



U.S. Small Business
Administration

July 23, 2020

MEMORANDUM FOR U.S. SMALL BUSINESS ADMINISTRATION

SUBJECT: Class Deviation from the Federal Acquisition Regulation (FAR) to Implement the United States-Mexico-Canada Agreement (USMCA)

Background. Enactment of the United States-Mexico-Canada Agreement Implementation Act (Pub. L. 116-113) implemented the USMCA. The USMCA is effective July 1, 2020. It supersedes the North American Free Trade Agreement (NAFTA), therefore references to NAFTA are replaced with USMCA. Although Canada is still a designated country under the World Trade Organization Government Procurement Agreement, Canada is no longer a Free Trade Agreement country, because chapter 13 of the USMCA (government procurement) applies only to the United States and Mexico. Therefore, references to Canada as a Free Trade Agreement country are deleted, including the \$25,000 threshold. Mexico thresholds remain unchanged.

Authority. The Chair of the Civilian Agency Acquisition Council (CAAC) issued CAAC Letter 2020-05 on June 29, 2020 authorizing civilian agencies to issue this deviation prior to amendment of the FAR. CAAC Letter 2020-05 constitutes consultation with the Chair of the CAAC as required by FAR 1404(a)(1).

Effective Date. Effective immediately, Contracting Officers should ensure that the changes detailed in Attachment A are reflected in clauses, solicitations and awards when applicable. This class deviation remains in effect until the statutory change is incorporated in the FAR, or until this class deviation is rescinded.

Attachment. Attachment A lists the FAR citations amended by this class deviation.

Kip Sheppard

Kip A. Sheppard
Acting Senior Procurement Executive
U.S. Small Business Administration

**CAAC Letter 2020-05 FAR text 2020-014
United States-Mexico-Canada Agreement**

Baseline is FAC 2020-06

Additions shown by: **[bolded]**

Deletions shown by: ~~struck~~

June 22, 2020

PART 4—ADMINISTRATIVE AND INFORMATION MATTERS

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SUBPART 4.12—REPRESENTATIONS AND CERTIFICATIONS

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4.1202 Solicitation provision and contract clause.

(a) Insert the provision at 52.204-8, Annual Representations and Certifications, in solicitations, except for commercial item solicitations issued under FAR part 12. The contracting officer shall check the applicable provisions at 52.204-8(c)(2). Use the provision with its Alternate I in solicitations issued after October 1, 2022, that will result in a multiple-award contract with more than one North American Industry Classification System code assigned (see 19.102(b)). When the provision at 52.204-7, System for Award Management, is included in the solicitation, do not separately include the following representations and certifications:

* * * * *

(28) 52.225-4, Buy American—Free Trade Agreements—Israeli Trade Act Certificate (Basic, Alternates I, II, and III).

PART 13 - SIMPLIFIED ACQUISITION PROCEDURES

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Subpart 13.3 - Simplified Acquisition Methods

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13.302-5 Clauses.

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(d) * * *

(3) (i) When an acquisition for supplies for use within the United States cannot be set aside for small business concerns and trade agreements apply (see subpart 25.4), substitute the clause at FAR 52.225-3, Buy American-Free Trade Agreements Israeli Trade Act, used with ~~Alternate I~~ Alternate II, if appropriate, instead of the clause at FAR 52.225-1, Buy American-Supplies.

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PART 18—EMERGENCY ACQUISITIONS

* * * * *

SUBPART 18.1—AVAILABLE ACQUISITION FLEXIBILITIES

18.120 ~~[[Reserved]] Use of patented technology under the North American Free Trade Agreement.~~

~~Requirement to obtain authorization prior to use of patented technology may be waived in circumstances of extreme urgency or national emergency. (See 27.204-4.)~~

PART 22 – APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

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SUBPART 22.15—PROHIBITION OF ACQUISITION OF PRODUCTS PRODUCED BY FORCED OR INDENTURED CHILD LABOR

* * * * *

22.1503 Procedures for acquiring end products on the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor.

(b) The requirements of this subpart that result from the appearance of any end product on the List do not apply to a solicitation or contract if the identified country of origin on the List is—

- (1) ~~Canada, and the anticipated value of the acquisition is \$25,000 or more (see subpart 25.4);~~
- (2) Israel, and the anticipated value of the acquisition is \$50,000 or more (see 25.406);
- ~~(3)~~**[2]** Mexico, and the anticipated value of the acquisition is \$83,099 or more (see subpart 25.4); or

~~(4)~~**[3]** Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, **[Canada,]** Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Italy, Japan, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, Ukraine, or the

United Kingdom and the anticipated value of the acquisition is \$182,000 or more (see 25.402(b)).

* * * * *

22.1505 Solicitation provision and contract clause.

(a) * * * For solicitations estimated to equal or exceed ~~\$25,000~~ **[\$50,000]**, the contracting officer must exclude from the List in the solicitation end products from any countries identified at 22.1503(b), in accordance with the specified thresholds.

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PART 25—FOREIGN ACQUISITION

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25.003 Definitions.

As used in this part—

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“Designated country” means any of the following countries:

- (1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, 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, Moldova, Montenegro, Netherlands, New Zealand, 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)), Ukraine, or United Kingdom);
- (2) A Free Trade Agreement (FTA) country (Australia, Bahrain, ~~Canada~~, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore);

* * * * *

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

* * * * *

SUBPART 25.4—Trade Agreements

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25.400 Scope of subpart.

(a) This subpart provides policies and procedures applicable to acquisitions that are covered by—

- (1) The World Trade Organization Government Procurement Agreement (WTO GPA), as approved by Congress in the Uruguay Round Agreements Act (Pub. L. 103-465);
- (2) Free Trade Agreements (FTA), consisting of—

(i) ~~NAFTA (the North American Free Trade Agreement, as approved by Congress in the North American Free Trade Agreement Implementation Act of 1993 (Pub. L. 103-182) (19 U.S.C. 3304 note))~~**[USMCA (United States-Mexico-Canada Agreement, as approved by Congress in the United States-Mexico-Canada Agreement Implementation Act (Government Procurement Agreement applicable only to United States and Mexico) (Pub. L. 116-113) (19 U.S.C. chapter 29 (sections 4501-4732))];**

* * * * *

25.401 Exceptions.

* * * * *

(b) In the World Trade Organization Government Procurement Agreement (WTO GPA) and each FTA, there is a U.S. schedule that lists services that are excluded from that agreement in acquisitions by the United States. Acquisitions of the following services are excluded from coverage by the U.S. schedule of the WTO GPA or an FTA as indicated in this table:

Table 1 FAR 25.401 Exceptions

#	The service (Federal Service Codes from the Federal Procurement Data System Product/Service Code Manual are indicated in parentheses for some services.)	WTO GPA AND KOREA FTA	Bahrain FTA, CAFTA-DR, Chile FTA, Columbia FTA, NAFTA [USMCA] , Oman FTA, Panama FTA, and Peru FTA	Singapore FTA	Australia and Morocco FTA
(1)	All services purchased in support of military services overseas	X	X	X	X
(2i)	Automatic data processing (ADP) telecommunications and transmission services (D304), except enhanced (<i>i.e.</i> , value added) telecommunications services	X	X	-	-
(2ii)	ADP teleprocessing and timesharing services (D305), telecommunications network management services (D316), automated news services, data services or other information services (D317), and other ADP and telecommunications services (D399)	X	X	-	-

#	The service (Federal Service Codes from the Federal Procurement Data System Product/Service Code Manual are indicated in parentheses for some services.)	WTO GPA AND KOREA FTA	Bahrain FTA, CAFTA-DR, Chile FTA, Columbia FTA, NAFTA[USMCA], Oman FTA, Panama FTA, and Peru FTA	Singapore FTA	Australia and Morocco FTA
2(iii)	(Basic telecommunications network services (i.e., voice telephone services, packet switched data transmission services, circuit-switched data transmission services, telex services, facsimile services, and private leased circuit services, but not information services, as defined in 47 U.S.C. 153(24))	*	*	X	X
(3)	Dredging	X	X	X	X
(4i)	Operation and management contracts of certain Government or privately owned facilities used for Government purposes, including Federally Funded Research and Development Centers	X	-	X	-
4(ii)	Operation of all Department of Defense, Department of Energy, or the National Aeronautics and Space Administration facilities; and all Government-owned research and development facilities or Government-owned environmental laboratories	**	X	**	X
(5)	Research and development	X	X	X	X
(6)	Transportation services (including launching services, but not including travel agent services)	X	X	X	X
(7)	Utility services	X	X	X	X
(8)	Maintenance, repair, modification, rebuilding and installation of equipment related to ships (J019)	-	X	-	X
(9)	Nonnuclear ship repair (J998)	-	X	-	X

*NOTE 1. Acquisitions of the services listed at (2)(iii) of this table are a subset of the excluded services at (2)(i) and (ii), and are therefore not covered under the WTO GPA.

**NOTE 2. Acquisitions of the services listed at (4)(ii) of this table are a subset of the excluded services at (4)(i), and are therefore not covered under the WTO GPA.

25.402 General.

* * * * *

(b) The value of the acquisition is a determining factor in the applicability of trade agreements. Most of these dollar thresholds are subject to revision by the U.S. Trade Representative approximately every 2 years. The various thresholds are summarized as follows:

Table 2 TABLE 1 TO PARAGRAPH (b)

Trade Agreement	Supply contract (equal to or exceeding)	Service Contract (equal to or exceeding)	Construction contract (equal to or exceeding)
WTO GPA	\$182,000	\$182,000	\$7,008,000
FTAs:	\$3,099	\$3,099	\$7,008,000
Australia FTA	182,000	182,000	10,802,884
Bahrain FTA	\$3,099	\$3,099	7,008,000
CAFTA-DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua)	\$3,099	\$3,099	7,008,000
Columbia FTA	\$3,099	\$3,099	7,008,000
Korea FTA	100,000	100,000	7,008,000
Morocco FTA	182,000	182,000	7,008,000
NAFTA[USMCA]:			
—Canada	\$3,099	\$3,099	10,802,884
—Mexico	\$3,099	\$3,099	10,802,884
Oman FTA	182,000	182,000	10,802,884
Panama FTA	182,000	182,000	7,008,000
Peru FTA	182,000	182,000	7,008,000

Trade Agreement	Supply contract (equal to or exceeding)	Service Contract (equal to or exceeding)	Construction contract (equal to or exceeding)
Singapore FTA	\$3,099	\$3,099	7,008,000
Israeli Trade Act	50,000	-	-

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Subpart 25.11 - Solicitation Provisions and Contract Clauses

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25.1101 Acquisition of supplies.

The following provisions and clauses apply to the acquisition of supplies and the acquisition of services involving the furnishing of supplies.

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(b)(1)(i) Insert the clause at 52.225-3, Buy American—Free Trade Agreements—Israeli Trade Act, in solicitations and contracts if—

(A) The acquisition is for supplies, or for services involving the furnishing of supplies, for use within the United States, and the acquisition value is ~~\$25,000~~**[\$50,000]** or more, but is less than \$182,000;

* * * * *

~~(ii) If the acquisition value is \$25,000 or more but is less than \$50,000, use the clause with its *Alternate I*.~~

(iii) If the acquisition value is \$50,000 or more but is less than \$83,099, use the clause with its *Alternate II*.

(ivii) If the acquisition value is \$83,099 or more but is less than \$100,000, use the clause with its *Alternate III*.

(2)(i) Insert the provision at 52.225-4, Buy American—Free Trade Agreements—Israeli Trade Act Certificate, in solicitations containing the clause at 52.225-3.

~~(ii) If the acquisition value is \$25,000 or more but is less than \$50,000, use the provision with its *Alternate I*.~~

(iii) If the acquisition value is \$50,000 or more but is less than \$83,099, use the provision with its *Alternate II*.

(iv[~~ii~~]) If the acquisition value is \$83,099 or more, but is less than \$100,000, use the provision with its Alternate III.

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PART 27—PATENTS, DATA, AND COPYRIGHTS

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SUBPART 27.2—PATENTS AND COPRIGHTS

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27.204 Patented technology under trade agreements.

27.204-1 Use of patented technology under the ~~North American Free Trade Agreement~~[United States-Mexico-Canada Agreement].

- (a) ~~The requirements of this section apply to the use of technology covered by a valid patent when the patent holder is from a country that is a party to the North American Free Trade Agreement (NAFTA).~~
- (b) ~~Article 1709(10) of NAFTA generally requires a user of technology covered by a valid patent to make a reasonable effort to obtain authorization prior to use of the patented technology. However, NAFTA provides that this requirement for authorization may be waived in situations of national emergency or other circumstances of extreme urgency, or for public noncommercial use.~~
- (c) ~~Section 6 of Executive Order 12889, "Implementation of the North American Free Trade Act," of December 27, 1993, waives the requirement to obtain advance authorization for an invention used or manufactured by or for the Federal Government. However, the patent owner shall be notified in advance whenever the agency or its contractor knows or has reasonable grounds to know, without making a patent search, that an invention described in and covered by a valid U.S. patent is or will be used or manufactured without a license. In cases of national emergency or other circumstances of extreme urgency, this notification need not be made in advance, but shall be made as soon as reasonably practicable.~~
- (d) ~~The contracting officer, in consultation with the office having cognizance of patent matters, shall ensure compliance with the notice requirements of NAFTA Article 1709(10) and Executive Order 12889. A contract award should not be suspended pending notification to the patent owner.~~
- (e) ~~Section 6(c) of Executive Order 12889 provides that the notice to the patent owner does not constitute an admission of infringement of a valid privately owned patent.~~
- (f) ~~When addressing issues regarding compensation for the use of patented technology, Government personnel should be advised that NAFTA uses the term "adequate remuneration." Executive Order~~

~~12889 equates “remuneration” to “reasonable and entire compensation” as used in 28 U.S.C. 1498, the statute that gives jurisdiction to the U.S. Court of Federal Claims to hear patent and copyright cases involving infringement by the Government.~~

~~(g) When questions arise regarding the notice requirements or other matters relating to this section [with regard to use of patented technology under the USMCA], the contracting officer should consult with legal counsel.~~

27.204-2 Use of patented technology under the General Agreement on Tariffs and Trade (GATT).

Article 31 of Annex 1C, Agreement on Trade-Related Aspects of Intellectual Property Rights, to GATT (Uruguay Round) addresses situations where the law of a member country allows for use of a patent without authorization, including use by the Government.

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PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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SUBPART 52.2—TEXTS OF PROVISIONS AND CLAUSES

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52.204-8 Annual Representations and Certifications. As prescribed in 4.1202(a), insert the following provision:

ANNUAL REPRESENTATIONS AND CERTIFICATIONS (~~MAR 2020~~ **[DATE]**)

* * * * *

(C)(1) * * *

(xxi) 52.225-4, Buy American-Free Trade Agreements-Israeli Trade Act Certificate. (Basic, Alternates I, II, and III.)

This provision applies to solicitations containing the clause at 52.225-3.

(A) If the acquisition value is less than \$25,000 **[50,000]**, the basic provision applies.

~~(B) If the acquisition value is \$25,000 or more but is less than \$50,000, the provision with its Alternate I applies.~~

[(B)](C) If the acquisition value is \$50,000 or more but is less than \$83,099, the provision with its Alternate II applies.

[(C)](D) If the acquisition value is \$83,099 or more but is less than \$100,000, the provision with its Alternate III applies.

* * * * *

52.212-3 Offeror Representations and Certifications—Commercial Items.

As prescribed in 12.301(b)(2), insert the following provision:

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL ITEMS (JUN 2020[DATE])

* * * * *

(g)(1) *Buy American—Free Trade Agreements—Israeli Trade Act Certificate.* (Applies only if the clause at FAR 52.225-3, Buy American—Free Trade Agreements—Israeli Trade Act, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(1)(ii) or (g)(1)(iii) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The terms “Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end product,” “commercially available off-the-shelf (COTS) item,” “component,” “domestic end product,” “end product,” “foreign end product,” “Free Trade Agreement country,” “Free Trade Agreement country end product,” “Israeli end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American—Free Trade Agreements—Israeli Trade Act.”

(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end products) or Israeli end products as defined in the clause of this solicitation entitled “Buy American—Free Trade Agreements— Israeli Trade Act”

Free Trade Agreement Country End Products (Other than Bahrainian, Moroccan, Omani, Panamanian, or Peruvian End Products) or Israeli End Products:

Table 3

Line Item No.		Country of Origin
-	-	-
-	-	-
-	-	-

(List as Necessary)

(iii) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (g)(1)(ii) of this provision) as defined in the clause of this solicitation entitled “Buy American—Free Trade Agreements—Israeli Trade Act.” The offeror shall list as other foreign end products those 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 (2) of the definition of “domestic end product.”

Other Foreign End Products

Table 4

Line Item No.	-	Country of Origin
-	-	-
-	-	-
-	-	-

(List as Necessary)

(iv) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

~~(2) Buy American—Free Trade Agreements—Israeli Trade Act Certificate, Alternate I. If Alternate I to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:~~

~~(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled “Buy American—Free Trade Agreements—Israeli Trade Act”:~~

~~Canadian End Products:~~

~~Line Item No.~~

~~—
—
—~~

~~(List as necessary)~~

~~(3) Buy American—Free Trade Agreements—Israeli Trade Act Certificate, Alternate II. If Alternate II to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:~~

~~(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled “Buy American—Free Trade Agreements—Israeli Trade Act”:~~

~~Canadian or Israeli End Products:~~

Table 5

Line Item No.	-	Country of Origin
-	-	-
-	-	-
-	-	-

(List as necessary)

(4[3]) Buy American—Free Trade Agreements—Israeli Trade Act Certificate, Alternate III. If Alternate III to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian end products) or Israeli end products as defined in the clause of this solicitation entitled “Buy American—Free Trade Agreements— Israeli Trade Act”:

Free Trade Agreement Country End Products (Other than Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian End Products) or Israeli End Products:

Table 6

Line Item No.	-	Country of Origin
-	-	-
-	-	-
-	-	-

(List as necessary)

(5[4]) Trade Agreements Certificate. (Applies only if the clause at FAR 52.225-5, Trade Agreements, is included in this solicitation.)

* * * * *

52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

As prescribed in 12.301(b)(4), insert the following clause:

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES
OR EXECUTIVE
ORDERS—COMMERCIAL ITEMS (~~JUN 2020~~**[DATE]**)

* * * * *

(b) * * *

___ (28) 52.222-19, Child Labor—Cooperation with Authorities and Remedies
(~~JAN 2020~~**[DATE]**) (E.O. 13126).

* * *

___ (49)(i) 52.225-3, Buy American—Free Trade Agreements—
Israeli Trade Act (~~MAY 2014~~**JUL 2020**)(~~41 U.S.C. chapter 83~~, 19
U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, 19 U.S.C. 4001 note, **[19
U.S.C. chapter 29 (sections 45014732),]** Pub. L. 103-182, 108-77, 108-78, 108-286,
108-302, 109-53, 109-169, 109-283, 110-138, 112-41, 112-42, and 11243.

___ (ii) Alternate I (~~MAY 2014~~) of 52.225-3.

___ (~~iii~~) Alternate II (~~MAY 2014~~**[DATE]**) of 52.225-3.

___ (~~i~~**[ii]**) Alternate III (MAY 2014) of 52.225-3.

___ (50) 52.225-5, Trade Agreements (~~OCT 2019~~**[DATE]**) (19 U.S.C. 2501, *et seq.*, 19
U.S.C. 3301 note).

* * * * *

52.222-19 Child Labor—Cooperation with Authorities and Remedies.

As prescribed in 22.1505(b), insert the following clause:

CHILD LABOR—COOPERATION WITH AUTHORITIES AND REMEDIES (~~JAN 2020~~[DATE]**)**

(a) *Applicability.* This clause does not apply to the extent that the Contractor is supplying end products mined, produced, or manufactured in—

(1) ~~Canada, and the anticipated value of the acquisition is \$25,000 or more;~~

(2) Israel, and the anticipated value of the acquisition is \$50,000 or more;

(~~3~~**[2]**) Mexico, and the anticipated value of the acquisition is \$83,099 or more; or

(~~4~~**[3]**) Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, **[Canada,]** Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary,

Iceland, Ireland, Italy, Japan, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, Ukraine, or the United Kingdom and the anticipated value of the acquisition is \$182,000 or more.

* * * * *

52.225-3 Buy American—Free Trade Agreements—Israeli Trade Act.

As prescribed in 25.1101(b)(1)(i), insert the following clause:

BUY AMERICAN—FREE TRADE AGREEMENTS—ISRAELI TRADE ACT (MAY 2014[DATE])

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

* * * * *

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

* * * * *

~~Alternate 1~~ **[[Reserved]]** (MAY 2014). As prescribed in 25.1101(b)(1)(ii), add the following definition to paragraph (a) of the basic clause, and substitute the following paragraph (c) for paragraph (c) of the basic clause: “Canadian end product” means an article that—

- ~~(1) Is wholly the growth, product, or manufacture of Canada; or~~
- ~~(2) 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 the article, provided that the value of these incidental services does not exceed that of the article itself.~~

~~(c) Delivery of end products.~~ 41 U.S.C. chapter 83 provides a preference for domestic end products for supplies acquired for use in the United States. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for an end product that is a COTS item (See 12.505(a)(1)). In addition, the Contracting Officer has determined that NAFTA applies to this acquisition. Unless otherwise specified, NAFTA applies to all items in the Schedule. The Contractor shall deliver under this contract only domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled “Buy American—Free Trade Agreements—Israeli Trade Act Certificate.” If the Contractor specified in its offer that the Contractor would supply a Canadian end product, then the Contractor shall supply a Canadian end product or, at the Contractor's option, a domestic end product.

Alternate II (MAY 2014[DATE]). As prescribed in 25.1101(b)(1)(iii), add the following definition to paragraph (a) of the basic clause, and substitute the following paragraph (c) for paragraph (c) of the basic clause:

~~“Canadian end product” an article that—~~

- ~~(1) Is wholly the growth, product, or manufacture of Canada; or~~
- ~~(2) 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 the article, provided that the value of those incidental services does not exceed that of the article itself.~~

(c) *Delivery of end products.* 41 U.S.C. chapter 83 provides a preference for domestic end products for supplies acquired for use in the United States. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for an end product that is a COTS item (See 12.505(a)(1)). In addition, the Contracting Officer has determined that NAFTA and the Israeli Trade Act apply[ies] to this acquisition. Unless otherwise specified, these[this] trade agreements apply[ies] to all items in the Schedule. The Contractor shall deliver under this contract only domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled “Buy American—Free Trade Agreements— Israeli Trade Act.” If the Contractor specified in its offer that the Contractor would supply a Canadian end product or an Israeli end product, then the Contractor shall supply a Canadian end product, an Israeli end product or, at the Contractor's option, a domestic end product.

Alternate III (May 2014). As prescribed in 25.1101(b)(1)[(iii)](iv), delete the definition of “Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end product” and add in its place the following definition of “Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian end product” in paragraph (a) of the basic clause; and substitute the following paragraph (c) for paragraph (c) of the basic clause:

* * * * *

52.225-4 Buy American—Free Trade Agreement—Israeli Trade Act Certificate.

As prescribed in 25.1101(b)(2)(i), insert the following provision:

**BUY AMERICAN—FREE TRADE AGREEMENTS—ISRAELI TRADE ACT CERTIFICATE
(MAY 2014)**

(a) The offeror certifies that each end product, except those listed in paragraph (b) or (c) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The terms “Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end product,” “commercially available off-the-shelf (COTS) item,” “component,” “domestic end product,” “end product,” “foreign end product,” “Free Trade Agreement country,” “Free Trade

Agreement country end product,” “Israeli end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American—Free Trade Agreements—Israeli Trade Act.”

(b) The offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end products) or Israeli end products as defined in the clause of this solicitation entitled “Buy American—Free Trade Agreements— Israeli Trade Act”:

FREE TRADE AGREEMENT COUNTRY END PRODUCTS (OTHER THAN BAHRAINIAN, MOROCCAN, OMANI, PANAMANIAN, OR PERUVIAN END PRODUCTS) OR ISRAELI END PRODUCTS:

Table 7

Line Item No.	-	Country of Origin
-	-	-
-	-	-
-	-	-

(List as necessary)

(c) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (b) of this provision) as defined in the clause of this solicitation entitled “Buy American—Free Trade Agreements—Israeli Trade Act.” The offeror shall list as other foreign end products those 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 (2) of the definition of “domestic end product.” Other Foreign End Products:

Table 8

Line Item No.	-	Country of Origin
-	-	-
-	-	-
-	-	-

(List as necessary)

(d) The Government will evaluate offers in accordance with the policies and procedures of Part 25 of the Federal Acquisition Regulation.

(End of provision)

~~Alternate I **[[Reserved]]** (MAY 2014). As prescribed in 25.1101(b)(2)(ii), substitute the following paragraph (b) for paragraph (b) of the basic provision:~~

~~(b) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled “Buy American—Free Trade Agreements—Israeli Trade Act—Balance of Payments Program”:~~

~~Canadian End Products:~~

~~Line Item No.~~

~~(List as necessary)~~

Alternate II (MAY 2014**[DATE]**). As prescribed in 25.1101(b)(2)~~[(ii)]~~(iii), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled “Buy American—Free Trade Agreements—Israeli Trade Act—Balance of Payments Program”:

~~Canadian or Israeli End Products~~

~~Table 9~~

Line Item No.	-	Country of Origin
-	-	-
-	-	-
-	-	-

~~(List as necessary)~~

Alternate III (MAY 2014). As prescribed in 25.1101(b)(2)~~[(iii)]~~(iv), substitute the following paragraph (b) for paragraph (b) of the basic provision:

* * * * *

52.225-5 Trade Agreements.

As prescribed in 25.1101(c)(1), insert the following clause:

TRADE AGREEMENTS (OCT 2019[DATE]**)**

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

Caribbean Basin country end product—

(1) Means an article that—

(i)(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; and

(ii) Is not excluded from duty-free treatment for Caribbean countries under 19 U.S.C. 2703(b).

(A) For this reason, the following articles are not Caribbean Basin country end products:

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

(2) Petroleum, or any product derived from petroleum;

(3) 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 Harmonized Tariff Schedule of the United States (HTSUS) column 2 rates of duty apply (*i.e.*, Afghanistan, Cuba, Laos, North Korea, and Vietnam); and

(4) Certain of the following: textiles and apparel articles; footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel; or handloomed, handmade, and folklore articles;

(B) Access to the HTSUS to determine duty-free status of articles of these types is available at <https://usitc.gov/tata/hts/index.htm>. In particular, see the following:

(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; and

(2) Refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the acquisition, includes services (except transportation

services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

Designated country means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, 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, Moldova, Montenegro, Netherlands, New Zealand, 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)”), Ukraine, or United Kingdom);

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

(3) 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

(4) 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, an FTA 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 the contract for public use.

Free Trade Agreement country end product means an article that—

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

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an FTA 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 the article, provided that the value of those incidental services does not exceed that of the article itself.

Least developed country end product means an article that—

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

(2) 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 the article, provided that the value of those incidental services does not exceed that of the article itself.

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

U.S.-made end product means an article that is mined, produced, or manufactured in the United States or that 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—

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

(2) 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 the article, provided that the value of those incidental services does not exceed that of the article itself. (b) *Delivery of end products.* The Contracting Officer has determined that the WTO GPA and FTAs apply to this acquisition. Unless otherwise specified, these trade agreements apply to all items in the Schedule. The Contractor shall deliver under this contract only U.S.-made or designated country end products except to the extent that, in its offer, it specified delivery of other end products in the provision entitled “Trade Agreements Certificate.”

(End of clause)

* * * * *

52.225-11 Buy American—Construction Materials Under Trade Agreements.

As prescribed in 25.1102(c), insert the following clause:

BUY AMERICAN—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (~~OCT~~
2019[DATE])(a) *Definitions.* As used in this clause—

* * * * *

“Designated country” means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, 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, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, Ukraine, or United Kingdom);

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

* * * * *

Alternate 1 (~~MAY 2014~~[DATE]). As prescribed in 25.1102(c)(3), add the following definition of “Bahrainian, Mexican, or Omani construction material” to paragraph (a) of the basic clause, and substitute the following paragraphs (b)(1) and (b)(2) for paragraphs (b)(1) and (b)(2) of the basic clause:

“Bahrainian, Mexican, or Omani construction material” means a construction material that—

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

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

(b) *Construction materials.* (1) This clause implements 41 U.S.C. chapter 83, Buy American, by providing a preference for domestic construction material. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for construction material that is a COTS item. (See FAR 12.505(a)(2)). In addition, the Contracting Officer has determined that the WTO GPA and all the Free Trade Agreements except the Bahrain FTA, ~~NAFTA~~[**United States-Mexico-Canada Agreement**], and the Oman FTA apply to this acquisition. Therefore,

the Buy American statute restrictions are waived for designated country construction materials other than Bahrainian, Mexican, or Omani construction materials.

* * * * *

52.225-23 Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials Under Trade Agreements.

As prescribed in 25.1102(e), insert the following clause:

REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS—
BUY AMERICAN
STATUTE—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (~~OGT~~
2019[DATE])

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

* * * * *

“Designated country” means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, 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, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, Ukraine, or United Kingdom);

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

* * * * *

“Recovery Act designated country” means any of the following countries:

(3) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, 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, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, Ukraine, or United Kingdom);

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

* * * * *