. Revising Alternate I.

252.225–7001 Buy American and Balance of Payments Program.

As prescribed in 225.1101(2)(i), use one of the following clauses:

Basic. As prescribed in 225.1101(2)(ii), use the following clause:

Buy American and Balance of Payments Program—Basic (Nov 2014)

* * * * *

Alternate I. As prescribed in 225.1101(2)(iii), 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 different paragraphs (b) and (c) than the basic clause:

Buy American and Balance of Payments Program—Alternate I (Nov 2014)

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

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

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

(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)

* * * * *

■ 7. Amend section 252.225–7013 by—

■ a. Removing the clause date “(OCT 2013)” and adding “(NOV 2014)” in its place; 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 (either 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 (either basic or alternate II) clause of this contract;

(iii) *Canadian end product*, as defined in the Buy American—Free Trade Agreements—Balance of Payments Program (either alternate I or 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 (either alternate IV or alternate V) clause of this contract.

* * * * *

■ 8. Amend section 252.225–7020 by—

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

■ b. Revising paragraph (a);

■ c. In paragraph (c)(1), removing “Trade Agreements clause” and adding “Trade Agreements—Basic” in its place; and

■ d. 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 (Nov 2014)

(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—Basic clause of this solicitation.

* * * * *

Alternate I. As prescribed in 225.1101(5)(ii), use the following provision, which uses different paragraphs (a), (b)(2), and (c) than the basic clause:

Trade Agreements Certificate—Alternate I (Nov 2014)

(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—Alternate I 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—Alternate I 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)

■ 9. 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 (Nov 2014)

* * * * *

Alternate II. As prescribed in 225.1101(6)(ii), use the following clause, which (i) 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 (Nov 2014)

(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)

■ 10. Amend section 252.225–7035 by—

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

■ b. In paragraph (a), removing “Buy American—Free Trade Agreements—Balance of Payments Program” and adding “Buy American—Free Trade Agreements—Balance of Payments Program—Basic” in its place;

■ c. In paragraph (b)(2), removing “Free Trade Agreements” and adding “Buy American—Free Trade Agreements—Balance of Payments Program—Basic clause of this solicitation” in its place;

■ d. In paragraph (c)(1) introductory text, removing “Buy American—Free Trade Agreements—Balance of Payments Program” and adding “Buy American—Free Trade Agreements—Balance of Payments Program—Basic” in its place; and

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

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 (Nov 2014)

* * * * *

Alternate I. As prescribed in 225.1101(9)(ii), use the following provision, which uses *Canadian end product* in paragraph (a), rather than the phrases *Bahrainian end product*, *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 (Nov 2014)

(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—Alternate I 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 the Buy American—Free Trade Agreements—Balance of Payments Program—Alternate I clause of this solicitation, will evaluate offers of qualifying country 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—Alternate I 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 provision:

Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate II (Nov 2014)

(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—Alternate II 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 the Buy American—Free Trade Agreements—Balance of Payments Program—Alternate II clause of this solicitation, 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—Alternate II 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 provision:

Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate III (Nov 2014)

(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—Alternate III 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 the Buy American—Free Trade Agreements—Balance

of Payments Program—Alternate III clause of this solicitation, 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—Alternate III 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 (Nov 2014)

(a) *Definitions.* *Bahrainian end product*, *commercially available off-the-shelf (COTS) item*, *component*, *domestic end product*, *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—Alternate IV 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 the Buy American—Free Trade Agreements—Balance of Payments Program—Alternate IV clause of this solicitation, 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—Alternate IV 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 provision:

Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate V (Nov 2014)

(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—Alternate V 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 the Buy American—Free Trade Agreements—Balance of Payments Program—Alternate V clause of this solicitation, 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—Alternate V 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)

■ 11. Amend section 252.225–7036 by—

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

■ b. In paragraph (c), removing “Buy American—Free Trade Agreements—

Balance of Payments Program Certificate” and adding “Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Basic” in its place; and

■ c. 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(10)(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 (Nov 2014)

* * * * *

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 (Nov 2014)

(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—Alternate I 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 (Nov 2014)

(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—Alternate II 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 (Nov 2014)

(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—Alternate III 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 (Nov 2014)

(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—Alternate IV 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 (Nov 2014)

(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—Alternate V 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)

■ 12. Amend section 252.225–7044 by—

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

■ b. In paragraph (a), redesignating the paragraph numbers for—

■ i. *Commercially available off-the shelf (COTS) item* by redesignating paragraphs (1) and (2) as (i) and (ii); and in the newly redesignated paragraph (i), redesignating paragraphs (i), (ii), and (iii) as (i)(A), (B), and (C), respectively;

■ ii. *Cost of components* by redesignating paragraphs (1) and (2) as (i) and (ii), respectively;

■ iii. *Domestic construction material* by redesignating paragraphs (1) and (2) as (i) and (ii); and in the newly redesignated paragraph (ii), redesignating paragraphs (i) and (ii) as (ii)(A) and (B), respectively; and

■ c. Revising Alternate I.

252.225–7044 Balance of Payments Program—Construction Material.

As prescribed in 225.7503(a), use one of the following clauses:

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

Balance of Payments Program—Construction Material—Basic (Nov 2014)

* * * * *

Alternate I. As prescribed in 225.7503(a)(2), use the following clause, which adds definitions for *South Caucasus/Central and South Asian (SC/CASA) state* and *SC/CASA state construction material* to paragraph (a), and uses “domestic construction material” instead of “domestic construction material” in the second sentence of paragraph (b):

Balance of Payments Program—Construction Material—Alternate I (Nov 2014)

(a) *Definitions.* As used in this clause—
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 any article, material, or supply incorporated directly into construction material.

Construction material means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

Cost of components means—

(i) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm),

and any applicable duty (whether or not a duty-free entry certificate is issued); or

(ii) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

Domestic construction material means—

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or

(B) The construction material is a COTS item.

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

SC/CASA state construction material means construction material that—

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

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

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

(b) *Domestic preference.* This clause implements the Balance of Payments Program by providing a preference for domestic construction material. The Contractor shall use only domestic construction material or SC/CASA state construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation;

(2) Information technology that is a commercial item; or

(3) The construction material or components listed by the Government as follows:

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

(End of clause)

■ 13. Amend section 252.225–7045 by—

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

■ b. In paragraph (a), redesignating the paragraph numbers for—

■ i. *Caribbean Basin country construction material* by redesignating paragraphs (1) and (2) as (i) and (ii), respectively;

■ ii. *Commercially available off-the-shelf (COTS) item* by redesignating

paragraphs (1) and (2) as (i) and (ii); and in the newly redesignated paragraph (i), redesignating paragraphs (i), (ii), and (iii) as (i)(A), (B), and (C), respectively;

■ iii. *Cost of components* by redesignating paragraphs (1) and (2) as (i) and (ii), respectively;

■ iv. *Designated country* by redesignating paragraphs (1) through (4) as (i) through (iv), respectively;

■ v. *Domestic construction material* by redesignating paragraphs (1) and (2) as (i) and (ii); and in the newly redesignated paragraph (ii) redesignating paragraphs (i) and (ii) as (ii)(A) and (B);

■ vi. *Free Trade Agreement country construction material* by redesignating paragraphs (1) and (2) as (i) and (ii);

■ vii. *Least developed country construction material* by redesignating paragraphs (1) and (2) as (i) and (ii);

■ viii. *WTO GPA country construction material* by redesignating paragraphs (1) and (2) as (i) and (ii); and

■ c. Revising Alternates I, II, and III.

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

As prescribed in 225.7503(b), use one of the following clauses:

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

Balance of Payments Program—Construction Material Under Trade Agreements—Basic (Nov 2014)

* * * * *

Alternate I. As prescribed in 225.7503(b)(2), use the following clause, which adds *Bahrainian or Mexican construction material* to paragraph (a), and uses a different paragraph (b) and (c) than the basic clause:

Balance of Payments Program—Construction Material Under Trade Agreements—Alternate I (Nov 2014)

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

Bahrainian or Mexican construction material means a construction material that—

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

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

Caribbean Basin country construction material means a construction material that—

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

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

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 section 3 of the Shipping Act of 1984 (46 U.S.C. 40102), such as agricultural products and petroleum products.

Component means any article, material, or supply incorporated directly into construction material.

Construction material means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

Cost of components means—

(i) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(ii) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

Designated country means—

(i) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Croatia, 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, Panama, 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, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, 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 construction material means a construction material that is a WTO GPA country construction material, a Free Trade Agreement country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

Domestic construction material means—

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or

(B) The construction material is a COTS item.

Free Trade Agreement country construction material means a construction material that—

(i) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

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

Least developed country construction material means a construction material that—

(i) Is wholly the growth, product, or manufacture of a least developed country; or

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

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

WTO GPA country construction material means a construction material that—

(i) Is wholly the growth, product, or manufacture of a WTO GPA country; or

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

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

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

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation; or

(2) Information technology that is a commercial item; or

(3) The construction material or components listed by the Government as follows:

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

(End of clause)

Alternate II. As prescribed in 225.7503(b)(3), use the following clause, which adds *South Caucasus/Central and South Asian (SC/CASA) state* and *SC/CASA state construction material* to paragraph (a), uses a different paragraph (b) and introductory text for paragraph (c) than the basic clause, and adds paragraph (d):

Balance of Payments Program—Construction Material Under Trade Agreements—Alternate II (Nov 2014)

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

Caribbean Basin country construction material means a construction material that—

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

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

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 section 3 of the Shipping Act of 1984 (46 U.S.C. 40102), such as agricultural products and petroleum products.

Component means any article, material, or supply incorporated directly into construction material.

Construction material means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

Cost of components means—

(i) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(ii) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

Designated country means—

(i) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Croatia, 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, Panama, 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, Equatorial Guinea, Eritrea, Ethiopia, Gambia,

Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, 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 construction material means a construction material that is a WTO GPA country construction material, a Free Trade Agreement country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

Domestic construction material means—

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or

(B) The construction material is a COTS item.

Free Trade Agreement country construction material means a construction material that—

(i) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

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

Least developed country construction material means a construction material that—

(i) Is wholly the growth, product, or manufacture of a least developed country; or

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

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

SC/CASA state construction material means construction material that—

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

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

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

WTO GPA country construction material means a construction material that—

(i) Is wholly the growth, product, or manufacture of a WTO GPA country; or

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

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

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

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation;

(2) Information technology that is a commercial item; or

(3) The construction material or components listed by the Government as follows:

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

(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.

(End of clause)

Alternate III. As prescribed in 225.7503(b)(4), use the following clause, which adds *South Caucasus/Central and South Asian (SC/CASA state and SC/CASA state construction material* to paragraph (a), uses a different paragraph (b) and introductory text for paragraph (c) than the basic clause, and adds paragraph (d):

**Balance of Payments Program—
Construction Material Under Trade
Agreements—Alternate III (Nov 2014)**

(a) *Definitions.* As used in this clause—
Caribbean Basin country construction material means a construction material that—

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

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

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 section 3 of the Shipping Act of 1984 (46 U.S.C. 40102), such as agricultural products and petroleum products.

Component means any article, material, or supply incorporated directly into construction material.

Construction material means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

Cost of components means—

(i) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(ii) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

Designated country means—

(i) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Croatia, 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, Panama, 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, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, 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 construction material means a construction material that is a WTO GPA country construction material, a Free Trade Agreement country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

Domestic construction material means—

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or

(B) The construction material is a COTS item.

Free Trade Agreement country construction material means a construction material that—

(i) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

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

Least developed country construction material means a construction material that—

(i) Is wholly the growth, product, or manufacture of a least developed country; or

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

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

SC/CASA state construction material means construction material that—

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

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

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

WTO GPA country construction material means a construction material that—

(i) Is wholly the growth, product, or manufacture of a WTO GPA country; or

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

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

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

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation;

(2) Information technology that is a commercial item; or

(3) The construction material or components listed by the Government as follows:

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

(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.

(End of clause)

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