OFFICE OF THE ASSISTANT SECRETARY OF WAR
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

ACQUISITION
AND SUSTAINMENT

In reply refer to
DARS Tracking Number: 2026-O0041

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES SPECIAL OPERATIONS COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY (PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY (PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE (CONTRACTING)
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation—Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 25, Defense FAR Supplement (DFARS) Part 225

Effective February 17, 2026, contracting officers shall use—

- The revised FAR Part 25, Foreign Acquisition, published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-25 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov).

- The attached DFARS Part 225, Foreign Acquisition, in lieu of the text codified at 48 CFR chapter 2; and

- The attached DFARS Procedures, Guidance, and Information (PGI) 225, Foreign Acquisition, in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.

This class deviation implements the following:

- Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR "should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not advance these objectives should be removed."

- Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base, which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.

- The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.

This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.

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John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and Acquisition Policy

Attachments:
As stated

PART 225—FOREIGN ACQUISITION

225.001 General.
For guidance on evaluating offers of foreign end products, see PGI 225.001.

225.003 Definitions.
As used in this part—

"600 series of the Commerce Control List" means the series of 5-character export control classification numbers (ECCNs) of the Commerce Control List of the Export Administration Regulations in 15 CFR part 774, supplement no. 1, that have a "6" as the third character. The 600 series constitutes the munitions and munitions-related ECCNs within the larger Commerce Control List. (See definition of "600 series" in 15 CFR 772.)

"Caribbean Basin country end product" includes petroleum or any product derived from petroleum.

"Defense equipment" means any equipment, item of supply, component, or end product purchased by DoD.

"Domestic concern" means—

(1) A concern incorporated in the United States (including a subsidiary that is incorporated in the United States, even if the parent corporation is a foreign concern); or

(2) An unincorporated concern having its principal place of business in the United States.

"Domestic end product" means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured end product 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 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with FAR 25.101(d); or award is made before January 1, 2030, for a foreign end product that exceeds 55 percent domestic content (see 225.103(b)(ii)). 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). Components of unknown origin are treated as foreign. 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 commercially available off-the-shelf (COTS) item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

"Eligible product" means, instead of the definition in FAR 25.003—

(1) A foreign end product that—

(i) Is in a category listed in 225.401-70; and

(ii) Is not subject to discriminatory treatment, due to the applicability of a trade agreement to a particular acquisition;

(2) A foreign construction material that is not subject to discriminatory treatment, due to the applicability of a trade agreement to a particular acquisition; or

(3) A foreign service that is not subject to discriminatory treatment, due to the applicability of a trade agreement to a particular acquisition.

"Foreign concern" means any concern other than a domestic concern.

"Free Trade Agreement country" does not include Oman.

"Nonqualifying country" means a country other than the United States or a qualifying country.

"Nonqualifying country component" means a component mined, produced, or manufactured in a nonqualifying country.

"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 (see 225.872-1(b) for additional guidance)
- Belgium
- Canada
- Czech Republic
- Denmark
- Egypt
- Estonia
- Finland
- France
- Germany
- Greece
- Israel
- Italy
- Japan
- Latvia
- Lithuania
- Luxembourg
- Netherlands
- Norway
- Poland
- Portugal
- Slovenia
- 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—

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

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

(i) The cost of the following types of components exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract:

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

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

(C) 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. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item. Qualifying country end product is also defined in the clause at 252.225-7021, Trade Agreements.

"Qualifying country offer" means an offer of a qualifying country end product, including the price of transportation to destination.

"Source", when restricted by words such as foreign, domestic, or qualifying country, means the actual manufacturer or producer of the end product or component.

"United States Munitions List" means the munitions list of the International Traffic in Arms Regulation in 22 CFR part 121.

225.070 Reporting of acquisition of end products manufactured outside the United States.
Follow the procedures at PGI 225.070 for entering the data on the acquisition of end products manufactured outside the United States.

SUBPART 225.1—BUY AMERICAN—SUPPLIES

225.101 General.

(a) For DoD, the following two-part test determines whether a manufactured end product is a domestic end product:

(i) The end product is manufactured in the United States; and

(ii)(A) Except for an end product that consists wholly or predominantly of iron or steel or a combination of both, the cost of its U.S. and qualifying country components exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, but see paragraph (d) of this section. This test is applied to end products only and not to individual components.

(B) For an end product that consists wholly or predominantly of iron or steel or a combination of both, the cost of iron and steel not produced in the United States or a qualifying country must constitute less than 5 percent of the cost of all the

components used in the end product. The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding commercially available off-the-shelf (COTS) fasteners. The domestic content test of the Buy American statute has not been waived for acquisitions of COTS items in this category, except for COTS fasteners.

(c) Additional exceptions that allow the purchase of foreign end products are listed at 225.103.

(d)(1) In lieu of the threshold increases in FAR 25.101(a)(2)(i), use the domestic content threshold increases in paragraph (a)(ii) of this section. The senior procurement executive may approve application of an alternate domestic content test, under which the domestic content threshold in effect at the time of contract award will apply to the entire period of performance of the contract, following consultation with the Office of Management and Budget's Made in America Office. See PGI 225.101 for guidance on documentation requirements when the senior procurement executive approves application of an alternate domestic content test.

(2) When the senior procurement executive allows for application of an alternate domestic content test for the contract pursuant to FAR 25.101(d)(1) (but see paragraph (d)(1) of this section)—

(A) See 225.601(2)(ii) for use of alternate II of the clause at 252.225-7001, Buy American and Balance of Payments Program;

(B) See 225.601(9) for use of the basic or alternate provision at 252.225-7035, Buy American—Free Trade Agreements—Balance of Payments Program Certificate, or the basic or alternate clause at 252.225-7036, Buy American—Free Trade Agreements—Balance of Payments Program; and

(C) See 225.601(10)(i) for use of the basic or alternate clause at 252.225-7036, Buy American—Free Trade Agreements—Balance of Payments Program.

225.103 Exceptions.

(a)(i)(A) 225.872 lists public interest exceptions for certain countries.

(B) For procurements covered by the World Trade Organization Government Procurement Agreement, the Under Secretary of Defense (Acquisition and Sustainment) has determined that applying the Buy American statute to end products that are substantially transformed in the United States is inconsistent with the public interest.

(ii)(A) Normally, use the evaluation procedures in subpart 225.5, but consider recommending a public interest exception if the purposes of the Buy American statute are not served, or to meet a need set forth in 10 U.S.C. 4861. For example, a public interest exception may be appropriate—

(*1*) If accepting the low domestic offer will involve substantial foreign expenditures, or accepting the low foreign offer will involve substantial domestic expenditures;

(*2*) To ensure access to advanced state-of-the-art commercial technology; or

(*3*) To maintain the same source of supply for spare and replacement parts (also see paragraph (b)(iii)(B) of this section)—

(*i*) For an end item that qualifies as a domestic end product; or

(*ii*) In order not to impair integration of the military and commercial industrial base.

(B) Except as provided in PGI 225.872-4, process a determination for a public interest exception after consideration of the factors in 10 U.S.C. 4861—

(*1*) At a level above the contracting officer for acquisitions valued at or below the simplified acquisition threshold;

(*2*) By the head of the contracting activity for acquisitions with a value greater than the simplified acquisition threshold but less than $2 million; or

(*3*) By the agency head for acquisitions valued at $2 million or more.

(b)(i) A determination is required that an article, material, or supply is not reasonably available when—

(A) Domestic offers are insufficient to meet the requirement; and

(B) Award will be made on other than a qualifying country or eligible end product.

(ii) A determination is not required before January 1, 2030, if an offer is received for a foreign end product that exceeds 55 percent domestic content. The determination must be approved—

(A) At a level above the contracting officer for acquisitions valued at or below the simplified acquisition threshold;

(B) By the chief of the contracting office for acquisitions with a value greater than the simplified acquisition threshold but less than $2 million; or

(C) By the head of the contracting activity or immediate deputy for acquisitions valued at $2 million or more.

(iii) A separate determination whether an article is reasonably available is not required for the following articles because DoD has already determined that these articles are not reasonably available from domestic sources:

(A) Spare or replacement parts that must be acquired from the original foreign manufacturer or supplier.

(B) Foreign drugs acquired by the Defense Supply Center, Philadelphia, when the Director, Pharmaceuticals Group, Directorate of Medical Materiel, determines that only the requested foreign drug will fulfill the requirements.

(iv) Under coordinated acquisition (see subpart 208.70), the determination is the responsibility of the requiring department when the requiring department specifies acquisition of a foreign end product.

(c) The cost of a domestic end product is unreasonable if it is not the low evaluated offer when evaluated under subpart 225.5.

225.106 Determining reasonableness of cost.

(b) Use an evaluation factor of 50 percent instead of the factors specified in FAR 25.106(b)(1)(i) and (c)(1)(i).

225.170 Acquisition from or through other Government agencies.
Contracting activities must apply the evaluation procedures in subpart 225.5 when using Federal supply schedules.

SUBPART 225.2—BUY AMERICAN—CONSTRUCTION MATERIALS

225.202 Exceptions.
(a)(2) A nonavailability determination is not required for construction materials listed in FAR 25.104(a). For other materials, a nonavailability determination must be approved at the levels specified in 225.103(b)(ii). Use the estimated value of the construction materials to determine the approval level. A nonavailability determination is not required before January 1, 2030, if an offer is received for foreign construction material that exceeds 55 percent domestic content.

225.206 Noncompliance.

(c)(4) Prepare any report of noncompliance in accordance with the procedures at 209.406-3 or 209.407-3.

225.270 Energy savings service contracts.
If construction and construction materials will be used during the performance of a contract for DoD energy savings service requirements, see PGI 225.270 for additional guidance.

SUBPART 225.3—[RESERVED]

SUBPART 225.4—TRADE AGREEMENTS

225.401 Exceptions.

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

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

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

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

(B) [Reserved].

225.401-70 End products subject to trade agreements.

Acquisitions of end products in the following product service groups (PSGs) are covered by trade agreements if the value of the acquisition is at or above the applicable trade agreement threshold and no exception applies. If an end product is not in one of the listed groups, the trade agreements do not apply. The definition of Caribbean Basin country end products in FAR 25.003 excludes those end products that are not eligible for duty-free treatment under 19 U.S.C. 2703(b). Therefore, certain watches, watch parts, and luggage from certain Caribbean Basin countries are not eligible products. However, 225.003 expands the definition of Caribbean Basin country end products to include petroleum and any product derived from petroleum, in accordance with Section 8094 of Pub. L. 103-139.

PSG	Category/Description
22	Railway equipment
23	Motor vehicles, trailers, and cycles (except 2305, 2350, and buses under 2310)
24	Tractors
25	Vehicular equipment components
26	Tires and tubes
29	Engine accessories
30	Mechanical power transmission equipment
32	Woodworking machinery and equipment
34	Metalworking machinery
35	Service and trade equipment
36	Special industry machinery (except 3690)
37	Agricultural machinery and equipment
38	Construction, mining, excavating, and highway maintenance equipment

PSG	Category/Description
39	Materials handling equipment
40	Rope, cable, chain, and fittings
41	Refrigeration, air conditioning, and air circulating equipment
42	Fire fighting, rescue, and safety equipment; and environmental protection equipment and materials
43	Pumps and compressors
44	Furnace, steam plant, and drying equipment (except 4470)
45	Plumbing, heating, and waste disposal equipment
46	Water purification and sewage treatment equipment
47	Pipe, tubing, hose, and fittings
48	Valves
49	Maintenance and repair shop equipment (except 4920-4927, 4931-4935, 4960, 4970)
53	Hardware and abrasives
54	Prefabricated structures and scaffolding
55	Lumber, millwork, plywood, and veneer
56	Construction and building materials
61	Electric wire, and power and distribution equipment
62	Lighting fixtures and lamps
63	Alarm, signal, and security detection systems
65	Medical, dental, and veterinary equipment and supplies
66	Instruments and laboratory equipment (except aircraft clocks under 6645)—See FAR 25.003 exclusion of certain watches and watch parts for certain Caribbean Basin countries
67	Photographic equipment
68	Chemicals and chemical products
69	Training aids and devices
70	Automatic data processing equipment (including firmware), software, supplies and support equipment
71	Furniture
72	Household and commercial furnishings and appliances
73	Food preparation and serving equipment
74	Office machines, text processing systems and visible record equipment
75	Office supplies and devices
76	Books, maps, and other publications
77	Musical instruments, phonographs, and home-type radios
78	Recreational and athletic equipment
79	Cleaning equipment and supplies
80	Brushes, paints, sealers, and adhesives
81	Containers, packaging, and packing supplies (except 8140)

PSG	Category/Description
83	Pins, needles, and sewing kits (only part of 8315) and flagstaffs, flagpoles, and flagstaff trucks (only part of 8345)
84	Luggage (only 8460)—See FAR 25.003 for exclusion of luggage for Caribbean Basin countries
85	Toiletries
87	Agricultural supplies
88	Live animals
89	Tobacco products (only 8975)
91	Fuels, lubricants, oils, and waxes
93	Nonmetallic fabricated materials
94	Nonmetallic crude materials
96	Ores, minerals, and their primary products
99	Miscellaneous

225.402 General.
To estimate the value of the acquisition, use the total estimated value of end products covered by trade agreements (see 225.401-70).

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

(c) For acquisitions of supplies covered by the World Trade Organization Government Procurement Agreement, acquire only U.S.-made, qualifying country, or designated country end products unless—

(i) The contracting officer determines that offers of U.S.-made, qualifying country, or designated country end products from responsive, responsible offerors are either—

(A) Not received; or

(B) Insufficient to fill the Government's requirements. In this case, accept all responsive, responsible offers of U.S.-made, qualifying country, and eligible products before accepting any other offers; or

(ii) A national interest waiver under 19 U.S.C. 2512(b)(2) is granted. Such waivers are on a case-by-case basis. Except as delegated in paragraphs (c)(i)(A) and (B) of this section, submit any request for a national interest waiver to the Principal Director, Defense Pricing, Contracting, and Acquisition Policy in accordance with department or agency procedures. Include supporting rationale with the request.

(A) The head of the contracting activity may approve a national interest waiver for a purchase by an overseas purchasing activity. A written statement from the requiring activity that the products being acquired are critical for the support of U.S. forces stationed abroad must accompany the waiver request.

(B) The Commander or Director, Defense Energy Support Center, may approve national interest waivers for purchases of fuel for use by U.S. forces overseas.

225.408 Procedures.

(a)(4) The requirements of FAR 25.408(a)(4), on submission of offers in U.S. dollars, do not apply to overseas acquisitions or to Defense Energy Support Center post, camp, or station overseas requirements.

SUBPART 225.5—EVALUATING FOREIGN OFFERS—SUPPLY CONTRACTS

225.502 Application.

(a) [Reserved]

(b) Use the following procedures instead of the procedures in FAR 25.502(b) for acquisitions subject to the World Trade Organization Government Procurement Agreement:

(i) Consider only offers of U.S.-made, qualifying country, or designated country end products, except as permitted by 225.403.

(ii) If price is the determining factor, award on the low offer.

(c) Use the following procedures instead of those in FAR 25.502(c) for acquisitions subject to the Buy American statute or the Balance of Payments Program:

(i)(A) If the acquisition is subject only to the Buy American statute or the Balance of Payments Program, then only qualifying country end products are exempt from application of the Buy American or Balance of Payments Program evaluation factor.

(B) If the acquisition is also subject to a Free Trade Agreement, then eligible products of the applicable Free Trade Agreement country are also exempt from application of the Buy American or Balance of Payments Program evaluation factor (but see 225.106).

(ii) If price is the determining factor, use the following procedures:

(A) If the low offer is a domestic offer, award on that offer.

(B) If no domestic offers exist, award on the low offer (see example in PGI 225.504(1)).

(C) If the low offer is a foreign offer that is exempt from application of the Buy American or Balance of Payments Program evaluation factor, award on that offer. If the low offer is a qualifying country offer from a country listed at 225.872-1(b), execute a determination in accordance with 225.872-4. A qualifying country offer is subject to the domestic content requirement for end products that are wholly or predominantly of iron or steel or a combination of both.

(D) If the low offer is a foreign offer that is not exempt from application of the Buy American or Balance of Payments Program evaluation factor, and another foreign offer is received that is exempt and is lower than the lowest domestic offer, award on the low foreign offer (see example in PGI 225.504(2)).

(E) Otherwise, apply the 50 percent evaluation factor to the low foreign offer.

(*1*) If the price of the low domestic offer is less than the evaluated price of the low foreign offer, award on the low domestic offer (see example in PGI 225.504(3)).

(*2*) If the evaluated price of the low foreign offer remains less than the low domestic offer, award on the low foreign offer (see example in PGI 225.504(4)).

(iii) If price is not the determining factor, use the following procedures:

(A) If domestic offers are received, apply the 50 percent Buy American or Balance of Payments Program evaluation factor to all foreign offers unless an exemption applies.

(B) Evaluate in accordance with the criteria of the solicitation.

(C) If these procedures will not result in award on a domestic offer, reevaluate offers without the 50 percent factor. If this will result in award on an offer to which the Buy American statute or Balance of Payments Program applies, but evaluation in accordance with paragraph (c)(ii) of this section would result in award on a domestic offer, proceed with award only after execution of a determination in accordance with 225.103(a)(ii)(B) (domestic preference would be inconsistent with the public interest).

225.503 Group offers.
Evaluate group offers in accordance with FAR 25.503, but also apply the evaluation procedures of 225.502.

225.504 Evaluation examples.
For examples that illustrate the evaluation procedures in 225.502(c)(ii), see PGI 225.504.

SUBPART 225.6—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

225.600 Scope of subpart.
This subpart prescribes the clauses that implement subparts 225.1 through 225.5 and 225.7 through 225.10. The clauses that implement subparts 225.70 through 225.75 are prescribed within those subparts.

225.601 Acquisition of supplies.

(1) Insert 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 products and commercial services, that includes the basic or the alternate of the clause at 252.225-7001, Buy American and Balance of Payments Program.

(2)(i) Insert the basic or the alternate of the clause at 252.225-7001, Buy American and Balance of Payments Program, instead of the clause at FAR 52.225-1, Buy American —Supplies, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, unless—

(A) All line items will be acquired from a particular source or sources under the authority of FAR 6.103-3;

(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;

(C) The acquisition is for supplies for use within the United States and an exception to the Buy American statute applies, e.g., nonavailability or public interest (see FAR 25.103 and 225.103);

(D) The acquisition is for supplies for use outside the United States and an exception to the Balance of Payments Program applies (see 225.7501); or

(E) One or more of the basic or the alternates of the following clauses will apply to all line items in the contract:

(*1*) 252.225-7021, Trade Agreements.

(*2*) 252.225-7036, Buy American —Free Trade Agreements—Balance of Payments Program.

(ii) Insert alternate II of the clause in lieu of the basic clause in solicitations and contracts if an alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

(3) Insert the clause at 252.225-7002, Qualifying Country Sources as Subcontractors, in solicitations and contracts that include the basic or one of the alternates of the following clauses:

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

(ii) 252.225-7021, Trade Agreements.

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

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

(5) Insert 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 products and commercial services, that include the clause at 252.225-7021, Trade Agreements. Do not include the provision if the solicitation includes alternate III of the clause at 252.225-7021. If the solicitation includes the provision at FAR 52.204-7, do not separately list the provision 252.225-7020 in the solicitation.

(6) Insert the basic or the 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 products and commercial services, 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 $174,000, and none of the exceptions at FAR 25.401(a) applies.

(i) Insert the alternate III clause in lieu of the basic clause in solicitations and contracts when an alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

(ii) Do not insert the basic or the alternate of the clause if purchase from foreign sources is restricted, unless the contracting officer anticipates a waiver of the restriction.

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

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

(i) Submit an offer; or

(ii) Receive a subcontract exceeding $1 million.

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

(i) Submit an offer; or

(ii) Receive a subcontract exceeding $1 million.

(9) Insert 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 products and commercial services, that include the basic or an alternate of the clause at 252.225-7036, Buy American—Free Trade Agreements—Balance of Payments Program.

(i) Insert the basic provision in solicitations when the basic or alternate VI of the clause at 252.225-7036 is used.

(ii) Insert the alternate I provision when the solicitation includes alternate I or alternate VII of the clause at 252.225-7036.

(iii) Insert the alternate IV provision when the solicitation includes alternate IV or alternate X of the clause at 252.225-7036.

(10)(i) Except as provided in paragraph (10)(ii) of this section, insert 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 products and commercial services, for the items listed at 225.401-70, when the estimated value is less than $174,000, unless an exception at FAR 25.401 or 225.401 applies.

(A) Insert the basic clause in solicitations and contracts when the estimated value equals or exceeds $100,000, but is less than $174,000.

(B) Insert the alternate I clause in solicitations and contracts when the estimated value is less than $102,280.

(C) Insert the alternate IV clause in solicitations and contracts when the estimated value equals or exceeds $102,280 but is less than $174,000.

(D) Insert the alternate VI clause in lieu of the basic clause in solicitations and contracts, when—

(*1*) The estimated value equals or exceeds $100,000 but is less than $174,000; and

(*2*) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

(E) Insert the alternate VII clause in lieu of the alternate I clause in solicitations and contracts when—

(1) The estimated value is less than $102,280; and

(2) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

(F) Insert the alternate X clause in lieu of the alternate IV clause in solicitations and contracts, when—

(1) The estimated value equals or exceeds $102,280 but is less than $174,000; and

(2) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

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

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

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

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

225.603 Other provisions and clauses.

(1) Unless the contracting officer knows that the prospective contractor is not a domestic concern, insert the clause at 252.225-7005, Identification of Expenditures in the United States, in solicitations and contracts that—

(i) Exceed the simplified acquisition threshold; and

(ii) Are for the acquisition of—

(A) Supplies for use outside the United States;

(B) Construction to be performed outside the United States; or

(C) Services to be performed primarily outside the United States.

(2) Insert the clause at 252.225-7041, Correspondence in English, in solicitations and contracts when contract performance will be wholly or in part in a foreign country.

(3) Insert the provision at 252.225-7042, Authorization to Perform, in solicitations when contract performance will be wholly or in part in a foreign country. If the solicitation includes the provision at FAR 52.204-7, do not separately list the provision 252.225-7042 in the solicitation.

SUBPART 225.7—CONTRACTS PERFORMED OUTSIDE THE UNITED STATES

225.701 Contractor personnel in a designated operational area or supporting a diplomatic or consular mission outside the United States.

225.701-1 Scope.

(a) *Performance in a designated operational area*, as used in this section, means performance of a service or construction, as required by the contract. For supply contracts, the term includes services associated with the acquisition of supplies (e.g., installation or maintenance), but does not include production of the supplies or associated overhead functions.

(c) For DoD, this section also applies to all personal services contracts.

225.701-4 Contract clause.

(1) Use the clause at FAR 52.225-19, Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States, in accordance with the prescription at FAR 25.701-4, except that—

(i) Use the clause also in personal services contracts with individuals; and

(ii) Do not use the clause when all contractor personnel performing outside the United States will be covered by the clause at 252.225-7040.

(2) When using the clause at FAR 52.225-19, inform the contractor that the Synchronized Predeployment and Operational Tracker (SPOT) is the appropriate automated system to use for the list of contractor personnel required by paragraph (g) of the clause. Information on the SPOT system is available at *https://www.acq.osd.mil/asds/log/cso/ocs/spot.html*.

225.702 Contractors performing private security functions outside the United States.

225.702-6 Contract clause.

Use the clause at 252.225-7039, Defense Contractors Performing Private Security Functions Outside the United States, instead of FAR clause 52.225-26, Contractors Performing Private Security Functions Outside the United States, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, when private security functions are to be performed outside the United States in—

(1) Contingency operations;

(2) Combat operations, as designated by the Secretary of Defense;

(3) Other significant military operations (as defined in 32 CFR part 159), designated by the Secretary of Defense, and only upon agreement of the Secretary of Defense and the Secretary of State;

(4) Peace operations, consistent with Joint Publication 3-07.3; or

(5) Other military operations or military exercises, when designated by the Combatant Commander.

225.770 Contracts requiring performance or delivery in a foreign country.

(a) If the acquisition requires the performance of services or delivery of supplies in an area outside the United States, follow the procedures at PGI 225.770(a).

(b) For work performed in Germany, eligibility for logistics support or base privileges of contractor employees is governed by U.S.-German bilateral agreements.

(c) For work performed in Japan or Korea, see PGI 225.770(c) for information on bilateral agreements and policy relating to contractor employees in Japan or Korea.

(d) For work performed in the U.S. Central Command area of responsibility, follow the procedures for theater business clearance/contract administration delegation instructions at PGI 225.770(d).

225.771 Contractor personnel supporting U.S. Armed Forces deployed outside the United States.
For additional information on contractor personnel supporting U.S. Armed Forces, see PGI 225.771.

225.771-1 Scope.

(a) This section applies to contracts that involve contractor personnel supporting U.S. Armed Forces deployed outside the United States in—

(1) Contingency operations;

(2) Humanitarian or peacekeeping operations; or

(3) Other military operations or military exercises, when designated by the combatant commander.

(b) Any of the types of operations listed in paragraph (a) of this section may include stability operations such as—

(1) Establishment or maintenance of a safe and secure environment; or

(2) Provision of emergency infrastructure reconstruction, humanitarian relief, or essential governmental services (until feasible to transition to local government).

225.771-2 Definition.
As used in this section—

"Designated operational area" means a geographic area designated by the combatant commander or subordinate joint force commander for the conduct or support of specified military operations. (See PGI 225.771-2 for additional information on designated operational areas.)

225.771-3 Government support.

(a) Government support that may be authorized or required for contractor personnel performing in a designated operational area may include, but is not limited to, the types of support listed in PGI 225.771-3(a).

(b) The agency must provide logistical or security support only when the appropriate agency official, in accordance with agency guidance, determines in coordination with the combatant commander that—

(1) Such Government support is available and is needed to ensure continuation of essential contractor services; and

(2) The contractor cannot obtain adequate support from other sources at a reasonable cost.

(c) Specify in the solicitation and contract—

(1) Valid terms, approved by the combatant commander, that specify the responsible party, if a party other than the combatant commander is responsible for providing protection to the contractor personnel performing in the designated operational area; and

(2) Any other Government support to be provided, and whether this support will be provided on a reimbursable basis, citing the authority for the reimbursement.

(d) *Medical support of contractor personnel.* Provide direction to the contractor when the contractor is required to reimburse the Government for medical treatment or transportation of contractor personnel to a selected civilian facility in accordance with paragraph (c)(2)(ii) of the clause at 252.225-7040. For additional information, see PGI 225.771-3(d).

(e) *Letter of authorization.* Contractor personnel must have a Synchronized Predeployment and Operational Tracker (SPOT)-generated letter of authorization (LOA) signed by the contracting officer in order to process through a deployment center or to travel to, from, or within the designated operational area. The LOA also will identify any additional authorizations, privileges, or Government support that the contractor personnel are entitled to under the contract. For additional information on LOAs, see PGI 225.771-3(e).

225.771-4 Law of war training.

(a) *Basic training.* Basic law of war training is required for all contractor personnel supporting U.S. Armed Forces deployed outside the United States. The basic training normally will be provided through a military-run training center. The contracting officer may authorize the use of an alternate basic training source, provided the servicing DoD legal advisor concurs with the course content.

(b) *Advanced law of war training.* (1) The types of personnel that must obtain advanced law of war training include the following:

(i) Private security contractors.

(ii) Security guards in or near areas of military operations.

(iii) Interrogators, linguists, interpreters, guards, report writers, information technology technicians, or others who will come into contact with enemy prisoners of war, civilian internees, retained persons, other detainees, terrorists, or criminals who are captured, transferred, confined, or detained during or in the aftermath of hostilities.

(iv) Other personnel when deemed necessary by the contracting officer.

(2) If contractor personnel will be required to obtain advanced law of war training, the solicitation and contract must specify—

(i) The types of personnel subject to advanced law of war training requirements;

(ii) Whether the training will be provided by the Government or the contractor;

(iii) If the training will be provided by the Government, the source of the training; and

(iv) If the training will be provided by the contractor, a requirement for coordination of the content with the servicing DoD legal advisor to ensure that training content is commensurate with the duties and responsibilities of the personnel to be trained.

225.771-5 Contract clauses.

Unless otherwise stated, the following deviation provisions and clauses remain in effect until incorporated in the FAR or DFARS or otherwise rescinded:

Use the clause 252.225-7980, Contractor Personnel Performing in the United States Africa Command Area of Responsibility (DEVIATION 2016-O0008)(JUN 2016), in lieu of the clause at DFARS 252.225-7040, Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States, in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of

commercial items, that will require contractor personnel to perform in the United States Africa Command (AFRICOM) area of responsibility.

Use the clause 252.225-7995, Contractor Personnel Performing in the United States Central Command Area of Responsibility (DEVIATION 2017-O0004) (SEP 2017), in lieu of DFARS 252.225-7040, Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States, in solicitations and contracts that will require contractor personnel to perform in the United States Central Command area of responsibility.

See Class Deviation 2017-O0009 (SEP 2017), Products and Services from the African Host Nation—Djibouti, implementing section 889A of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017, Enhanced Authority to Acquire Products and Services Produced in Africa in Support of Certain Activities. Contracting officers shall use the procedures and clauses provided when acquiring products and services from the African host nation-Djibouti in support of the covered activities in Djibouti. This authority is not available for procurement of any product on the Ability One Procurement List.

Use the provision at 252.225-7985, Preference for Products or Services from the African Host Nation—Djibouti (SEP 2017) (DEVIATION 2017-O0009), in solicitations that include the clause at 252.225-7986, Requirement for Products or Services from the African Host Nation—Djibouti (SEP 2017) (DEVIATION 2017-O0009).

Use the clause at 252.225-7986, Requirement for Products or Services from the African Host Nation—Djibouti (SEP 2017) (DEVIATION 2017-O0009), in solicitations and contracts that provide a preference for products or services from the African host nation—Djibouti in accordance with Class Deviation 2017-O0009.

Use the clause at 252.225-7977, Acquisition Restricted to Products or Services from the African Host Nation—Djibouti (SEP 2017) (DEVIATION 2017-O0009), in solicitations and contracts that limit competition to products or services from the African host nation—Djibouti in accordance with Class Deviation 2017-O0009.

Use the clause at 252.225-7976, Contractor Personnel Performing in Japan (DEVIATION 2018-O0019) (AUG 2018), in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that will require contractor personnel to perform in Japan. The clause requires DoD contractors to account for contractor personnel and dependents in the Synchronized Predeployment and Operational Tracker, in order for the contractor personnel and dependents to be eligible for coverage under the Status of Forces Agreement.

Use the clause 252.225-7987, Requirements for Contractor Personnel Performing in the U.S. Southern Command Area of Responsibility (DEVIATION 2021-O0004) (FEB 2021), in lieu of the clause at DFARS 252.225-7040, Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States, in solicitations and contracts that require contractor performance in the U.S. Southern Command area of responsibility.

(a) Use the clause at 252.225-7040, Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States, instead of the clause at FAR 52.225-19, Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, for performance in a designated operational area that authorize contractor personnel (including both contractors authorized to accompany the Force (CAAF) and non-CAAF) to support U.S. Armed Forces deployed outside the United States in—

(1) Contingency operations;

(2) Peace operations consistent with Joint Publication 3-07.3; or

(3) Other military operations or military exercises, when designated by the combatant commander or as directed by the Secretary of Defense.

(b) [Reserved]

225.772 Antiterrorism/force protection.

225.772-1 General.
Information and guidance pertaining to DoD antiterrorism/force protection policy for contracts that require performance or travel outside the United States can be obtained from the offices listed in PGI 225.772-1.

225.772-2 Contract clause.

Use the clause at 252.225-7963, Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that require performance or travel outside the United States, except for contracts with—

(a) Foreign governments;

(b) Representatives of foreign governments; or

(c) Foreign corporations wholly owned by foreign governments.

225.773 Contract administration in support of contingency operations.
For additional guidance on contract administration considerations when supporting contingency operations, see PGI 225.773.

225.774 Use of electronic business tools.
See 218.271 concerning the use of electronic business tools in support of a contingency operation or humanitarian or peacekeeping operation.

SUBPART 225.8—OTHER INTERNATIONAL AGREEMENTS AND COORDINATION

225.802 Procedures.

(b) Information on memoranda of understanding and other international agreements is available at PGI 225.802(b).

225.802-70 Contracts for performance outside the United States and Canada.

Follow the procedures at PGI 225.802-70 when placing a contract requiring performance outside the United States and Canada. See also subpart 225.7, Contracts Performed Outside the United States.

225.802-71 End use certificates.

Contracting officers considering the purchase of an item from a foreign source may encounter a request for the signing of a certificate to indicate that the Armed Forces of the United States is the end user of the item, and that the U.S. Government will not transfer the item to third parties without authorization from the Government of the country selling the item. When encountering this situation, refer to DoD Instruction 2040.03, End Use Certificates, for guidance.

225.870 Contracting with Canadian contractors.

225.870-1 General.

(a) The Canadian government guarantees to the U.S. Government all commitments, obligations, and covenants of the Canadian Commercial Corporation under any contract or order issued to the Corporation by any contracting office of the U.S. Government. The Canadian government has waived notice of any change or modification that may be made, from time to time, in these commitments, obligations, or covenants.

(b) For production planning purposes, Canada is part of the defense industrial base (see 225.870-2(b)).

(c) The Canadian Commercial Corporation will award and administer contracts with contractors located in Canada, except for—

(1) Negotiated acquisitions for experimental, developmental, or research work under projects other than the Defense Development Sharing Program;

(2) Acquisitions of unusual or compelling urgency;

(3) Acquisitions at or below the simplified acquisition threshold; or

(4) Acquisitions made by DoD activities located in Canada.

(d) For additional information on production rights, data, and information; services provided by Canadian Commercial Corporation; audit; and inspection, see PGI 225.870-1(d).

225.870-2 Solicitation of Canadian contractors.

(a) If requested, furnish a solicitation to the Canadian Commercial Corporation even if no Canadian firm is solicited.

(b) Handle acquisitions at or below the simplified acquisition threshold directly with Canadian firms and not through the Canadian Commercial Corporation.

225.870-3 Submission of offers.

(a) As indicated in 225.870-4, the Canadian Commercial Corporation is the prime contractor. To indicate acceptance of offers by individual Canadian companies, the Canadian Commercial Corporation issues a letter supporting the Canadian offer and containing the following information:

(1) Name of the Canadian offeror.

(2) Confirmation and endorsement of the offer in the name of the Canadian Commercial Corporation.

(3) A statement that the Corporation shall subcontract 100 percent with the offeror.

(b) When a Canadian offer cannot be processed through the Canadian Commercial Corporation in time to meet the date for receipt of offers, the Corporation may permit Canadian firms to submit offers directly. However, the contracting officer must receive the Canadian Commercial Corporation's endorsement before contract award.

(c) The Canadian Commercial Corporation will submit all sealed bids in terms of U.S. currency. Do not adjust contracts awarded under sealed bidding for losses or gains from fluctuation in exchange rates.

(d) Except for sealed bids, the Canadian Commercial Corporation normally will submit offers and quotations in terms of Canadian currency. The Corporation may, at the time of submitting an offer, elect to quote and receive payment in terms of U.S. currency, in which case the contract—

(1) Must provide for payment in U.S. currency; and

(2) Must not be adjusted for losses or gains from fluctuation in exchange rates.

225.870-4 Contracting procedures.

(a) Except for contracts described in 225.870-1(c)(1) through (4), award individual contracts covering purchases from suppliers located in Canada to the Canadian Commercial Corporation, 350 Albert Street, Suite 700, Ottawa, ON K1R 1A4.

(b) Direct communication with the Canadian supplier is authorized and encouraged in connection with all technical aspects of the contract, provided the Corporation's approval is obtained on any matters involving changes to the contract.

(c) *Requirement for data other than certified cost or pricing data.* (1) DoD has waived the requirement for submission of certified cost or pricing data for the Canadian Commercial Corporation and its subcontractors.

(2) The Canadian Commercial Corporation is not exempt from the requirement to submit data other than certified cost or pricing data, as defined in FAR 2.101. Require the offeror to submit data other than certified cost or pricing data to the extent necessary to determine a fair and reasonable price.

(i) No further approval is required to request data other than certified cost or pricing data from the Canadian Commercial Corporation in the following circumstances:

(A) In a solicitation for a sole source acquisition that is—

(*1*) Cost-reimbursement, if the contract value is expected to exceed $700,000; or

(*2*) Fixed-price, if the contract value is expected to exceed $500 million.

(B) If the Canadian Commercial Corporation submits the only offer in response to a competitive solicitation that meets the thresholds specified in paragraph (c)(2)(i)(A) of this section.

(C) For modifications that exceed $150,000 in contracts that meet the criteria in paragraph (c)(2)(i)(A) or (B) of this section.

(D) In competitive solicitations in which data other than certified cost or pricing data are required from all offerors.

(ii) In any circumstances other than those specified in paragraph (c)(2)(i) of this section, require data other than certified cost or pricing data from the Canadian Commercial Corporation if the head of the contracting activity, or designee no lower than two levels above the contracting officer, determines that data other than certified cost or pricing data are needed (or in the case of modifications that it is reasonably certain that data other than certified cost or pricing data will be needed) in order to determine that the price is fair and reasonable).

(3) Use the provision at 252.215-7003, Requirement for Submission of Data Other Than Certified Cost or Pricing Data—Canadian Commercial Corporation, and the clause at 252.215-7004, Requirement for Submission of Data Other Than Certified Cost or Pricing Data—Modifications—Canadian Commercial Corporation, as prescribed at 215.110(2)(i) and (ii), respectively.

(4) Except for contracts described in 225.870-1(c)(1) through (4), Canadian suppliers will provide required data other than certified cost or pricing data exclusively through the Canadian Commercial Corporation.

(5) If an offeror does not comply with a requirement to submit data necessary to determine price reasonableness or cost realism, see FAR 15.403-1(d).

(d) Identify in the contract, the type of currency, i.e., U.S. or Canadian. Contracts that provide for payment in Canadian currency must—

(1) Quote the contract price in terms of Canadian dollars and identify the amount by the initials "CN", e.g., $1,647.23CN; and

(2) Clearly indicate on the face of the contract the U.S./Canadian conversion rate at the time of award and the U.S. dollar equivalent of the Canadian dollar contract amount.

225.870-5 Contract administration.
Follow the contract administration procedures at PGI 225.870-5.

225.870-6 Termination procedures.
When contract termination is necessary, follow the procedures at 249.7000.

225.870-7 Acceptance of Canadian supplies.
For information on the acceptance of Canadian supplies, see PGI 225.870-7.

225.870-8 Industrial security.
Industrial security for Canada must accord with the U.S.-Canada Industrial Security Agreement of March 31, 1952, as amended.

225.871 North Atlantic Treaty Organization (NATO) cooperative projects.

225.871-1 Scope.
This section implements 22 U.S.C. 2767 and 10 U.S.C. 2350b.

225.871-2 Definitions.
As used in this section—

"Cooperative project" means a jointly managed arrangement—

(1) Described in a written agreement between the parties;

(2) Undertaken to further the objectives of standardization, rationalization, and interoperability of the armed forces of NATO member countries; and

(3) Providing for—

(i) One or more of the other participants to share with the United States the cost of research and development, testing, evaluation, or joint production (including follow-on support) of certain defense articles;

(ii) Concurrent production in the United States and in another member country of a defense article jointly developed; or

(iii) Acquisition by the United States of a defense article or defense service from another member country.

"Other participant" means a cooperative project participant other than the United States.

225.871-3 General.

(a) *Cooperative project authority.* (1) Departments and agencies possessing the necessary authority may enter into cooperative project agreements with NATO or with one or more member countries of NATO under DoDD 5530.3, International Agreements.

(2) Under laws and regulations governing the negotiation and implementation of cooperative project agreements, departments and agencies may enter into contracts, or incur other obligations, on behalf of other participants without charge to any appropriation or contract authorization.

(3) Agency heads are authorized to solicit and award contracts to implement cooperative projects.

(b) Contracts implementing cooperative projects must comply with all applicable laws relating to Government acquisition, unless a waiver is granted under 225.871-4. A waiver of certain laws and regulations may be obtained if the waiver—

(1) Is required by the terms of a written cooperative project agreement;

(2) Will significantly further NATO standardization, rationalization, and interoperability; and

(3) Is approved by the appropriate DoD official.

225.871-4 Statutory waivers.

(a) For contracts or subcontracts placed outside the United States, the Deputy Secretary of Defense may waive any provision of law that specifically prescribes—

(1) Procedures for the formation of contracts;

(2) Terms and conditions for inclusion in contracts;

(3) Requirements or preferences for—

(i) Goods grown, produced, or manufactured in the United States or in U.S. Government-owned facilities; or

(ii) Services to be performed in the United States; or

(4) Requirements regulating the performance of contracts.

(b) No authority exists for waiver of—

(1) Any provision of the Arms Export Control Act (22 U.S.C. 2751);

(2) Any provision of 10 U.S.C. 3201-3205;

(3) The cargo preference laws of the United States, including the Military Cargo Preference Act of 1904 (10 U.S.C. 2631) and the Cargo Preference Act of 1954 (46 U.S.C. 1241(b)); or

(4) Any of the financial management responsibilities administered by the Secretary of the Treasury.

(c) To request a waiver under a cooperative project, follow the procedures at PGI 225.871-4.

(d) Obtain the approval of the Deputy Secretary of Defense before committing to make a waiver in an agreement or a contract.

225.871-5 Directed subcontracting.

(a) The Principal Director, Defense Pricing, Contracting, and Acquisition Policy may authorize the direct placement of subcontracts with particular subcontractors. Directed subcontracting is not authorized unless specifically addressed in the cooperative project agreement.

(b) In some instances, it may not be feasible to name specific subcontractors at the time the agreement is concluded. However, the agreement must clearly state the general provisions for work sharing at the prime and subcontract level. For additional information on cooperative project agreements, see PGI 225.871-5.

225.871-6 Disposal of property.
Dispose of property jointly acquired by the members of a cooperative project under the procedures established in the agreement or in a manner consistent with the terms of the agreement, without regard to any laws of the United States applicable to the disposal of property owned by the United States.

225.871-7 Congressional notification.

(a) Congressional notification is required when DoD makes a determination to award a contract or subcontract to a particular entity, if the determination was not part of the certification made under 22 U.S.C. 2767(f) before finalizing the cooperative agreement.

(1) Departments and agencies must provide a proposed Congressional notice to the Principal Director, Defense Pricing, Contracting, and Acquisition Policy in sufficient time to forward to Congress before the time of contract award.

(2) The proposed notice must include the reason using the authority to designate a particular contractor or subcontractor is necessary.

(b) Congressional notification is also required each time a statutory waiver under 225.871-4 is incorporated in a contract or a contract modification, if such information was not provided in the certification to Congress before finalizing the cooperative agreement.

225.872 Contracting with qualifying country sources.

225.872-1 General.

(a) As a result of memoranda of understanding and other international agreements, DoD has determined it inconsistent with the public interest to apply restrictions of the Buy American statute or the Balance of Payments Program to the acquisition of qualifying country end products from the following qualifying countries:

- Australia
- Belgium
- Canada
- Czech Republic
- Denmark
- Egypt
- Estonia
- Federal Republic of Germany
- Finland
- France
- Greece
- Israel
- Italy
- Japan
- Latvia
- Lithuania
- Luxembourg
- Netherlands
- Norway
- Poland
- Portugal
- Slovenia
- Spain
- Sweden
- Switzerland
- Turkey
- United Kingdom of Great Britain and Northern Ireland.

(b) Individual acquisitions of qualifying country end products or qualifying country components from the following qualifying country may, on a purchase-by-purchase basis (see 225.872-4), be exempted from application of the Buy American statute and the Balance of Payments Program as inconsistent with the public interest:

- Austria.

(c) The determination in paragraph (a) of this subsection does not limit the authority of the Secretary concerned to restrict acquisitions to domestic sources or reject an otherwise acceptable offer from a qualifying country source when considered necessary for national defense reasons.

225.872-2 Applicability.

(a) This section applies to all acquisitions of supplies except those restricted by—

(1) U.S. National Disclosure Policy, DoDD 5230.11, Disclosure of Classified Military Information to Foreign Governments and International Organizations;

(2) U.S. defense mobilization base requirements purchased under the authority of FAR 6.103-3(b)(1), except for quantities in excess of that required to maintain the defense mobilization base. This restriction does not apply to Canadian planned producers.

(i) Review individual solicitations to determine whether this restriction applies.

(ii) Information concerning restricted items may be obtained from the Deputy Assistant Secretary of Defense for Industrial Base Policy;

(3) Other U.S. laws or regulations (e.g., the annual DoD appropriations act); and

(4) U.S. industrial security requirements.

(b) This section does not apply to construction contracts.

225.872-3 Solicitation procedures.

(a) Except for items developed under the U.S./Canadian Development Sharing Program, use the criteria for soliciting and awarding contracts to small business concerns under FAR Part 19 without regard to whether potential qualifying country sources exist for the end product. Do not consider an offer of a qualifying country end product if the solicitation is identified for the exclusive participation of small business concerns.

(b) Send solicitations directly to qualifying country sources. Solicit Canadian sources through the Canadian Commercial Corporation in accordance with 225.870.

(c) Use international air mail if solicitation destinations are outside the United States and security classification permits such use.

(d) If unusual technical or security requirements preclude the acquisition of otherwise acceptable defense equipment from qualifying country sources, review the need for such requirements. Do not impose unusual technical or security requirements solely for the purpose of precluding the acquisition of defense equipment from qualifying countries.

(e) Do not automatically exclude qualifying country sources from submitting offers because their supplies have not been tested and evaluated by the department or agency.

(1) Consider the adequacy of qualifying country service testing on a case-by-case basis. Departments or agencies that must limit solicitations to sources whose items

have been tested and evaluated by the department or agency must consider supplies from qualifying country sources that have been tested and accepted by the qualifying country for service use.

(2) The department or agency may perform a confirmatory test, if necessary.

(3) Apply U.S. test and evaluation standards, policies, and procedures when the department or agency decides that confirmatory tests of qualifying country end products are necessary.

(4) If these provisions might adversely delay service programs, obtain the concurrence of the Under Secretary of Defense (Acquisition and Sustainment), before excluding the qualifying country source from consideration.

(f) Permit industry representatives from a qualifying country to attend symposia, program briefings, prebid conferences (see 15.101), and similar meetings that address U.S. defense equipment needs and requirements. When practical, structure these meetings to allow attendance by representatives of qualifying country concerns.

225.872-4 Individual determinations.
If the offer of an end product from a qualifying country source listed in 225.872-1(b), as evaluated, is low or otherwise eligible for award, prepare a determination and findings exempting the acquisition from the Buy American statute and the Balance of Payments Program as inconsistent with the public interest, unless another exception such as the Trade Agreements Act applies. Follow the procedures at PGI 225.872-4.

225.872-5 Contract administration.

(a) Arrangements exist with some qualifying countries to provide reciprocal contract administration services. Some arrangements are at no cost to either government. To determine whether such an arrangement has been negotiated and what contract administration functions are covered, contact the Office of the Principal Director, Defense Pricing, Contracting, and Acquisition Policy (Contract Policy) via email at *osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil.*

(b) Follow the procedures at PGI 225.872-5(b).

(c) Information on quality assurance delegations to foreign governments is in subpart, Government Contract Quality Assurance.

225.872-6 Request for audit services.
Handle requests for audit services in France, Germany, the Netherlands, or the United Kingdom in accordance with PGI 215.406, but follow the additional procedures at PGI 225.872-6.

225.872-7 Industrial security for qualifying countries.
The required procedures for safeguarding classified defense information necessary for the performance of contracts awarded to qualifying country sources are in the National Industrial Security Program Operating Manual, 32 CFR part 117 (implemented for the Army by AR 380-49; for the Navy by SECNAV Instruction 5510.1H; for the Air Force by

AFI 31-601; for the Defense Information Systems Agency by DCA Instruction 240-110-8; and for the National Imagery and Mapping Agency by NIMA Instruction 5220.22).

225.872-8 Subcontracting with qualifying country sources.
In reviewing contractor subcontracting procedures, ensure that the contract does not preclude qualifying country sources from competing for subcontracts, except when restricted by national security interest reasons, mobilization base considerations, or applicable U.S. laws or regulations (see the clause at 252.225-7002, Qualifying Country Sources as Subcontractors).

225.873 Waiver of United Kingdom commercial exploitation levies.

225.873-1 Policy.

DoD and the Government of the United Kingdom (U.K.) have agreed to waive U.K. commercial exploitation levies and U.S. nonrecurring cost recoupment charges on a reciprocal basis. For U.K. levies to be waived, the offeror or contractor must identify the levies and the contracting officer must request a waiver before award of the contract or subcontract under which the levies are charged.

225.873-2 Procedures.
When an offeror or a contractor identifies a levy included in an offered or contract price, follow the procedures at PGI 225.873-2.

SUBPART 225.9—CUSTOMS AND DUTIES

225.900-70 Definition.
As used in this subpart—

"Component" means any item supplied to the Government as part of an end product or of another component.

225.901 Policy.

Unless the supplies are entitled to duty-free treatment under a special category in the Harmonized Tariff Schedule of the United States (e.g., the Caribbean Basin Economic Recovery Act or a Free Trade Agreement), or unless the supplies already have entered into the customs territory of the United States and the contractor already has paid the duty, DoD will issue duty-free entry certificates for—

(1) Qualifying country supplies (end products and components);

(2) Eligible products (end products but not components) under contracts covered by the World Trade Organization Government Procurement Agreement or a Free Trade Agreement; and

(3) Other foreign supplies for which the contractor estimates that duty will exceed $300 per shipment into the customs territory of the United States.

225.902 Procedures.
Follow the entry and release procedures at PGI 225.902.

225.903 Exempted supplies.

(b)(i) For an explanation of the term "supplies," see PGI 225.903(b)(i).

(ii) The duty-free certificate must be printed, stamped, or typed on the face of, or attached to, Customs Form 7501. A duly designated officer or civilian official of the appropriate department or agency must execute the certificate in the format provided at PGI 225.903(b)(ii).

SUBPART 225.10—ADDITIONAL FOREIGN ACQUISITION REGULATIONS

225.1070 Clause deviations in overseas contracts.
See 201.305 for approval authority for clause deviations in overseas contracts with governments of North Atlantic Treaty Organization (NATO) countries or other allies or with United Nations or NATO organizations.

SUBPART 225.11—[RESERVED]

SUBPART 225.70—AUTHORIZATION ACTS, APPROPRIATIONS ACTS, AND OTHER STATUTORY RESTRICTIONS ON FOREIGN ACQUISITION

225.7000 Scope of subpart.

(a) This subpart states restrictions on the acquisition of foreign products and services, imposed by DoD appropriations and authorization acts and other statutes. Refer to the acts to verify current applicability of the restrictions.

(b) Nothing in this subpart affects the applicability of the Buy American statute or the Balance of Payments Program.

225.7001 Definitions.

As used in this subpart—

"Assembly" means an item forming a portion of a system or subsystem that—

(1) Can be provisioned and replaced as an entity; and

(2) Incorporates multiple, replaceable parts.

"Bearing components" means the bearing element, retainer, inner race, or outer race.

"Component" means any item supplied to the Government as part of an end item or of another component, except that for use in 225.7004-2(b)(6), the term means an article, material, or supply incorporated directly into an end product.

"Covered country" means—

(1) The Democratic People's Republic of North Korea;

(2) The People's Republic of China;

(3) The Russian Federation; and

(4) The Islamic Republic of Iran (10 U.S.C. 4872 and 4875).

"End item", as used in sections 225.7003 and 225.7018, means the final production product when assembled or completed and ready for delivery under a line item of the contract (10 U.S.C. 4863(m)).

"End product" means supplies delivered under a line item of the contract.

"Large medium-speed diesel engines" means diesel engines whose revolutions per minute (RPM) fall between 300 and 1500 RPM with a displacement greater than 1500 cubic inches per cylinder.

"Structural component of a tent"—

(1) Means a component that contributes to the form and stability of the tent (e.g., poles, frames, flooring, guy ropes, pegs); and

(2) Does not include equipment such as heating, cooling, or lighting.

"Subsystem" means a functional grouping of items that combine to perform a major function within an end item, such as electrical power, altitude control, and propulsion.

225.7002 Restrictions on food, clothing, fabrics, hand or measuring tools, and flags.

225.7002-1 Restrictions.

(a) The following restrictions implement 10 U.S.C. 4862 (the "Berry Amendment"). Except as provided in 225.7002-2, do not acquire—

(1) Any of the following items, either as end products or components, unless the items have been grown, reprocessed, reused, or produced in the United States:

(i) Food.

(ii) Clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing and the materials and components thereof. Clothing includes items such as outerwear, headwear, underwear, nightwear, footwear, hosiery, handwear, belts, badges, and insignia. For additional guidance and examples, see PGI 225.7002-1(a)(1)(ii).

(iii)(A) Tents and the structural components of tents;

(B) Tarpaulins; or

(C) Covers.

(iv) Cotton and other natural fiber products.

(v) Woven silk or woven silk blends.

(vi) Spun silk yarn for cartridge cloth.

(vii) Synthetic fabric or coated synthetic fabric, including all textile fibers and yarns that are for use in such fabrics.

(viii) Canvas products.

(ix) Wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles).

(x) Any item of individual equipment (Product or Service Code (PSC) 8465) manufactured from or containing any of the fibers, yarns, fabrics, or materials listed in this paragraph (a)(1).

(2) Hand or measuring tools, unless the tools were produced in the United States. For additional guidance, see PGI 225.7002-1(a)(2).

(b) In accordance with section 8123 of the Department of Defense Appropriations Act, 2014 (Pub. L. 113-76, division C, title VIII), and the same provision in subsequent Defense appropriations acts, except as provided in 225.7002-2, do not acquire a flag of the United States (PSC 8345), unless such flag, including the materials and components thereof, is manufactured in the United States, consistent with the requirements at 10 U.S.C. 4862. This restriction does not apply to the acquisition of any end items or components related to flying or displaying the flag (e.g., flag poles and accessories).

225.7002-2 Exceptions.

Acquisitions in the following categories are not subject to the restrictions in 225.7002-1:

(a) Acquisitions not exceeding $200,000, except for athletic footwear purchased by DoD for use by members of the Army, Navy, Air Force, or Marine Corps upon their initial entry into the Armed Forces (37 U.S.C. 418(b)(4)).

(b) Acquisitions of any of the items in 225.7002-1, if the secretary concerned determines that items grown, reprocessed, reused, or produced in the United States cannot be acquired as and when needed in a satisfactory quality and sufficient quantity at U.S. market prices. (See the requirement in 205.301 for synopsis within 7 days after contract award when using this exception.)

(1) The following officials are authorized, without power of redelegation, to make such a domestic nonavailability determination:

(i) The Under Secretary of Defense (Acquisition and Sustainment).

(ii) The Secretary of the Army.

(iii) The Secretary of the Navy.

(iv) The Secretary of the Air Force.

(v) The Director of the Defense Logistics Agency.

(2) The supporting documentation for the determination must include an analysis and written certification by the requiring activity, with specificity, why alternatives that would not require a domestic nonavailability determination are unacceptable.

(3) Defense agencies other than the Defense Logistics Agency must follow the procedures at PGI 225.7002-2(b)(3) when submitting a request for a domestic nonavailability determination.

(c) Acquisitions of items listed in FAR 25.104(a).

(d) Acquisitions outside the United States in support of combat operations.

(e) Acquisitions of perishable foods by or for activities located outside the United States for personnel of those activities.

(f) Acquisitions of food or hand or measuring tools—

(1) In support of contingency operations; or

(2) For which the use of other than competitive procedures are approved on the basis of unusual and compelling urgency in accordance with FAR 6.103-2.

(g) Emergency acquisitions by activities located outside the United States for personnel of those activities.

(h) Acquisitions by vessels in foreign waters.

(i) Acquisitions of items specifically for commissary resale.

(j) Acquisitions of incidental amounts of cotton, other natural fibers, or wool incorporated in an end product, for which the estimated value of the cotton, other natural fibers, or wool—

(1) Is not more than 10 percent of the total price of the end product; and

(2) Does not exceed the threshold at 225.7002-2(a).

(k) Acquisitions of waste and byproducts of cotton or wool fiber for use in the production of propellants and explosives.

(l) Acquisitions of foods manufactured or processed in the United States, regardless of where the foods (and any component if applicable) were grown or produced. However, in accordance with section 8118 of the DoD Appropriations Act for Fiscal Year 2005 (Pub. L. 108-287), this exception does not apply to fish, shellfish, or seafood

manufactured or processed in the United States or fish, shellfish, or seafood contained in foods manufactured or processed in the United States.

(m) Acquisitions of fibers and yarns that are for use in synthetic fabric or coated synthetic fabric (but not the purchase of the synthetic or coated synthetic fabric itself), if—

(1) The fabric is to be used as a component of an end product that is not a textile product. Examples of textile products, made in whole or in part of fabric, include—

(i) Draperies, floor coverings, furnishings, and bedding PSG 72, Household and Commercial Furnishings and Appliances);

(ii) Items made in whole or in part of fabric in PSG 83, Textile/leather/furs/apparel/findings/tents/flags, or Federal Supply Group 84, Clothing, Individual Equipment and Insignia;

(iii) Upholstered seats (whether for household, office, or other use); and

(iv) Parachutes (Product or Service Group (PSG) 1670); or

(2) The fibers and yarns are para-aramid fibers and continuous filament para-aramid yarns manufactured in a qualifying country.

(n) Acquisitions of chemical warfare protective clothing when the acquisition furthers an agreement with a qualifying country. (See 225.003(10) and the requirement in 205.301 for synopsis within 7 days after contract award when using this exception.)

(o) Acquisitions that are interagency, State, or local purchases that are executed by DoD as a result of the transfer of contracts from the General Services Administration or for which DoD serves as an item manager for products on behalf of the General Services Administration. According to section 897 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92), such contracts must not be subject to requirements under subchapter II of chapter 385 (including 10 U.S.C. 4862), to the extent such contracts are for purchases of products by other Federal agencies or State or local governments.

225.7002-3 Contract clauses.

Unless an exception at 225.7002-2 applies—

(a) Insert the clause at 252.225-7012, Preference for Certain Domestic Commodities, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services.

(b) Insert the clause at 252.225-7015, Restriction on Acquisition of Hand or Measuring Tools, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that exceed the threshold at 225.7002-2(a) that require delivery of hand or measuring tools.

(c) Insert the clause at 252.225-7006, Acquisition of the American Flag, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that are for the acquisition of the American flag, with an estimated value that exceeds the threshold at 225.7002-2(a).

225.7003 Restrictions on acquisition of specialty metals.

225.7003-1 Definitions.
As used in this section—

"Alloy" means a metal consisting of a mixture of a basic metallic element and one or more metallic, or non-metallic, alloying elements.

(1) For alloys named by a single metallic element (e.g., titanium alloy), it means that the alloy contains 50 percent or more of the named metal (by mass).

(2) If two metals are specified in the name (e.g., nickel-iron alloy), those metals are the two predominant elements in the alloy, and together they constitute 50 percent or more of the alloy (by mass).

"Automotive item" —

(1) Means a self-propelled military transport tactical vehicle, primarily intended for use by military personnel or for carrying cargo, such as—

(i) A high-mobility multipurpose wheeled vehicle;

(ii) An armored personnel carrier; or

(iii) A troop/cargo-carrying truckcar, truck, or van; and

(2) Does not include—

(i) A commercially available off-the-shelf vehicle; or

(ii) Construction equipment (such as bulldozers, excavators, lifts, or loaders) or other self-propelled equipment (such as cranes or aircraft ground support equipment).

"Commercial derivative military article" means an item acquired by the Department of Defense that is or will be produced using the same production facilities, a common supply chain, and the same or similar production processes that are used for the production of articles predominantly used by the general public or by nongovernmental entities for purposes other than governmental purposes.

"Electronic component" means an item that operates by controlling the flow of electrons or other electrically charged particles in circuits, using interconnections of electrical devices such as resistors, inductors, capacitors, diodes, switches, transistors, or integrated circuits. The term does not include structural or mechanical parts of an assembly containing an electronic component and does not include any high performance magnets that may be used in the electronic component.

"High performance magnet" means a permanent magnet that obtains a majority of its magnetic properties from rare earth metals (such as samarium).

"Produce" means—

(1) Atomization;

(2) Sputtering; or

(3) Final consolidation of non-melt derived metal powders.

"Specialty metal" means—

(1) Steel—

(i) With a maximum alloy content exceeding one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or

(ii) Containing more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, molybdenum, nickel, niobium (columbium), titanium, tungsten, or vanadium;

(2) Metal alloys consisting of—

(i) Nickel or iron-nickel alloys that contain a total of alloying metals other than nickel and iron in excess of 10 percent; or

(ii) Cobalt alloys that contain a total of alloying metals other than cobalt and iron in excess of 10 percent;

(3) Titanium and titanium alloys; or

(4) Zirconium and zirconium alloys.

"Steel" means an iron alloy that includes between .02 and 2 percent carbon and may include other elements.

225.7003-2 Restrictions.

(a) The following restrictions implement 10 U.S.C. 4863. Except as provided in 225.7003-3—

(1) Do not acquire the following items, or any components of the following items, unless any specialty metals contained in the items or components are melted or produced in the United States (also see guidance at PGI 225.7003-2(a)):

(i) Aircraft.

(ii) Missile or space systems.

(iii) Ships.

(iv) Tank or automotive items.

(v) Weapon systems.

(vi) Ammunition.

(2) Do not acquire a specialty metal (e.g., raw stock, including bar, billet, slab, wire, plate, and sheet; castings; and forgings) as an end item, unless the specialty metal is melted or produced in the United States. This restriction applies to specialty metal acquired by a contractor for delivery to DoD as an end item, in addition to specialty metal acquired by DoD directly from the entity that melted or produced the specialty metal.

(b) For more information on specialty metals restrictions and reporting of noncompliances, see *https://www.acq.osd.mil/asda/dpc/cp/ic/specialty-metals-restrictions.html*.

225.7003-3 Exceptions.

(a) Acquisitions in the following categories are not subject to the restrictions in 225.7003-2:

(1) Acquisitions at or below the simplified acquisition threshold.

(2) Acquisitions outside the United States in support of combat operations.

(3) Acquisitions in support of contingency operations.

(4) Acquisitions for which the use of other than competitive procedures has been approved on the basis of unusual and compelling urgency in accordance with FAR 6.103-2.

(5) Acquisitions of items specifically for commissary resale.

(6) Acquisitions of items for test and evaluation under the foreign comparative testing program (10 U.S.C. 2350a(g)). However, this exception does not apply to any acquisitions under follow-on production contracts.

(b) One or more of the following exceptions may apply to an end item or component that includes any of the following, under a prime contract or subcontract at any tier. The restrictions in 225.7003-2 do not apply to the following:

(1) Electronic components, unless the Secretary of Defense, upon the recommendation of the Strategic and Critical Materials Board of Directors pursuant to 50 U.S.C. 98h-1, determines that the domestic availability of a particular electronic component is critical to national security.

(2)(i) Commercially available off-the-shelf (COTS) items containing specialty metals, except the restrictions do apply to contracts or subcontracts for the acquisition of—

(A) Specialty metal mill products, such as bar, billet, slab, wire, plate, and sheet, that have not been incorporated into end items, subsystems, assemblies, or components. Specialty metal supply contracts issued by COTS producers are not subcontracts for the purposes of this exception;

(B) Forgings or castings of specialty metals, unless the forgings or castings are incorporated into COTS end items, subsystems, or assemblies;

(C) Commercially available high performance magnets that contain specialty metal, unless such high performance magnets are incorporated into COTS end items or subsystems (see PGI 225.7003-3(b)(6) for a table of applicability of specialty metals restrictions to magnets); and

(D) COTS fasteners, unless—

(*1*) The fasteners are incorporated into COTS end items, subsystems, or assemblies; or

(*2*) The fasteners qualify for the commercial product exception in paragraph (b)(3) of this section.

(ii) If this exception is used for an acquisition of COTS end items valued at $5 million or more per item, the acquiring department or agency must submit an annual report to the Principal Director, Defense Pricing, Contracting, and Acquisition Policy, in accordance with the procedures at PGI 225.7003-3(b)(2).

(3) Fasteners that are commercial products and are acquired under a contract or subcontract with a manufacturer of such fasteners, if the manufacturer has certified that it will purchase, during the relevant calendar year, an amount of domestically melted or produced specialty metal, in the required form, for use in the production of fasteners for sale to DoD and other customers, that is not less than 50 percent of the total amount of the specialty metal that the manufacturer will purchase to carry out the production of such fasteners for all customers.

(4) Items listed in 225.7003-2(a), manufactured in a qualifying country or containing specialty metals melted or produced in a qualifying country.

(5) Specialty metal in any of the items listed in 225.7003-2 if the USD(A&S), or an official authorized in accordance with paragraph (b)(5)(i) of this section, determines that specialty metal melted or produced in the United States cannot be acquired as and when needed at a fair and reasonable price in a satisfactory quality, a sufficient quantity, and the required form (i.e., a domestic nonavailability determination). In accordance with 10 U.S.C. 4863(m)(4), the term "required form" in this section refers to the form of the mill product, such as bar, billet, wire, slab, plate, or sheet, in the grade appropriate for the production of a finished end item to be delivered to the Government under this contract; or a finished component assembled into an end item to be delivered to the Government under the contract. See guidance in PGI 225.7003-3(b)(5).

(i) The secretary of the military department concerned is authorized, without power of redelegation, to make a domestic nonavailability determination that applies to only one contract. The supporting documentation for the determination must include an analysis and written documentation by the requiring activity, with specificity, why alternatives that would not require a domestic nonavailability determination are unacceptable.

(ii) A domestic nonavailability determination that applies to more than one contract (i.e., a class domestic nonavailability determination), requires the approval of the USD(A&S).

(A) At least 30 days before making a domestic nonavailability determination that would apply to more than one contract, the USD(A&S) will, to the maximum extent practicable, and in a manner consistent with the protection of national security and confidential business information—

(*1*) Publish a notice in the Governmentwide point of entry (GPE) (*https://www.sam.gov*) of the intent to make the domestic nonavailability determination; and

(*2*) Solicit information relevant to such notice from interested parties, including producers of specialty metal mill products.

(B) The USD(A&S)—

(*1*) Will take into consideration all information submitted in response to the notice in making a class domestic nonavailability determination;

(*2*) May consider other relevant information that cannot be made part of the public record consistent with the protection of national security information and confidential business information; and

(*3*) Will ensure that any such domestic nonavailability determination and the rationale for the determination are made publicly available to the maximum extent consistent with the protection of national security and confidential business information.

(6) End items containing a minimal amount of otherwise noncompliant specialty metals (i.e., specialty metals not melted or produced in the United States that are not covered by another exception listed in this paragraph (b)), if the total weight of noncompliant specialty metal does not exceed 2 percent of the total weight of all specialty metal in the end item. This exception does not apply to high performance magnets containing specialty metals. See PGI 225.7003-3(b)(6) for a table of applicability of specialty metals restrictions to magnets.

(c) *Compliance for commercial derivative military articles.* The restrictions at 225.7003-2(a) do not apply to an item acquired under a prime contract if—

(1) The offeror has certified, and subsequently demonstrates, that the offeror and its subcontractor(s) will individually or collectively enter into a contractual

agreement or agreements to purchase a sufficient quantity of domestically melted or produced specialty metal in accordance with the provision at 252.225-7010; and

(2) The USD(A&S), or the secretary of the military department concerned, determines that the item is a commercial derivative military article (defense agencies see procedures at PGI 225.7003-3(c)). Submit the offeror's certification and a request for a determination to the appropriate official, through agency channels, and notify the offeror when a decision has been made.

(d) *National security waiver.* The USD(A&S) may waive the restrictions at 225.7003-2 if the USD(A&S) determines in writing that acceptance of the item is necessary to the national security interests of the United States (see procedures at PGI 225.7003-3(d). This authority may not be delegated.

(1) The written determination of the USD(A&S)—

(i) Must specify the quantity of end items to which the national security waiver applies;

(ii) Must specify the time period over which the national security waiver applies; and

(iii) Must be provided to the congressional defense committees before the determination is executed, except that in the case of an urgent national security requirement, the determination may be provided to the congressional defense committees up to 7 days after it is executed.

(2) After making such a determination, the USD(A&S) will—

(i) Ensure that the contractor or subcontractor responsible for the noncompliant specialty metal develops and implements an effective plan to ensure future compliance; and

(ii) Determine whether the noncompliance was knowing and willful. If the USD(A&S) determines that the noncompliance was knowing and willful, the appropriate debarring and suspending official must consider suspending or debarring the contractor or subcontractor until such time as the contractor or subcontractor has effectively addressed the issues that led to the noncompliance.

(3) Because national security waivers will only be granted when the acquisition in question is necessary to the national security interests of the United States, the requirement for a plan will be applied as a condition subsequent, and not a condition precedent, to the granting of a waiver.

225.7003-4 [Reserved]

225.7003-5 Solicitation provision and contract clauses.

(a) Unless the acquisition is wholly exempt from the specialty metals restrictions at 225.7003-2 because the acquisition is covered by an exception in 225.7003-3(a) or (d) (see paragraph (d) of this section)—

(1) Insert the clause at 252.225-7008, Restriction on Acquisition of Specialty Metals, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that—

(i) Exceed the simplified acquisition threshold; and

(ii) Require the delivery of specialty metals as end items.

(2) Insert the clause at 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that—

(i) Exceed the simplified acquisition threshold; and

(ii) Require delivery of any of the following items, or components of the following items, if such items or components contain specialty metal:

(A) Aircraft.

(B) Missile or space systems.

(C) Ships.

(D) Tank or automotive items.

(E) Weapon systems.

(F) Ammunition.

(b) Insert the provision at 252.225-7010, Commercial Derivative Military Article—Specialty Metals Compliance Certificate, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services—

(1) That contain the clause at 252.225-7009; and

(2) For which the contracting officer anticipates that one or more offers of commercial derivative military articles may be received.

(c) If an agency cannot reasonably determine at time of acquisition whether some or all of the items will be used in support of combat operations or in support of contingency operations, the contracting officer should not rely on the exception at 225.7003-3(a)(2) or (3) but should include the appropriate specialty metals clause or provision in the solicitation and contract.

(d) If the solicitation and contract require delivery of a variety of contract line items containing specialty metals, but only some of the items are subject to domestic specialty

metals restrictions, identify in the Schedule those items that are subject to the restrictions.

225.7004 Restrictions on the procurement of goods other than U.S. goods.

225.7004-0 Scope.
This section implements 10 U.S.C. 4864.

225.7004-1 Definitions.
As used in this section—

"National technology and industrial base" means the persons and organizations that are engaged in production activities conducted within the United States, Australia, Canada, New Zealand, and the United Kingdom of Great Britain and Northern Ireland (United Kingdom). (10 U.S.C. 4801)

"Star tracker" means a navigational tool used in a satellite weighing more than 400 pounds whose principal purpose is to support the national security, defense, or intelligence needs of the U.S. Government.

225.7004-2 Restrictions.

Except as provided in 225.7004-3, do not acquire any of the following items, either as end products or components, unless the manufacturer of the items is part of the national technology and industrial base:

(a) Buses, if multipassenger motor vehicles are purchased, leased, rented, or made available under contracts for transportation services.

(b) Components for naval vessels, to the extent they are unique to marine applications (see also 225.7004-4 for implementation of the restriction for naval vessels):

(1) Gyrocompasses.

(2) Electronic navigation chart systems.

(3) Steering controls.

(4) Propulsion and machinery control systems.

(5) Totally enclosed lifeboats.

(6) Welded shipboard anchor and mooring chain. See also 225.7004-5.

(c) Large medium-speed diesel engines for new construction of auxiliary ships using funds available for National Defense Sealift Fund programs or Shipbuilding and Conversion, Navy.

(d) For T-AO 205 and T-ARC class vessels:

(1) Auxiliary equipment, including pumps, for all shipboard services.

(2) Propulsion system components, including engines, reduction gears, and propellers.

(3) Shipboard cranes.

(4) Spreaders for shipboard cranes.

(e) Star trackers.

225.7004-3 Exceptions.

(a) *Contracts under the simplified acquisition threshold.* The restrictions at 225.7004-2 do not apply to a contract or subcontract that does not exceed the simplified acquisition threshold.

(b) *Buses.* The restriction at 225.7004-2(a) does not apply in the following circumstances:

(1) Buses manufactured outside the national technology and industrial base are needed for temporary use because buses manufactured in the national technology and industrial base are not available to satisfy requirements that cannot be postponed. Such use may not, however, exceed the lead time required for acquisition and delivery of buses manufactured in the national technology and industrial base.

(2) The requirement for buses is temporary in nature. For example, to meet a special, nonrecurring requirement or a sporadic and infrequent recurring requirement, buses manufactured outside the national technology and industrial base may be used for temporary periods of time. Such use may not however, exceed the period of time needed to meet the special requirement.

(3) Buses manufactured outside the national technology and industrial base are available at no cost to the U.S. Government.

(c) *Components for naval vessels.* The restriction at 225.7004-2(b) does not apply to acquisition of spare or repair parts needed to support components for naval vessels manufactured outside the United States. Support includes the purchase of spare gyrocompasses, electronic navigation chart systems, steering controls, propulsion and machinery control systems, totally enclosed lifeboats, and welded shipboard anchor and mooring chain.

(d) *Components for auxiliary ships.* The restriction at 225.7004-2(c) does not apply to large medium-speed engines for icebreakers or special mission ships.

(e) *Star trackers.* The restriction at 225.7004-2(e) does not apply to acquisition programs that have received Milestone A approval as defined in 10 U.S.C. 4211 before October 1, 2021, as documented by the requiring activity official performing program management responsibilities. Include the Milestone A approval documentation in the contract file.

225.7004-4 Implementation of restriction on certain naval vessel components.

(a) The statute at 10 U.S.C. 4864(h) prohibits the use of contract clauses or certifications to implement the restriction at 225.7004-2(b) for naval vessel components.

(b) Agencies must accomplish implementation of the restriction at 225.7004-2(b) through use of management and oversight techniques that achieve the objectives of this section without imposing a significant management burden on the Government or the contractor involved.

225.7004-5 Additional restrictions on anchor and mooring chain.

(a) In accordance with section 8041 of the Fiscal Year 1991 DoD Appropriations Act (Pub. L. 101-511) and similar sections in subsequent DoD appropriations acts, do not acquire welded shipboard anchor and mooring chain, unless—

(1) It is manufactured in the United States, including cutting, heat treating, quality control, testing, and welding (both forging and shot blasting process); and

(2) The cost of the components manufactured in the United States exceeds 50 percent of the total cost of components.

(b) The statute at 10 U.S.C. 4864 also restricts acquisition of welded shipboard anchor and mooring chain, when used as a component of a naval vessel; however, the Appropriations Act restriction described in paragraph (a) of this section takes precedence over the restriction of 10 U.S.C. 4864 cited in 225.7004-2(b)(6).

225.7004-6 Waiver of restrictions.

(a) *Welded shipboard anchor and mooring chain.* (1) In accordance with section 8016 of the Consolidated Appropriations Act, 2023 (Pub. L. 117-328), the secretary of the department responsible for acquisition may waive the restrictions in 225.7004-2(b)(6) and 225.7004-5, on a case-by-case basis, if—

(i) Sufficient domestic suppliers are not available to meet DoD requirements on a timely basis; and

(ii) The acquisition is necessary to acquire capability for national security purposes.

(2) Document the waiver in a written determination and findings containing—

(i) The factors supporting the waiver; and

(ii) A certification that the acquisition must be made in order to acquire capability for national security purposes.

(3) Provide a copy of the determination and findings to the House and Senate Committees on Appropriations.

(b) *Star trackers* . The waiver criteria at paragraph (c) of this section apply, except that the USD(A&S) may delegate the authority to waive a restriction for a star tracker for a particular foreign country to the service acquisition executive, without power of redelegation (section 1603, National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116-283)).

(c) *Waiver of restrictions of 10 U.S.C. 4864(a).* The restrictions on certain foreign purchases at 225.7004-2 may be waived, except as provided in paragraphs (a) and (b) of this section, as follows:

(1)(i) USD(A&S), without power of delegation, may waive a restriction for a particular item for a particular foreign country upon determination that—

(A) U.S. producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country; or

(B) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country, or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items under 225.872, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(ii) A notice of the determination to exercise the waiver authority must be published in the Federal Register and submitted to the congressional defense committees at least 15 days before the effective date of the waiver.

(iii) The effective period of the waiver must not exceed 1 year.

(iv) For contracts entered into prior to the effective date of a waiver, provided adequate consideration is received to modify the contract, the waiver must be applied as directed or authorized in the waiver to—

(A) Subcontracts entered into on or after the effective date of the waiver; and

(B) Options for the procurement of items that are exercised after the effective date of the waiver, if the option prices are adjusted for any reason other than the application of the waiver.

(2) The head of the contracting activity may waive a restriction on a case-by-case basis upon execution of a determination and findings that any of the following applies:

(i) The restriction would cause unreasonable delays.

(ii) Satisfactory quality items manufactured in the national technology and industrial base are not available.

(iii) Application of the restriction would result in the existence of only one source for the item in the national technology and industrial base.

(iv) Application of the restriction is not in the national security interests of the United States.

(v) Application of the restriction would adversely affect a U.S. company.

(3) A restriction is waived when it would cause unreasonable costs. The cost of an item of national technology and industrial base origin is unreasonable if it exceeds 150 percent of the offered price, inclusive of duty, of items that are not of national technology and industrial base origin.

225.7004-7 Contract clauses.

(a) Unless a waiver has been granted, insert the clause at 252.225-7019, Restriction on Acquisition of Anchor and Mooring Chain, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that exceed the simplified acquisition threshold and that require welded shipboard anchor or mooring chain.

(b) Insert the clause at 252.225-7062, Restriction on Acquisition of Large Medium-Speed Diesel Engines, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that exceed the simplified acquisition threshold and that require large medium-speed diesel engines for new construction of auxiliary ships using funds available for National Defense Sealift Fund programs or Shipbuilding and Conversion, Navy unless—

(1) An exception at 225.7004-3(d) applies; or

(2) A waiver has been granted.

(c) Unless a waiver has been granted, insert the clause at 252.225-7063, Restriction on Acquisition of Components of T-AO 205 and T-ARC Class Vessels, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that exceed the simplified acquisition threshold and that require components of T-AO 205 and T-ARC class vessels.

(d) Insert the clause at 252.225-7064, Restriction on Acquisition of Certain Satellite Components, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that exceed the simplified acquisition threshold and that include the acquisition of star trackers unless—

(1) An exception at 225.7004-3(e) applies; or

(2) A waiver has been granted.

225.7005-225.7008 [Reserved]

225.7009 Restriction on ball and roller bearings.

225.7009-1 Scope.
This section implements section 8065 of the Fiscal Year 2002 DoD Appropriations Act (Pub. L. 107-117) and the same restriction in subsequent DoD appropriations acts.

225.7009-2 Restriction.

(a) Do not acquire ball and roller bearings unless—

(1) The bearings are manufactured in the United States or Canada; and

(2) For each ball or roller bearing, the cost of the bearing components manufactured in the United States or Canada exceeds 50 percent of the total cost of the bearing components of that ball or roller bearing.

(b) The restriction at 225.7003-2 may also apply to bearings that are made from specialty metals, such as high carbon chrome steel (bearing steel).

225.7009-3 Exception.
The restriction in 225.7009-2 does not apply to contracts or subcontracts for the acquisition of commercial products, except for commercial ball and roller bearings acquired as end items.

225.7009-4 Waiver.

The secretary of the department responsible for acquisition or, for the Defense Logistics Agency, the Component Acquisition Executive, may waive the restriction in 225.7009-2, on a case-by-case basis, by certifying to the House and Senate Committees on Appropriations that—

(a) Adequate domestic supplies are not available to meet DoD requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

225.7009-5 Contract clause.

Insert the clause at 252.225-7016, Restriction on Acquisition of Ball and Roller Bearings, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, unless—

(a) The items being acquired are commercial products other than ball or roller bearings acquired as end items;

(b) The items being acquired do not contain ball and roller bearings; or

(c) A waiver has been granted in accordance with 225.7009-4.

225.7010 [Reserved]

225.7011 Restriction on carbon, alloy, and armor steel plate.

225.7011-1 Restriction.

(a) In accordance with Section 8111 of the Fiscal Year 1992 DoD Appropriations Act (Pub. L. 102-172) and similar sections in subsequent DoD appropriations acts, do not acquire any of the following types of carbon, alloy, or armor steel plate for use in a Government-owned facility or a facility under the control of (e.g., leased by) DoD, unless it is melted and rolled in the United States or Canada:

(1) Carbon, alloy, or armor steel plate in Federal Supply Class 9515.

(2) Carbon, alloy, or armor steel plate described by specifications of the American Society for Testing Materials or the American Iron and Steel Institute.

(b) This restriction—

(1) Applies to the acquisition of carbon, alloy, or armor steel plate as a finished steel mill product that may be used "as is" or may be used as an intermediate material for the fabrication of an end product; and

(2) Does not apply to the acquisition of an end product (e.g., a machine tool), to be used in the facility, that contains carbon, alloy, or armor steel plate as a component.

225.7011-2 Waiver.

The secretary of the department responsible for acquisition may waive this restriction, on a case-by-case basis, by certifying to the House and Senate Committees on Appropriations that—

(a) Adequate U.S. or Canadian supplies are not available to meet DoD requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

225.7011-3 Contract clause.

Unless a waiver has been granted, insert the clause at 252.225-7030, Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate, in solicitations and contracts that'

(a) Require the delivery to the Government of carbon, alloy, or armor steel plate that will be used in a Government-owned facility or a facility under the control of DoD; or

(b) Require contractors operating in a Government-owned facility or a facility under the control of DoD to purchase carbon, alloy, or armor steel plate.

225.7012 Restriction on supercomputers.

225.7012-1 Restriction.
In accordance with Section 8112 of Public Law 100-202, and similar sections in subsequent DoD appropriations acts, do not purchase a supercomputer unless it is manufactured in the United States.

225.7012-2 Waiver.

The Secretary of Defense may waive this restriction, on a case-by-case basis, after certifying to the Armed Services and Appropriations Committees of Congress that—

(a) Adequate U.S. supplies are not available to meet requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

225.7012-3 Contract clause.
Unless a waiver has been granted, insert the clause at 252.225-7011, Restriction on Acquisition of Supercomputers, in solicitations and contracts for the acquisition of supercomputers.

225.7013 Restrictions on construction or repair of vessels in foreign shipyards.

225.7013-0 Scope.
This section implements 10 U.S.C. 8679 and 10 U.S.C. 8680.

225.7013-1 Definitions.
As used in this section—

"Corrective and preventive maintenance or repair" means—

(1) Maintenance or repair actions performed as a result of a failure in order to return or restore equipment to acceptable performance levels; and

(2) Scheduled maintenance or repair actions to prevent or discover functional failures.

"Facilities maintenance" means the effort required to—

(1) Provide housekeeping services throughout the ship;

(2) Perform coating maintenance and repair to exterior and interior surfaces due to normal environmental conditions; and

(3) Clean mechanical spaces, mission zones, and topside spaces.

225.7013-2 Restrictions.

(a) *Contract award (10 U.S.C. 8679).* Do not award a contract to construct in a foreign shipyard—

(1) A vessel for any of the armed forces; or

(2) A major component of the hull or superstructure of a vessel for any of the armed forces.

(b) *Overhaul, repair, or maintenance (10 U.S.C. 8680).* (1) Do not overhaul, repair, or maintain, in a shipyard outside the United States or Guam, a naval vessel (or any other vessel under the jurisdiction of the Secretary of the Navy) homeported in the United States or Guam.

(2) This restriction on overhaul, repair, or maintenance does not apply to—

(i) Voyage repairs; or

(ii) Repairs necessary to correct damage sustained due to hostile actions or interventions.

(3) For a naval vessel classified as a littoral combat ship and operating on deployment—

(i) Corrective and preventive maintenance or repair, whether intermediate or depot level, and facilities maintenance may be performed if the work is performed by U.S. Government personnel or U.S. contractor personnel—

(A) In a foreign shipyard;

(B) At a facility outside of a foreign shipyard; or

(C) At any other facility convenient to the vessel;

(ii) Foreign workers may be used to perform corrective and preventive maintenance or repair, only if the Secretary of the Navy, without power of delegation, determines that travel by U.S. Government or contractor personnel to perform the maintenance or repair is not advisable for health or safety reasons; and

(iii) Foreign contractors may perform facilities maintenance only as approved by the Secretary of the Navy.

225.7014 Restrictions on military construction.

(a) For restriction on award of military construction contracts to be performed in the United States outlying areas in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf, see 236.273(a).

(b) For restriction on acquisition of steel for use in military construction projects, see 236.274.

225.7015 Restriction on overseas architect-engineer services.
For restriction on award of architect-engineer contracts to be performed in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf, see 236.602-70.

225.7017 Utilization of domestic photovoltaic devices.

225.7017-1 Definitions.
As used in this section—

"Caribbean Basin country photovoltaic device" means a photovoltaic device that—

(1) Is wholly manufactured in a Caribbean Basin country; or

(2) In the case of a photovoltaic device 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, provided that the photovoltaic device is not subsequently substantially transformed outside of a Caribbean Basin country.

"Covered contract" means an energy savings performance contract, a utility services contract, or a private housing contract awarded by DoD, to be performed in the United States, if such contract results in DoD ownership of photovoltaic devices, by means other than DoD purchase as end products. DoD is deemed to own a photovoltaic device if the device is—

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

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

"Designated country photovoltaic device" means a World Trade Organization Government Procurement Agreement (WTO GPA) country photovoltaic device, a Free Trade Agreement country photovoltaic device, a least developed country photovoltaic device, or a Caribbean Basin country photovoltaic device.

"Domestic photovoltaic device" means a photovoltaic device that is manufactured in the United States.

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

"Free Trade Agreement country photovoltaic device" means a photovoltaic device that—

(1) Is wholly manufactured in a Free Trade Agreement country; or

(2) In the case of a photovoltaic device 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, provided that the photovoltaic device is not subsequently substantially transformed outside of a Free Trade Agreement country.

"Least developed country photovoltaic device" means a photovoltaic device that—

(1) Is wholly manufactured in a least developed country; or

(2) In the case of a photovoltaic device 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, provided that the photovoltaic device is not subsequently substantially transformed outside of a least developed country.

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

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

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

(1) Is manufactured in the United States; or

(2) 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, provided that the photovoltaic device is not subsequently substantially transformed outside of the United States.

"WTO GPA country photovoltaic device" means a photovoltaic device that—

(1) Is wholly manufactured in a WTO GPA country; or

(2) In the case of a photovoltaic device 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, provided that the photovoltaic device is not subsequently substantially transformed outside of a WTO GPA country.

225.7017-2 Restriction.
In accordance with section 846 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111-383), photovoltaic devices provided under any covered contract must comply with 41 U.S.C. chapter 83, Buy American, subject to the exceptions to that statute provided in the Trade Agreements Act of 1979 (19 U.S.C. 2501 *et seq.*).

225.7017-3 Exceptions.

DoD requires the contractor to utilize domestic photovoltaic devices in covered contracts that exceed the simplified acquisition threshold, with the following exceptions:

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

(b) *Buy American—unreasonable cost.* For a covered contract that utilizes photovoltaic devices valued at less than $174,000, the exception for unreasonable cost may apply (see FAR 25.103(c)). If the cost of a foreign photovoltaic device plus 50 percent is less than the cost of a domestic photovoltaic device, then the foreign photovoltaic device may be utilized.

(c) *Trade agreements*—(1) *Free Trade Agreements.* For a covered contract that utilizes photovoltaic devices, photovoltaic devices may be utilized from a country covered under the acquisition by a Free Trade Agreement, depending upon dollar threshold (see FAR subpart 25.4).

(2) *World Trade Organization—Government Procurement Agreement.* For covered contracts that utilize photovoltaic devices that are valued at $174,000 or more, only U.S.-made photovoltaic devices, designated country photovoltaic devices, or qualifying country photovoltaic devices may be utilized.

225.7017-4 Solicitation provision and contract clause.

(a)(1) Insert the clause at 252.225-7017, Photovoltaic Devices, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services, for a contract expected to exceed the simplified acquisition threshold that may be a covered contract, e.g., an energy savings performance contract, a utility service contract, or a private housing contract awarded by DoD, if such contract will result in DoD ownership of photovoltaic devices, by means other than DoD purchase as end products.

(2) Insert the clause in the resultant contract, including contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, if it is a covered contract.

(b) Insert the provision at 252.225-7018, Photovoltaic Devices—Certificate, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services, that contain the clause at 252.225-7017.

225.7018 Restriction on acquisition of certain magnets, tantalum, and tungsten.

225.7018-0 Scope.
This section implements 10 U.S.C. 4872.

225.7018-1 Definitions.
As used in this section—

"Covered material" means—

(1) Samarium-cobalt magnets;

(2) Neodymium-iron-boron magnets;

(3) Tantalum metals and alloys;

(4) Tungsten metal powder; and

(5) Tungsten heavy alloy or any finished or semi-finished component containing tungsten heavy alloy.

"Electronic device" means an item that operates by controlling the flow of electrons or other electrically charged particles in circuits, using interconnections such as resistors, inductors, capacitors, diodes, switches, transistors, or integrated circuits.

"Tungsten heavy alloy" means a tungsten base pseudo alloy that—

(1) Meets the specifications of ASTM B777 or SAE-AMS-T-21014 for a particular class of tungsten heavy alloy; or

(2) Contains at least 90 percent tungsten in a matrix of other metals (such as nickel-iron or nickel-copper) and has density of at least 16.5 g/cm3).

225.7018-2 Restriction.

(a) *General.* Except as provided in 225.7018-3 and 225.7018-4—

(1) Effective through December 31, 2026, do not acquire any covered material melted or produced in any covered country, or any end item, manufactured in any covered country, that contains a covered material; and

(2) Effective January 1, 2027, do not acquire any covered material mined, refined, separated, melted, or produced in any covered country, or any end item, manufactured in any covered country, that contains a covered material. (Section 854, Pub. L. 118-31; 10 U.S.C. 4872.)

(b) *Samarium-cobalt magnets and neodymium-iron-boron magnets.* (1) Effective through December 31, 2026, for samarium-cobalt magnets and neodymium-iron-boron magnets, this restriction includes—

(i) Melting samarium with cobalt to produce the samarium-cobalt alloy or melting neodymium with iron and boron to produce the neodymium-iron-boron alloy; and

(ii) All subsequent phases of production of the magnets, such as powder formation, pressing, sintering or bonding, and magnetization.

(2) Effective January 1, 2027, for samarium-cobalt magnets this restriction includes the entire supply chain from mining or production of a cobalt and samarium ore or feedstock, including recycled material, through production of finished magnets, except as provided at 225.7018-3.

(3) The restriction on melting and producing of samarium-cobalt magnets is in addition to any applicable restrictions on melting of specialty metals at 225.7003 and the clause at 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals.

(4) Effective January 1, 2027, for neodymium-iron-boron magnets, this restriction includes the entire supply chain from mining of neodymium, iron, and boron through production of finished magnets, except as provided at 225.7018-3.

(c) *Tantalum metals and alloys.* (1) Effective through December 31, 2026, for production of tantalum metals of any kind and alloys, this restriction includes the reduction or melting of any form of tantalum to create tantalum metal including unwrought, powder, mill products, and alloys. The restriction also covers all subsequent phases of production of tantalum metals and alloys.

(2) Effective January 1, 2027, for production of tantalum metals of any kind and alloys, this restriction includes mining or production of a tantalum ore or feedstock, including recycled material, through production of metals of any kind and alloys, except as provided at 225.7018-3.

(d) *Tungsten metal powder and tungsten heavy alloy.* (1) Effective through December 31, 2026, for production of tungsten metal powder and tungsten heavy alloy, this restriction includes—

(i) Atomization;

(ii) Calcination and reduction into powder;

(iii) Final consolidation of non-melt derived metal powders; and

(iv) All subsequent phases of production of tungsten metal powder, tungsten heavy alloy, or any finished or semi-finished component containing tungsten heavy alloy.

(2) Effective January 1, 2027, for production of tungsten metal powder, tungsten heavy alloy, or any finished or semi-finished component containing tungsten heavy alloy, this restriction includes mining or production of a tungsten ore or feedstock, including recycled material, through production of tungsten metal powders, except as provided at 225.7018-3.

225.7018-3 Exceptions.

The restriction in section 225.7018-2 does not apply to an acquisition—

(a) At or below the simplified acquisition threshold;

(b) Outside the United States of an item for use outside the United States; or

(c) Of an end item containing a covered material that is—

(1) A commercially available off-the-shelf item (but see PGI 225.7018-3(c)(1) with regard to commercially available samarium-cobalt magnets), other than—

(i) A commercially available off-the-shelf item that is—

(A) 50 percent or more tungsten by weight effective through December 31, 2026; or

(B) 50 percent or more covered material by weight effective January 1, 2027;

(ii) Effective through December 31, 2026, a tantalum metal, tantalum alloy, or tungsten heavy alloy mill product, such as bar, billet, slab, wire, cube, sphere, block, blank, plate, or sheet, that has not been incorporated into an end item, subsystem, assembly, or component; or

(iii) Effective January 1, 2027, a covered material that is a mill product such as bar, billet, slab, wire, cube, sphere, block, blank, plate, or sheet, that has not been incorporated into an end item, subsystem, assembly, or component;

(2) An electronic device, unless the Secretary of Defense, upon the recommendation of the Strategic and Critical Materials Board of Directors pursuant to 50 U.S.C. 98h-1 determines that the domestic availability of a particular electronic device is critical to national security (but see PGI 225.7018-3(c)(2) with regard to samarium-cobalt magnets used in electronic components); or

(3) A neodymium-iron-boron magnet manufactured from recycled material if the milling of the recycled material and sintering of the final magnet takes place in the United States.

(d) If the authorized agency official concerned, as specified in 225.7018-4, determines that compliant covered materials of satisfactory quality and quantity, in the required form, cannot be procured as and when needed at a reasonable price.

(1) For tantalum metal, tantalum alloy, or tungsten heavy alloy, the term "required form" refers to the form of the mill product, such as bar, billet, wire, slab, plate, or sheet, in the grade appropriate for the production of a finished end item to be delivered to the Government under the contract; or a finished component assembled into an end item to be delivered to the Government under the contract.

(2) For samarium-cobalt magnets or neodymium-iron-boron magnets, the term "required form" refers to the form and properties of the magnets.

225.7018-4 Nonavailability determination.

(a) *Individual nonavailability determinations.* (1) The head of the contracting activity is authorized to make a nonavailability determination described in 225.7018-3(d) on an individual basis (e.g., applies to only one contract).

(2) The supporting documentation for the determination must include an analysis and written certification by the requiring activity that describes, with specificity, why alternatives that would not require a nonavailability determination are unacceptable. The template for an individual nonavailability determination is available at PGI 225.7018-4(a)(2).

(3) Provide to USD(A&S) DASD (Industrial Policy), in accordance with the procedures at PGI 225.7018-4(a)(3)—

(i) A copy of individual nonavailability determinations with supporting documentation; and

(ii) Notification when individual nonavailability determinations are requested but denied.

(b) *Class nonavailability determinations.* A class nonavailability determination (e.g., a nonavailability determinations that applies to more than one contract) requires the approval of the USD(A&S). Follow the procedures at PGI 225.7018-4(b) when submitting a request for a class nonavailability determination.

(1) At least 30 days before making a nonavailability determination that would apply to more than one contract, the USD(A&S) will, to the maximum extent practicable, and in a manner consistent with the protection of national security and confidential business information—

(i) Publish a notice in the GPE (*https://www.sam.gov*) of the intent to make the nonavailability determination; and

(ii) Solicit information relevant to such notice from interested parties, including producers of mill products from covered materials.

(2) The USD(A&S)—

(i) Will take into consideration all information submitted in response to the notice in making a class nonavailability determination;

(ii) May consider other relevant information that cannot be made part of the public record consistent with the protection of national security information and confidential business information; and

(iii) Will ensure that any such nonavailability determination and the rationale for the determination are made publicly available to the maximum extent consistent with the protection of national security and confidential business information.

225.7018-5 Contract clause.
Unless acquiring items outside the United States for use outside the United States or a nonavailability determination has been made in accordance with 225.7018-4, insert the clause at 252.225-7052, Restriction on Acquisition of Certain Magnets, Tantalum, and Tungsten , in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that exceed the simplified acquisition threshold.

225.7019 Prohibition on use of certain energy sourced from inside the Russian Federation.

225.7019-1 Definitions.
As used in this section—

"Covered military installation" means a military installation in Europe identified by DoD as a main operating base.

"Furnished energy" means energy furnished to a covered military installation in any form and for any purpose, including heating, cooling, and electricity.

"Main operating base" means a facility outside the United States and its territories with permanently stationed operating forces and robust infrastructure.

225.7019-2 Prohibition.

In accordance with section 2821 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92), contracts for the acquisition of furnished energy for a covered military installation must not use any energy sourced from inside the Russian Federation as a means of generating the furnished energy for the covered military installation. The prohibition—

(a) Applies to all forms of energy that are furnished to a covered military installation; and

(b) Does not apply to energy converted by a third party into another form of energy and not directly delivered to a covered military installation.

225.7019-3 Waiver.

(a) *Request and approval of waiver.* The requiring activity may submit to the contracting activity a request for waiver of the prohibition in 225.7019-2 for a specific contract for the acquisition of furnished energy for a covered military installation. The head of the contracting activity, without power of redelegation, may approve the waiver, upon certification to the congressional defense committees that—

(1) The waiver of section 2821 is necessary to ensure an adequate supply of furnished energy for the covered military installation; and

(2) National security requirements have been balanced against the potential risk associated with reliance upon the Russian Federation for furnished energy.

(b) *Submission of waiver notice.* (1) Not later than 14 days before the execution of any energy contract for which a waiver is granted under paragraph (a) of this section, the head of the contracting activity must submit to the congressional defense committees a notice of the waiver. See PGI 225.7019-3 for waiver procedures.

(2) The waiver notice must include the following:

(i) The rationale for the waiver, including the basis for the certifications required by paragraph (a) of this section.

(ii) An assessment of how the waiver may impact DoD's European energy resilience strategy.

(iii) An explanation of the measures DoD is taking to mitigate the risk of using Russian Federation furnished energy.

225.7019-4 Solicitation provision and contract clause.

Unless a waiver has been granted in accordance with 225.7019-3—

(a) Insert the provision at 252.225-7053, Representation Regarding Prohibition on Use of Certain Energy Sourced from Inside the Russian Federation, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services and solicitations at or below the simplified acquisition threshold, that are for the acquisition of furnished energy for a covered military installation; and

(b) Insert the clause at 252.225-7054, Prohibition on Use of Certain Energy Sourced from Inside the Russian Federation, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services and solicitations and contracts at or below the simplified acquisition threshold, that are for the acquisition of furnished energy for a covered military installation.

225.7020 Prohibition on contracting with the Maduro regime.

225.7020-1 Definitions.
As used in this section—

"Agency or instrumentality of the government of Venezuela" means an agency or instrumentality of a foreign state as defined in 28 U.S.C. 1603(b), with each reference in section 1603(b) to a foreign state deemed to be a reference to Venezuela.

"Business operations" means engaging in commerce in any form, including acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

"Government of Venezuela" means the government of any political subdivision of Venezuela, and any agency or instrumentality of the government of Venezuela.

"Person" means—

(1) A natural person, corporation, company, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group;

(2) Any governmental entity or instrumentality of a government, including a multilateral development institution (as defined in section 1701(c)(3) of the International Financial Institutions Act (22 U.S.C. 262r(c)(3)); and

(3) Any successor, subunit, parent entity, or subsidiary of, or any entity under common ownership or control with, any entity described in paragraph (1) or (2) of this definition.

225.7020-2 Prohibition.
In accordance with section 890 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92), do not enter into a contract for the procurement of products or services with any person that has business operations with an authority of the government of Venezuela that is not recognized as the legitimate government of Venezuela by the U.S. Government, except as provided in 225.7020-3 or 225.7020-4.

225.7020-3 Exceptions.

The prohibition in 225.7020-2 does not apply if—

(a) The person has a valid license to operate in Venezuela issued by the Office of Foreign Assets Control of the Department of the Treasury; or

(b) The acquisition is related to the operation and maintenance of the U.S. Government's consular office and diplomatic posts in Venezuela.

225.7020-4 Joint determination.

(a) The prohibition in section 225.7020-2 does not apply to an acquisition jointly determined by the Secretary of Defense and Secretary of State, without power of redelegation, to be—

(1) Necessary for purposes of—

(i) Providing humanitarian assistance to the people of Venezuela;

(ii) Disaster relief and other urgent lifesaving measures; or

(iii) Carrying out noncombatant evacuations; or

(2) Vital to the national security interests of the United States.

(b) Follow the procedures at PGI 225.7020-4(b) when entering into a contract on the basis of a joint determination.

225.7020-5 Solicitation provision and contract clause.

(a) Insert the provision at 252.225-7055, Representation Regarding Business Operations with the Maduro Regime, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services, that include the clause at 252.225-7056, Prohibition Regarding Business Operations with the Maduro Regime.

(b) Unless the exception at 225.7020-3(b) applies or a joint determination has been made in accordance with 225.7020-4, insert the clause at 252.225-7056, Prohibition Regarding Business Operations with the Maduro Regime, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services.

225.7021 Disclosure requirements for employment transparency regarding individuals who perform work in the People's Republic of China.
See PGI 225.7021 for additional procedures regarding disclosures.

225.7021-1 Definitions.
As used in this section—

"Covered contract" means any DoD contract or subcontract with a value in excess of $5 million, not including contracts for commercial products and commercial services.

"Covered entity" means any corporation, company, limited liability company, limited partnership, business trust, business association, or other similar entity, including any subsidiary thereof, performing work on a covered contract in the People's Republic of China, including by leasing or owning real property used in the performance of the covered contract in the People's Republic of China.

225.7021-2 Restrictions.
In accordance with section 855 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117-81, 10 U.S.C. 4651 note prec.), do not award, extend, or exercise an option on a covered contract unless a covered entity has submitted each required disclosure.

225.7021-3 National security waiver of disclosure.
The senior procurement executive (SPE) may waive the disclosure requirements at 225.7021-2 if the SPE determines in writing that such disclosure would not be in the national security interests of the United States. This authority is not delegable. See PGI 225.7021-3 for procedures and content requirements regarding the SPE's written determination.

225.7021-4 Solicitation provision and contract clause.

(a) Insert the provision at 252.225-7057, Preaward Disclosure of Employment of Individuals Who Work in the People's Republic of China, in solicitations that include the clause at 252.225-7058.

(b) Unless a waiver has been granted, insert the clause at 252.225-7058, Postaward Disclosure of Employment of Individuals Who Work in the People's Republic of China, in solicitations and contracts with an estimated value in excess of $5 million.

225.7022 Prohibition on certain procurements from the Xinjiang Uyghur Autonomous Region.

225.7022-1 Scope.
This section implements section 855 of the National Defense Authorization Act for Fiscal Year 2023 (Pub. L. 117-263) and 10 U.S.C. 4661.

225.7022-2 Definitions.
As used in this section—

"Forced labor" means any work or service that is exacted from any person under the menace of any penalty for nonperformance and that the worker does not offer to perform (10 U.S.C. 2496).

"XUAR" means the Xinjiang Uyghur Autonomous Region of the People's Republic of China (10 U.S.C. 2496).

225.7022-3 Prohibition.
Do not award a contract utilizing funds appropriated or otherwise made available for any fiscal year for any products mined, produced, or manufactured wholly or in part by forced labor from XUAR or from an entity that has used labor from within or transferred from XUAR as part of any forced labor programs, unless an exception applies.

225.7022-4 Exceptions.

The prohibition at 225.7022-3 does not apply to—

(a) Purchases under the micro-purchase threshold made using the Governmentwide commercial purchase card; or

(b) Purchases using the SF 44 in accordance with 213.306.

225.7022-5 Solicitation provision and contract clause.

(a) Insert the provision at 252.225-7059, Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region—Representation, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products, commercial services, and COTS items, that contain the clause at 252.225-7060, Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region.

(b) Insert the clause at 252.225-7060, Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region, in solicitations, contracts, and orders for products utilizing funds appropriated or otherwise made available for any fiscal year, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products, commercial services, and COTS items.

225.7023 Restriction on acquisition of personal protective equipment and certain other items from non-allied foreign nations.

225.7023-1 Definitions.
As used in this section—

"Covered item" means an article or item of—

(1) Personal protective equipment for use in preventing spread of disease, such as by exposure to infected individuals or contamination or infection by infectious material, including—

(i) Nitrile and vinyl gloves;

(ii) Surgical masks;

(iii) Respirator masks and powered air purifying respirators and required filters;

(iv) Face shields and protective eyewear;

(v) Surgical and isolation gowns and head and foot coverings; or

(vi) Clothing; and

(vii) The materials and components thereof, other than sensors, electronics, or other items added to and not normally associated with such personal protective equipment or clothing; or

(2) Sanitizing and disinfecting wipes, testing swabs, gauze, and bandages.

225.7023-2 Restriction.
Except as provided in 225.7023-3, do not acquire a covered item from a covered country in accordance with 10 U.S.C. 4875.

225.7023-3 Exceptions.

The restriction in section 225.7023-2 does not apply to acquisitions—

(a) Of covered items for use outside of the United States;

(b) At or below $200,000; or

(c)(1) If the head of the contracting activity determines that a covered item of satisfactory quality and quantity, in the required form, cannot be procured as and when needed from nations other than a covered country to meet requirements at a reasonable price.

(2) Include a copy of any such determination in the contract file.

225.7023-4 Contract clause.

Unless an exception applies, use the clause at 252.225-7061, Restriction on the Acquisition of Personal Protective Equipment and Certain Other Items from Non-Allied Foreign Nations, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products, including COTS items, and commercial services, and that—

(a) Are for the acquisition of covered items;

(b) Are for use within the United States; and

(c) Have an estimated value greater than $200,000.

225.7024 Restriction on acquisition of fuel for overseas contingency operations.

225.7024-1 Scope.
This section implements section 843 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117-81), for the acquisition of fuel for overseas contingency operations.

225.7024-2 Prohibition.
Do not award, for an overseas contingency operation, a contract for fuel, in whole or in part, or derivatives of such fuel, that is sourced from nations or regions prohibited from selling petroleum to the United States. See FAR subpart 40.2 and the Office of Foreign Assets Control website at *https://ofac.treasury.gov/sanctions-programs-and-country-information* for prohibited sources.

225.7024-3 Procedures.

(a) For contracts for the acquisition of fuel for overseas contingency operations, including contracts using FAR part 12 procedures, expected to exceed the simplified acquisition threshold, the contracting officer—

(1) May request records from the prospective contractor to verify compliance with the following statutes and regulations only when the head of the contracting activity determines in writing that the request is necessary:

(i) The Foreign Corrupt Practices Act (15 U.S.C. 78dd-1 *et seq.*).

(ii) International Traffic in Arms Regulations at 22 CFR parts 120 through 130 (see PGI 225.7901-2).

(iii) Export Administration Regulations at 15 CFR parts 730 through 774 (see PGI 225.7901-2).

(iv) Relevant regulations promulgated by the Office of Foreign Assets Control of the Department of the Treasury. Sanction information for specific countries and programs is available at *https://ofac.treasury.gov/sanctions-programs-and-country-information.*

(2) To the maximum extent practicable, must not disqualify an otherwise responsible offeror on the basis of an unsupported denial of access to a facility or equipment by a host-nation government. The provision at 252.225-7964, Restriction on Acquisition of Fuel for Overseas Contingency Operations, requires offerors to report promptly to the contracting officer, prior to award, any instance of unsupported denial of access to a facility or equipment by a host-nation government that may prevent it from complying with the terms and conditions of the solicitation.

(b) See 215.103-1-71 for the requirement to consider using a tradeoff process.

225.7024-4 Solicitation provision.
Insert the provision at 252.225-7964, Restriction on Acquisition of Fuel for Overseas Contingency Operations, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services, that are for the acquisition of fuel for overseas contingency operations and are expected to exceed the simplified acquisition threshold.

SUBPART 225.71—OTHER RESTRICTIONS ON FOREIGN ACQUISITION

225.7100 Scope of subpart.
This subpart contains foreign product restrictions that are based on policies designed to protect the defense industrial base.

225.7101 Definitions.
As used in this subpart—

"Component" means any item supplied to the Government as part of an end product or of another component.

"Domestic manufacture" means manufactured in the United States, its outlying areas; or Canada.

225.7102 Forgings.

225.7102-1 Policy.
When acquiring the following forging items, whether as end items or components, acquire items that are of domestic manufacture to the maximum extent practicable:

Items	Categories
Ship propulsion shafts	Excludes service and landing craft shafts.
Periscope tubes	All.
Ring forgings for bull gears	All greater than 120 inches in diameter.

225.7102-2 Exceptions.

The policy in 225.7102-1 does not apply to acquisitions—

(a) Using simplified acquisition procedures, unless the restricted item is the end item being purchased;

(b) Overseas for overseas use; or

(c) When the quantity acquired exceeds the amount needed to maintain the U.S. defense mobilization base (provided the excess quantity is an economical purchase quantity). The requirement for domestic manufacture does not apply to the quantity above that required to maintain the base, in which case, qualifying country sources may compete.

225.7102-3 Waiver.
Upon request from a contractor, the contracting officer may waive the requirement for domestic manufacture of the items listed in 225.7102-1.

225.7102-4 Contract clause.

Insert the clause at 252.225-7025, Restriction on Acquisition of Forgings, in solicitations and contracts, unless—

(a) The supplies being acquired do not contain any of the items listed in 225.7102-1; or

(b) An exception in 225.7102-2 applies. If an exception applies to only a portion of the acquisition, specify the excepted portion in the solicitation and contract.

SUBPART 225.72—REPORTING CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES

225.7201 Policy.

10 U.S.C. 4603 requires offerors and contractors to notify DoD of any intention to perform any part of a DoD contract outside the United States and Canada that—

(a) Exceeds $900,000 in value; and

(b) Could be performed inside the United States or Canada.

225.7202 Exception.
This subpart does not apply to contracts for commercial products, commercial services, construction, ores, natural gas, utilities, petroleum products and crudes, timber (logs), or subsistence.

225.7203 Contracting officer distribution of reports.
Follow the procedures at PGI 225.7203 for distribution of reports submitted with offers in accordance with the provision at 252.225-7003, Report of Intended Performance Outside the United States and Canada—Submission with Offer.

225.7204 Solicitation provision and contract clauses.

Except for acquisitions described in 225.7202—

(a) Insert the provision at 252.225-7003, Report of Intended Performance Outside the United States and Canada—Submission with Offer, in solicitations with a value exceeding $20 million; and

(b) Insert the clause at 252.225-7004, Report of Intended Performance Outside the United States and Canada—Submission after Award, in solicitations and contracts with a value exceeding $20 million.

SUBPART 225.73—ACQUISITIONS FOR FOREIGN MILITARY SALES

225.7300 Scope of subpart.

(a) This subpart contains policies and procedures for acquisitions for foreign military sales (FMS) under the Arms Export Control Act (22 U.S.C. Chapter 39). Section 22 of the Arms Export Control Act (22 U.S.C. 2762) authorizes DoD to enter into contracts for resale to foreign countries or international organizations.

(b) This subpart does not apply to—

(1) FMS made from inventories or stocks;

(2) Acquisitions for replenishment of inventories or stocks; or

(3) Acquisitions made under DoD cooperative logistic supply support arrangements.

225.7301 General.

(a) The U.S. Government sells defense articles and services to foreign governments or international organizations through FMS agreements. The agreement is documented in a Letter of Offer and Acceptance (LOA) (see the Defense Security Cooperation Agency (DSCA) Security Assistance Management Manual (DSCA 5105.38-M)).

(b) Conduct FMS acquisitions under the same acquisition and contract management procedures used for other defense acquisitions.

(c) Follow the additional procedures at PGI 225.7301(c) for preparation of solicitations and contracts that include FMS requirements.

(d) See 229.170 for policy on contracts financed under U.S. assistance programs that involve payment of foreign country value added taxes or customs duties.

225.7301-1 [Reserved]

225.7301-2 Solicitation approval for sole source contracts.

Coordinate through agency channels with the Principal Director, Defense Pricing, Contracting, and Acquisition Policy, prior to issuing a solicitation for a sole source contract for U.S./FMS combined requirements for a major system that has an estimated contract value that exceeds $500 million. See also 201.170.

225.7302 Preparation of letter of offer and acceptance.

For FMS programs that will require an acquisition, assist the DoD implementing agency responsible for preparing the Letter of Offer and Acceptance (LOA) by—

(1) Working with prospective contractors to—

(i) Identify, in advance of the LOA, any unusual provisions or deviations (such as those requirements for Pseudo LOAs identified at PGI 225.7301);

(ii) Advise the contractor if the DoD implementing agency expands, modifies, or does not accept any key elements of the prospective contractor's proposal;

(iii) Identify any logistics support necessary to perform the contract (such as those requirements identified at PGI 225.7301); and

(iv) For noncompetitive acquisitions over $10,000, ask the prospective contractor for information on price, delivery, and other relevant factors. The request for information must identify the fact that the information is for a potential foreign military sale and must identify the foreign customer; and

(2) Working with the DoD implementing agency responsible for preparing the LOA, as specified in PGI 225.7302.

225.7303 Pricing acquisitions for FMS.

(a) Price FMS contracts using the same principles used in pricing other defense contracts. However, application of the pricing principles in FAR parts 15 and 31 to an FMS contract may result in prices that differ from other defense contract prices for the same item due to the considerations in this section.

(b) If the foreign government has conducted a competition resulting in adequate price competition (see FAR 15.403-2(b)(1)), do not require the submission of certified cost or pricing data. The contracting officer should consult with the foreign government through security assistance personnel to determine if adequate price competition has occurred.

225.7303-1 Contractor sales to other foreign customers.
If the contractor has made sales of the item required for the foreign military sale to foreign customers under comparable conditions, including quantity and delivery, price the FMS contract in accordance with FAR part 15.

225.7303-2 Cost of doing business with a foreign government or an international organization.

(a) In pricing FMS contracts where non-U.S. Government prices as described in 225.7303-1 do not exist, except as provided in 225.7303-5, recognize the reasonable and allocable costs of doing business with a foreign government or international organization, even though such costs might not be recognized in the same amounts in

pricing other defense contracts. Examples of such costs include, but are not limited to, the following:

(1) Selling expenses (not otherwise limited by FAR Part 31), such as—

(i) Maintaining international sales and service organizations;

(ii) Sales commissions and fees in accordance with FAR subpart 3.4;

(iii) Sales promotions, demonstrations, and related travel for sales to foreign governments. Section 126.8 of the International Traffic in Arms Regulations (22 CFR 126.8) may require Government approval for these costs to be allowable, in which case the appropriate Government approval must be obtained; and

(iv) Configuration studies and related technical services undertaken as a direct selling effort to a foreign country.

(2) Product support and post-delivery service expenses, such as—

(i) Operations or maintenance training, training or tactics films, manuals, or other related data; and

(ii) Technical field services provided in a foreign country related to accident investigations, weapon system problems, or operations/tactics enhancement, and related travel to foreign countries.

(3) *Offsets.* For additional information see 225.7306.

(i) An offset agreement is the contractual arrangement between the FMS customer and the U.S. defense contractor that identifies the offset obligation imposed by the FMS customer that has been accepted by the U.S. defense contractor as a condition of the FMS customer's purchase. These agreements are distinct and independent of the LOA and the FMS contract. Further information about offsets and LOAs may be found in the Defense Security Cooperation Agency (DSCA) Security Assistance Management Manual (DSCA 5105.38-M), chapter 6, paragraph 6.3.9. (*http://samm.dsca.mil/chapter/chapter-6*).

(ii) A U.S. defense contractor may recover all costs incurred for offset agreements with a foreign government or international organization if the LOA is financed wholly with foreign government or international organization customer cash or repayable foreign military finance credits.

(iii) The U.S. Government assumes no obligation to satisfy or administer the offset agreement or to bear any of the associated costs.

(iv) Indirect offset costs are deemed reasonable for purposes of FAR parts 15 and 31 with no further analysis necessary on the part of the contracting officer, provided that the U.S. defense contractor submits to the contracting officer a signed offset agreement or other documentation showing that the FMS customer has made the provision of an indirect offset a condition of the FMS acquisition. FMS customers are

placed on notice through the LOA that indirect offset costs are deemed reasonable without any further analysis by the contracting officer.

(4) Costs that are the subject of advance agreement under the appropriate provisions of FAR part 31; or where the advance understanding places a limit on the amounts of cost that will be recognized as allowable in defense contract pricing, and the agreement contemplated that it will apply only to DoD contracts for the U.S. Government's own requirement (as distinguished from contracts for FMS).

(b) Costs not allowable under FAR part 31 are not allowable in pricing FMS contracts, except as noted in paragraphs (c) and (e) of this section.

(c) The limitations for all contractors described in 231.205-18(c)(iii) and (iv) do not apply to FMS contracts, except as provided in 225.7303-5. The allowability of independent research and development (IR&D) costs and bid and proposal (B&P) costs on contracts for FMS not wholly paid for from funds made available on a nonrepayable basis is limited to the contract's allocable share of the contractor's total IR&D expenditures and total B&P expenditures. In pricing contracts for such FMS—

(1) Use the best estimate of reasonable costs in forward pricing; and

(2) Use actual expenditures, to the extent that they are reasonable, in determining final cost.

(d) Under paragraph (e)(1)(A) of Section 21 of the Arms Export Control Act (22 U.S.C. 2761), the United States must charge for administrative services to recover the estimated cost of administration of sales made under the Army Export Control Act.

(e) The limitations in 231.205-1 on allowability of costs associated with leasing Government equipment do not apply to FMS contracts.

225.7303-3 Government-to-government agreements.
If a government-to-government agreement between the United States and a foreign government for the sale, coproduction, or cooperative logistic support of a specifically defined weapon system, major end item, or support item, contains language in conflict with the provisions of this section, the language of the government-to-government agreement prevails.

225.7303-4 Contingent fees.

(a) Except as provided in paragraph (b) of this subsection, contingent fees are generally allowable under DoD contracts, provided—

(1) The fees are paid to a bona fide employee or a bona fide established commercial or selling agency maintained by the prospective contractor for the purpose of securing business (see FAR part 31 and FAR subpart); and

(2) The contracting officer determines that the fees are fair and reasonable.

(b)(1) Under DoD 5105.38-M, LOAs for requirements for the governments of Australia, Taiwan, Egypt, Greece, Israel, Japan, Jordan, Republic of Korea, Kuwait,

Pakistan, Philippines, Saudi Arabia, Turkey, Thailand, or Venezuela (Air Force) must provide that all U.S. Government contracts resulting from the LOAs prohibit the reimbursement of contingent fees as an allowable cost under the contract, unless the contractor identifies the payments and the foreign customer approves the payments in writing before contract award (see 225.7307(a)).

(2) For FMS to countries not listed in paragraph (b)(1) of this subsection, contingent fees exceeding $50,000 per FMS case are unallowable under DoD contracts, unless the contractor identifies the payment, and the foreign customer approves the payment in writing before contract award.

225.7303-5 Acquisitions wholly paid for from nonrepayable funds.

(a) In accordance with 22 U.S.C. 2762(d), price FMS wholly paid for from funds made available on a nonrepayable basis on the same costing basis regarding profit, overhead, IR&D/B&P, and other costing elements as is applicable to acquisitions of like items purchased by DoD for its own use.

(b) Direct costs associated with meeting a foreign customer's additional or unique requirements are allowable under such contracts. Indirect burden rates applicable to such direct costs are permitted at the same rates applicable to acquisitions of like items purchased by DoD for its own use.

(c) A U.S. defense contractor may not recover costs incurred for offset agreements with a foreign government or international organization if the LOA is financed with funds made available on a nonrepayable basis.

225.7304 FMS customer involvement.

(a) FMS customers may request that a defense article or defense service be obtained from a particular contractor. In such cases, FAR 6.103-4 provides authority to contract without full and open competition. The FMS customer may also request that a subcontract be placed with a particular firm. Honor such requests from the FMS customer only if the LOA or other written direction sufficiently fulfills the requirements of FAR subpart 6.1.

(b) FMS customers should be encouraged to participate with U.S. Government acquisition personnel in discussions with industry to—

(1) Develop technical specifications;

(2) Establish delivery schedules;

(3) Identify any special warranty provisions or other requirements unique to the FMS customer; and

(4) Review prices of varying alternatives, quantities, and options needed to make price-performance tradeoffs.

(c) Do not disclose to the FMS customer any data, including certified cost or pricing data, that is contractor proprietary unless the contractor authorizes its release.

(d) Except as provided in paragraph (e)(3) of this section, the degree of FMS customer participation in contract negotiations is left to the discretion of the contracting officer after consultation with the contractor. Provide an explanation to the FMS customer if its participation in negotiations will be limited. Factors that may limit FMS customer participation include situations where—

(1) The contract includes requirements for more than one FMS customer;

(2) The contract includes unique U.S. requirements; or

(3) Contractor proprietary data is a subject of negotiations.

(e) Do not allow representatives of the FMS customer to—

(1) Direct the exclusion of certain firms from the solicitation process (they may suggest the inclusion of certain firms);

(2) Interfere with a contractor's placement of subcontracts; or

(3) Observe or participate in negotiations between the U.S. Government and the contractor involving certified cost or pricing data, unless a deviation is granted in accordance with subpart 201.4.

(f) Do not accept directions from the FMS customer on source selection decisions or contract terms (except that, upon timely notice, the contracting officer may attempt to obtain any special contract provisions, warranties, or other unique requirements requested by the FMS customer).

(g) Do not honor any requests by the FMS customer to reject any bid or proposal.

(h) If an FMS customer requests additional data concerning FMS contract prices, after consultation with the contractor, provide sufficient data to demonstrate the reasonableness of the price and reasonable responses to relevant questions concerning contract price. This data—

(1) May include tailored responses, top-level pricing summaries, historical prices, or an explanation of any significant differences between the actual contract price and the estimated contract price included in the initial LOA; and

(2) May be provided orally, in writing, or by any other method acceptable to the contracting officer.

225.7305 Limitation of liability.
Advise the contractor when the foreign customer will assume the risk for loss or damage under the appropriate limitation of liability clause(s) (see FAR subpart 46.8). Consider the costs of necessary insurance, if any, obtained by the contractor to cover the risk of loss or damage in establishing the FMS contract price.

225.7306 Offset arrangements.
In accordance with the Presidential policy statement of April 16, 1990, DoD does not encourage, enter into, or commit U.S. firms to FMS offset arrangements. The decision whether to engage in offsets, and the responsibility for negotiating and implementing offset arrangements, resides with the companies involved. (See also 225.7303-2(a)(3).)

225.7307 Contract clauses.

(a) Insert the clause at 252.225-7027, Restriction on Contingent Fees for Foreign Military Sales, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that are for FMS. Insert in paragraph (b)(1) of the clause the name(s) of any foreign country customer(s) listed in 225.7303-4(b).

(b) Insert the clause at 252.225-7028, Exclusionary Policies and Practices of Foreign Governments, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that are for the purchase of supplies and services for international military education training and FMS.

SUBPART 225.74 [RESERVED]

SUBPART 225.75—BALANCE OF PAYMENTS PROGRAM

225.7500 Scope of subpart.

This subpart states policies and procedures implementing the Balance of Payments Program. It applies to contracts for the acquisition of—

(a) Supplies for use outside the United States; and

(b) Construction to be performed outside the United States.

225.7501 Policy.

Acquire only domestic end products for use outside the United States, and use only domestic construction material for construction to be performed outside the United States, including end products and construction material for foreign military sales, unless—

(a) Before issuing the solicitation—

(1) The estimated cost of the acquisition or the value of a particular construction material is at or below the simplified acquisition threshold;

(2) The end product or particular construction material is—

(i) Listed in FAR 25.104;

(ii) A petroleum product;

(iii) A spare part for foreign-manufactured vehicles, equipment, machinery, or systems, provided the acquisition is restricted to the original manufacturer or its supplier;

(iv) An industrial gas;

.

(v) A brand drug specified by the Defense Medical Materiel Board; or

(vi) Information technology that is a commercial product, using fiscal year 2004 or subsequent funds (section 535 of Division F of the Consolidated Appropriations Act, 2004 (Pub. L. 108-199), and the same provision in subsequent appropriations acts);

(3) The acquisition is covered by the World Trade Organization Government Procurement Agreement;

(4) The acquisition of foreign end products or construction material is required by a treaty or executive agreement between governments;

(5) [Reserved];

(6) The end product is acquired for commissary resale; or

(7) The contracting officer determines that a requirement can best be filled by a foreign end product or construction material, including determinations that—

(i) A subsistence product is perishable and delivery from the United States would significantly impair the quality at the point of consumption;

(ii) An end product or construction material, by its nature or as a practical matter, can best be acquired in the geographic area concerned, e.g., ice or books; or bulk material, such as sand, gravel, or other soil material, stone, concrete masonry units, or fired brick;

(iii) A particular domestic construction material is not available;

(iv) The cost of domestic construction material would exceed the cost of foreign construction material by more than 50 percent, calculated on the basis of—

(A) A particular construction material; or

(B) The comparative cost of application of the Balance of Payments Program to the total acquisition; or

(v) Use of a particular domestic construction material is impracticable;

(b) After receipt of offers—

(1) The evaluated low offer (see subpart 225.5) is an offer of an end product that—

(i) Is a qualifying country end product;

(ii) Is an eligible product; or

(iii) [Reserved]

(iv) Is a nonqualifying country end product, but application of the Balance of Payments Program evaluation factor would not result in award on a domestic offer; or

(2) [Reserved**]**

(c) At any time during the acquisition process, the head of the agency determines that applying the restrictions of the Balance of Payments Program to the end product or construction material is not in the public interest.

225.7502 Procedures.
If the Balance of Payments Program applies to the acquisition, follow the procedures at PGI 225.7502.

225.7503 Contract clauses.

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

(a) Insert 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 products or commercial components, with an estimated value greater than the simplified acquisition threshold but less than $6,708,000.

(1) [Reserved]

(2) [Reserved]

(3) Insert the alternate II clause in lieu of the basic clause if an alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

(4) [Reserved]

(b) Insert 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 $6,708,000 or more, including acquisitions of commercial products or commercial components.

(1) Insert the basic clause in solicitations and contracts with an estimated value of $13,296,489 or more.

(2) Insert the alternate I clause in solicitations and contracts with an estimated value of $6,708,000 or more, but less than $13,296,489.

(3) [Reserved]

(4) [Reserved]

(5) Insert the alternate IV clause in lieu of the basic clause in solicitations and contracts when—

(i) The estimated value is $13,296,489 or more; and

(ii) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

(6) Insert the alternate V clause in lieu of the alternate I clause in solicitations and contracts when—

(i) The estimated value is $6,708,000 or more, but less than $13,296,489; and

(ii) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

(7) [Reserved]

(8) [Reserved]

SUBPART 225.76—SECONDARY ARAB BOYCOTT OF ISRAEL

225.7601 Restriction.
In accordance with 10 U.S.C. 4659, do not enter into a contract with a foreign entity unless it has certified that it does not comply with the secondary Arab boycott of Israel.

225.7602 Procedures.
For contracts awarded to the Canadian Commercial Corporation (CCC), the CCC will submit a certification from its proposed subcontractor with the other required precontractual information (see 225.870).

225.7603 Exceptions.

This restriction does not apply to—

(a) Purchases at or below the simplified acquisition threshold;

(b) Contracts for consumable supplies, provisions, or services for the support of United States forces or of allied forces in a foreign country; or

(c) Contracts pertaining to the use of any equipment, technology, data, or services for intelligence or classified purposes, or to the acquisition or lease thereof, in the interest of national security.

225.7604 Waivers.
The Secretary of Defense may waive this restriction on the basis of national security interests. To request a waiver, follow the procedures at PGI 225.7604.

225.7605 Solicitation provision.
Unless an exception at 225.7603 applies or a waiver has been granted in accordance with 225.7604, insert the provision at 252.225-7031, Secondary Arab Boycott of Israel, in all solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services. If the solicitation includes the provision at FAR 52.204-7, do not separately list 252.225-7031 in the solicitation.

SUBPART 225.78—ACQUISITIONS IN SUPPORT OF GEOGRAPHIC COMBATANT COMMAND'S THEATER SECURITY COOPERATION EFFORTS

225.7801 Policy.
For guidance on procurement support of the geographic combatant command's theater security cooperation efforts, see PGI 225.78.

SUBPART 225.79—EXPORT CONTROL

225.7900 Scope of subpart.

This subpart implements—

(a) Section 890(a) of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181); and

(b) The requirements regarding export control of Title I of the Security Cooperation Act of 2010 (Pub. L. 111-266); the Treaty Between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation (the U.S.-Australia DTC Treaty); and the Treaty Between the Government of the United States of America and the Government the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation (the U.S.-U.K. DTC Treaty). See PGI 225.7902 for additional information.

225.7901 Export-controlled items.
This section implements section 890(a) of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

225.7901-1 Definitions.
As used in this section—

"Export-controlled items" means items subject to the Export Administration Regulations (EAR) (15 CFR Parts 730-774) or the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130). The term includes:

(1) "Defense items", defined in the Arms Export Control Act, 22 U.S.C. 2778(j)(4)(A), as defense articles, defense services, and related technical data, and further defined in the ITAR, 22 CFR Part 120.

(2) "Items", defined in the EAR as "commodities", "software", and "technology," terms that are also defined in the EAR, 15 CFR 772.1.

225.7901-2 General.
Certain types of items are subject to export controls in accordance with the Arms Export Control Act (22 U.S.C. 2751, *et seq.*), the International Traffic in Arms Regulations (22 CFR parts 120-130), the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401 *et seq.*), and the Export Administration Regulations (15 CFR parts 730-774). See PGI 225.7901-2 for additional information.

225.7901-3 Policy.

(a) Both the Government and the contractor should be aware of export controls as they apply to the performance of DoD contracts.

(b) The contractor bears responsibility to comply with all applicable laws and regulations regarding export-controlled items. This responsibility exists independent of, and is not established or limited by, this section.

225.7901-4 Contract clause.
Insert the clause at 252.225-7048, Export-Controlled Items, in all solicitations and contracts.

225.7902 Defense Trade Cooperation Treaties.
This section implements the Defense Trade Cooperation (DTC) Treaties with Australia and the United Kingdom and the associated Implementing Arrangements for DoD solicitations and contracts that authorize prospective contractors and contractors to use the DTC Treaties to respond to DoD solicitations and in the performance of DoD contracts.

225.7902-1 Definitions.
As used in this section—

"Approved Community" means the U.S. Government, U.S. entities that are registered and eligible exporters, and certain government and industry facilities in Australia or the United Kingdom that are approved and listed by the U.S. Government.

"Defense articles" means articles, services, and related technical data, including software, in tangible or intangible form, listed on the United States Munitions List of the International Traffic in Arms Regulations (ITAR), as modified or amended.

"Defense Trade Cooperation (DTC) Treaty" means—

(1) The Treaty Between the Government of the United States of America and the government of the United Kingdom of Great Britain and Northern Ireland concerning Defense Trade Cooperation, signed at Washington and London on June 21 and 26, 2007; or

(2) The Treaty Between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation, signed at Sydney on September 5, 2007.

"Export" means the initial movement of defense articles from the United States Community to the United Kingdom Community and the Australia community.

"Qualifying defense articles" means defense articles that are not exempt from the scope of the DTC Treaties as defined in 22 CFR 126.16(g) and 22 CFR 126.17(g).

"Transfer" means the movement of previously exported defense articles within the Approved Community. "United Kingdom Community member" means a United Kingdom government authority or nongovernmental entity or facility on the United Kingdom Community list accessible at http://pmddtc.state.gov.

"U.S. DoD Treaty-eligible requirements" means any defense article acquired by the DoD for use in a combined military or counterterrorism operation, cooperative research, development, production or support program, or DoD end use, as described in Article 3 of the U.S.-U.K. DTC Treaty and sections 2 and 3 of the associated Implementing Arrangement; and Article 3 of the U.S.-Australia DTC Treaty and sections 2 and 3 of the associated Implementing Arrangement.

225.7902-2 Purpose.
The DTC Treaties permit the export of certain U.S. defense articles, technical data, and defense services, without U.S. export licenses or other written authorization under the International Traffic in Arms Regulation (ITAR) into and within the Approved Community, as long as the exports are in support of purposes specified in the DTC Treaties. All persons must continue to comply with statutory and regulatory requirements outside of DFARS and ITAR concerning the import of defense articles and defense services or the possession or transfer of defense articles, including, but not limited to, regulations issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives found at 27 CFR parts 447, 478, and 479, which are unaffected by the DTC Treaties. The Approved Community consists of U.S. entities that are registered with the Department of State and are eligible exporters, the U.S. Government, and certain governmental and commercial facilities in Australia and the United Kingdom that are approved and listed by the U.S. Government. See PGI 225.7902-2 for additional information.

225.7902-3 Policy.
DoD will facilitate maximum use of the DTC Treaties by prospective contractors responding to DoD solicitations and by contractors eligible to export qualifying defense articles under DoD contracts in accordance with 22 CFR 126.16(g) and 22 CFR 126.17(g).

225.7902-4 Procedures.

(a) For all solicitations and contracts that may be eligible for DTC Treaty coverage (see PGI 225.7902-4(1)), the program manager must identify in writing and submit to the contracting officer prior to issuance of a solicitation and prior to award of a contract—

(1) The qualifying DTC Treaty Scope paragraph (Article 3(1)(a), 3(1)(b), or 3(1)(d) of the U.S.-Australia DTC Treaty or Article (3)(1)(a), (3(1)(b), or 3(1)(d) of the U.S.-U.K. DTC Treaty); and

(2) The qualifying defense article(s) using the categories described in 22 CFR 126.16(g) and 22 CFR 126.17(g).

(b) If applicable, the program manager must also identify in writing and submit to the contracting officer any specific Part C, DTC Treaty-exempted technology list items, terms and conditions for applicable contract line item numbers (See PGI 225.7902-4(2)).

225.7902-5 Solicitation provision and contract clause.

(a) Insert the provision at 252.225-7046, Exports by Approved Community Members in Response to the Solicitation, in solicitations containing the clause at 252.225-7047.

(b)(1) Insert the clause at 252.225-7047, Exports by Approved Community Members in Performance of the Contract, in solicitations and contracts when—

(i) Export-controlled items are expected to be involved in the performance of the contract and the clause at 252.225-7048 is used; and

(ii) At least one contract line item is intended to satisfy a U.S. DoD Treaty-eligible requirement.

(2) Complete paragraph (b) of the clause using information the program manager provided as required by 225.7902-4(a).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

SUBPART 252.2—TEXT OF PROVISIONS AND CLAUSES

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

Basic. As prescribed in 225.601(1), use the following provision:

BUY AMERICAN—BALANCE OF PAYMENTS PROGRAM CERTIFICATE—BASIC (FEB 2024)

(a) *Definitions.* "Commercially available off-the-shelf (COTS) item," "component," "critical component," "critical item," "domestic end product," "foreign end product," "qualifying country," "qualifying country end product," and "United States," as used in this provision, have the meanings given in the 252.225-7001, Buy American and Balance of Payments Program—Basic 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 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—Basic 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 that each domestic end product listed in paragraph (c)(4) of this provision contains a critical component or a critical item; 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. For those end products that do not consist wholly or predominantly of iron or steel or a combination of both, the Offeror shall also indicate whether these foreign end products exceed 55 percent domestic content, except for those that are COTS items. If the percentage of the domestic content is unknown, select "no".

(2) The Offeror certifies that the following end products are qualifying country 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. For those foreign end products that do not consist wholly or predominantly of iron or steel or a combination of both, the Offeror shall also indicate whether these foreign end products exceed 55 percent domestic content, except for those that are COTS items. If the percentage of the domestic content is unknown, select "no".

Line Item Number	Country of Origin (If known)	Exceeds 55% Domestic Content (yes/no)

(4) The Offeror shall separately list the line item numbers of domestic end products that contain a critical component or a critical item (see Federal Acquisition Regulation 25.105).

Domestic end products containing a critical component or a critical item:
Line Item Number _____
[List as necessary]

(End of provision)

Alternate I. **[Reserved]**

252.225-7001 Buy American and Balance of Payments Program.

Basic. As prescribed in 225.601(2)(i), use the following clause:

BUY AMERICAN AND BALANCE OF PAYMENTS PROGRAM—BASIC
(FEB 2024)

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

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

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

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

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

(iii) 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

(2) 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.

"Critical component" means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

"Critical item" means a domestic construction material or domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

"Domestic end product" means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured end product 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 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with FAR 25.101(d), or award is made before January 1, 2030, for a foreign end product that exceeds 55 percent domestic content (see Defense Federal Acquisition Regulation Supplement 225.103(b)(ii)). 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). Components of unknown origin are treated as foreign. 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; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

"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.

"Predominantly of iron or steel or a combination of both" means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

"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
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Lithuania
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
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—

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

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

(i) The cost of the following types of components exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract:

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

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

(C) 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. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

"Steel" means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

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

(b) This clause implements 41 U.S.C chapter 83, Buy American. 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 . 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, the Contractor shall deliver a qualifying country 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 I. **[Reserved]**

Alternate II. As prescribed in 225.601(2)(i) and (2)(ii), use the following clause, which includes, in the definitions of "domestic end product" at paragraph (1)(ii)(A) and "qualifying country end product" at paragraph (2)(i), the domestic content threshold that will apply to the entire contract period of performance.

BUY AMERICAN AND BALANCE OF PAYMENTS PROGRAM—
ALTERNATE II (FEB 2024)

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

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

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

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

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

(iii) 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

(2) 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.

"Critical component" means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

"Critical item" means a domestic construction material or domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

"Domestic end product" means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured end product 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, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 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). Components of unknown origin are treated as foreign. 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; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of

iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

"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.

"Predominantly of iron or steel or a combination of both" means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

"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
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia

Lithuania
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
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—

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

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

(i) The cost of the following types of components exceeds, for the entire period of performance for a contract awarded in calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 percent of the cost of all its components:

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

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

(C) 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. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

"Steel" means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

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

(b) This clause implements 41 U.S.C. chapter 83, Buy American. 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. 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, the Contractor shall deliver a qualifying country 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)

252.225-7002 Qualifying Country Sources as Subcontractors.
As prescribed in 225.601(3), use the following clause:

QUALIFYING COUNTRY SOURCES AS SUBCONTRACTORS (MAR 2022)

(a) *Definition.* "Qualifying country," as used in this clause, 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
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Lithuania
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden

Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

(b) Subject to the restrictions in section 225.872 of the Defense FAR Supplement, the Contractor shall not preclude qualifying country sources or U.S. sources from competing for subcontracts under this contract.

(End of clause)

252.225-7003 Report of Intended Performance Outside the United States and Canada—Submission with Offer.
As prescribed in 225.7204(a), use the following provision:

REPORT OF INTENDED PERFORMANCE OUTSIDE THE UNITED STATES AND CANADA—SUBMISSION WITH OFFER (OCT 2025)

(a) *Definition.* "United States," as used in this provision, means the 50 States, the District of Columbia, and outlying areas.

(b) The Offeror shall submit, with its offer, a report of intended performance outside the United States and Canada if—

(1) The offer exceeds $20 million in value; and

(2) The Offeror is aware that the Offeror or a first-tier subcontractor intends to perform any part of the contract outside the United States and Canada that—

(i) Exceeds $900,000 in value; and

(ii) Could be performed inside the United States or Canada.

(c) Information to be reported includes that for—

(1) Subcontracts;

(2) Purchases; and

(3) Intracompany transfers when transfers originate in a foreign location.

(d) The Offeror shall submit the report using—

(1) DD Form 2139, Report of Contract Performance Outside the United States; or

(2) A computer-generated report that contains all information required by DD Form 2139.

(e) The Offeror may obtain a copy of DD Form 2139 from the Contracting Officer or via the Internet at http://www.dtic.mil/whs/directives/infomgt/forms/formsprogram.htm.

(End of provision)

252.225-7004 Report of Intended Performance Outside the United States and Canada—Submission after Award.
As prescribed in 225.7204(b), use the following clause:

REPORT OF INTENDED PERFORMANCE OUTSIDE THE UNITED STATES AND CANADA—SUBMISSION AFTER AWARD (JUL 2024)

(a) *Definition.* "United States," as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) *Reporting requirement.* The Contractor shall submit a report in accordance with this clause, if the Contractor or a first-tier subcontractor will perform any part of this contract outside the United States and Canada that—

(1) Exceeds the threshold specified in Defense Acquisition Regulation Supplement 225.7201(a); and

(2) Could be performed inside the United States or Canada.

(c) *Submission of reports.* The Contractor—

(1) Shall submit a report as soon as practical after the information is known;

(2) To the maximum extent practicable, shall submit a report regarding a first-tier subcontractor at least 30 days before award of the subcontract;

(3) Need not resubmit information submitted with its offer, unless the information changes;

(4) Shall submit all reports to the Contracting Officer; and

(5) Shall submit a copy of each report to: Principal Director, Defense Pricing, Contracting, and Acquisition Policy (Contract Policy), OUSD(A&S) DPCAP/CP, Washington, DC 20301-3060.

(d) *Report format.* The Contractor—

(1) Shall submit reports using—

(i) DD Form 2139, Report of Contract Performance Outside the United States; or

(ii) A computer-generated report that contains all information required by DD Form 2139; and

(2) May obtain copies of DD Form 2139 from the Contracting Officer or via the Internet at https://www.esd.whs.mil/Directives/forms/.

(End of clause)

252.225-7005 Identification of Expenditures in the United States.
As prescribed in 225.603(1), use the following clause:

IDENTIFICATION OF EXPENDITURES IN THE UNITED STATES (JUN 2005)

(a) *Definition.* "United States," as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) This clause applies only if the Contractor is—

(1) A concern incorporated in the United States (including a subsidiary that is incorporated in the United States, even if the parent corporation is not incorporated in the United States); or

(2) An unincorporated concern having its principal place of business in the United States.

(c) On each invoice, voucher, or other request for payment under this contract, the Contractor shall identify that part of the requested payment that represents estimated expenditures in the United States. The identification—

(1) May be expressed either as dollar amounts or as percentages of the total amount of the request for payment;

(2) Should be based on reasonable estimates; and

(3) Shall state the full amount of the payment requested, subdivided into the following categories:

(i) U.S. products—expenditures for material and equipment manufactured or produced in the United States, including end products, components, or construction material, but excluding transportation;

(ii) U.S. services—expenditures for services performed in the United States, including all charges for overhead, other indirect costs, and profit under construction or service contracts;

(iii) Transportation on U.S. carriers—expenditures for transportation furnished by U.S. flag, ocean, surface, and air carriers; and

(iv) Expenditures not identified under paragraphs (c)(3)(i) through (iii) of this clause.

(d) Nothing in this clause requires the establishment or maintenance of detailed accounting records or gives the U.S. Government any right to audit the Contractor's books or records.

(End of clause)

252.225-7006 Acquisition of the American Flag.
As prescribed in 225.7002-3(c), insert the following clause:

ACQUISITION OF THE AMERICAN FLAG (DEC 2022)

(a) *Definition.* "United States," as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) If the Contractor is required to deliver under this contract one or more American flags (Product or Service Code 8345), such flag(s), including the materials and components thereof, shall be manufactured in the United States, consistent with the requirements at 10 U.S.C. 4862 (commonly known as the "Berry Amendment").

(c) This clause does not apply to the acquisition of any end items or components related to flying or displaying the flag (e.g., flagpoles and accessories).

(End of clause)

252.225-7008 Restriction on Acquisition of Specialty Metals.
As prescribed in 225.7003-5(a)(1), use the following clause:

RESTRICTION ON ACQUISITION OF SPECIALTY METALS (MAR 2013)

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

"Alloy" means a metal consisting of a mixture of a basic metallic element and one or more metallic, or non-metallic, alloying elements.

(i) For alloys named by a single metallic element (e.g., titanium alloy), it means that the alloy contains 50 percent or more of the named metal (by mass).

(ii) If two metals are specified in the name (e.g, nickel-iron alloy), those metals are the two predominant elements in the alloy, and together they constitute 50 percent or more of the alloy (by mass).

"Produce" means—

(i) Atomization;

(ii) Sputtering; or

(iii) Final consolidation of non-melt derived metal powders.

"Specialty metal" means—

(i) Steel—

(A) With a maximum alloy content exceeding one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or

(B) Containing more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, molybdenum, nickel, niobium (columbium), titanium, tungsten, or vanadium;

(ii) Metal alloys consisting of—

(A) Nickel or iron-nickel alloys that contain a total of alloying metals other than nickel and iron in excess of 10 percent; or

(B) Cobalt alloys that contain a total of alloying metals other than cobalt and iron in excess of 10 percent;

(iii) Titanium and titanium alloys; or

(iv) Zirconium and zirconium alloys.

"Steel" means an iron alloy that includes between .02 and 2 percent carbon and may include other elements.

(b) Any specialty metal delivered under this contract shall be melted or produced in the United States or its outlying areas.

(End of clause)

252.225-7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals.
As prescribed in 225.7003-5(a)(2), use the following clause:

RESTRICTION ON ACQUISITION OF CERTAIN ARTICLES CONTAINING SPECIALTY METALS (JAN 2023)

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

"Alloy" means a metal consisting of a mixture of a basic metallic element and one or more metallic, or non-metallic, alloying elements.

(i) For alloys named by a single metallic element (e.g., titanium alloy), it means that the alloy contains 50 percent or more of the named metal (by mass).

(ii) If two metals are specified in the name (e.g, nickel-iron alloy), those metals are the two predominant elements in the alloy, and together they constitute 50 percent or more of the alloy (by mass).

"Assembly" means an item forming a portion of a system or subsystem that—

(i) Can be provisioned and replaced as an entity; and

(ii) Incorporates multiple, replaceable parts.

"Commercial derivative military article" means an item acquired by the Department of Defense that is or will be produced using the same production facilities, a common supply chain, and the same or similar production processes that are used for the production of articles predominantly used by the general public or by nongovernmental entities for purposes other than governmental purposes.

"Commercially available off-the-shelf item"—

(i) Means any item of supply that is—

(A) A commercial product (as defined in paragraph (1) of the definition of "commercial product" 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 this contract or a 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 item supplied to the Government as part of an end item or of another component.

"Electronic component" means an item that operates by controlling the flow of electrons or other electrically charged particles in circuits, using interconnections of electrical devices such as resistors, inductors, capacitors, diodes, switches, transistors, or integrated circuits. The term does not include structural or mechanical parts of an assembly containing an electronic component, and does not include any high performance magnets that may be used in the electronic component.

"End item" means the final production product when assembled or completed and ready for delivery under a line item of this contract.

"High performance magnet" means a permanent magnet that obtains a majority of its magnetic properties from rare earth metals (such as samarium).

"Produce" means—

(i) Atomization;

(ii) Sputtering; or

(iii) Final consolidation of non-melt derived metal powders.

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

"Specialty metal" means—

(i) Steel—

(A) With a maximum alloy content exceeding one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or

(B) Containing more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, molybdenum, nickel, niobium (columbium), titanium, tungsten, or vanadium;

(ii) Metal alloys consisting of—

(A) Nickel or iron-nickel alloys that contain a total of alloying metals other than nickel and iron in excess of 10 percent; or

(B) Cobalt alloys that contain a total of alloying metals other than cobalt and iron in excess of 10 percent;

(iii) Titanium and titanium alloys; or

(iv) Zirconium and zirconium alloys.

"Steel" means an iron alloy that includes between .02 and 2 percent carbon and may include other elements.

"Subsystem" means a functional grouping of items that combine to perform a major function within an end item, such as electrical power, attitude control, and propulsion.

(b) *Restriction.* Except as provided in paragraph (c) of this clause, any specialty metals incorporated in items delivered under this contract shall be melted or produced in the United States, its outlying areas, or a qualifying country.

(c) *Exceptions.* The restriction in paragraph (b) of this clause does not apply to—

(1) Electronic components.

(2)(i) Commercially available off-the-shelf (COTS) items, other than—

(A) Specialty metal mill products, such as bar, billet, slab, wire, plate, or sheet, that have not been incorporated into COTS end items, subsystems, assemblies, or components;

(B) Forgings or castings of specialty metals, unless the forgings or castings are incorporated into COTS end items, subsystems, or assemblies;

(C) Commercially available high performance magnets that contain specialty metal, unless such high performance magnets are incorporated into COTS end items or subsystems; and

(D) COTS fasteners, unless—

(1) The fasteners are incorporated into COTS end items, subsystems, assemblies, or components; or

(2) The fasteners qualify for the commercial product exception in paragraph (c)(3) of this clause.

(ii) A COTS item is considered to be "without modification" if it is not modified prior to contractual acceptance by the next higher tier in the supply chain.

(A) Specialty metals in a COTS item that was accepted without modification by the next higher tier are excepted from the restriction in paragraph (b) of this clause, and remain excepted, even if a piece of the COTS item subsequently is removed (e.g., the end is removed from a COTS screw or an extra hole is drilled in a COTS bracket).

(B) Specialty metals that were not contained in a COTS item upon acceptance, but are added to the COTS item after acceptance, are subject to the restriction in paragraph (b) of this clause (e.g., a special reinforced handle made of specialty metal is added to a COTS item).

(C) If two or more COTS items are combined in such a way that the resultant item is not a COTS item, only the specialty metals involved in joining the COTS items together are subject to the restriction in paragraph (b) of this clause (e.g., a COTS aircraft is outfitted with a COTS engine that is not the COTS engine normally provided with the aircraft).

(D) For COTS items that are normally sold in the commercial marketplace with various options, items that include such options are also COTS items. However, if a COTS item is offered to the Government with an option that is not normally offered in the commercial marketplace, that option is subject to the restriction in paragraph (b) of this clause (e.g. - An aircraft is normally sold to the public with an option for installation kits. The Department of Defense requests a military-unique kit. The aircraft is still a COTS item, but the military-unique kit is not a COTS item and must comply with the restriction in paragraph (b) of this clause unless another exception applies).

(3) Fasteners that are commercial products, if the manufacturer of the fasteners certifies it will purchase, during the relevant calendar year, an amount of domestically melted or produced specialty metal, in the required form, for use in the production of fasteners for sale to the Department of Defense and other customers, that is not less than 50 percent of the total amount of the specialty metal that it will purchase to carry out the production of such fasteners for all customers.

(4) Items manufactured in a qualifying country.

(5) Specialty metals for which the Government has determined in accordance with DFARS 225.7003-3 that specialty metal melted or produced in the United States, its outlying areas, or a qualifying country cannot be acquired as and when needed in—

(i) A satisfactory quality;

(ii) A sufficient quantity; and

(iii) The required form. In accordance with 10 U.S.C. 4863(m)(4), the term "required form" in this clause refers to the form of the mill product, such as bar, billet, wire, slab, plate, or sheet, in the grade appropriate for the production of a finished end item to be delivered to the Government under this contract; or a finished component

assembled into an end item to be delivered to the Government under this contract.

(6) End items containing a minimal amount of otherwise noncompliant specialty metals (i.e., specialty metals not melted or produced in the United States, an outlying area, or a qualifying country, that are not covered by one of the other exceptions in this paragraph (c)), if the total weight of such noncompliant metals does not exceed 2 percent of the total weight of all specialty metals in the end item, as estimated in good faith by the Contractor. This exception does not apply to high performance magnets containing specialty metals.

(d) *Compliance for commercial derivative military articles.*

(1) As an alternative to the compliance required in paragraph (b) of this clause, the Contractor may purchase an amount of domestically melted or produced specialty metals in the required form, for use during the period of contract performance in the production of the commercial derivative military article and the related commercial article, if—

(i) The Contracting Officer has notified the Contractor of the items to be delivered under this contract that have been determined by the Government to meet the definition of "commercial derivative military article"; and

(ii) For each item that has been determined by the Government to meet the definition of "commercial derivative military article," the Contractor has certified, as specified in the provision of the solicitation entitled "Commercial Derivative Military Article—Specialty Metals Compliance Certificate" (DFARS 252.225-7010), that the Contractor and its subcontractor(s) will enter into a contractual agreement or agreements to purchase an amount of domestically melted or produced specialty metal in the required form, for use during the period of contract performance in the production of each commercial derivative military article and the related commercial article, that is not less than the Contractor's good faith estimate of the greater of—

(A) An amount equivalent to 120 percent of the amount of specialty metal that is required to carry out the production of the commercial derivative military article (including the work performed under each subcontract); or

(B) An amount equivalent to 50 percent of the amount of specialty metal that will be purchased by the Contractor and its subcontractors for use during such period in the production of the commercial derivative military article and the related commercial article.

(2) For the purposes of this alternative, the amount of specialty metal that is required to carry out production of the commercial derivative military article includes specialty metal contained in any item, including COTS items.

(e) *Subcontracts.*

(1) The Contractor shall exclude and reserve paragraph (d) and this paragraph (e)(1) when flowing down this clause to subcontracts.

(2) The Contractor shall insert paragraphs (a) through (c) and this paragraph

(e)(2) of this clause in subcontracts, including subcontracts for commercial products, that are for items containing specialty metals to ensure compliance of the end products that the Contractor will deliver to the Government. When inserting this clause in subcontracts, the Contractor shall—

(i) Modify paragraph (c)(6) of this clause only as necessary to facilitate management of the minimal content exception at the prime contract level. The minimal content exception does not apply to specialty metals contained in high-performance magnets; and

(ii) Not further alter the clause other than to identify the appropriate parties.

(End of clause)

252.225-7010 Commercial Derivative Military Article—Specialty Metals Compliance Certificate.
As prescribed in 225.7003-5(b), use the following provision:

COMMERCIAL DERIVATIVE MILITARY ARTICLE—SPECIALTY METALS COMPLIANCE CERTIFICATE (JUL 2009)

(a) *Definitions.* "Commercial derivative military article," "commercially available off-the-shelf item," "produce," "required form," and "specialty metal," as used in this provision, have the meanings given in the clause of this solicitation entitled "Restriction on Acquisition of Certain Articles Containing Specialty Metals" (DFARS 252.225-7009).

(b) The offeror shall list in this paragraph any commercial derivative military articles it intends to deliver under any contract resulting from this solicitation using the alternative compliance for commercial derivative military articles, as specified in paragraph (d) of the clause of this solicitation entitled "Restriction on Acquisition of Certain Articles Containing Specialty Metals" (DFARS 252.225-7009). The offeror's designation of an item as a "commercial derivative military article" will be subject to Government review and approval.

_____
_____.

(c) If the offeror has listed any commercial derivative military articles in paragraph (b) of this provision, the offeror certifies that, if awarded a contract as a result of this solicitation, and if the Government approves the designation of the listed item(s) as commercial derivative military articles, the offeror and its subcontractor(s) will demonstrate that individually or collectively they have entered into a contractual agreement or agreements to purchase an amount of domestically melted or produced specialty metal in the required form, for use during the period of contract performance in the production of each commercial derivative military article and the related commercial article, that is not less than the Contractor's good faith estimate of the greater of—

(1) An amount equivalent to 120 percent of the amount of specialty metal that is required to carry out the production of the commercial derivative military article (including the work performed under each subcontract); or

(2) An amount equivalent to 50 percent of the amount of specialty metal that will be purchased by the Contractor and its subcontractors for use during such period in the production of the commercial derivative military article and the related commercial article.

(d) For the purposes of this provision, the amount of specialty metal that is required to carry out the production of the commercial derivative military article includes specialty metal contained in any item, including commercially available off-the-shelf items, incorporated into such commercial derivative military articles.

(End of provision)

252.225-7011 Restriction on Acquisition of Supercomputers.
As prescribed in 225.7012-3, use the following clause:

RESTRICTION ON ACQUISITION OF SUPERCOMPUTERS (JUN 2005)

Supercomputers delivered under this contract shall be manufactured in the United States or its outlying areas.

(End of clause)

252.225-7012 Preference for Certain Domestic Commodities.
As prescribed in 225.7002-3(a), use the following clause:

PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (APR 2022)

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

"Component" means any item supplied to the Government as part of an end product or of another component.

"End product" means supplies delivered under a line item of this contract.

"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
Estonia
Finland

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

"Structural component of a tent"—

(1) Means a component that contributes to the form and stability of the tent (e.g., poles, frames, flooring, guy ropes, pegs); and

(2) Does not include equipment such as heating, cooling, or lighting.

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

"U.S.-flag vessel" means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b) The Contractor shall deliver under this contract only such of the following items, either as end products or components, that have been grown, reprocessed, reused, or produced in the United States:

(1) Food.

(2) Clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing and the materials and components thereof. Clothing includes items such as outerwear, headwear, underwear, nightwear, footwear, hosiery, handwear, belts, badges, and insignia.

(3)(i) Tents and structural components of tents;

(ii) Tarpaulins; or

(iii) Covers.

(4) Cotton and other natural fiber products.

(5) Woven silk or woven silk blends.

(6) Spun silk yarn for cartridge cloth.

(7) Synthetic fabric, and coated synthetic fabric, including all textile fibers and yarns that are for use in such fabrics.

(8) Canvas products.

(9) Wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles).

(10) Any item of individual equipment (Federal Supply Class 8465) manufactured from or containing fibers, yarns, fabrics, or materials listed in this paragraph (b).

(c) This clause does not apply—

(1) To items listed in section 25.104(a) of the Federal Acquisition Regulation, or other items for which the Government has determined that a satisfactory quality and sufficient quantity cannot be acquired as and when needed at U.S. market prices;

(2) To incidental amounts of cotton, other natural fibers, or wool incorporated in an end product, for which the estimated value of the cotton, other natural fibers, or wool—

(i) Is not more than 10 percent of the total price of the end product; and

(ii) Does not exceed the threshold at Defense Federal Acquisition Regulation Supplement 225.7002-2(a);

(3) To waste and byproducts of cotton or wool fiber for use in the production of propellants and explosives;

(4) To foods, other than fish, shellfish, or seafood, that have been manufactured or processed in the United States, regardless of where the foods (and any component if applicable) were grown or produced. Fish, shellfish, or seafood manufactured or processed in the United States and fish, shellfish, or seafood contained in foods manufactured or processed in the United States shall be provided in accordance with paragraph (d) of this clause;

(5) To chemical warfare protective clothing produced in a qualifying country; or

(6) To fibers and yarns that are for use in synthetic fabric or coated synthetic fabric (but does apply to the synthetic or coated synthetic fabric itself), if—

(i) The fabric is to be used as a component of an end product that is not a textile product. Examples of textile products, made in whole or in part of fabric, include—

(A) Draperies, floor coverings, furnishings, and bedding (Federal Supply Group 72, Household and Commercial Furnishings and Appliances);

(B) Items made in whole or in part of fabric in Federal Supply Group 83, Textile/leather/furs/apparel/findings/tents/flags, or Federal Supply Group 84, Clothing, Individual Equipment and Insignia;

(C) Upholstered seats (whether for household, office, or other use); and

(D) Parachutes (Federal Supply Class 1670); or

(ii) The fibers and yarns are para-aramid fibers and continuous filament para-aramid yarns manufactured in a qualifying country.

(d)(1) Fish, shellfish, and seafood delivered under this contract, or contained in foods delivered under this contract—

(i) Shall be taken from the sea by U.S.-flag vessels; or

(ii) If not taken from the sea, shall be obtained from fishing within the United States; and

(2) Any processing or manufacturing of the fish, shellfish, or seafood shall be performed on a U.S.-flag vessel or in the United States.

(End of clause)

252.225-7013 Duty-Free Entry.
As prescribed in 225.601(4), use the following clause:

DUTY-FREE ENTRY (AUG 2025)

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

"Component," means any item supplied to the Government as part of an end product or of another component.

"Customs territory of the United States" means the 50 States, the District of Columbia, and Puerto Rico.

"Eligible product" means—

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

(2) "Free Trade Agreement country end product," other than a "Bahraini 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, basic or its Alternate II; or

(3) "Free Trade Agreement country end product" other than a "Bahraini end product," "Korean end product," "Moroccan end product," "Panamanian end product," or "Peruvian end product," as defined in of the Buy American—Free Trade Agreements—Balance of Payments Program (either alternate IV or alternate V) clause of this contract.

"Qualifying country" and "qualifying country end product" have the meanings given in the Trade Agreements clause, the Buy American and Balance of Payments Program clause, or the Buy American—Free Trade Agreements—Balance of Payments Program clause of this contract, basic or alternate.

(b) Except as provided in paragraph (i) of this clause, or unless supplies were imported into the customs territory of the United States before the date of this contract or the applicable subcontract, the price of this contract shall not include any amount for duty on—

(1) End items that are eligible products or qualifying country end products;

(2) Components (including, without limitation, raw materials and intermediate assemblies) produced or made in qualifying countries, that are to be incorporated in U.S.- made end products to be delivered under this contract; or

(3) Other supplies for which the Contractor estimates that duty will exceed $300 per shipment into the customs territory of the United States.

(c) The Contractor shall—

(1) Claim duty-free entry only for supplies that the Contractor intends to deliver to the Government under this contract, either as end items or components of end items; and

(2) Pay duty on supplies, or any portion thereof, that are diverted to nongovernmental use, other than—

(i) Scrap or salvage; or

(ii) Competitive sale made, directed, or authorized by the Contracting Officer.

(d) Except as the Contractor may otherwise agree, the Government will execute duty-free entry certificates and will afford such assistance as appropriate to obtain the duty-free entry of supplies—

(1) For which no duty is included in the contract price in accordance with paragraph (b) of this clause; and

(2) For which shipping documents bear the notation specified in paragraph (e) of this clause.

(e) For foreign supplies for which the Government will issue duty-free entry certificates in accordance with this clause, shipping documents submitted to Customs

shall—

(1) Consign the shipments to the appropriate—

(i) Military department in care of the Contractor, including the Contractor's delivery address; or

(ii) Military installation; and

(2) Include the following information:

(i) Prime contract number and, if applicable, delivery order number.

(ii) Number of the subcontract for foreign supplies, if applicable.

(iii) Identification of the carrier.

(iv)(A) For direct shipments to a U.S. military installation, the notation: "UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE Duty-Free Entry to be claimed pursuant to Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States. Upon arrival of shipment at the appropriate port of entry, District Director of Customs, please release shipment under 19 CFR Part 142 and notify Defense Contract Management Agency (DCMA) St. Louis, St. Louis, MO, ATTN: Duty Free Entry Team, 1222 Spruce Street, Room 9.300, St. Louis, MO 63103-2812, for execution of Customs Form 7501, 7501A, or 7506 and any required duty-free entry certificates."

(B) If the shipment will be consigned to other than a military installation, e.g., a domestic contractor's plant, the shipping document notation shall be altered to include the name and address of the contractor, agent, or broker who will notify DCMA St. Louis, Duty Free Entry Team, for execution of the duty-free entry certificate. (If the shipment will be consigned to a contractor's plant and no duty-free entry certificate is required due to a trade agreement, the Contractor shall claim duty-free entry under the applicable trade agreement and shall comply with the U.S. Customs Service requirements. No notification to DCMA St. Louis, Duty Free Entry Team, is required.)

(v) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight).

(vi) Estimated value in U.S. dollars.

(vii) Activity address number of the contract administration office administering the prime contract, e.g., for DCMA Dayton, S3605A.

(f) *Preparation of customs forms.*

(1)(i) Except for shipments consigned to a military installation, the Contractor shall—

(A) Prepare any customs forms required for the entry of foreign supplies

into the customs territory of the United States in connection with this contract; and

(B) Submit the completed customs forms to the District Director of Customs, with a copy to DCMA St. Louis, Duty Free Entry Team for execution of any required duty-free entry certificates.

(ii) Shipments consigned directly to a military installation will be released in accordance with sections 10.101 and 10.102 of the U.S. Customs regulations.

(2) For shipments containing both supplies that are to be accorded duty-free entry and supplies that are not, the Contractor shall identify on the customs forms those items that are eligible for duty-free entry.

(g) The Contractor shall—

(1) Prepare (if the Contractor is a foreign supplier), or shall instruct the foreign supplier to prepare, a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry;

(2) Consign the shipment as specified in paragraph (e) of this clause; and

(3) Mark on the exterior of all packages—

(i) "UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE"; and

(ii) The activity address number of the contract administration office administering the prime contract.

(h) The Contractor shall notify the Administrative Contracting Officer (ACO) in writing of any purchase of eligible products or qualifying country supplies to be accorded duty-free entry, that are to be imported into the customs territory of the United States for delivery to the Government or for incorporation in end items to be delivered to the Government. The Contractor shall furnish the notice to the ACO immediately upon award to the supplier and shall include in the notice—

(1) The Contractor's name, address, and Commercial and Government Entity (CAGE) code;

(2) Prime contract number and, if applicable, delivery order number;

(3) Total dollar value of the prime contract or delivery order;

(4) Date of the last scheduled delivery under the prime contract or delivery order;

(5) Foreign supplier's name and address;

(6) Number of the subcontract for foreign supplies;

(7) Total dollar value of the subcontract for foreign supplies;

(8) Date of the last scheduled delivery under the subcontract for foreign supplies;

(9) List of items purchased;

(10) An agreement that the Contractor will pay duty on supplies, or any portion thereof, that are diverted to nongovernmental use other than—

(i) Scrap or salvage; or

(ii) Competitive sale made, directed, or authorized by the Contracting Officer;

(11) Country of origin; and

(12) Scheduled delivery date(s).

(i) This clause does not apply to purchases of eligible products or qualifying country supplies in connection with this contract if—

(1) The supplies are identical in nature to supplies purchased by the Contractor or any subcontractor in connection with its commercial business; and

(2) It is not economical or feasible to account for such supplies so as to ensure that the amount of the supplies for which duty-free entry is claimed does not exceed the amount purchased in connection with this contract.

(j) The Contractor shall—

(1) Insert the substance of this clause, including this paragraph (j), in all subcontracts for—

(i) Qualifying country components; or

(ii) Nonqualifying country components for which the Contractor estimates that duty will exceed $200 per unit;

(2) Require subcontractors to include the number of this contract on all shipping documents submitted to Customs for supplies for which duty-free entry is claimed pursuant to this clause; and

(3) Include in applicable subcontracts—

(i) The name and address of the ACO for this contract;

(ii) The name, address, and activity address number of the contract administration office specified in this contract; and

(iii) The information required by paragraphs (h)(1), (2), and (3) of this

clause.

(End of clause)

252.225-7014 Reserved.

252.225-7015 Restriction on Acquisition of Hand or Measuring Tools.
As prescribed in 225.7002-3(b), use the following clause:

RESTRICTION ON ACQUISITION OF HAND OR MEASURING TOOLS
(JUN 2005)

Hand or measuring tools delivered under this contract shall be produced in the United States or its outlying areas.

(End of clause)

252.225-7016 Restriction on Acquisition of Ball and Roller Bearings.
As prescribed in 225.7009-5, use the following clause:

RESTRICTION ON ACQUISITION OF BALL AND ROLLER BEARINGS
(JAN 2023)

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

(1) "Bearing components" means the bearing element, retainer, inner race, or outer race.

(2) "Component," other than a bearing component, means any item supplied to the Government as part of an end product or of another component.

(3) "End product" means supplies delivered under a line item of this contract.

(b) Except as provided in paragraph (c) of this clause—

(1) Each ball and roller bearing delivered under this contract shall be manufactured in the United States, its outlying areas, or Canada; and

(2) For each ball or roller bearing, the cost of the bearing components manufactured in the United States, its outlying areas, or Canada shall exceed 50 percent of the total cost of the bearing components of that ball or roller bearing.
.

(c) The restriction in paragraph (b) of this clause does not apply to ball or roller bearings that are acquired as—

(1) Commercial components of an other than commercial end product; or

(2) Commercial or other than commercial components of a commercial component of an other than commercial end product.

(d) The restriction in paragraph (b) of this clause may be waived upon request from the Contractor in accordance with subsection 225.7009-4 of the Defense Federal Acquisition Regulation Supplement.

(e) If this contract includes DFARS clause 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals, all bearings that contain specialty metals, as defined in that clause, must meet the requirements of that clause.

(f) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (f), in all subcontracts, except those for—

(1) Commercial products; or

(2) Items that do not contain ball or roller bearings.

(End of clause)

252.225-7017 Photovoltaic Devices.
As prescribed in 225.7017-4(a), use the following clause:

PHOTOVOLTAIC DEVICES (MAR 2024)

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

"Bahraini photovoltaic device" means a photovoltaic device that—

(1) Is wholly manufactured in Bahrain; or

(2) In the case of a photovoltaic device 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, provided that the photovoltaic device is not subsequently substantially transformed outside of Bahrain.

"Caribbean Basin country photovoltaic device" means a photovoltaic device that—

(1) Is wholly manufactured in a Caribbean Basin country; or

(2) In the case of a photovoltaic device 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, provided that the photovoltaic device is not subsequently substantially transformed outside of a Caribbean Basin country.

"Designated country" means—

(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, North Macedonia, 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 the United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, 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 photovoltaic device" means a WTO GPA country photovoltaic device, a Free Trade Agreement country photovoltaic device, a least developed country photovoltaic device, or a Caribbean Basin country photovoltaic device.

"Domestic photovoltaic device" means a photovoltaic device that is manufactured in the United States

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

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

"Free Trade Agreement country photovoltaic device" means a photovoltaic device that—

(1) Is wholly manufactured in a Free Trade Agreement country; or

(2) In the case of a photovoltaic device 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, provided that the photovoltaic device is not subsequently substantially transformed outside of a Free Trade Agreement country.

"Korean photovoltaic device" means a photovoltaic device that—

(1) Is wholly manufactured in Korea (Republic of); or

(2) In the case of a photovoltaic device 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, provided that the photovoltaic device is not subsequently substantially transformed outside of Korea (Republic of).

"Least developed country photovoltaic device" means a photovoltaic device that—

(1) Is wholly manufactured in a least developed country; or

(2) In the case of a photovoltaic device 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, provided that the photovoltaic device is not subsequently substantially transformed outside of a least developed country.

"Moroccan photovoltaic device" means a photovoltaic device that—

(1) Is wholly manufactured in Morocco; or

(2) In the case of a photovoltaic device 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, provided that the photovoltaic device is not subsequently substantially transformed outside of Morocco.

"Panamanian photovoltaic device" means a photovoltaic device that—

(1) Is wholly manufactured in Panama; or

(2) In the case of a photovoltaic device 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, provided that the photovoltaic device is not subsequently substantially transformed outside of Panama.

"Peruvian photovoltaic device" means a photovoltaic device that—

(1) Is wholly manufactured in Peru; or

(2) In the case of a photovoltaic device 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, provided that the photovoltaic device is not subsequently substantially transformed outside of Peru.

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

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

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

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

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

(1) Is manufactured in the United States; or

(2) 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, provided that the photovoltaic device is not subsequently substantially transformed outside of the United States.

"WTO GPA country photovoltaic device" means a photovoltaic device that—

(1) Is wholly manufactured in a WTO GPA country; or

(2) In the case of a photovoltaic device 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, provided that the photovoltaic device is not subsequently substantially transformed outside of a WTO GPA country.

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

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

(1) More than the micro-purchase threshold but less than $100,000, then the Contractor shall utilize only domestic photovoltaic devices unless, in its offer, it specified utilization of qualifying country or other foreign photovoltaic devices in paragraph (d)(2) of the Photovoltaic Devices—Certificate provision of the solicitation.

(2) $100,000 or more but less than $102,280, then the Contractor shall utilize under this contract only domestic photovoltaic devices unless, in its offer, it specified utilization of Free Trade Agreement country photovoltaic devices (other than Bahraini, Korean, Moroccan, Panamanian, or Peruvian photovoltaic devices), qualifying country photovoltaic devices, or other foreign photovoltaic devices in paragraph (d)(4) of the Photovoltaic Devices—Certificate provision of the solicitation. If the Contractor certified in its offer that it will utilize a Free Trade Agreement country photovoltaic device (other than a Bahraini, Korean, Moroccan, Panamanian, or Peruvian photovoltaic device) or a qualifying country photovoltaic device, then the Contractor shall utilize a Free Trade Agreement country photovoltaic device (other than a Bahraini, Korean, Moroccan, Panamanian, or Peruvian photovoltaic device) or a qualifying country photovoltaic device; or, at the Contractor's option, a domestic photovoltaic device;

(3) $100,000 or more but less than $174,000, then the Contractor shall utilize under this contract only domestic photovoltaic devices, unless, in its offer it specified utilization of Free Trade Agreement country photovoltaic devices (other than Bahraini, Moroccan, Panamanian, or Peruvian photovoltaic devices), qualifying country photovoltaic devices, or other foreign photovoltaic devices in paragraph (d)(5) of the Photovoltaic Devices—Certificate provision of the solicitation. If the Contractor certified in its offer that it will utilize a Free Trade Agreement country photovoltaic device (other than a Bahraini, Moroccan, Panamanian, or Peruvian photovoltaic device) or a qualifying country photovoltaic device, then the Contractor shall utilize a Free

Trade Agreement country photovoltaic device (other than a Bahraini, Moroccan, Panamanian, or Peruvian photovoltaic device) or a qualifying country photovoltaic device; or, at the Contractor's option, a domestic photovoltaic device; or

(4) $174,000 or more, then the Contractor shall utilize under this contract only U.S.-made, designated country, or qualifying country photovoltaic devices.

(End of clause)

252.225-7018 Photovoltaic Devices—Certificate.
As prescribed in 225.7017-4(b), use the following provision:

PHOTOVOLTAIC DEVICES—CERTIFICATE (MAR 2024)

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

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

(1) If more than the micro-purchase threshold but less than $174,000, then the Government will not accept an offer specifying the use of other foreign photovoltaic devices in paragraph (d)(2)(ii), (d)(3)(ii), (d)(4)(ii), or (d)(5)(ii) of this provision, unless the Offeror documents to the satisfaction of the Contracting Officer that the price of the foreign photovoltaic device plus 50 percent is less than the price of a comparable domestic photovoltaic device.

(2) If $174,000 or more, then the Government will consider only offers that utilize photovoltaic devices that are U.S.-made, qualifying country, or designated country photovoltaic devices.

(c) *Country in which a designated country photovoltaic device was wholly manufactured or was substantially transformed.* If the estimated value of the photovoltaic devices to be utilized under a resultant contract exceeds $102,280, the Offeror's certification that such photovoltaic device (e.g., solar panel) is a designated country photovoltaic device shall be consistent with country of origin determinations by the U.S. Customs and Border Protection with regard to importation of the same or similar photovoltaic devices into the United States. If the Offeror is uncertain as to what the country of origin would be determined to be by the U.S. Customs and Border Protection, the Offeror shall request a determination from U.S. Customs and Border Protection. (See https://www.cbp.gov/trade/rulings.)

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

[The Offeror shall check the block and fill in the blank for one of the following paragraphs, based on the estimated value and the country of origin of photovoltaic devices to be utilized in performance of the contract:]

___ (1) No photovoltaic devices will be utilized in performance of the contract, or such photovoltaic devices have an estimated value that does not exceed the micro-purchase threshold.

(2) If more than the micro-purchase threshold but less than $100,000—

___ (i) The Offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device;

___ (ii) The Offeror certifies that each photovoltaic device to be utilized in performance of the contract is a qualifying country photovoltaic device *[Offeror to specify country of origin_____]*; or

___ (iii) The foreign (other than qualifying country) photovoltaic devices to be utilized in performance of the contract are the product of _____. *[Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device, i.e. that the price of the foreign photovoltaic device plus 50 percent is less than the price of a comparable domestic photovoltaic device.]*

(3) If less than $100,000—

___ (i) The Offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device;

___ (ii) The Offeror certifies that each photovoltaic device to be utilized in performance of the contract is a qualifying country photovoltaic device *[Offeror to specify country of origin_____]*; or

___ (iii) The foreign photovoltaic devices to be utilized in performance of the contract are the product of _____. *[Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device, i.e. that the price of the foreign photovoltaic device plus 50 percent is less than the price of a comparable domestic photovoltaic device.]*

(4) If $100,000 or more but less than $102,280—

___ (i) The Offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device;

___ (ii) The Offeror certifies that each photovoltaic device to be utilized in performance of the contract is a Free Trade Agreement country photovoltaic device (other than a Bahraini, Korean, Moroccan, Panamanian, or Peruvian photovoltaic device) or a qualifying country photovoltaic device *[Offeror to specify country of origin_____]*; or

___ (iii) The offered foreign photovoltaic devices (other than those from countries listed in paragraph (d)(4)(ii) of this provision) are the product of _____. *[Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device, i.e. that the price of the foreign photovoltaic device plus 50 percent is less than the price of a comparable domestic photovoltaic device.]*

(5) If $100,000 or more but less than $174,000—

___ (i) The Offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device;

___ (ii) The Offeror certifies that each photovoltaic device to be utilized in performance of the contract is a Free Trade Agreement country photovoltaic device (other than a Bahraini, Moroccan, Panamanian, or Peruvian photovoltaic device) or a qualifying country photovoltaic device *[Offeror to specify country of origin_____]*; or

___ (iii) The offered foreign photovoltaic devices (other than those from countries listed in paragraph (d)(5)(ii) of this provision) are the product of _____. *[Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device, i.e. that the price of the foreign photovoltaic device plus 50 percent is less than the price of a comparable domestic photovoltaic device.]*

(6) If $174,000 or more, the Offeror certifies that each photovoltaic device to be used in performance of the contract is—

___ (i) A U.S.-made photovoltaic device; or

___ (ii) A designated country photovoltaic device or a qualifying country photovoltaic device. *[Offeror to specify country of origin_____.]*

(End of provision)

252.225-7019 Restriction on Acquisition of Anchor and Mooring Chain.
As prescribed in 225.7004-7(a), use the following clause:

RESTRICTION ON ACQUISITION OF ANCHOR AND MOORING CHAIN
(MAY 2024)

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

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

(b) Welded shipboard anchor and mooring chain delivered under this contract—

(1) Shall be manufactured in the United States or its outlying areas, including cutting, heat treating, quality control, testing, and welding (both forging and shot blasting process); and

(2) The cost of the components manufactured in the United States or its outlying areas shall exceed 50 percent of the total cost of components.

(c) The Contractor may request a waiver of this restriction if adequate domestic supplies meeting the requirements in paragraph (a) of this clause are not available to meet the contract delivery schedule.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts for items containing welded shipboard anchor and mooring chain.

(End of clause)

252.225-7020 Trade Agreements Certificate.

Basic. As prescribed in 225.601(5), 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.

(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, 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 Agreements—Basic clause of this solicitation, the offeror certifies that each end product to be delivered under this contract, except those listed in paragraph (c)(2) of this provision, is a U.S.-made, qualifying country, or designated country end product.

(2) The following supplies are other nondesignated country end products:

(Line Item Number) (Country of Origin)

(End of provision)

Alternate I. **[Reserved]**

252.225-7021 Trade Agreements.

Basic. As prescribed in 225.601(6), use the following clause:

TRADE AGREEMENTS—BASIC (FEB 2024)

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

"Caribbean Basin country end product"—

(1) Means an article that—

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

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

(2) 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—

(i) 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);

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

(iii) 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"—

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

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

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

(iii) 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

(2) 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—

(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, North Macedonia, 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 the United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, 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, 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—

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

(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 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
Estonia
Finland
France
Germany

Greece
Israel
Italy
Japan
Latvia
Lithuania
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

"Qualifying country end product" means—

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

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

(i) The cost of the following types of components exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract:

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

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

(C) 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

(ii) The end product is a COTS item.

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

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

(1) Is mined, produced, or manufactured in the United States; or

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

(e) The HTSUS is available 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 the definition of "Caribbean Basic country end product" within paragraph (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)

Alternate I. **[Reserved.]**

Alternate II. **[Reserved.]**

Alternate III. As prescribed in 225.601(6) and (6)(i), use the following clause, which includes, in the definition of "qualifying country end product" at paragraph (2)(i), the domestic content threshold that will apply to the entire contract period of performance.

TRADE AGREEMENTS—ALTERNATE III (FEB 2024)

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

"Caribbean Basin country end product"—

(1) Means an article that—

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

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

(2) 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—

(i) 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);

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

(iii) 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"—

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

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

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

(iii) 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

(2) 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—

(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, North Macedonia, 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 the United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, 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, 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—

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

(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 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
Estonia
Finland
France
Germany
Greece
Israel
Italy

Japan
Latvia
Lithuania
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland

"Qualifying country end product" means—

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

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

(i) The cost of the following types of components exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 percent of the cost of all its components:

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

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

(C) 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

(ii) The end product is a COTS item.

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

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

(1) Is mined, produced, or manufactured in the United States; or

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

(e) The HTSUS is available 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 the definition of "Caribbean Basin country end product" within paragraph (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)

Alternate IV. **[Reserved]**

252.225-7022 Reserved.

252.225-7023 [Reserved]

252.225-7024 [Reserved]

252.225-7025 Restriction on Acquisition of Forgings.
As prescribed in 225.7102-4, use the following clause:

RESTRICTION ON ACQUISITION OF FORGINGS (DEC 2009)

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

(1) "Component" means any item supplied to the Government as part of an end product or of another component.

(2) "Domestic manufacture" means manufactured in the United States, its outlying areas; or Canada.

(3) "Forging items" means—

ITEMS	CATEGORIES
Ship propulsion shafts	Excludes service and landing craft shafts
Periscope tubes	All
Ring forgings for bull gears	All greater than 120 inches in diameter

(b) End products and their components delivered under this contract shall contain forging items that are of domestic manufacture only.

(c) The restriction in paragraph (b) of this clause may be waived upon request from the Contractor in accordance with subsection 225.7102-3 of the Defense Federal Acquisition Regulation Supplement.

(d) The Contractor shall retain records showing compliance with the restriction in paragraph (b) of this clause until 3 years after final payment and shall make the records available upon request of the Contracting Officer.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e), in subcontracts for forging items or for other items that contain forging items.

(End of clause)

252.225-7026 [Reserved]

252.225-7027 Restriction on Contingent Fees for Foreign Military Sales.
As prescribed in 225.7307(a), use the following clause.

RESTRICTION ON CONTINGENT FEES FOR FOREIGN MILITARY SALES
(APR 2003)

(a) Except as provided in paragraph (b) of this clause, contingent fees, as defined in the Covenant Against Contingent Fees clause of this contract, are generally an allowable cost, provided the fees are paid to—

(1) A bona fide employee of the Contractor; or

(2) A bona fide established commercial or selling agency maintained by the Contractor for the purpose of securing business.

(b) For foreign military sales, unless the contingent fees have been identified and payment approved in writing by the foreign customer before contract award, the following contingent fees are unallowable under this contract:

(1) For sales to the Government(s) of _____, contingent fees in any amount.

(2) For sales to Governments not listed in paragraph (b)(1) of this clause, contingent fees exceeding $50,000 per foreign military sale case.

(End of clause)

252.225-7028 Exclusionary Policies and Practices of Foreign Governments.
As prescribed in 225.7307(b), use the following clause:

EXCLUSIONARY POLICIES AND PRACTICES OF FOREIGN GOVERNMENTS (APR 2003)

The Contractor and its subcontractors shall not take into account the exclusionary policies or practices of any foreign government in employing or assigning personnel, if—

(a) The personnel will perform functions required by this contract, either in the United States or abroad; and

(b) The exclusionary policies or practices of the foreign government are based on race, religion, national origin, or sex.

(End of clause)

252.225-7030 Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate.
As prescribed in 225.7011-3, use the following clause:

RESTRICTION ON ACQUISITION OF CARBON, ALLOY, AND ARMOR STEEL PLATE (DEC 2006)

(a) Carbon, alloy, and armor steel plate shall be melted and rolled in the United States or Canada if the carbon, alloy, or armor steel plate—

(1) Is in Federal Supply Class 9515 or is described by specifications of the American Society for Testing Materials or the American Iron and Steel Institute; and

(2)(i) Will be delivered to the Government for use in a Government-owned

facility or a facility under the control of the Department of Defense; or

(ii) Will be purchased by the Contractor for use in a Government-owned facility or a facility under the control of the Department of Defense.

(b) This restriction—

(1) Applies to the acquisition of carbon, alloy, or armor steel plate as a finished steel mill product that may be used "as is" or may be used as an intermediate material for the fabrication of an end product; and

(2) Does not apply to the acquisition of an end product (e.g., a machine tool), to be used in the facility, that contains carbon, alloy, or armor steel plate as a component.

(End of clause)

252.225-7031 Secondary Arab Boycott of Israel.
As prescribed in 225.7605, use the following provision:

SECONDARY ARAB BOYCOTT OF ISRAEL (JUN 2005)

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

(1) "Foreign person" means any person (including any individual, partnership, corporation, or other form of association) other than a United States person.

(2) "United States" means the 50 States, the District of Columbia, outlying areas, and the outer Continental Shelf as defined in 43 U.S.C. 1331.

(3) "United States person" is defined in 50 U.S.C. App. 2415(2) and means—

(i) Any United States resident or national (other than an individual resident outside the United States who is employed by other than a United States person);

(ii) Any domestic concern (including any permanent domestic establishment of any foreign concern); and

(iii) Any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern that is controlled in fact by such domestic concern.

(b) *Certification.* If the offeror is a foreign person, the offeror certifies, by submission of an offer, that it—

(1) Does not comply with the Secondary Arab Boycott of Israel; and

(2) Is not taking or knowingly agreeing to take any action, with respect to the Secondary Boycott of Israel by Arab countries, which 50 U.S.C. App. 2407(a) prohibits a United States person from taking.

(End of provision)

252.225-7032 Waiver of United Kingdom Levies—Evaluation of Offers.
As prescribed in 225.601(7), use the following provision:

WAIVER OF UNITED KINGDOM LEVIES – EVALUATION OF OFFERS
(APR 2003)

(a) Offered prices for contracts or subcontracts with United Kingdom (U.K.) firms may contain commercial exploitation levies assessed by the Government of the U.K. The offeror shall identify to the Contracting Officer all levies included in the offered price by describing—

(1) The name of the U.K. firm;

(2) The item to which the levy applies and the item quantity; and

(3) The amount of levy plus any associated indirect costs and profit or fee.

(b) In the event of difficulty in identifying levies included in a price from a prospective subcontractor, the offeror may seek advice through the Director of Procurement, United Kingdom Defence Procurement Office, British Embassy, 3100 Massachusetts Avenue NW, Washington, DC 20006.

(c) The U.S. Government may attempt to obtain a waiver of levies pursuant to the U.S./U.K. reciprocal waiver agreement of July 1987.

(1) If the U.K. waives levies before award of a contract, the Contracting Officer will evaluate the offer without the levy.

(2) If levies are identified but not waived before award of a contract, the Contracting Officer will evaluate the offer inclusive of the levies.

(3) If the U.K. grants a waiver of levies after award of a contract, the U.S. Government reserves the right to reduce the contract price by the amount of the levy waived plus associated indirect costs and profit or fee.

(End of provision)

252.225-7033 Waiver of United Kingdom Levies.
As prescribed in 225.601(8), use the following clause:

WAIVER OF UNITED KINGDOM LEVIES (APR 2003)

(a) The U.S. Government may attempt to obtain a waiver of any commercial exploitation levies included in the price of this contract, pursuant to the U.S./United Kingdom (U.K.) reciprocal waiver agreement of July 1987. If the U.K. grants a waiver of levies included in the price of this contract, the U.S. Government reserves the right to reduce the contract price by the amount of the levy waived plus associated indirect costs and profit or fee.

(b) If the Contractor contemplates award of a subcontract exceeding $1 million to a

U.K. firm, the Contractor shall provide the following information to the Contracting Officer before award of the subcontract:

(1) Name of the U.K. firm.

(2) Prime contract number.

(3) Description of item to which the levy applies.

(4) Quantity being acquired.

(5) Amount of levy plus any associated indirect costs and profit or fee.

(c) In the event of difficulty in identifying levies included in a price from a prospective subcontractor, the Contractor may seek advice through the Director of Procurement, United Kingdom Defence Procurement Office, British Embassy, 3100 Massachusetts Avenue NW, Washington, DC 20006.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in any subcontract for supplies where a lower-tier subcontract exceeding $1 million with a U.K. firm is anticipated.

(End of clause)

252.225-7034 Reserved.

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

Basic. As prescribed in 225.601(9) and (9)(i), use the following provision:

BUY AMERICAN—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM CERTIFICATE—BASIC (FEB 2024)

(a) *Definitions.* "Bahraini end product," "commercially available off-the-shelf (COTS) item," "component," "critical component," "critical item," "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," and "United States," as used in this provision, have the meanings given in the 252.225-7036, Buy American—Free Trade Agreements—Balance of Payments Program—Basic 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—Basic clause of this solicitation, will evaluate offers of qualifying country end products or Free Trade Agreement country end products other than Bahraini 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—Basic 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;

(ii) Each domestic end product listed in paragraph (c)(3) of this provision contains a critical component or a critical item; and

(iii) 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) 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 Bahraini 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. For those foreign end products that do not consist wholly or predominantly of iron or steel or a combination of both, the Offeror shall also indicate whether these foreign end products exceed 55 percent domestic content, except those that are COTS items. If the percentage of the domestic content is unknown, select "no".

Line Item Number	Country of Origin (If known)	Exceeds 55% Domestic Content (yes/no)

(3) The Offeror shall list the line item numbers of domestic end products that contain a critical component or a critical item (see section 25.105 of the Federal Acquisition Regulation).

Line Item Number: _____*[List as necessary]*_____

(End of provision)

Alternate I. As prescribed in 225.601(9) and (9)(ii), use the following provision, which does not use the phrases "Bahraini end product," "Free Trade Agreement country," "Free Trade Agreement country end product," "Moroccan end product," "Panamanian end product," and "Peruvian end products" in paragraph (a); does not use"Free Trade Agreement country end products other than Bahraini end products, Moroccan end products, Panamanian end products, or Peruvian end products" in paragraphs (b)(2) and (c)(2)(ii); does not use "Australian or" in paragraph (c)(2)(i); and includes "that are mined, produced, or manufactured in the United States" in paragraph (c)(2)(ii):

BUY AMERICAN—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM CERTIFICATE—ALTERNATE I (FEB 2024)

(a) *Definitions.* "Commercially available off-the-shelf (COTS) item," "component," "critical component," "critical item," "domestic end product," "foreign end product," "qualifying country end product," and "United States," as used in this provision, have the meanings given in the 252.225-7036 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 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;

(ii) Each domestic end product listed in paragraph (c)(3) of this provision contains a critical component or a critical item; and

(iii) 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 end products:

(Line Item Number) (Country of Origin)

(ii) The following supplies are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products. For those foreign end products that do not consist wholly or predominantly of iron or steel or a combination of both, the Offeror shall also indicate whether these foreign end products exceed 55 percent domestic content, except those that are COTS items that are mined, produced, or manufactured in the United States. If the percentage of the domestic content is unknown, select "no".

Line Item Number	Country of Origin (If known)	Exceeds 55% Domestic Content (yes/no)

(3) The Offeror shall list the line item numbers of domestic end products that contain a critical component or a critical item (see section 25.105 of the Federal Acquisition Regulation).

Line Item Number: _____*[List as necessary]*_____

(End of provision)

Alternate II. **[Reserved]**

Alternate III. **[Reserved]**

Alternate IV. As prescribed in 225.601(9) and (9)(iii), use the following provision, which adds "Korean end product" to paragraph (a) and uses "Free Trade Agreement country end products other than Bahraini 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 Bahraini 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 (FEB 2024)

(a) *Definitions.* "Bahraini end product," "commercially available off-the-shelf (COTS) item," "component," "critical component," "critical item," "domestic end product," "Free Trade Agreement country," "Free Trade Agreement country end product," "foreign end product," "Korean end product," "Moroccan end product," "Panamanian end

product," "Peruvian end product," "qualifying country end product," and "United States," as used in this provision, have the meanings given in the 252.225-7036, 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 Bahraini 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;

(ii) Each domestic end product listed in paragraph (c)(3) of this provision contains a critical component or a critical item; and

(iii) 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) 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 Bahraini 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. For those foreign end products that do not consist wholly or predominantly of iron or steel or a combination of both, the Offeror shall also indicate whether these foreign end products exceed 55 percent domestic content, except those that are COTS

items. If the percentage of the domestic content is unknown, select "no".

Line item Number	Country of Origin (If known)	Exceeds 55% Domestic Content (yes/no)

(3) The Offeror shall list the line item numbers of domestic end products that contain a critical component or a critical item (see section 25.105 of the Federal Acquisition Regulation).

Line Item Number: _____[*List as necessary*]_____

(End of provision)

Alternate V. **[Reserved]**

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

Basic. As prescribed in 225.601(10)(i) and (10)(i)(A), use the following clause:

BUY AMERICAN—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM—BASIC (FEB 2024)

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

"Bahraini end product" means an article that—

(1) Is wholly the growth, product, or manufacture of Bahrain; 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 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"—

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

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

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

(iii) 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

(2) 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.

"Critical component" means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

"Critical item" means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

"Domestic end product" means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured end product 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 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with Defense Federal Acquisition Regulation Supplement (DFARS) 225.101(d); or award is made before January 1, 2030, for a foreign end product that exceeds 55 percent domestic content (see DFARS 225.103(b)(ii)). 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). Components of unknown origin are treated as foreign. 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; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

"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, 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—

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

(1) Is wholly the growth, product, or manufacture of Morocco; 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 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—

(1) Is wholly the growth, product, or manufacture of Panama; 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 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—

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

"Predominantly of iron or steel or a combination of both" means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

"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
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Lithuania
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
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—

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

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

(i) The cost of the following types of components exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract:

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

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

(C) 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. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

"Steel" means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

"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 Bahraini 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—Basic 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 Bahraini 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 Bahraini 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 I. As prescribed in 225.601(10)(i) and (10)(i)(B), use the following clause, which uses a different paragraph (c) than the basic clause:

BUY AMERICAN—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM—ALTERNATE I (FEB 2024)

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

"Bahraini end product" means an article that—

(1) Is wholly the growth, product, or manufacture of Bahrain; 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 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"—

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

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

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

(iii) 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

(2) 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.

"Critical component" means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

"Critical item" means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

"Domestic end product" means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured end product 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 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with Defense Federal Acquisition Regulation Supplement (DFARS) 225.101(d); or award is made before January 1, 2030, for a foreign end product that exceeds 55 percent domestic content (see DFARS 225.103(b)(ii)). 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).

Components of unknown origin are treated as foreign. 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; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

"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, 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—

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

(1) Is wholly the growth, product, or manufacture of Morocco; 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 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—

(1) Is wholly the growth, product, or manufacture of Panama; 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 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—

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

"Predominantly of iron or steel or a combination of both" means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

"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
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Lithuania
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
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—

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

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

(i) The cost of the following types of components exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered

starting in calendar year 2029, unless an alternate percentage is established for a contract:

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

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

(C) 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. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

"Steel" means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

"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 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, the Contractor shall deliver a qualifying country 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. **[Reserved]**

Alternate III. **[Reserved]**

Alternate IV. As prescribed in 225.601(10)(i) and (10)(i)(C), 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 (FEB 2024)

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

"Bahraini end product" means an article that—

(1) Is wholly the growth, product, or manufacture of Bahrain; 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 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"—

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

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

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

(iii) 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

(2) 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.

"Critical component" means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

"Critical item" means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

"Domestic end product" means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured end product 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 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered

starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with Defense Federal Acquisition Regulation Supplement (DFARS) 225.101(d)); or award is made before January 1, 2030, for a foreign end product that exceeds 55 percent domestic content (see DFARS 225.103(b)(ii)). 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). Components of unknown origin are treated as foreign. 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; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

"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, 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—

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

(1) Is wholly the growth, product, or manufacture of Korea; 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 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—

(1) Is wholly the growth, product, or manufacture of Morocco; 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 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—

(1) Is wholly the growth, product, or manufacture of Panama; 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 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—

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

"Predominantly of iron or steel or a combination of both" means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

"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
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Lithuania
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
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—

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

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

(i) The cost of the following types of components exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract:

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

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

(C) 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. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

"Steel" means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

"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 Bahraini 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 Bahraini 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 Bahraini 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. **[Reserved]**

Alternate VI. As prescribed in 225.601(10)(i) and (10)(i)(D), use the following clause, which includes, in the definitions of "domestic end product" at paragraph (1)(ii)(A) and "qualifying country end product" at paragraph (2)(i), the domestic content threshold that will apply to the entire contract period of performance:

BUY AMERICAN—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM—ALTERNATE VI (FEB 2024)

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

"Bahraini end product" means an article that—

(1) Is wholly the growth, product, or manufacture of Bahrain; 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 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"—

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

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

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

(iii) 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

(2) 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.

"Critical component" means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

"Critical item" means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

"Domestic end product" means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured end product 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, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 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). Components of unknown origin are treated as foreign. 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; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of

all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

"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, 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–

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

(1) Is wholly the growth, product, or manufacture of Morocco; 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 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–

(1) Is wholly the growth, product, or manufacture of Panama; 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 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–

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

"Predominantly of iron or steel or a combination of both" means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

"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
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Lithuania
Luxembourg
Netherlands

Norway
Poland
Portugal
Slovenia
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—

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

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

(i) The cost of the following types of components exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 percent of the cost of all its components:

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

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

(C) 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. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

"Steel" means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

"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 Bahraini 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—Basic 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 Bahraini 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 Bahraini 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 VII. As prescribed in 225.601(10)(i) and (10)(i)(E), use the following clause, which includes, in the definitions of "domestic end product" at paragraph (1)(ii)(A) and "qualifying country end product" at paragraph (2)(i), the domestic content threshold that will apply to the entire contract period of performance and uses a different paragraph (c) than the basic clause:

BUY AMERICAN—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM—ALTERNATE VII (FEB 2024)

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

"Bahraini end product" means an article that—

(1) Is wholly the growth, product, or manufacture of Bahrain; 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 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"—

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

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

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

(iii) 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

(2) 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.

"Critical component" means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

"Critical item" means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

"Domestic end product" means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured end product 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, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 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). Components of unknown origin are treated as foreign. 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; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except

metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

"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, 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—

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

(1) Is wholly the growth, product, or manufacture of Morocco; 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 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—

(1) Is wholly the growth, product, or manufacture of Panama; 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 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—

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

"Predominantly of iron or steel or a combination of both" means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

"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
Estonia
Finland
France
Germany
Greece
Israel
Italy

Japan
Latvia
Lithuania
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
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—

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

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

(i) The cost of the following types of components exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 percent of the cost of all its components:

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

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

(C) 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. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

"Steel" means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

"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 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, the Contractor shall deliver a qualifying country 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 VIII. **[Reserved]**

Alternate IX. **[Reserved]**

Alternate X. As prescribed in 225.601(10)(i) and (10)(i)(F), use the following clause, which includes, in the definitions of "domestic end product" at paragraph (1)(ii)(A) and "qualifying country end product" at paragraph (2)(i), the domestic content threshold that will apply to the entire contract period of performance; 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 X (FEB 2024)

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

"Bahraini end product" means an article that—

(1) Is wholly the growth, product, or manufacture of Bahrain; 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 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"—

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

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

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

(iii) 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

(2) 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.

"Critical component" means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

"Critical item" means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

"Domestic end product" means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured end product 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, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 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). Components of unknown origin are treated as foreign. 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; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of

iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

"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, 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—

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

(1) Is wholly the growth, product, or manufacture of Korea; 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 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—

(1) Is wholly the growth, product, or manufacture of Morocco; 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 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—

(1) Is wholly the growth, product, or manufacture of Panama; 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 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—

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

"Predominantly of iron or steel or a combination of both" means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

"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
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Lithuania
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
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—

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

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

(i) The cost of the following types of components exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 percent of the cost of all its components:

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

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

(C) 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. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

"Steel" means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

"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 Bahraini 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 Bahraini 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 Bahraini 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 XI. **[Reserved]**

252.225-7037 Reserved.

252.225-7038 Reserved.

252.225-7039 Defense Contractors Performing Private Security Functions Outside the United States.
As prescribed **in** 225.702-6, **insert** the following clause:

DEFENSE CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS OUTSIDE THE UNITED STATES (JAN 2023)

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

"Full cooperation"—

(1) Means disclosure to the Government of the information sufficient to identify the nature and extent of the incident and the individuals responsible for the conduct. It includes providing timely and complete response to Government auditors' and investigators' requests for documents and access to employees with information;

(2) Does not foreclose any contractor rights arising in law, the FAR or the terms of the contract. It does not require—

(i) The contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine; or

(ii) Any officer, director, owner, or employee of the contractor, including a sole proprietor, to waive his or her attorney-client privilege or Fifth Amendment rights; and

(3) Does not restrict the contractor from—

(i) Conducting an internal investigation; or

(ii) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

"Private security functions" means the following activities engaged in by a contractor:

(1) Guarding of personnel, facilities, designated sites or property of a Federal agency, the contractor or subcontractor, or a third party.

(2) Any other activity for which personnel are required to carry weapons in the performance of their duties in accordance with the terms of this contract.

(b) *Applicability*. If this contract is performed both in a designated area and in an area that is not designated, the clause only applies to performance in the designated area. Designated areas are areas outside the United States of—

(1) Contingency operations;

(2) Combat operations, as designated by the Secretary of Defense;

(3) Other significant military operations (as defined in 32 CFR part 159), designated by the Secretary of Defense upon agreement of the Secretary of State;

(4) Peace operations, consistent with Joint Publication 3-07.3; or

(5) Other military operations or military exercises, when designated by the Combatant Commander.

(c) *Requirements*. The Contractor shall—

(1) Ensure that all Contractor personnel who are responsible for performing private security functions under this contract comply with 32 CFR part 159 and any orders, directives, or instructions to contractors performing private security functions that are identified in the contract for—

(i) Registering, processing, accounting for, managing, overseeing and keeping appropriate records of personnel performing private security functions;

(ii) Authorizing, accounting for and registering in Synchronized Predeployment and Operational Tracker (SPOT), weapons to be carried by or available to be used by personnel performing private security functions;

(iii) Identifying and registering in SPOT armored vehicles, helicopters and other military vehicles operated by Contractors performing private security functions; and

(iv) In accordance with orders and instructions established by the applicable Combatant Commander, reporting incidents in which—

(A) A weapon is discharged by personnel performing private security functions;

(B) Personnel performing private security functions are attacked, killed, or injured;

(C) Persons are killed or injured or property is destroyed as a result of conduct by Contractor personnel;

(D) A weapon is discharged against personnel performing private security functions or personnel performing such functions believe a weapon was so discharged; or

(E) Active, non-lethal countermeasures (other than the discharge of a weapon) are employed by personnel performing private security functions in response to a perceived immediate threat;

(2) Ensure that Contractor personnel who are responsible for performing private security functions under this contract are briefed on and understand their obligation to comply with—

(i) Qualification, training, screening (including, if applicable, thorough background checks) and security requirements established by 32 CFR part 159;

(ii) Applicable laws and regulations of the United States and the host country and applicable treaties and international agreements regarding performance of private security functions;

(iii) Orders, directives, and instructions issued by the applicable Combatant Commander or relevant Chief of Mission relating to weapons,

equipment, force protection, security, health, safety, or relations and interaction with locals; and

(iv) Rules on the use of force issued by the applicable Combatant Commander or relevant Chief of Mission for personnel performing private security functions;

(3) Provide full cooperation with any Government-authorized investigation of incidents reported pursuant to paragraph (c)(1)(iv) of this clause and incidents of alleged misconduct by personnel performing private security functions under this contract by providing—

(i) Access to employees performing private security functions; and

(ii) Relevant information in the possession of the Contractor regarding the incident concerned; and

(4) Comply with ANSI/ASIS PSC.1-2012, American National Standard, Management System for Quality of Private Security Company Operations—Requirements with Guidance or the International Standard ISO 18788, Management System for Private Security Operations—Requirements with Guidance (located at http://www.acq.osd.mil/log/PS/psc.html).

(d) *Remedies*. In addition to other remedies available to the Government—

(1) The Contracting Officer may direct the Contractor, at its own expense, to remove and replace any Contractor or subcontractor personnel performing private security functions who fail to comply with or violate applicable requirements of this clause or 32 CFR part 159. Such action may be taken at the Government's discretion without prejudice to its rights under any other provision of this contract;

(2) The Contractor's failure to comply with the requirements of this clause will be included in appropriate databases of past performance and considered in any responsibility determination or evaluation of past performance; and

(3) If this is an award-fee contract, the Contractor's failure to comply with the requirements of this clause shall be considered in the evaluation of the Contractor's performance during the relevant evaluation period, and the Contracting Officer may treat such failure to comply as a basis for reducing or denying award fees for such period or for recovering all or part of award fees previously paid for such period.

(e) *Rule of construction*. The duty of the Contractor to comply with the requirements of this clause shall not be reduced or diminished by the failure of a higher- or lower-tier Contractor or subcontractor to comply with the clause requirements or by a failure of the contracting activity to provide required oversight.

(f) *Subcontracts*. The Contractor shall include the substance of this clause, including this paragraph (f), in subcontracts, including subcontracts for commercial

products or commercial services, when private security functions will be performed outside the United States in areas of—

(1) Contingency operations;

(2) Combat operations, as designated by the Secretary of Defense;

(3) Other significant military operations (as defined in 32 CFR part 159), designated by the Secretary of Defense upon agreement of the Secretary of State;

(4) Peace operations, consistent with Joint Publication 3-07.3; or

(5) Other military operations or military exercises, when designated by the Combatant Commander.

(End of clause)

252.225-7040 Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States.
As prescribed in 222.771-5(a), use the following clause:

CONTRACTOR PERSONNEL SUPPORTING U.S. ARMED FORCES DEPLOYED OUTSIDE THE UNITED STATES (AUG 2025)

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

"Combatant Commander" means the commander of a unified or specified combatant command established in accordance with 10 U.S.C. 161.

"Contractors authorized to accompany the Force," or "CAAF," means contractor personnel, including all tiers of subcontractor personnel, who are authorized to accompany U.S. Armed Forces in applicable operations and have been afforded CAAF status through a letter of authorization. CAAF generally include all U.S. citizen n and third-country national employees not normally residing within the operational area whose area of performance is in the direct vicinity of U.S. Armed Forces and who routinely are collocated with the U.S. Armed Forces (especially in non-permissive environments). Personnel collocated with U.S. Armed Forces shall be afforded CAAF status through a letter of authorization. In some cases, Combatant Commander subordinate commanders may designate mission-essential host nation or local national contractor employees (e.g., interpreters) as CAAF. CAAF includes contractors previously identified as contractors deploying with the U.S. Armed Forces. CAAF status does not apply to contractor personnel in support of applicable operations within the boundaries and territories of the United States.

"Designated operational area" means a geographic area designated by the combatant commander or subordinate joint force commander for the conduct or support of specified military operations.

"Designated reception site" means the designated place for the reception, staging, integration, and onward movement of contractors deploying during a contingency. The designated reception site includes assigned joint reception centers

and other Service or private reception sites.

"Law of war" means that part of international law that regulates the conduct of armed hostilities. The law of war encompasses all international law for the conduct of hostilities binding on the United States or its individual citizens, including treaties and international agreements to which the United States is a party, and applicable customary international law.

"Non-CAAF" means personnel who are not designated as CAAF, such as local national (LN) employees and non-LN employees who are permanent residents in the operational area or third-country nationals not routinely residing with U.S. Armed Forces (and third-country national expatriates who are permanent residents in the operational area) who perform support functions away from the close proximity of, and do not reside with, U.S. Armed Forces. Government-furnished support to non-CAAF is typically limited to force protection, emergency medical care, and basic human needs (e.g., bottled water, latrine facilities, security, and food when necessary) when performing their jobs in the direct vicinity of U.S. Armed Forces. Non-CAAF status does not apply to contractor personnel in support of applicable operations within the boundaries and territories of the United States.

"Subordinate joint force commander" means a sub-unified commander or joint task force commander.

(b) *General.*

(1) This clause applies to both CAAF and non-CAAF when performing in a designated operational area outside the United States to support U.S. Armed Forces deployed outside the United States in—

(i) Contingency operations;

(ii) Peace operations, consistent with Joint Publication 3-07.3; or

(iii) Other military operations or military exercises, when designated by the Combatant Commander or as directed by the Secretary of Defense.

(2) Contract performance in support of U.S. Armed Forces deployed outside the United States may require work in dangerous or austere conditions. Except as otherwise provided in the contract, the Contractor accepts the risks associated with required contract performance in such operations.

(3) When authorized in accordance with paragraph (j) of this clause to carry arms for personal protection, Contractor personnel are only authorized to use force for individual self-defense.

(4) Unless immune from host nation jurisdiction by virtue of an international agreement or international law, inappropriate use of force by contractor personnel supporting the U.S. Armed Forces can subject such personnel to United States or host nation prosecution and civil liability (see paragraphs (d) and (j)(3) of this clause).

(5) Service performed by Contractor personnel subject to this clause is not

active duty or service under 38 U.S.C. 106 note.

(c) *Support.*

(1)(i) The Combatant Commander will develop a security plan for protection of Contractor personnel in locations where there is not sufficient or legitimate civil authority, when the Combatant Commander decides it is in the interests of the Government to provide security because—

(A) The Contractor cannot obtain effective security services;

(B) Effective security services are unavailable at a reasonable cost; or

(C) Threat conditions necessitate security through military means.

(ii) In appropriate cases, the Combatant Commander may provide security through military means, commensurate with the level of security provided DoD civilians.

(2)(i) Generally, CAAF will be afforded emergency medical and dental care if injured while supporting applicable operations. Additionally, non-CAAF employees who are injured while in the vicinity of U. S. Armed Forces will normally receive emergency medical and dental care. Emergency medical and dental care includes medical care situations in which life, limb, or eyesight is jeopardized. Examples of emergency medical and dental care include examination and initial treatment of victims of sexual assault; refills of prescriptions for life-dependent drugs; repair of broken bones, lacerations, infections; and traumatic injuries to the dentition. Hospitalization will be limited to stabilization and short-term medical treatment with an emphasis on return to duty or placement in the patient movement system.

(ii) When the Government provides medical treatment or transportation of Contractor personnel to a selected civilian facility, the Contractor shall ensure that the Government is reimbursed for any costs associated with such treatment or transportation.

(iii) Medical or dental care beyond this standard is not authorized.

(3) Contractor personnel must have a Synchronized Predeployment and Operational Tracker (SPOT)-generated letter of authorization signed by the Contracting Officer in order to process through a deployment center or to travel to, from, or within the designated operational area. The letter of authorization also will identify any additional authorizations, privileges, or Government support that Contractor personnel are entitled to under this contract. Contractor personnel who are issued a letter of authorization shall carry it with them at all times while deployed.

(4) Unless specified elsewhere in this contract, the Contractor is responsible for all other support required for its personnel engaged in the designated operational area under this contract.

(d) *Compliance with laws and regulations.*

(1) The Contractor shall comply with, and shall ensure that its personnel supporting U.S. Armed Forces deployed outside the United States as specified in paragraph (b)(1) of this clause are familiar with and comply with, all applicable—

(i) United States, host country, and third country national laws;

(ii) Provisions of the law of war, as well as any other applicable treaties and international agreements;

(iii) United States regulations, directives, instructions, policies, and procedures; and

(iv) Orders, directives, and instructions issued by the Combatant Commander, including those relating to force protection, security, health, safety, or relations and interaction with local nationals.

(2) The Contractor shall institute and implement an effective program to prevent violations of the law of war by its employees and subcontractors, including law of war training in accordance with paragraph (e)(1)(vii) of this clause.

(3) The Contractor shall ensure that CAAF and non-CAAF are aware—

(i) Of the DoD definition of "sexual assault" in DoD Directive 6495.01, Sexual Assault Prevention and Response Program;

(ii) That the offenses addressed by the definition are covered under the Uniform Code of Military Justice (see paragraph (e)(2)(iv) of this clause). Other sexual misconduct may constitute offenses under the Uniform Code of Military Justice, Federal law, such as the Military Extraterritorial Jurisdiction Act, or host nation laws; and

(iii) That the offenses not covered by the Uniform Code of Military Justice may nevertheless have consequences to the contractor employees (see paragraph (h)(1) of this clause).

(4) The Contractor shall report to the appropriate investigative authorities, identified in paragraph (d)(6) of this clause, any alleged offenses under—

(i) The Uniform Code of Military Justice (chapter 47 of title 10, United States Code) (applicable to contractors serving with or accompanying an armed force in the field during a declared war or contingency operations); or

(ii) The Military Extraterritorial Jurisdiction Act (chapter 212 of title 18, United States Code).

(5) The Contractor shall provide to all contractor personnel who will perform work on a contract in the deployed area, before beginning such work, information on the following:

(i) How and where to report an alleged crime described in paragraph (d)(4) of this clause.

(ii) Where to seek victim and witness protection and assistance available to contractor personnel in connection with an alleged offense described in paragraph (d)(4) of this clause.

(iii) That this section does not create any rights or privileges that are not authorized by law or DoD policy.

(6) The appropriate investigative authorities to which suspected crimes shall be reported include the following—

(i) US Army Criminal Investigation Command at http://www.cid.army.mil/;

(ii) Air Force Office of Special Investigations at https://www.osi.af.mil/;

(iii) Navy Criminal Investigative Service at http://www.ncis.navy.mil/;

(iv) Defense Criminal Investigative Service at http://www.dodig.mil/;

(v) To any command of any supported military element or the command of any base.

(7) Personnel seeking whistleblower protection from reprisals for reporting criminal acts shall seek guidance through the DoD Inspector General hotline at 800-424-9098 or www.dodig.mil/. Personnel seeking other forms of victim or witness protections should contact the nearest military law enforcement office.

(8)(i) The Contractor shall ensure that Contractor employees supporting the U.S. Armed Forces are aware of their rights to—

(A) Hold their own identity or immigration documents, such as passport or driver's license, regardless of the documents' issuing authority;

(B) Receive agreed upon wages on time;

(C) Take lunch and work-breaks;

(D) Elect to terminate employment at any time;

(E) Identify grievances without fear of reprisal;

(F) Have a copy of their employment contract in a language they understand;

(G) Receive wages that are not below the legal host-country minimum wage;

(H) Be notified of their rights, wages, and prohibited activities prior to signing their employment contract; and

(I) If housing is provided, live in housing that meets host-country housing and safety standards.

(ii) The Contractor shall post these rights in employee work spaces in English and in any foreign language(s) spoken by a significant portion of the workforce.

(iii) The Contractor shall enforce the rights of Contractor personnel supporting the U.S. Armed Forces.

(e) *Preliminary personnel requirements.*

(1) The Contractor shall ensure that the following requirements are met prior to deploying CAAF (specific requirements for each category will be specified in the statement of work or elsewhere in the contract):

(i) All required security and background checks are complete and acceptable.

(ii) All CAAF deploying in support of an applicable operation—

(A) Are medically, dentally, and psychologically fit for deployment and performance of their contracted duties;

(B) Meet the minimum medical screening requirements, including theater-specific medical qualifications as established by the geographic Combatant Commander (as posted to the Geographic Combatant Commander's website or other venue); and

(C) Have received all required immunizations as specified in the contract.

(1) During predeployment processing, the Government will provide, at no cost to the Contractor, any military-specific immunizations and/or medications not available to the general public.

(2) All other immunizations shall be obtained prior to arrival at the deployment center.

(3) All CAAF and selected non-CAAF, as specified in the statement of work, shall bring to the designated operational area a copy of the U.S. Centers for Disease Control and Prevention (CDC) Form 731, International Certificate of Vaccination or Prophylaxis as Approved by the World Health Organization, (also known as "shot record" or "Yellow Card") that shows vaccinations are current.

(iii) Deploying personnel have all necessary passports, visas, and other documents required to enter and exit a designated operational area and have a Geneva Conventions identification card, or other appropriate DoD identity credential, from the deployment center.

(iv) Special area, country, and theater clearance is obtained for all personnel deploying. Clearance requirements are in DoD Directive 4500.54E, DoD Foreign Clearance Program. For this purpose, CAAF are considered non-DoD contactor

personnel traveling under DoD sponsorship.

(v) All deploying personnel have received personal security training. At a minimum, the training shall—

(A) Cover safety and security issues facing employees overseas;

(B) Identify safety and security contingency planning activities; and

(C) Identify ways to utilize safety and security personnel and other resources appropriately.

(vi) All personnel have received isolated personnel training, if specified in the contract, in accordance with DoD Instruction 1300.23, Isolated Personnel Training for DoD Civilian and Contractors.

(vii) Personnel have received law of war training as follows:

(A) Basic training is required for all CAAF. The basic training will be provided through—

(1) A military-run training center; or

(2) A web-based source, if specified in the contract or approved by the Contracting Officer.

(B) Advanced training, commensurate with their duties and responsibilities, may be required for some Contractor personnel as specified in the contract.

(2) The Contractor shall notify all personnel who are not a host country national, or who are not ordinarily resident in the host country, that—

(i) Such employees, and dependents residing with such employees, who engage in conduct outside the United States that would constitute an offense punishable by imprisonment for more than one year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States, may potentially be subject to the criminal jurisdiction of the United States in accordance with the Military Extraterritorial Jurisdiction Act of 2000 (18 U.S.C. 3621, *et seq*.);

(ii) Pursuant to the War Crimes Act (18 U.S.C. 2441), Federal criminal jurisdiction also extends to conduct that is determined to constitute a war crime when committed by a civilian national of the United States;

(iii) Other laws may provide for prosecution of U.S. nationals who commit offenses on the premises of U.S. diplomatic, consular, military or other U.S. Government missions outside the United States (18 U.S.C. 7(9)); and

(iv) In time of declared war or a contingency operation, CAAF are subject to the jurisdiction of the Uniform Code of Military Justice under 10 U.S.C. 802(a)(10).

(v) Such employees are required to report offenses alleged to have been committed by or against Contractor personnel to appropriate investigative authorities.

(vi) Such employees will be provided victim and witness protection and assistance.

(f) *Processing and departure points.* CAAF shall—

(1) Process through the deployment center designated in the contract, or as otherwise directed by the Contracting Officer, prior to deploying. The deployment center will conduct deployment processing to ensure visibility and accountability of Contractor personnel and to ensure that all deployment requirements are met, including the requirements specified in paragraph (e)(1) of this clause;

(2) Use the point of departure and transportation mode directed by the Contracting Officer; and

(3) Process through a designated reception site (DRS) upon arrival at the deployed location. The DRS will validate personnel accountability, ensure that specific designated operational area entrance requirements are met, and brief Contractor personnel on theater-specific policies and procedures.

(g) *Personnel data.*

(1) The Contractor shall use the Synchronized Predeployment and Operational Tracker (SPOT) web-based system, to enter and maintain the data for all CAAF and, as designated by the Under Secretary of Defense (Acquisition and Sustainment) or the Combatant Commander, non-CAAF supporting U.S. Armed Forces deployed outside the United States as specified in paragraph (b)(1) of this clause.

(2) The Contractor shall enter the required information about their contractor personnel prior to deployment and shall continue to use the SPOT web-based system at https://spot.dmdc.mil to maintain accurate, up-to-date information throughout the deployment for all Contractor personnel. Changes to status of individual Contractor personnel relating to their in-theater arrival date and their duty location, to include closing out the deployment with their proper status (e.g., mission complete, killed, wounded) shall be annotated within the SPOT database in accordance with the timelines established in the SPOT Business Rules at https://www.acq.osd.mil/asds/log/cso/ocs/spot.html.

(h) *Contractor personnel.*

(1) The Contracting Officer may direct the Contractor, at its own expense, to remove and replace any Contractor personnel who jeopardize or interfere with mission accomplishment or who fail to comply with or violate applicable requirements of this contract. Such action may be taken at the Government's discretion without prejudice to its rights under any other provision of this contract, including the Termination for Default clause.

(2) The Contractor shall identify all personnel who occupy a position designated

as mission essential and ensure the continuity of essential Contractor services during designated operations, unless, after consultation with the Contracting Officer, Contracting Officer's representative, or local commander, the Contracting Officer directs withdrawal due to security conditions.

(3) The Contractor shall ensure that Contractor personnel follow the guidance at paragraph (e)(2)(v) of this clause and any specific Combatant Commander guidance on reporting offenses alleged to have been committed by or against Contractor personnel to appropriate investigative authorities.

(4) Contractor personnel shall return all U.S. Government-issued identification, to include the Common Access Card, to appropriate U.S. Government authorities at the end of their deployment (or, for non-CAAF, at the end of their employment under this contract).

(i) *Military clothing and protective equipment*.

(1) Contractor personnel are prohibited from wearing military clothing unless specifically authorized in writing by the Combatant Commander. If authorized to wear military clothing, Contractor personnel must—

(i) Wear distinctive patches, arm bands, nametags, or headgear, in order to be distinguishable from military personnel, consistent with force protection measures; and

(ii) Carry the written authorization with them at all times.

(2) Contractor personnel may wear military-unique organizational clothing and individual equipment (OCIE) required for safety and security, such as ballistic, nuclear, biological, or chemical protective equipment.

(3) The deployment center, or the Combatant Commander, shall issue OCIE and shall provide training, if necessary, to ensure the safety and security of Contractor personnel.

(4) The Contractor shall ensure that all issued OCIE is returned to the point of issue, unless otherwise directed by the Contracting Officer.

(j) *Weapons*.

(1) If the Contractor requests that its personnel performing in the designated operational area be authorized to carry weapons for individual self-defense, the request shall be made through the Contracting Officer to the Combatant Commander, in accordance with DoD Instruction 3020.41, Operational Contractor Support. The Combatant Commander will determine whether to authorize in-theater Contractor personnel to carry weapons and what weapons and ammunition will be allowed.

(2) If Contractor personnel are authorized to carry weapons in accordance with paragraph (j)(1) of this clause, the Contracting Officer will notify the Contractor what weapons and ammunition are authorized.

(3) The Contractor shall ensure that its personnel who are authorized to carry weapons—

(i) Are adequately trained to carry and use them—

(A) Safely;

(B) With full understanding of, and adherence to, the rules of the use of force issued by the Combatant Commander; and

(C) In compliance with applicable agency policies, agreements, rules, regulations, and other applicable law;

(ii) Are not barred from possession of a firearm by 18 U.S.C. 922;

(iii) Adhere to all guidance and orders issued by the Combatant Commander regarding possession, use, safety, and accountability of weapons and ammunition;

(iv) Comply with applicable Combatant Commander and local commander force-protection policies; and

(v) Understand that the inappropriate use of force could subject them to U.S. or host-nation prosecution and civil liability.

(4) Whether or not weapons are Government-furnished, all liability for the use of any weapon by Contractor personnel rests solely with the Contractor and the Contractor employee using such weapon.

(5) Upon redeployment or revocation by the Combatant Commander of the Contractor's authorization to issue firearms, the Contractor shall ensure that all Government-issued weapons and unexpended ammunition are returned as directed by the Contracting Officer.

(k) *Vehicle or equipment licenses.* Contractor personnel shall possess the required licenses to operate all vehicles or equipment necessary to perform the contract in the designated operational area.

(l) *Purchase of scarce goods and services.* If the Combatant Commander has established an organization for the designated operational area whose function is to determine that certain items are scarce goods or services, the Contractor shall coordinate with that organization local purchases of goods and services designated as scarce, in accordance with instructions provided by the Contracting Officer.

(m) *Evacuation.*

(1) If the Combatant Commander orders a mandatory evacuation of some or all personnel, the Government will provide assistance, to the extent available, to United States and third country national Contractor personnel.

(2) In the event of a non-mandatory evacuation order, unless authorized in writing by the Contracting Officer, the Contractor shall maintain personnel on location

sufficient to meet obligations under this contract.

(n) *Next of kin notification and personnel recovery*.

(1) The Contractor shall be responsible for notification of the employee-designated next of kin in the event an employee dies, requires evacuation due to an injury, or is isolated, missing, detained, captured, or abducted.

(2) In the case of isolated, missing, detained, captured, or abducted Contractor personnel, the Government will assist in personnel recovery actions in accordance with DoD Directive 3002.01E, Personnel Recovery in the Department of Defense.

(o) *Mortuary affairs*. Contractor personnel who die while in support of the U.S. Armed Forces shall be covered by the DoD mortuary affairs program as described in DoD Directive 1300.22, Mortuary Affairs Policy, and DoD Instruction 3020.41, Operational Contractor Support.

(p) *Changes*. In addition to the changes otherwise authorized by the Changes clause of this contract, the Contracting Officer may, at any time, by written order identified as a change order, make changes in the place of performance or Government-furnished facilities, equipment, material, services, or site. Any change order issued in accordance with this paragraph (p) shall be subject to the provisions of the Changes clause of this contract.

(q) *Subcontracts*. The Contractor shall incorporate the substance of this clause, including this paragraph (q), in all subcontracts when subcontractor personnel are supporting U.S. Armed Forces deployed outside the United States in—

(1) Contingency operations;

(2) Peace operations consistent with Joint Publication 3-07.3; or

(3) Other military operations or military exercises, when designated by the Combatant Commander or as directed by the Secretary of Defense.

(End of clause)

252.225-7041 Correspondence in English.
As prescribed in 225.603(2), use the following clause:

CORRESPONDENCE IN ENGLISH (JUN 1997)

The Contractor shall ensure that all contract correspondence that is addressed to the United States Government is submitted in English or with an English translation.

(End of clause)

252.225-7042 Authorization to Perform.
As prescribed in 225.603(3), use the following provision:

AUTHORIZATION TO PERFORM (APR 2003)

The offeror represents that it has been duly authorized to operate and to do business in the country or countries in which the contract is to be performed.

(End of provision)

252.225-7963 Antiterrorism/Force Protection for Defense Contractors Outside the United States.
As prescribed in 225.772-2, use the following clause:

ANTITERRORISM/FORCE PROTECTION POLICY FOR DEFENSE CONTRACTORS OUTSIDE THE UNITED STATES (DEVIATION 2026-O0041) (FEB 2026)

(a) *Definition*. "United States," as used in this clause, means, the 50 States, the District of Columbia, and outlying areas.

(b) Except as provided in paragraph (c) of this clause, the Contractor and its subcontractors, if performing or traveling outside the United States under this contract, shall—

(1) Affiliate with the Overseas Security Advisory Council, if the Contractor or subcontractor is a U.S. entity;

(2) Ensure that Contractor and subcontractor personnel who are U.S. nationals and are in-country on a non-transitory basis, register with the U.S. Embassy, and that Contractor and subcontractor personnel who are third country nationals comply with any security related requirements of the Embassy of their nationality;

(3) Provide, to Contractor and subcontractor personnel, antiterrorism/force protection awareness information commensurate with that which the Department of Defense (DoD) provides to its military and civilian personnel and their families, to the extent such information can be made available prior to travel outside the United States; and

(4) Obtain and comply with the most current antiterrorism/force protection guidance for Contractor and subcontractor personnel.

(c) The requirements of this clause do not apply to any subcontractor that is—

(1) A foreign government;

(2) A representative of a foreign government; or

(3) A foreign corporation wholly owned by a foreign government.

(d) Information and guidance pertaining to DoD antiterrorism/force protection can be obtained from *(Contracting Officer to insert applicable information cited in PGI 225.772-1)*.

(End of clause)

252.225-7044 Balance of Payments Program–Construction Material.

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

BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL—BASIC
(FEB 2024)

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

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

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

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

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

(iii) 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

(2) 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—

(1) 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

(2) 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.

"Critical component" means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

"Critical item" means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

"Domestic construction material" means—

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both—

(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 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with FAR 25.201(c). Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of iron and steel not produced in the United States (excluding fasteners) as estimated in good faith by the contractor, constitutes less than 5 percent of the cost of all the components used in such construction material (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of "cost of components" in this clause.

"Predominantly of iron or steel or a combination of both" means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab,

wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

"Steel" means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

"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 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 product; 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 I. **[Reserved]**

Alternate II. As prescribed in 225.7503(a) and (a)(3), use the following clause, which includes, in the definition of "domestic construction material" at paragraph (1)(ii)(A), the domestic content threshold that will apply to the entire contract period of performance:

BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL—
ALTERNATE II (FEB 2024)

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

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

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

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

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

(iii) 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

(2) 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—

(1) 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

(2) 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.

"Critical component" means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

"Critical item" means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

"Domestic construction material" means—

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both—

(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, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or

later, 75 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. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of iron and steel not produced in the United States (excluding fasteners) as estimated in good faith by the contractor, constitutes less than 5 percent of the cost of all the components used in such construction material (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of "cost of components" in this clause.

"Predominantly of iron or steel or a combination of both" means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

"Steel" means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

"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 in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in FAR part 2;

(2) Information technology that is a commercial product; 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 III. **[Reserved]**

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

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

BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL UNDER TRADE AGREEMENTS—BASIC (FEB 2024)

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

"Caribbean Basin country construction material" means a construction material that—

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

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

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

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

(iii) 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

(2) 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—

(1) 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

(2) 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.

"Critical component" means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

"Critical item" means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

"Designated country" means—

(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, North Macedonia, 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 the United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, 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 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—

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both—

(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 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with FAR 25.201(c). Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of iron and steel not produced in the United States (excluding fasteners) as estimated in good faith by the contractor, constitutes less than 5 percent of the cost of all the components used in such construction material (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States, utilized in the manufacture of the construction material and a good faith estimate of the cost of all iron or steel components not produced in the United States, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of "cost of components" in this clause.

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

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

(1) Is wholly the growth, product, or manufacture of a least developed country; 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 a least developed country into a new and different construction material distinct from the materials from which it was transformed.

"Predominantly of iron or steel or a combination of both" means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

"Steel" means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

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

"WTO GPA country construction material" means a construction material that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; 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 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 Free Trade Agreements apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for designated country construction materials.

(c) The Contractor shall use only domestic 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 product; 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 I. As prescribed in 225.7503(b) and (b)(2), use the following clause, which adds "Bahraini 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 (FEB 2024)

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

"Bahraini or Mexican construction material" means a construction material that—

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

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

"Caribbean Basin country construction material" means a construction material that—

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

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

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

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

(iii) 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

(2) 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—

(1) 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

(2) 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.

"Critical component" means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

"Critical item" means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

"Designated country" means—

(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, North Macedonia, 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 the United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, 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 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—

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both—

(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 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with FAR 25.201(c). Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of iron and steel not produced in the United States (excluding fasteners) as estimated in good faith by the contractor, constitutes less than 5 percent of the cost of all the components used in such construction material (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States includes but is

not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States, utilized in the manufacture of the construction material and a good faith estimate of the cost of all iron or steel components not produced in the United States, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of "cost of components" in this clause.

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

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

(1) Is wholly the growth, product, or manufacture of a least developed country; 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 a least developed country into a new and different construction material distinct from the materials from which it was transformed.

"Predominantly of iron or steel or a combination of both" means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

"Steel" means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

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

"WTO GPA country construction material" means a construction material that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; 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 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 United States-Mexico-Canada Agreement 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 Bahraini or Mexican construction material.

(c) The Contractor shall use only domestic or designated country construction material other than Bahraini 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 product; 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. **[Reserved]**

Alternate III. **[Reserved]**

Alternate IV. As prescribed in 225.7503(b) and (b)(5), use the following clause, which includes, in the definition of "domestic construction material" at paragraph (1)(ii)(A), the domestic content threshold that will apply to the entire contract period of performance:

BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL UNDER TRADE AGREEMENTS—ALTERNATE IV (FEB 2024)

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

"Caribbean Basin country construction material" means a construction material that—

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

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

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

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

(iii) 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

(2) 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—

(1) 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

(2) 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.

"Critical component" means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

"Critical item" means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

"Designated country" means—

(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, North Macedonia, 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 the United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, 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 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—.

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both—

(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, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 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. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of iron and steel not produced in the United States (excluding fasteners) as estimated in good faith by the contractor, constitutes less than 5 percent of the cost of all the components used in such construction material (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States, utilized in the manufacture of the construction material and a good faith estimate of the cost of all iron or steel components not produced in the United States, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of "cost of components" in this clause.

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

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

(1) Is wholly the growth, product, or manufacture of a least developed country; 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 a least developed country into a new and different construction material distinct from the materials from which it was transformed.

"Predominantly of iron or steel or a combination of both" means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

"Steel" means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

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

"WTO GPA country construction material" means a construction material that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; 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 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 Free Trade Agreements apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for designated country construction materials.

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

(1) Construction material valued at or below the simplified acquisition threshold in FAR part 2;

(2) Information technology that is a commercial product; 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 V. As prescribed in 225.7503(b) and (b)(6), use the following clause, which includes, in the definition of "domestic construction material" at paragraph (1)(ii)(A), the domestic content threshold that will apply to the entire contract period of performance; adds "Bahraini or Mexican construction material" to paragraph (a); and uses different paragraphs (b) and (c) than the basic clause:

BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL UNDER TRADE AGREEMENTS—ALTERNATE V (FEB 2024)

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

"Bahraini or Mexican construction material" means a construction material that—

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

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

"Caribbean Basin country construction material" means a construction material that—

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

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

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

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

(iii) 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

(2) 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—

(1) 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

(2) 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.

"Critical component" means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

"Critical item" means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

"Designated country" means—

(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, North Macedonia, 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 the United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, 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 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—

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both—

(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, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 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. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of iron and steel not produced in the United States (excluding fasteners) as estimated in good faith by the contractor, constitutes less than 5 percent of the cost of all the components used in such construction material (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States, utilized in the manufacture of the construction material and a good faith estimate of the cost of all iron or steel components not produced in the United States, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of "cost of components" in this clause.

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

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

(1) Is wholly the growth, product, or manufacture of a least developed country; 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 a least developed country into a new and different construction material distinct from the materials from which it was transformed.

"Predominantly of iron or steel or a combination of both" means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

"Steel" means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

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

"WTO GPA country construction material" means a construction material that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; 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 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 United States-Mexico-Canada Agreement 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 Bahraini or Mexican construction material.

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

(1) Construction material valued at or below the simplified acquisition threshold in FAR part 2; or

(2) Information technology that is a commercial product; 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 VI. **[Reserved]**

Alternate VII. **[Reserved]**

252.225-7046 Exports by Approved Community Members in Response to the Solicitation.
As prescribed in 225.7902-5(a), use the following provision:

EXPORTS BY APPROVED COMMUNITY MEMBERS IN RESPONSE TO THE SOLICITATION (JUNE 2013)

(a) *Definitions.* The definitions of "Approved Community", "defense articles", Defense Trade Cooperation (DTC) Treaty", "export", "Implementing Arrangement", "qualifying defense articles", "transfer", and "U.S. DoD Treaty-eligible requirements" in DFARS clause 252.225-7047 apply to this provision.

(b) All contract line items in the contemplated contract, except any identified in this paragraph, are intended to satisfy U.S. DoD Treaty-eligible requirements. Specific defense articles that are not U.S. DoD Treaty-eligible will be identified as such in those contract line items that are otherwise U.S. DoD Treaty-eligible.

CONTRACT LINE ITEMS NOT INTENDED TO SATISFY
U.S. DoD TREATY-ELIGIBLE REQUIREMENTS:

_____
[*Enter Contract Line Item Number(s) or enter "None"*]

(c) Approved Community members responding to the solicitation may only export or transfer defense articles that specifically respond to the stated requirements of the solicitation.

(d) Subject to the other terms and conditions of the solicitation and the contemplated contract that affect the acceptability of foreign sources or foreign end products, components, parts, or materials, Approved Community members are permitted, but not required, to use the DTC Treaties for exports or transfers of qualifying defense articles in preparing a response to this solicitation.

(e) Any conduct by an offeror responding to this solicitation that falls outside the scope of the DTC Treaties, the Implementing Arrangements, and the implementing regulations of the Department of State in 22 CFR 126.16 (Australia), 22 C.F.R. 126.17 (United Kingdom), and 22 C.F.R. 126 Supplement No. 1 (exempted technologies list) is subject to all applicable International Traffic in Arms Regulations (ITAR) requirements, including any criminal, civil, and administrative penalties or sanctions, as well as all other United States statutory and regulatory requirements outside of ITAR.

(f) If the offeror uses the procedures established pursuant to the DTC Treaties, the offeror agrees that, with regard to the export or transfer of a qualifying defense article associated with responding to the solicitation, the offeror shall—

(1) Comply with the requirements and provisions of the applicable DTC Treaties, the Implementing Arrangements, and corresponding regulations (including the ITAR) of the U.S. Government and the government of Australia or of the United Kingdom, as applicable;

(2) Prior to the export or transfer of a qualifying defense article—

(i) Mark, identify, transmit, store, and handle any defense articles provided for the purpose of responding to such solicitations, as well as any defense articles provided with or developed pursuant to their responses to such solicitations, in accordance with the DTC Treaties, the Implementing Arrangements, and corresponding regulations of the United States Government and the government of Australia or the government of the United Kingdom, as applicable, including, but not limited to, the marking and classification requirements described in the applicable regulations;

(ii) Comply with the re-transfer or re-export provisions of the DTC Treaties, the Implementing Arrangements, and corresponding regulations of the United States Government and the government of Australia or the government of the United Kingdom, as applicable, including, but not limited to, the re-transfer and re-export requirements described in the applicable regulations; and

(iii) Acknowledge that any conduct that falls outside or in violation of the DTC Treaties, Implementing Arrangements, and implementing regulations of the applicable government including, but not limited to, unauthorized re-transfer or re-export in violation of the procedures established in the applicable Implementing Arrangement and implementing regulations, remains subject to applicable licensing requirements of the government of Australia, the government of the United Kingdom, and the United States Government, as applicable, including any criminal, civil, and administrative penalties or sanctions contained therein; and

(g) *Representation.* The offeror shall check one of the following boxes and sign the representation:

□ The offeror represents that export(s) or transfer(s) of qualifying defense articles were made in preparing its response to this solicitation and that such export(s) or transfer(s) complied with the requirements of this provision.

_____
Name/Title of Duly Authorized Representative Date

□ The offeror represents that no export(s) or transfer(s) of qualifying defense articles were made in preparing its response to this solicitation.

_____
Name/Title of Duly Authorized Representative Date

(h) *Subcontracts.* Flow down the substance of this provision, including this paragraph (h), but excluding the representation at paragraph (g), to any subcontractor at any tier intending to use the DTC Treaties in responding to this solicitation.

(End of provision)

252.225-7047 Exports by Approved Community Members in Performance of the Contract.
As prescribed in 225.7902-5(b), use the following clause:

EXPORTS BY APPROVED COMMUNITY MEMBERS IN PERFORMANCE OF THE CONTRACT (JUNE 2013)

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

"Approved Community" means the U.S. Government, U.S. entities that are registered and eligible exporters, and certain government and industry facilities in Australia or the United Kingdom that are approved and listed by the U.S. Government.

"Australia Community member" means an Australian government authority or nongovernmental entity or facility on the Australia Community list accessible at http://pmddtc.state.gov/treaties/index.html .

"Defense articles" means articles, services, and related technical data, including software, in tangible or intangible form, listed on the United States Munitions List of the International Traffic in Arms Regulations (ITAR), as modified or amended.

"Defense Trade Cooperation (DTC) Treaty" means—

(1) The Treaty Between the Government of the United States of America and the government of the United Kingdom of Great Britain and Northern Ireland concerning Defense Trade Cooperation, signed at Washington and London on June 21 and 26, 2007; or

(2) The Treaty Between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation, signed at Sydney on September 5, 2007.

"Export" means the initial movement of defense articles from the United States Community to the United Kingdom Community and the Australia community.

"Implementing Arrangement" means–

(1) The Implementing Arrangement Pursuant to the Treaty between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation, signed on February 14, 2008; or

(2) The Implementing Arrangement Pursuant to the Treaty between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation, signed on March 14, 2008.

"Qualifying defense articles" means defense articles that are not exempt from the scope of the DTC Treaties as defined in 22 CFR 126.16(g) and 22 CFR 126.17(g).

"Transfer" means the movement of previously exported defense articles within the Approved Community.

"United Kingdom Community member" means a United Kingdom government authority or nongovernmental entity or facility on the United Kingdom Community list accessible at http://pmddtc.state.gov.

"United States Community" means—

(1) Departments and agencies of the U.S. Government, including their personnel, with, as appropriate, security accreditation and a need-to-know; and

(2) Nongovernmental U.S. entities registered with the Department of State and eligible to export defense articles under U.S. law and regulation, including their employees, with, as appropriate, security accreditation and a need-to-know.

"U.S. DoD Treaty-eligible requirements" means any defense article acquired by the DoD for use in a combined military or counterterrorism operation, cooperative research, development, production or support program, or DoD end use, as described in Article 3 of the U.S.-U.K. DTC Treaty and sections 2 and 3 of the associated Implementing Arrangement; and Article 3 of the U.S.-Australia DTC Treaty and sections 2 and 3 of the associated Implementing Arrangement.

(b) All contract line items in this contract, except any identified in this paragraph, are intended to satisfy U.S. DoD Treaty-eligible requirements. Specific defense articles that are not U.S. DoD Treaty-eligible will be identified as such in those contract line items that are otherwise U.S. DoD Treaty-eligible.

CONTRACT LINE ITEMS NOT INTENDED TO SATISFY
U.S. DoD TREATY-ELIGIBLE REQUIREMENTS:

_____
[*Enter Contract Line Item Number(s) or enter "None"*]

(c) Subject to the other terms and conditions of this contract that affect the acceptability of foreign sources or foreign end products, components, parts, or materials, Approved Community members are permitted, but not required, to use the DTC Treaties for exports or transfers of qualifying defense articles in performance of the contract.

(d) Any conduct by the Contractor that falls outside the scope of the DTC Treaties, the Implementing Arrangements, and 22 CFR 126.16(g) and 22 CFR 126.17(g) is subject to all applicable ITAR requirements, including any criminal, civil, and administrative penalties or sanctions, as well as all other United States statutory and regulatory requirements outside of ITAR, including, but not limited to, regulations issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives found at 27 C.F.R. Parts 447, 478, and 479, which are unaffected by the DTC Treaties.

(e) If the Contractor is an Approved Community member, the Contractor agrees that—

(1) The Contractor shall comply with the requirements of the DTC Treaties, the Implementing Arrangements, the ITAR, and corresponding regulations of the U.S. Government and the government of Australia or the government of the United Kingdom, as applicable; and

(2) Prior to the export or transfer of a qualifying defense article the Contractor—

(i) Shall mark, identify, transmit, store, and handle any defense articles provided for the purpose of responding to such solicitations, as well as any defense articles provided with or developed pursuant to their responses to such solicitations, in accordance with the DTC Treaties, the Implementing Arrangements, and corresponding regulations of the United States Government and the government of Australia or the government of the United Kingdom, as applicable, including, but not limited to, the marking and classification requirements described in the applicable regulations;

(ii) Shall comply with the re-transfer or re-export provisions of the DTC Treaties, the Implementing Arrangements, and corresponding regulations of the United States Government and the government of Australia or the government of the United Kingdom, as applicable, including, but not limited to, the re-transfer and re-export requirements described in the applicable regulations; and

(iii) Shall acknowledge that any conduct that falls outside or in violation of the DTC Treaties, Implementing Arrangements, and implementing regulations of the applicable government including, but not limited to, unauthorized re-transfer or re-export in violation of the procedures established in the applicable Implementing Arrangement and implementing regulations, remains subject to applicable licensing requirements of the government of Australia, the government of the United Kingdom, and the United States Government, including any criminal, civil, and administrative penalties or sanctions contained therein.

(f) The contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts that may require exports or transfers of qualifying defense articles in connection with deliveries under the contract.

(End of clause)

252.225-7048 Export-Controlled Items.
As prescribed in 225.7901-4, use the following clause:

EXPORT CONTROLLED ITEMS (JUNE 2013)

(a) *Definition.* "Export-controlled items," as used in this clause, means items subject to the Export Administration Regulations (EAR) (15 CFR Parts 730-774) or the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130). The term includes:

(1) "Defense items," defined in the Arms Export Control Act, 22 U.S.C. 2778(j)(4)(A), as defense articles, defense services, and related technical data, and further defined in the ITAR, 22 CFR Part 120.

(2) "Items," defined in the EAR as "commodities", "software", and "technology," terms that are also defined in the EAR, 15 CFR 772.1.

(b) The Contractor shall comply with all applicable laws and regulations regarding export-controlled items, including, but not limited to, the requirement for contractors to

register with the Department of State in accordance with the ITAR. The Contractor shall consult with the Department of State regarding any questions relating to compliance with the ITAR and shall consult with the Department of Commerce regarding any questions relating to compliance with the EAR.

(c) The Contractor's responsibility to comply with all applicable laws and regulations regarding export-controlled items exists independent of, and is not established or limited by, the information provided by this clause.

(d) Nothing in the terms of this contract adds, changes, supersedes, or waives any of the requirements of applicable Federal laws, Executive orders, and regulations, including but not limited to—

(1) The Export Administration Act of 1979, as amended (50 U.S.C. App. 2401, *et seq*.);

(2) The Arms Export Control Act (22 U.S.C. 2751, *et seq*.);

(3) The International Emergency Economic Powers Act (50 U.S.C. 1701, et seq.);

(4) The Export Administration Regulations (15 CFR Parts 730-774);

(5) The International Traffic in Arms Regulations (22 CFR Parts 120-130); and

(6) Executive Order 13222, as extended.

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in all subcontracts.

(End of clause)

252.225-7049 [Reserved]

252.225-7050 [Reserved]

252.225-7051 [Reserved]

252.225-7052 Restriction on the Acquisition of Certain Magnets, Tantalum, and Tungsten.
As prescribed in 225.7018-5, use the following clause:

RESTRICTION ON THE ACQUISITION OF CERTAIN MAGNETS, TANTALUM, AND TUNGSTEN (MAY 2024)

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

"Assembly" means an item forming a portion of a system or subsystem that—

(1) Can be provisioned and replaced as an entity; and

(2) Incorporates multiple, replaceable parts.

"Commercially available off-the-shelf item"—

(1) Means any item of supply that is—

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

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

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

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

"Component" means any item supplied to the Government as part of an end item or of another component.

"Covered country" means—

(1) The Democratic People's Republic of North Korea;

(2) The People's Republic of China;

(3) The Russian Federation; or

(4) The Islamic Republic of Iran.

"Covered material" means—

(1) Samarium-cobalt magnets;

(2) Neodymium-iron-boron magnets;

(3) Tantalum metals and alloys;

(4) Tungsten metal powder; and

(5) Tungsten heavy alloy or any finished or semi-finished component containing tungsten heavy alloy.

"Electronic device" means an item that operates by controlling the flow of electrons or other electrically charged particles in circuits, using interconnections such as resistors, inductors, capacitors, diodes, switches, transistors, or integrated circuits.

"End item" means the final production product when assembled or completed and ready for delivery under a line item of this contract.

"Subsystem" means a functional grouping of items that combine to perform a major function within an end item, such as electrical power, attitude control, and propulsion.

"Tungsten heavy alloy" means a tungsten base pseudo alloy that—

(1) Meets the specifications of ASTM B777 or SAE-AMS-T-21014 for a particular class of tungsten heavy alloy; or

(2) Contains at least 90 percent tungsten in a matrix of other metals (such as nickel-iron or nickel-copper) and has density of at least 16.5 g/cm3).

(b) *Restriction*.

(1) Except as provided in paragraph (c) of this clause—

(i) Effective through December 31, 2026, the Contractor shall not deliver under this contract any covered material melted or produced in any covered country, or any end item, manufactured in any covered country, that contains a covered material; and

(ii) Effective January 1, 2027, the Contractor shall not deliver under this contract any covered material mined, refined, separated, melted, or produced in any covered country, or any end item, manufactured in any covered country, that contains a covered material (section 854, Pub. L. 118-31; 10 U.S.C. 4872).

(2)(i)(A) Effective through December 31, 2026, for samarium-cobalt magnets and neodymium-iron-boron magnets, this restriction includes—

(*1*) Melting samarium with cobalt to produce the samarium-cobalt alloy or melting neodymium with iron and boron to produce the neodymium-iron-boron alloy; and

(*2*) All subsequent phases of production of the magnets, such as powder formation, pressing, sintering or bonding, and magnetization.

(B) Effective January 1, 2027, for samarium-cobalt magnets this restriction includes the entire supply chain from mining or production of a cobalt and samarium ore or feedstock, including recycled material, through production of finished magnets.

(ii) The restriction on melting and producing of samarium-cobalt magnets is in addition to any applicable restrictions on melting of specialty metals if the clause at 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals, is included in the contract.

(3) Effective January 1, 2027, for neodymium-iron-boron magnets, this restriction includes the entire supply chain from mining of neodymium, iron, and boron through production of finished magnets.

(4)(i) Effective through December 31, 2026, for production of tantalum

metals of any kind and alloys, this restriction includes the reduction or melting of any form of tantalum to create tantalum metal including unwrought, powder, mill products, and alloys. The restriction also covers all subsequent phases of production of tantalum metals and alloys.

(ii) Effective January 1, 2027, for production of tantalum metals of any kind and alloys, this restriction includes mining or production of a tantalum ore or feedstock, including recycled material, through production of metals of any kind and alloys.

(5)(i) Effective through December 31, 2026, for production of tungsten metal powder and tungsten heavy alloy, this restriction includes–

(A) Atomization;

(B) Calcination and reduction into powder;

(C) Final consolidation of non-melt derived metal powders; and

(D) All subsequent phases of production of tungsten metal powder, tungsten heavy alloy, or any finished or semi-finished component containing tungsten heavy alloy.

(ii) Effective January 1, 2027, for production of tungsten metal powder, tungsten heavy alloy, or any finished or semi-finished component containing tungsten heavy alloy, this restriction includes mining or production of a tungsten ore or feedstock, including recycled material, through production of tungsten metal powders, tungsten heavy alloy, or any finished or semi-finished component containing tungsten heavy alloy.

(c) *Exceptions*. This clause does not apply—

(1) To an end item containing a covered material that is—

(i) A commercially available off-the-shelf item, other than—

(A) A commercially available off-the-shelf item that is—

(*1*) 50 percent or more tungsten by weight effective through December 31, 2026; or

(*2*) 50 percent or more covered material by weight effective January 1, 2027;

(B) Effective through December 31, 2026, a tantalum metal, tantalum alloy, or tungsten heavy alloy mill product, such as bar, billet, slab, wire, cube, sphere, block, blank, plate, or sheet, that has not been incorporated into an end item, subsystem, assembly, or component;

(ii) Effective January 1, 2027, a covered material that is a mill product, such as bar, billet, slab, wire, cube, sphere, block, blank, plate, or sheet, that has

not been incorporated into an end item, subsystem, assembly, or component;

(iii) An electronic device, unless otherwise specified in the contract; or

(iv) A neodymium-iron-boron magnet manufactured from recycled material if the milling of the recycled material and sintering of the final magnet takes place in the United States.

(2) If the authorized agency official concerned has made a nonavailability determination, in accordance with section 225.7018-4 of the Defense Federal Acquisition Regulation Supplement, that compliant covered materials of satisfactory quality and quantity, in the required form, cannot be procured as and when needed at a reasonable price.

(i) For tantalum metal, tantalum alloy, or tungsten heavy alloy, the term "required form" refers to the form of the mill product, such as bar, billet, wire, slab, plate, or sheet, in the grade appropriate for the production of a finished end item to be delivered to the Government under this contract; or a finished component assembled into an end item to be delivered to the Government under the contract.

(ii) For samarium-cobalt magnets or neodymium-iron-boron magnets, the term "required form" refers to the form and properties of the magnets.

(d) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (d), in subcontracts and other contractual instruments that are for items containing a covered material, including subcontracts and other contractual instruments for commercial products, unless an exception in paragraph (c) of this clause applies. The Contractor shall not alter this clause other than to identify the appropriate parties.

(End of clause)

252.225-7053 Representation Regarding Prohibition on Use of Certain Energy Sourced from Inside the Russian Federation.
As prescribed in 225.7019-4(a), use the following provision:

REPRESENTATION REGARDING PROHIBITION ON USE OF CERTAIN ENERGY SOURCED FROM INSIDE THE RUSSIAN FEDERATION (AUG 2021)

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

"Covered military installation" means a military installation in Europe identified by DoD as a main operating base.

"Furnished energy" means energy furnished to a covered military installation in any form and for any purpose, including heating, cooling, and electricity.

"Main operating base" means a facility outside the United States and its territories with permanently stationed operating forces and robust infrastructure.

(b) *Prohibition.* In accordance with section 2821 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92), contracts for the acquisition of furnished energy for a covered military installation shall not use any energy sourced from inside the Russian Federation as a means of generating the furnished energy for the covered military installation, unless a waiver is approved. The prohibition—

(1) Applies to all forms of energy that are furnished to a covered military installation; and

(2) Does not apply to energy converted by a third party into another form of energy and not directly delivered to a covered military installation.

(c) *Representation.* By submission of its offer, the Offeror represents that the Offeror will not use or provide any energy sourced from inside the Russian Federation as a means of generating the furnished energy for the covered military installation in the performance of any contract, subcontract, or other contractual instrument resulting from this solicitation.

(End of provision)

252.225-7054 Prohibition on Use of Certain Energy Sourced from Inside the Russian Federation.
As prescribed in 225.7019-4(b), use the following clause:

PROHIBITION ON USE OF CERTAIN ENERGY SOURCED FROM INSIDE THE RUSSIAN FEDERATION (JAN 2023)

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

"Covered military installation" means a military installation in Europe identified by DoD as a main operating base.

"Furnished energy" means energy furnished to a covered military installation in any form and for any purpose, including heating, cooling, and electricity.

"Main operating base" means a facility outside the United States and its territories with permanently stationed operating forces and robust infrastructure.

(b) *Prohibition.* In accordance with section 2821 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92), the Contractor shall not use in the performance of this contract any energy sourced from inside the Russian Federation as a means of generating the furnished energy for the covered military installation unless a waiver is approved. The prohibition—

(1) Applies to all forms of energy that are furnished to a covered military installation; and

(2) Does not apply to energy converted by a third party into another form of energy and not directly delivered to a covered military installation.

(c) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts and other commercial instruments that are for furnished energy at a covered military installation, including subcontracts and commercial instruments for commercial products.

(End of clause)

252.225-7055 Representation Regarding Business Operations with the Maduro Regime.
As prescribed in 225.7020-5(a), use the following provision:

REPRESENTATION REGARDING BUSINESS OPERATIONS WITH THE MADURO REGIME (MAY 2022)

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

"Agency or instrumentality of the government of Venezuela," "business operations," "government of Venezuela," and "person" have the meaning given in the clause 252.225-7056, Prohibition Regarding Business Operations with the Maduro Regime, of this solicitation.

(b) *Prohibition*. In accordance with section 890 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92), DoD is prohibited from entering into a contract for the procurement of products or services with any person that has business operations with an authority of the government of Venezuela that is not recognized as the legitimate government of Venezuela by the U.S. Government, unless the person has a valid license to operate in Venezuela issued by the Office of Foreign Assets Control of the Department of the Treasury.

(c) *Representation*. By submission of its offer, the Offeror represents that the Offeror is a person that—

(1) Does not have any business operations with an authority of the Maduro regime or the government of Venezuela that is not recognized as the legitimate government of Venezuela by the U.S. Government; or

(2) Has a valid license to operate in Venezuela issued by the Office of Foreign Assets Control of the Department of the Treasury.

(End of provision)

252.225-7056 Prohibition Regarding Business Operations with the Maduro Regime.
As prescribed in 225.7020-5(b), use the following clause:

PROHIBITION REGARDING BUSINESS OPERATIONS WITH THE MADURO REGIME (JAN 2023)

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

"Agency or instrumentality of the government of Venezuela" means an agency or instrumentality of a foreign state as defined in 28 U.S.C. 1603(b), with each reference in section 1603(b) to a foreign state deemed to be a reference to Venezuela.

"Business operations" means engaging in commerce in any form, including acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

"Government of Venezuela" means the government of any political subdivision of Venezuela, and any agency or instrumentality of the government of Venezuela.

"Person" means—

(1) A natural person, corporation, company, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group;

(2) Any governmental entity or instrumentality of a government, including a multilateral development institution (as defined in section 1701(c)(3) of the International Financial Institutions Act (22 U.S.C. 262r(c)(3)); and

(3) Any successor, subunit, parent entity, or subsidiary of, or any entity under common ownership or control with, any entity described in paragraph (1) or (2) of this definition.

(b) *Prohibition.* In accordance with section 890 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92), DoD is prohibited from entering into a contract for the procurement of products or services with any person that has business operations with an authority of the government of Venezuela that is not recognized as the legitimate government of Venezuela by the U.S. Government, unless the person has a valid license to operate in Venezuela issued by the Office of Foreign Assets Control of the Department of the Treasury.

(c) The Contractor shall—

(1) Not have any business operations with an authority of the Maduro regime or the government of Venezuela that is not recognized as the legitimate government of Venezuela by the U.S. Government; or

(2) Have a valid license to operate in Venezuela issued by the Office of Foreign Assets Control of the Department of the Treasury.

(d) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts, including subcontracts for the acquisition of commercial products.

(End of clause)

252.225-7057 Preaward Disclosure of Employment of Individuals Who Work in the People's Republic of China.
As prescribed in 225.7021-4(a), use the following provision:

PREAWARD DISCLOSURE OF EMPLOYMENT OF INDIVIDUALS WHO WORK IN THE PEOPLE'S REPUBLIC OF CHINA (AUG 2022)

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

"Covered contract" and "covered entity" have the meaning given in the clause 252.225-7058, Postaward Disclosure of Employment of Individuals Who Work in the People's Republic of China.

(b) *Prohibition on award.* In accordance with section 855 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117-81, 10 U.S.C. 4651 note prec.), DoD may not award a contract to the Offeror if it is a covered entity and proposes to employ one or more individuals who will perform work in the People's Republic of China on a covered contract, unless the Offeror has disclosed its use of workforce and facilities in the People's Republic of China.

(c) *Preaward disclosure requirement.* At the time of submission of an offer for a covered contract, an Offeror that is a covered entity shall provide disclosures to include—

(1) The proposed use of workforce on a covered contract or subcontract, if the Offeror employs one or more individuals who perform work in the People's Republic of China;

(2) The total number of such individuals who will perform work in the People's Republic of China; and

(3) A description of the physical presence, including street address or addresses, in the People's Republic of China, where work on the covered contract will be performed.

(End of provision)

252.225-7058 Postaward Disclosure of Employment of Individuals Who Work in the People's Republic of China.
As prescribed in 225.7021-4(b), use the following clause:

POSTAWARD DISCLOSURE OF EMPLOYMENT OF INDIVIDUALS WHO WORK IN THE PEOPLE'S REPUBLIC OF CHINA (JAN 2023)

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

"Covered contract" means any DoD contract or subcontract with a value in excess of $5 million, not including contracts for commercial products and commercial services.

"Covered entity" means any corporation, company, limited liability company, limited partnership, business trust, business association, or other similar entity, including any subsidiary thereof, performing work on a covered contract in the People's Republic of China, including by leasing or owning real property used in the performance of the covered contract in the People's Republic of China.

(b) *Disclosure requirement.*

(1) In accordance with section 855 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117-81, 10 U.S.C. 4651 note prec.), DoD may not award, extend, or exercise an option on a covered contract with a covered entity unless such covered entity submits each required disclosure of its use of workforce and facilities in the People's Republic of China, if it employs one or more individuals who perform work in the People's Republic of China on a covered contract.

(2) If the Contractor is a covered entity, the Contractor shall disclose for the Government's fiscal years 2023 and 2024, the Contractor's employment of one or more individuals who perform work in the People's Republic of China on any covered contract. The disclosures shall include—

(i) The total number of such individuals who perform work in the People's Republic of China on the covered contracts funded by DoD; and

(ii) A description of the physical presence, including street address or addresses in the People's Republic of China, where work on the covered contract is performed.

(c) *Subcontracts*. The Contractor shall insert this clause, including this paragraph (c), without alteration other than to identify the appropriate parties, in all subcontracts that meet the definition of a covered contract.

(End of clause)

252.225-7059 Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region–Representation.
As prescribed in 225.7022-5(a), use the following provision:

PROHIBITION ON CERTAIN PROCUREMENTS FROM THE XINJIANG UYGHUR AUTONOMOUS REGION–REPRESENTATION (JUN 2023)

(a) *Definitions.* "Forced labor" and "XUAR", as used in this provision, have the meaning given in the 252.225-7060, Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region, clause of this solicitation.

(b) *Prohibition.* DoD may not knowingly procure any products mined, produced, or manufactured wholly or in part by forced labor from XUAR or from an entity that has used labor from within or transferred from XUAR as part of any forced labor programs, as specified in paragraph (b) of the 252.225-7060, Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region, clause of this solicitation.

(c) *Representation.* By submission of its offer, the Offeror represents that it has made a good faith effort to determine that forced labor from XUAR will not be used in the performance of a contract resulting from this solicitation.

(End of provision)

252.225-7060 Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region.
As prescribed in 225.7022-5(b), use the following clause:

PROHIBITION ON CERTAIN PROCUREMENTS FROM THE XINJIANG UYGHUR AUTONOMOUS REGION (JUN 2023)

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

"Forced labor" means any work or service that is exacted from any person under the menace of any penalty for nonperformance and that the worker does not offer to perform (10 U.S.C. 2496).

"XUAR" means the Xinjiang Uyghur Autonomous Region of the People's Republic of China (10 U.S.C. 2496).

(b) *Prohibition.* In accordance with 10 U.S.C. 4661, none of the funds appropriated or otherwise made available for DoD may be used to knowingly procure any products mined, produced, or manufactured wholly or in part by forced labor from XUAR or from an entity that has used labor from within or transferred from XUAR. The Contractor shall make a good faith effort to determine that forced labor from XUAR will not be used in the performance of this contract (section 855, Pub. L. 117-263).

(c) *Subcontracts*. The Contractor shall insert this clause, including this paragraph (c), without alteration other than to identify the appropriate parties, in subcontracts including subcontracts for commercial products, commercial services, and commercially available off-the-shelf items.

(End of clause)

252.225-7061 Restriction on the Acquisition of Personal Protective Equipment and Certain Other Items from Non-Allied Foreign Nations.
As prescribed in 225.7023-4, use the following clause:

RESTRICTION ON THE ACQUISITION OF PERSONAL PROTECTIVE EQUIPMENT AND CERTAIN OTHER ITEMS FROM NON-ALLIED FOREIGN NATIONS (JAN 2023)

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

"Covered country" means—

(1) The Democratic People's Republic of North Korea;

(2) The People's Republic of China;

(3) The Russian Federation; and

(4) The Islamic Republic of Iran.

"Covered item" means an article or item of—

(1) Personal protective equipment for use in preventing spread of disease, such as by exposure to infected individuals or contamination or infection by infectious material, including—

(i) Nitrile and vinyl gloves;

(ii) Surgical masks;

(iii) Respirator masks and powered air purifying respirators and required filters;

(iv) Face shields and protective eyewear;

(v) Surgical and isolation gowns and head and foot coverings; or

(vi) Clothing; and

(vii) The materials and components thereof, other than sensors, electronics, or other items added to and not normally associated with such personal protective equipment or clothing; or

(2) Sanitizing and disinfecting wipes, testing swabs, gauze, and bandages.

(b) *Restriction*. The Contractor shall not deliver under this contract a covered item from a covered country (10 U.S.C. 4875).

(c) *Subcontracts*. The Contractor shall insert this clause, including this paragraph (c), without alteration other than to identify the appropriate parties, in subcontracts valued above $150,000 that are for the acquisition of covered items, including subcontracts for commercial products, including commercially available off-the-shelf items, and commercial services.

(End of clause)

252.225-7062 Restriction on Acquisition of Large Medium-Speed Diesel Engines.
As prescribed in 225.7004-7(b), use the following clause:

RESTRICTION ON ACQUISITION OF LARGE MEDIUM-SPEED DIESEL ENGINES (JUL 2023)

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

"Large medium-speed diesel engines" means diesel engines whose revolutions per minute (RPM) fall between 300 and 1500 RPM with a displacement greater than 1500 cubic inches per cylinder.

(b) *Restriction*. As required by 10 U.S.C. 4864, the Contractor shall deliver under this contract large medium-speed diesel engines manufactured in the United States, Australia, Canada, New Zealand, or the United Kingdom.

(c) *Subcontracts*. The Contractor shall include the substance of this clause, including this paragraph (c), in subcontracts that exceed the simplified acquisition threshold, including subcontracts for commercial products and commercial services, that require large medium-speed diesel engines for new construction of auxiliary ships.

(End of clause)

252.225-7063 Restriction on Acquisition of Components of T-AO 205 and T-ARC Class Vessels.
As prescribed in 225.7004-7(c), use the following clause:

RESTRICTION ON ACQUISITION OF COMPONENTS OF T-AO 205 AND T-ARC CLASS VESSELS (MAY 2024)

(a) *Restriction*.

(1) In accordance with 10 U.S.C. 4864, the following components of T-AO 205 and T-ARC class vessels must be manufactured in the United States, Australia, Canada, New Zealand, or the United Kingdom of Great Britain and Northern Ireland (United Kingdom):

(i) Auxiliary equipment, including pumps, for all shipboard services.

(ii) Propulsion system components, including engines, reduction gears, and propellers.

(iii) Shipboard cranes.

(iv) Spreaders for shipboard cranes.

(2) The Contractor shall deliver under this contract only T-AO 205 and T-ARC class vessel components, as described in paragraph (a)(1) of this clause, manufactured in the United States, Australia, Canada, New Zealand, or the United Kingdom (10 U.S.C. 4864).

(b) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (b), in subcontracts for the components described in paragraph (a)(1) of this clause that exceed the simplified acquisition threshold, including subcontracts for commercial products and commercial services.

(End of clause)

252.225-7064 Restriction on Acquisition of Certain Satellite Components.
As prescribed in 225.7004-7(d), use the following clause:

RESTRICTION ON ACQUISITION OF CERTAIN SATELLITE COMPONENTS (MAY 2024)

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

"Star tracker" means a navigational tool used in a satellite weighing more than 400 pounds whose principal purpose is to support the national security, defense, or intelligence needs of the U.S. Government.

(b) *Restriction*. In accordance with 10 U.S.C. 4864, a star tracker must be manufactured in the United States, Australia, Canada, New Zealand, or the United Kingdom of Great Britain and Northern Ireland (United Kingdom). The Contractor shall deliver under this contract only star trackers manufactured in the United States, Australia, Canada, New Zealand, or the United Kingdom.

(c) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts for star trackers that exceed the simplified acquisition threshold, including subcontracts for commercial products and commercial services.

(End of clause)

252.225-7964 Restriction on Acquisition of Fuel for Overseas Contingency Operations.
As prescribed in 225.7024-4, use the following provision:

RESTRICTION ON ACQUISITION OF FUEL FOR OVERSEAS CONTINGENCY OPERATIONS (DEVIATION 2026-O0041)(FEB 2026)

(a) *Prohibition*. For an overseas contingency operation, DoD may not procure fuel in whole or in part, or derivatives of such fuel, that is sourced from nations or regions prohibited from selling petroleum to the United States. See Federal Acquisition Regulation subpart 40.2 and the Office of Foreign Assets Control website at *https://ofac.treasury.gov/sanctions-programs-and-country-information* for prohibited sources.

(b) *Certification*. Offerors shall complete the certification in paragraph (b)(1) of this provision and submit the certification with their offer.

(1) The Offeror does [ ] does not [ ] certify that the fuel, in whole or in part, or derivatives of such fuel, to be provided under any contract resulting from this solicitation is not sourced from a nation or region prohibited from selling petroleum to the United States.

(2) Only Offerors who certify that the fuel to be provided is not sourced from a prohibited nation or region will be eligible for award.

(c) *Compliance*.

(1) When requested by the Contracting Officer, the prospective Contractor shall submit records necessary to demonstrate compliance with applicable laws and regulations regarding export-controlled items and anticorruption statutes and regulations including—

(i) The Foreign Corrupt Practices Act (15 U.S.C. 78dd-1 *et seq*.);

(ii) International Traffic in Arms Regulations (ITAR) at 22 CFR 120 through 130 (also see Defense Federal Acquisition Regulation Supplement (DFARS) clause 252.225-7048, Export-Controlled Items);

(iii) Export Administration Regulations (EAR) at 15 CFR 730 through 774 (also see DFARS clause 252.225-7048); and

(iv) Relevant regulations promulgated by the Office of Foreign Assets Control of the Department of the Treasury. Sanction information for specific countries and programs is available at *https://ofac.treasury.gov/sanctions-programs-and-country-information*.

(2) The Offeror shall contact the Department of State regarding ITAR compliance and the Department of Commerce regarding EAR compliance.

(d) *Reporting requirement*. The Offeror shall, prior to contract award, promptly report to the Contracting Officer any instance of unsupported denial of access to a facility or equipment by a host-nation government that may prevent it from complying with the terms and conditions of the solicitation.

(End of provision)

PGI PART 225—FOREIGN ACQUISITION

PGI 225.001 General.

Consider the following when evaluating offers of foreign end products:

(1) *Statutory or policy restrictions*.

(i) Determine whether the product is restricted by—

(A) Statute (see DFARS subpart 225.70); or

(B) DoD policy (see DFARS subpart 225.71, FAR 6.103-3, and DoD Directive 5230.11, Disclosure of Classified Military Information to Foreign Governments and International Organizations).

(ii) If an exception to or waiver of a restriction in DFARS subpart 225.70 or 225.71 would result in award of a foreign end product, apply the policies and procedures of the Buy American statute or the Balance of Payments Program, and, if applicable, the trade agreements.

(2) *Memoranda of understanding or other international agreements*. Determine whether the offered product is the product of one of the qualifying countries listed in DFARS 225.872-1.

(3) *Trade agreements*. If the product is not an eligible product, a qualifying country end product, or a U.S.-made end product, purchase of the foreign end product may be prohibited (see FAR 25.403(c) and DFARS 225.403(c)).

(4) *Other trade sanctions and prohibited sources*.

(i) Determine whether the offeror complies with the secondary Arab boycott of Israel. Award to such offerors may be prohibited (see DFARS subpart 225.76).

(ii) Determine whether the offeror is a prohibited source (see FAR subpart 40.2 and DFARS Subpart 240.2).

(5) *Buy American and Balance of Payments Program*. See the evaluation procedures in DFARS subpart 225.5.

PGI 225.070 Reporting of acquisition of end products manufactured outside the United States.

(1) *Definitions.* "Manufactured end product" and "place of manufacture" are defined in the provision at FAR 52.225-18, Place of Manufacture.

(2) Use the Federal Procurement Data System data field "Place of Manufacture," under the section on Product or Service Information, to enter data on the acquisition of end products manufactured outside the United States for contracts awarded and orders issued in fiscal year 2007 and subsequent fiscal years. Select the appropriate description in

accordance with the following table:

Place of Manufacture

Short Description as viewed in drop down box	**Long Description**
Manufactured or performed outside United States (Actions prior to FY 2007 only)	The action is for (i) Any foreign end product manufactured outside the United States; or (ii) Services performed outside the United States by a foreign concern.
Mfg in U.S.	The action is predominantly for acquisition of manufactured end products that are manufactured in the United States.
Mfg outside U.S. - Commercial information technology	The foreign manufactured end products are predominantly commercial information technology items (FAR 25.103(e)).
Mfg outside U.S. - Domestic nonavailability	The foreign manufactured end products were predominantly not domestically available as shown by one of the following: • The item is listed at FAR 25.104 (FAR 25.103(b)(1)). • The agency did an individual determination (FAR 25.103(b)(2)).
Mfg outside U.S - Public interest determination	The head of the agency has made a determination that domestic preferences would be inconsistent with the public interest (FAR 25.103(a)).

Mfg outside U.S. - Qualifying country	For DoD only, the foreign manufactured end products are predominantly qualifying country end products (DFARS 225.003 and 225.872-1).
Mfg outside U.S. - Resale	The foreign manufactured end products acquired are predominantly for resale (FAR 25.103(d)).
Mfg outside U.S. - Trade Agreements	The foreign manufactured end products are predominantly eligible products acquired under Trade Agreements (FAR 25.402(a)(1)).
Mfg outside U.S. - Unreasonable cost	The cost of the offered domestic end products was unreasonable (FAR 25.103(c), 25.106, and Subpart 25.5).
Mfg outside U.S. - Use outside the United States	The foreign manufactured end products acquired are predominantly for use outside the United States (FAR 25.100).
More than 50% of foreign content, but manufactured in United States (Actions prior to FY 2007 only)	The action is for (i) A foreign end product that is manufactured in the United States but still determined to be foreign because 50 percent or more of the cost of the components is not mined, produced, or manufactured inside the United States or qualifying countries; or (ii) Services performed in the United States by a foreign concern.
Not applicable	The action is NOT predominantly for acquisition of manufactured end products.

(3) Note that the first and second from the last options in the drop down box are to be used only for reporting of contracts awarded or orders issued prior to October 1, 2006.

(4) The other options in the drop down box apply only to contracts awarded and orders issued on or after October 1, 2006. If the solicitation for the contract contains the provision at FAR 52.225-18, Place of Manufacture , review the successful offeror's response to this provision to select the correct option.

(i) Enter "Mfg in U.S." if the offeror has checked the box "In the United States."

(ii) If the offeror has checked the box "Outside the United States," enter one of the other options, depending on the predominant reason for acquiring end products manufactured outside the United States. These reasons correspond to the exceptions to the Buy American statute (FAR subpart 25.1 and DFARS subpart 225.1). Further explanation of these exceptions to the Buy American statute are available at the FAR and DFARS references provided in the long description for each option.

(5) For any contract awarded on or after October 1, 2006, when the solicitation did not include the provision at FAR 52.225-18, Place of Manufacture , and for any order placed on or after October 1, 2006, under a contract that did not include one of these provisions, use

best judgment in estimating whether the acquisition is predominantly for manufactured end products and whether the end products were predominantly end products manufactured in the United States or outside the United States, using the place of performance or other information that may be available to the contracting officer to assist in forming this judgment.

PGI 225.1—BUY AMERICAN—SUPPLIES

PGI 225.101 General.

(d)(1) When the contracting officer obtains the approval from the senior procurement executive (this authority is not delegable) to allow for the application of an alternate domestic content test for the contract, ensure the documentation evidencing the senior procurement executive's consultation with the Office of Management and Budget's Made in America Office and subsequent allowance for the application of an alternate domestic content test is included in the contract file.

PGI 225.2—BUY AMERICAN—CONSTRUCTION MATERIALS

PGI 225.270 Energy savings service contracts.

(a) For DoD energy savings service contracts, the requirements documents from the requiring activity are required to specify if construction and construction materials will be used during the performance of the contract. If specified, then—

(1) Include the FAR provisions and clauses regarding construction materials that implement the Buy American statute; and

(2) Enforce them based on the associated terms and conditions of the contract.

(b) See FAR subpart 23.2, Energy Savings Performance Contracts.

PGI 225.3—[Reserved]

PGI 225.5—EVALUATING FOREIGN OFFERS—SUPPLY CONTRACTS

PGI 225.504 Evaluation examples.

The following examples illustrate the evaluation procedures in DFARS 225.502(c)(ii). The examples assume that the contracting officer has eliminated all offers that are unacceptable for reasons other than price or a trade agreement and that price is the determining factor in contract award. The same evaluation procedures and the 50 percent evaluation factor apply regardless of whether the acquisition is subject to the Buy American Act (BAA) or the Balance of Payments Program (BOPP).

(1) Example 1.

Offer A	$945,000	Foreign offer subject to BAA/BOPP
Offer B	$950,000	Foreign offer exempt from BAA/BOPP

Since no domestic offers are received, do not apply the evaluation factor. Award on Offer A.

(2) Example 2.

Offer A	$950,000	Domestic offer
Offer B	$890,000	Foreign offer exempt from BAA/BOPP
Offer C	$880,000	Foreign offer subject to BAA/BOPP

Since the exempt foreign offer is lower than the domestic offer, do not apply the evaluation factor. Award on Offer C.

(3) Example 3.

Offer A	$9,100	Foreign offer exempt from BAA/BOPP
Offer B	$8,900	Domestic offer
Offer C	$6,000	Foreign offer subject to BAA/BOPP

Since the domestic offer is lower than the exempt foreign offer, apply the 50 percent evaluation factor to Offer C. This results in an evaluated price of $9,000 for Offer C. Award on Offer B.

(4) Example 4.

Offer A	$910,000	Foreign offer exempt from BAA/BOPP
Offer B	$890,000	Domestic offer
Offer C	$590,000	Foreign offer subject to BAA/BOPP

Since the domestic offer is lower than the exempt foreign offer, apply the 50 percent evaluation factor to Offer C. This results in an evaluated price of $885,000 for Offer C. Award on Offer C.

(5) Example 5.

Offer A	$900,000	Foreign offer exempt from BAA/BOPP
Offer B	$850,000	Domestic offer (complies with the required domestic content)
Offer C	$550,000	Foreign offer subject to BAA/BOPP (exceeds the required domestic content)

Since the domestic offer complies with the required domestic content and is lower than the exempt foreign offer, apply the 50 percent evaluation factor to Offer C. This results in an evaluated price of $825,000 for Offer C. Award on Offer C.

PGI 225.7—CONTRACTS PERFORMED OUTSIDE THE UNITED STATES

PGI 225.770 Contracts requiring performance or delivery in a foreign country.

(a) If the acquisition requires the performance of services or delivery of supplies in an area outside the United States, then—

(i) Ensure that the solicitation and contract include any applicable host country and designated operational area performance considerations. Failure to provide such information—

(A) May result in a contract that does not reflect the respective support relationships between the contractor and the Government, ultimately affecting the ability of the contractor to fulfill the contract terms and conditions;

(B) May result in unplanned support burdens being placed on the Government in a theater of operations;

(C) May result in contractor personnel conflicting with theater operations or performing in violation of a theater commander's directives or host country laws; or

(D) May cause contractor personnel to be wrongly subjected to host country laws;

(ii) Comply with any theater business clearance and contract administration delegation requirements, and set forth by the combatant commander, and consistent with the Combat Support Agency's established functions and responsibilities.

(A) Theater business clearance ensures—

(*1*) Contracted effort to be accomplished in designated area(s) of operations, along with any associated contractor personnel, is visible to the combatant commander;

(*2*) Contracted effort is in consonance with in-country commanders' plans;

(*3*) Solicitations and contracts contain appropriate terms and conditions;

(*4*) Contracted effort will be properly overseen in designated area(s) of operation;

(*5*) Any Government-furnished support requirements associated with contractor personnel are properly addressed in the contract terms and conditions.

(B) Contract administration delegation—

(*1*) Allows the combatant commander to exercise control over the assignment of contract administration (which must be consistent with the combat support agency's established functions and responsibilities) for that portion of contracted effort that relates to performance in, or delivery to, designated area(s) of operation.

(*2*) Allows the combatant commander to exercise oversight to ensure the contractor's compliance with combatant commander and subordinate task force commander policies, directives, and terms and conditions;

(iii) [Reserved]

(iv) Follow specific guidance for the combatant command in whose area the contractor will be performing services or delivering supplies. This guidance is contained

on the respective combatant commander's operational contract support webpage, which is linked to the procedures at *https://www.acq.osd.mil/asda/dpc/cp/cc/aor.html*, at the weblink for the combatant command for the area in which the contractor will be performing services or delivering items. These pages list prevailing regulations, policies, requirements, host nation laws, orders/fragmentary orders, combatant commander's directives, unique clauses, and other considerations necessary for soliciting and awarding a contract for performance in, or delivery of items to, that combatant commander's area of responsibility;

(v) To determine the appropriate point(s) of contact for contracting matters within the combatant commander's area of responsibility, contact the overseas contracting office by accessing the link for the combatant command in whose area of responsibility the contractor will be performing services or delivering items. From the combatant command website, link to the contracting office supporting the combatant command to identify the appropriate point of contact; and

(vi) Use the following checklist as a guide to document consideration of each listed issue, as applicable, and retain a copy of the completed checklist in the contract file.

CHECKLIST

Verify that the requiring activity has considered the following when building its requirements package, as applicable:

____ (1) Whether the contemplated acquisition will duplicate or otherwise conflict with existing work being performed or items already provided in the area, and whether economies of scope/schedule can be leveraged if there are already existing contracts in place for similar work or items.

____ (2) The availability of technically qualified and properly trained Government civilian and/or military personnel to oversee the performance of the contract in the combatant commander's area of responsibility (e.g., contracting officer's representatives, quality assurance representatives, and property administrators).

____ (3) The applicability of any international agreements to the acquisition. (Some agreements may be classified and must be handled appropriately.)

____ (4) Compliance with area-specific, anti-terrorism security guidance set forth by the command anti-terrorism officer, to include soliciting anti-terrorism officer guidance on the particular requirement and the location of delivery and/or execution of services, and incorporating recommended security measures into the requirements package.

____ (5) Whether there are any requirements for use of foreign currencies, including applicability of U.S. holdings of excess foreign currencies.

____ (6) Information on taxes and duties from which the Government may be exempt.

____ (7) If the acquisition requires performance of work in the foreign country, whether there are standards of conduct for the prospective contractor and, if so, the consequences for violation of such standards of conduct.

____ (8) The availability of logistical and other Government-furnished support and equipment for contractor personnel. This includes, but is not limited to: berthing and messing; intra-theater transportation; medical support; morale, welfare, and recreation support; postal support; force protection support; organizational clothing and personal protective gear (e.g., body armor and gas masks.)

____ (9) If the contractor will employ foreign workers, whether a waiver of the Defense Base Act will be required (see FAR 28.305).

____ (10) Whether contractor personnel will need authorization to carry weapons for the performance of the contract.

____ (11) If the contract will include the clause at DFARS 252.225-7040, Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States, the Government official authorized to receive DD Form 93, Record of Emergency Data Card, to enable the contracting officer to provide that information to the contractor, as required by paragraph (g) of the clause.

____ (12) Ascertain the existence of and detail any Geographic Combatant Commander's (GCC's)/Subordinate Joint Force Commander Combating Trafficking in Persons Directives or Notices applying to Combating Trafficking in Persons (as required by FAR 22.1703 for contracts performed outside the United States) that would require the contracting officer to use Alternate I of the clause at FAR 52.222-50 detailing these requirements. This information can be ascertained from review of content on the cognizant Geographic Combatant Command Operational Contract Support webpage referred to in (a)(iv) of this PGI section.

____ (13) Other requirements associated with contractor personnel to include deployment -related training, accountability (registration in Synchronized Pre-deployment and Operational Tracker), medical and dental qualifications, theater entrance and country clearance requirements.

____ (14) Any other requirements of the website for the country in which the contract will be performed or the designated operational area to which deliveries will be made.

Provide the following information to the applicable overseas contracting office (see PGI 225.770(a)(v)):

____ (1) The solicitation number, the estimated dollar value of the acquisition, and a brief description of the work to be performed or the items to be delivered.

____ (2) Notice of contract award, including contract number, dollar value, and a brief description of the work to be performed or the items to be delivered.

____ (3) Any additional information requested by the applicable contracting office to ensure full compliance with policies, procedures, and objectives of the applicable country or designated operational area.

(c) For work performed in Japan or Korea, U.S.-Japan or U.S.-Korea bilateral agreements govern the status of contractors and employees, criminal jurisdiction, and taxation. U.S. Forces Japan (USFJ) and U.S. Forces Korea (USFK) are sub-unified commands of Pacific Command (PACOM). The PACOM Staff Judge Advocate contact information is available at https://www.pacom.mil/Contact/Directory/ or by clicking on Staff Directory/Special Staff on the PACOM website. Links to USFJ and USFK websites can be found at the PACOM website at https://www.pacom.mil/Resources/Useful-Links/ .

(i) For work performed in Japan—

(A) U.S.-Japan bilateral agreements govern the status of contractors and employees, criminal jurisdiction, and taxation;

(B) USFJ and component policy, as well as U.S.-Japan bilateral agreements, govern logistic support and base privileges of contractor employees;

(C) The Commander, USFJ, is primarily responsible for interpreting the Status of Forces Agreement (SOFA) and local laws applicable to U.S. Forces in Japan and for requirements in support of USFJ; and

(D)(*1*) To ensure that the solicitation and resultant contract reflect an accurate description of available logistics support and application of the U.S.-Japan SOFA, review the information on Contract Performance in Japan at the USFJ website, http://www.usfj.mil; or

(2) Contact the Staff Judge Advocate at (commercial) 011-81-3117-55-7717, or DSN 315-225-7717.

(ii) For work performed in Korea—

(A) U.S.-Korea bilateral agreements govern the status of contractors and employees, criminal jurisdiction, and taxation;

(B) USFK and component policy, as well as U.S.-Korea bilateral agreements, govern logistics support and base privileges of contractor employees;

(C) The Commander, USFK, is primarily responsible for interpreting the SOFA and local laws applicable to U.S. Forces in Korea and for requirements in support of USFK; and

(D) To ensure that the solicitation and resultant contract reflect an accurate description of available logistics support and application of the U.S.-Korea SOFA, review the SOFA information found at the USFK website at https://www.usfk.mil/ under “Publications”, or at https://www.usfk.mil/Portals/105/Documents/411%20CSB/1%20U.S.-

ROK%20SOFA.PDF Contact information for the Commander is also available at http://www.usfk.mil/usfk/leadership.aspx; and

(E) Additional applicable directives and regulations are available at http://www.usfk.mil/ , click on the drop down menu for “Publications”.

(d) For work performed in specified countries in the USCENTCOM area of responsibility, follow theater business clearance/ contract administration delegation policy as set forth in OSD policy letters linked to this PGI, and specific theater business clearance/contract administration delegation instructions as implemented by USCENTCOM’s Joint Theater Support Contracting Command and found under contracting guidance at *https://www.acq.osd.mil/asda/dpc/cp/cc/aor.html* (click on CENTCOM area of responsibility).

PGI 225.771 Contractor personnel supporting U.S. Armed Forces deployed outside the United States.

(1) DoDI 3020.41, Operational Contract Support (OCS), establishes policy, assigns responsibilities and provides procedures for OCS, including OCS Program Management, contract support integration, and integration of defense contractor personnel into contingency operations outside the United States. This instruction serves as a comprehensive source of DoD policy and procedures concerning DoD contractor and subcontractor personnel supporting the U.S. Armed Forces deployed outside the United States.

(2) Also see PGI 207.105(b)(20)(C)(9) for special considerations for acquisition planning for crisis situations outside the United States.

PGI 225.771-2 Definitions.

“Designated operational areas” include, but are not limited to, such descriptors as theater of war, theater of operations, joint operations area, amphibious objective area, joint special operations area, and area of operations. See DoD Joint Publication 3-0, Joint Operations, Chapter IV, Paragraph 1, “Understanding the Operational Environment,” at https://jdeis.js.mil/jdeis/index.jsp?pindex=27&pubId=932# .

PGI 225.771-3 Government support.

(a) Support that may be authorized or required when contractor personnel are deployed with or otherwise provide support in the theater of operations to U.S. military forces deployed outside the United States may include, but are not limited to—

(i) Deployment in-processing centers;

(ii) Training;

(iii) Transportation to operation area;

(iv) Transportation within operation area;

(v) Physical security;

(vi) Force protection;

(vii) Organizational clothing and individual equipment;

(viii) Emergency medical care;

(ix) Mess operations;

(x) Quarters;

(xi) Postal service;

(xii) Phone service;

(xiii) Emergency notification;

(xiv) Laundry; and

(xv) Religious services.

(d) *Medical support of contractor personnel.*

(1) Contractors are required to ensure that the Government is reimbursed for any costs associated with medical or dental care provided to contractor employees accompanying the forces (see 252.225-7040(c)(2)).

(2) If questions arise concerning Defense Finance and Accounting Services (DFAS) billing to contractors for medical or dental care provided, contracting officers may refer the individual to any of the following resources:

(i) For in-patient and out-patient billing rates, go to http://comptroller.defense.gov/FinancialManagement/Reports/rates2013.aspx, click on the appropriate fiscal year, and select Deployed/Non-Fixed Medical Facility Billing Rates.

(ii) For Military Service-appointed points of contact (POCs) responsible for resolving medical billing disputes, see the POCs listed in the memoranda of agreements between DFAS and the military services).

(iii) For general information on medical support of deployed contractor personnel in applicable contingency operations, see DoDI 3020.41.

(3) Contracting officers are not responsible for adjudicating DFAS bills to contractors for such medical or dental reimbursement. However, contracting officers are required to assist the Military Service POCs in resolving billing disputes.

(e) *Letter of authorization*.

(i) If authorized by the contracting officer, a contracting officer's representative may approve a SPOT-generated LOA. Contractor travel orders will be prepared by the supporting installation.

(ii) The LOA will state the intended length of assignment in the theater of operations and will identify planned use of Government facilities and privileges in the theater of operations, as authorized by the contract. Authorizations may include such privileges as access to the exchange facilities and the commissary, and use of Government messing and billeting. The LOA must include the name of the approving Government official.

(iii) *Approved, standard DoD format for LOA*. See sample LOA, Business Rules for the Synchronized Predeployment and Operational Tracker, at https://www.acq.osd.mil/asds/log/cso/ocs/spot.html .

PGI 225.771-5 Contract clauses.

"Performance," as used *in Class Deviation 2017-O0004* Contractor Personnel Performing in the United States Central Command Area of Responsibility, means performance of a service or construction, as required by the contract. For supply contracts, production of the supplies or associated overhead functions are not covered by the Class Deviation, but services associated with the acquisition of the supplies are covered (e.g., installation or maintenance).

(b) [Reserved]

PGI 225.772 Antiterrorism/force protection.

PGI 225.772-1 General.

Information and guidance pertaining to DoD antiterrorism/force protection policy for contracts that require performance or travel outside the United States can be obtained from the following offices:

(1) For Army contracts: HQDA-AT; telephone, DSN 222-9832 or commercial (703) 692-9832.

(2) For Navy contracts: Naval Criminal Investigative Service (NCIS), Code 21; telephone, DSN 288-9077 or commercial (202) 433-9077.

(3) For Marine Corps contracts: CMC Code POS-10; telephone, DSN 224-4177 or commercial (703) 614-4177.

(4) For Air Force and Combatant Command contracts: The appropriate Antiterrorism/Force Protection Office at the Command Headquarters.

(5) For defense agency contracts: The appropriate agency security office.

(6) For additional information: Assistant Secretary of Defense for Special Operations and Low Intensity Conflict, ASD (SOLIC); telephone, DSN 227-7205 or commercial (703) 697-7205.

PGI 225.773 Contract administration in support of contingency operations.

(1) In accordance with Joint Publication 1, Doctrine for the Armed Forces of the United States, at https://jdeis.js.mil/jdeis/index.jsp?pindex=27&pubId=930 , the geographic combatant commander or subordinate joint force commander, through his command authority to exercise operational control, has the authority to exercise control over the assignment of contract administration during contingency operations, consistent with the combat support agency's established mission functions, responsibilities, and core competencies, for contracts requiring delivery of items or performance within the area of operations.

(2) In certain contingency operations, the combatant commander or joint force commander may promulgate theater or joint operations area guidance for contracting that may include establishing—

(i) A contracting command and control structure;

(ii) Head of contracting activity responsibilities, specific orders, and policies, including local clauses;

(iii) Roles and responsibilities of DoD components and supporting agencies in contract formation and execution; and

(iv) Procedures and requirements for contract clearance and contract administration of contracts requiring delivery of items and performance within the area of operations.

(3) When a combat support agency is tasked by the combatant commander to provide contingency contract administration services in support of contingency operations and such support will be required for a long duration, the combat support agency must initiate a memorandum of agreement with the combatant commander or joint force commander. This agreement must clearly delineate the purpose of the support, respective responsibilities of the combat support agency and the joint, lead service, or service contracting activity requesting the support, combat support agency support parameters, and a resolution process for resolving support issues.

(i) The memorandum of agreement should focus on maximizing the combat support agency's core competencies to address the more critical, complex, high-risk, and specialized oversight requirements.

(ii) The memorandum of agreement should take into consideration the combat support agency's core competencies, workload priorities, and contract administration services support parameters for accepting requests for contract administration services support.

(iii) A combat support agency must not be assigned to perform tasks outside its mission functions, responsibilities, or core competencies.

(iv) Contracting officers contemplating requesting contract administration support in a contingency area from a combat support agency should first ascertain whether such a memorandum of agreement exists by contacting their combat support agency point of contact and/or checking the combatant commander operational contract support website (referenced in DFARS PGI 225.770).

(v) The following is a notional format for a memorandum of agreement for contract administration services support;

(A) Purpose: Outline formal procedures for requesting contract administration services support, describe objectives associated with combat support agency providing such support.

(B) Reference: Key documents or reference(s) associated with the execution of the contract administration services support.

(C) Clearing-house functions performed by the designated joint or lead component contracting activity in the operational area–

(*1*) Contract clearance parameters – when required;

(*2*) Contract delegation parameters – when required.

(D) Contract administration services support parameters—

(*1*) Acceptable for delegation - contract types that will be accepted by the combat support agency based on risk, dollar threshold, geographic dispersion of performance, service type, criticality of acceptance, or other criteria;

(*2*) Generally not be delegated – below-threshold contract types;

(*3*) Will not be delegated – no agency expertise to oversee.

(E) Delegation process – process for accepting and assigning contract administration services tasks within the combat support agency.

(F) Joint resolution process – procedures in the event of disagreement on actions to be supported by the combat support agency.

(G) Term of the Agreement and Modification - length of time the agreement will be in effect and procedures for the parties to modify or terminate it.

(4) Disputes regarding requested support should be resolved at the lowest management level possible, through a predetermined resolution process. When support issues arise that affect the ability of a combat support agency to provide contract administration support that cannot be resolved at lower management levels, follow procedures set forth in DoDI 3000.06, Combat Support Agencies, paragraphs

5.6.8 and 5.6.9,
(https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/300006p.pdf).

(5) Responsibilities of the head of the contracting activity for contingency contract closeout are addressed at DFARS 204.804(2). See also planning considerations at PGI 207.105(b)(20)(C)(*8*).

PGI 225.8—OTHER INTERNATIONAL AGREEMENTS AND COORDINATION

PGI 225.802 Procedures.

(b) Information on specific memoranda of understanding and other international agreements is available as follows:

(i) Memoranda of understanding and other international agreements between the United States and the countries listed in DFARS 225.872-1 are maintained in the Office of the Principal Director, Defense Pricing, Contracting, and Acquisition Policy (Contract Policy) and are available at *https://www.acq.osd.mil/asda/dpc/cp/ic/reciprocal-procurement-mou.html*.

(ii) Military Assistance Advisory Groups, Naval Missions, and Joint U.S. Military Aid Groups normally have copies of the agreements applicable to the countries concerned.

(iii) Copies of international agreements covering the United Kingdom of Great Britain and Northern Ireland, Western European countries, North Africa, and the Middle East are filed with the U.S. European Command.

(iv) Agreements with countries in the Pacific and Far East are filed with the U.S. Pacific Command.

PGI 225.802-70 Contracts for performance outside the United States and Canada. When a contracting office anticipates placement of a contract for performance outside the United States and Canada, and the contracting office is not under the jurisdiction of a command for the country involved, the contracting office must maintain liaison with the cognizant contract administration office (CAO) during preaward negotiations and postaward administration. The cognizant CAO can be found at https://www.dcma.mil/About/Contact-Us/. The CAO will provide pertinent information for contract negotiations, effect appropriate coordination, and obtain required approvals for the performance of the contract.

PGI 225.870 Contracting with Canadian contractors.

PGI 225.870-1 General.

(d)(i) The Canadian Commercial Corporation uses provisions in contracts with Canadian or U.S. concerns that give DoD the same production rights, data, and information that DoD would obtain in contracts with U.S. concerns.

(ii) The Government of Canada will provide the following services under contracts with the Canadian Commercial Corporation without charge to DoD:

(A) Contract administration services, including—

(1) Cost and price analysis;

(2) Industrial security;

(3) Accountability and disposal of Government property;

(4) Production expediting;
(5) Compliance with Canadian labor laws;

(6) Processing of termination claims and disposal of termination inventory;

(7) Customs documentation;

(8) Processing of disputes and appeals; and

(9) Such other related contract administration functions as may be required with respect to the Canadian Commercial Corporation contract with the Canadian supplier.

(B) *Audits*. The Public Works and Government Services Canada (PWGSC) performs audits when needed, for contracts overseen by the Canadian Commercial Corporation in accordance with international agreement.

(C) *Inspection*. The Department of National Defence (Canada) provides inspection personnel, services, and facilities, at no charge to DoD departments and agencies (see DFARS 225.870-7).

(iii) In accordance with DPAP Policy Memorandum dated June 5, 2013, PWGSC will perform audits without charge to DoD, including accounting system and interim voucher reviews, when needed for—

(A) DoD contracts awarded directly to Canadian firms;

(B) Subcontracts with Canadian firms under such direct contracts with Canadian firms; and

(C) Subcontracts with Canadian firms under DoD contracts with U.S. contractors.

PGI 225.870-5 Contract administration.

(1) Assign contract administration in accordance with DFARS part 242. When the Defense Contract Management Agency will perform contract administration in Canada, name in the contract the following payment office for disbursement of DoD funds (DoD Department Code: 17-Navy; 21-Army; 57-Air Force; 97-all other DoD components), whether payment is in Canadian or U.S. dollars:

DFAS Columbus Center
DFAS-CO
PO Box 182317

Columbus, OH 43218-2317.

(2) The following procedures apply to cost-reimbursement type contracts:

(i) The PWGSC automatically arranges audits on contracts with the Canadian Commercial Corporation. Upon advice from PWGSC, the Canadian Commercial Corporation certifies the invoice and forwards it with Standard Form (SF) 1034, Public Voucher, to the administrative contracting officer for further processing and transmittal to the disbursing office.

(ii) For contracts placed directly with Canadian firms, the administrative contracting officer requests audits from the PWGSC, Ottawa, Ontario, Canada. Route requests for audit of non-Canadian Commercial Corporation contracts and subcontracts with Canadian contractors through the cognizant contract management office of the Defense Contract Management Agency.

(A) Within 25 days of the date of the audit request, PWGSC will provide—

(*1*) An acknowledgement of receipt form;

(*2*) An estimate of completion form; and

(*3*) A single point of contact to report the status of audit requests and the progress of audits.

(B) Audits will be completed within 24 months of the requested date for post-award audits.

(C) PWGSC will provide information to support the determination that the price is fair and reasonable.

(D) The PWGSC—

(*1*) Approves invoices on a provisional basis pending completion of the contract and final audit;

(*2*) Forwards these invoices, accompanied by SF 1034, Public Voucher, to the administrative contracting officer for further processing and transmittal to the disbursing officer; and

(*3*) Furnishes periodic advisory audit reports directly to the administrative contracting officer.

(A) Approves invoices on a provisional basis pending completion of the contract and final audit;

(B) Forwards these invoices, accompanied by SF 1034, Public Voucher, to the administrative contracting officer for further processing and transmittal to the disbursing officer; and

(C) Furnishes periodic advisory audit reports directly to the administrative contracting officer.

PGI 225.870-7 Acceptance of Canadian supplies.

(1) For contracts placed in Canada, either with the Canadian Commercial Corporation or directly with Canadian suppliers, the Department of National Defence (Canada) will perform any necessary contract quality assurance and/or acceptance, as applicable.

(2) Signature by the Department of National Defence (Canada) quality assurance representative on the DoD inspection and acceptance form is satisfactory evidence of acceptance for payment purposes.

PGI 225.871 North Atlantic Treaty Organization (NATO) cooperative projects.

PGI 225.871-4 Statutory waivers.
Forward any request for waiver under a cooperative project to the Deputy Secretary of Defense, through the Principal Director, Defense Pricing, Contracting, and Acquisition Policy. The waiver request must include a draft Determination and Findings for signature by the Deputy Secretary of Defense establishing that the waiver is necessary to significantly further NATO standardization, rationalization, and interoperability.

PGI 225.871-5 Directed subcontracting.

The cooperative project agreement is the authority for a contractual provision requiring the contractor to place certain subcontracts with particular subcontractors. No separate justification and approval during the acquisition process is required.

PGI 225.872 Contracting with qualifying country sources.

PGI 225.872-4 Individual determinations.

(1) Obtain signature of the determination and findings—

(i) At a level above the contracting officer, for acquisitions valued at or below the simplified acquisition threshold; or

(ii) By the chief of the contracting office, for acquisitions with a value greater than the simplified acquisition threshold.

(2) Prepare the determination and findings substantially as follows:

SERVICE OR AGENCY

Exemption of the Buy American and Balance of Payments Program

Determination and Findings

Upon the basis of the following findings and determination which I hereby make in accordance with the provisions of FAR 25.103(a), the acquisition of a qualifying country end

product may be made as follows:

Findings

1. The (*contracting office*) proposes to purchase under contract number _____, (*describe item*) mined, produced, or manufactured in (*qualifying country of origin*). The total estimated cost of this acquisition is _____.

2. The United States Government and the Government of _____ have agreed to remove barriers to procurement at the prime and subcontract level for defense equipment produced in each other's countries insofar as laws and regulations permit.

3. The agreement provides that the Department of Defense will evaluate competitive offers of qualifying country end products mined, produced, or manufactured in (*qualifying country*) without imposing any price differential under the Buy American statute or the Balance of Payments Program and without taking applicable U.S. customs and duties into consideration so that such items may better compete for sales of defense equipment to the Department of Defense. In addition, the Agreement stipulates that acquisitions of such items must fully satisfy Department of Defense requirements for performance, quality, and delivery and must cost the Department of Defense no more than would comparable U.S. source or other foreign source defense equipment eligible for award.

4. To achieve the foregoing objectives, the solicitation contained the clause (*title and number of the Buy American clause contained in the contract*). Offers were solicited from other sources and the offer received from (*offeror*) is found to be otherwise eligible for award.

Determination

I hereby determine that it is inconsistent with the public interest to apply the restrictions of the Buy American statute or the Balance of Payments Program to the offer described in this determination and findings.

(Date)

PGI 225.872-5 Contract administration.

(b)(i) When contract administration services are required on contracts to be performed in qualifying countries, direct the request to the cognizant activity listed in the Federal Directory of Contract Administration Services. The cognizant activity also will arrange contract administration services for DoD subcontracts that qualifying country sources place in the United States.

(ii) The contract administration activity receiving a delegation must determine whether any portions of the delegation are covered by memoranda of understanding annexes and, if so, must delegate those functions to the appropriate organization in the qualifying country's government.

PGI 225.872-6 Request for audit services.

(1) Send requests for audit services in France, Germany, the Netherlands, or the United Kingdom to the administrative contracting officer at the cognizant activity listed in Section 2B of the Federal Directory of Contract Administration Services. See DFARS 225.870, PGI 225.870-1, and PGI 225.870-5 for procedures to request audit services for contracts overseen by the Canadian Commercial Corporation.

(2) Complete requests for audit services in France, Germany, the Netherlands, or the United Kingdom using the form and information sheet with form completion instructions available at *https://www.dcma.mil/About/Contact-Us/* (click on "International Command"). Links to the form and information sheet are listed under "International Pricing Request."

PGI 225.873 Waiver of United Kingdom commercial exploitation levies.

PGI 225.873-2 Procedures.

(1) The Government of the U.K. must approve waiver of U.K. levies. When an offeror or contractor identifies a levy included in an offered or contract price, provide written notification to the Defense Security Cooperation Agency, ATTN: PSD-PMD, 1111 Jefferson Davis Highway, Arlington, VA 22202-4306, telephone (703) 601-3864. The Defense Security Cooperation Agency will request a waiver of the levy from the Government of the U.K. The notification must include—

(i) Name of the U.K. firm;

(ii) Prime contract number;

(iii) Description of item for which waiver is being sought;

(iv) Quantity being acquired; and

(v) Amount of levy.

(2) Waiver may occur after contract award. If levies are waived before contract award, evaluate the offer without the levy. If levies are identified but not waived before contract award, evaluate the offer inclusive of the levies.

PGI 225.9—CUSTOMS AND DUTIES

PGI 225.902 Procedures.

(1) Formal entry and release.

(i) The administrative contracting officer must—

(A) Ensure that contractors are aware of and understand any Duty-Free Entry clause requirements. Contractors should understand that failure by them or their subcontractors to provide the data required by the clause will result in treatment of the shipment as without benefit of free entry under Section XXII, Chapter 98, Subchapter VIII,

Item 9808.00.30 of the Harmonized Tariff Schedule of the United States.

(B) Upon receipt of the required notice of purchase of foreign supplies from the contractor or any tier subcontractor—

(1) Verify the duty-free entitlement of supplies entering under the contract; and

(2) Review the prime contract to ensure that performance of the contract requires the foreign supplies (quantity and price) identified in the notice.

(C) Within 20 days after receiving the notification of purchase of foreign supplies, forward the following information in the format indicated to the Commander, DCMA *New York, ATTN: Customs Team, DCMAE-GNTF, 201 Varick Street, Room 905C, New York, NY 10014:*

> We have received a contractor notification of the purchase of foreign supplies. I have verified that foreign supplies are required for the performance of the contract.

PGI 225.903 Exempted supplies.

(b)(i) The term “supplies”—

(A) Includes--

(1) Articles known as “stores,” such as food, medicines, and toiletries; and

(2) All consumable articles necessary and appropriate for the propulsion, operation, and maintenance of the vessel or aircraft, such as fuel, oil, gasoline, grease, paint, cleansing compounds, solvents, wiping rags, and polishes; and

(B) Does not include portable articles necessary and appropriate for the navigation, operation, or maintenance of the vessel or aircraft and for the comfort and safety of the persons on board, such as rope, bolts and nuts, bedding, china and cutlery, which are included in the term “equipment.”

(ii) Format for duty-free certificate.

> (Date) _____
> I certify that the acquisition of this material constituted a purchase of supplies by the United States for vessels or aircraft operated by the United States, and is admissible free of duty pursuant to 19 U.S.C. 1309.
>
> (Name) _____
> (Title) _____
> (Organization) _____

PGI 225.70—AUTHORIZATION ACTS, APPROPRIATIONS ACTS, AND OTHER STATUTORY RESTRICTIONS ON FOREIGN ACQUISITION

PGI 225.7002 Restrictions on food, clothing, fabrics, and hand or measuring tools.

PGI 225.7002-1 Restrictions.

(a)(1)(ii)(*1*) The following are examples, not all-inclusive, of Product and Service Codes (PSCs) that contain items of clothing:

(i) Clothing apparel (such as outerwear, headwear, underwear, nightwear, footwear, hosiery, or handwear) listed in PSC 8405, 8410, 8415, 8420, 8425, 8450, or 8475.

(ii) Footwear listed in PSC 8430 or 8435.

(iii) Hosiery, handwear, or other items of clothing apparel, such as belts and suspenders, listed in PSC 8440 or 8445.

(iv) Badges or insignia listed in PSC 8455.

(2) The PSCs listed in paragraph (a)(1)(ii)(*1*) of this section also contain items that are not clothing, such as—

(i) Visors;

(ii) Kevlar helmets;

(iii) Handbags; and

(iv) Plastic identification tags.

(3) Each item should be individually analyzed to determine if it is clothing, rather than relying on the PSC alone to make that determination.

(4) The fact that an item is excluded from the foreign source restriction of the Berry Amendment applicable to clothing does not preclude application of another Berry Amendment restriction in DFARS 225.7002-1 to the components of the item.

(5) Small arms protective inserts (SAPI plates) are an example of items added to, and not normally associated with, clothing. Therefore, SAPI plates are not covered under the Berry Amendment as clothing. However, fabrics used in the SAPI plate are still subject to the foreign source restrictions of the Berry Amendment. If the fabric used in the SAPI plate is a synthetic fabric or a coated synthetic fabric, the fibers and yarns used in the fabric are not covered by the Berry Amendment, because the fabric is a component of an end product that is not a textile product (see DFARS 225.7002-2(m).

Example: A SAPI plate is compliant with the Berry Amendment if the synthetic fiber or yarn is obtained from foreign country X and woven into synthetic fabric in the United States, which is then incorporated into a SAPI plate manufactured in foreign country Y.

(2) *Hand or measuring tools.*

(A) As applied to hand or measuring tools, "produced in the United States" means that the hand or measuring tool was assembled in the United States out of components, or otherwise made from raw materials into the finished product that is to be provided to the Government.

(B) If a hand or measuring tool was assembled in a country other than the United States, then disassembled and reassembled in the United States, the hand or measuring tool was not produced in the United States.

(C) The requirement to buy hand or measuring tools produced in the United States does not impose any restriction on the source of the components of the hand or measuring tools. This is unlike the Berry Amendment restriction on clothing (see 225.7002-1(a)(1)(ii)), which explicitly requires domestic source for the materials and components of clothing (other than unusual components such as sensors or electronics), as well as the additional separate restrictions on various types of fibers and fabrics that might be components of the clothing.

(D) If the acquisition of the hand or measuring tools is also subject to the Buy American statute (see FAR subpart 25.1), then in order to qualify as a domestic end product, the cost of the components mined, produced, or manufactured in the United States or a qualifying country, must exceed 50 percent of the cost of all the components of the hand or measuring tool.

PGI 225.7002-2 Exceptions.

(b) *Domestic nonavailability determinations.*

(3) *Defense agencies other than the Defense Logistics Agency*.

(A) A defense agency requesting a domestic nonavailability determination must submit the request, including the proposed determination, to—

Principal Director, Defense Pricing, Contracting, and Acquisition Policy
ATTN: OUSD(A&S) DPCAP/CP
3060 Defense Pentagon
Washington, DC 20301-3060.

(B) The Principal Director, Defense Pricing, Contracting, and Acquisition Policy, will forward the request to the Under Secretary of Defense (Acquisition and Sustainment) (USD(A&S)) as appropriate.

PGI 225.7003 Restrictions on acquisition of specialty metals.

PGI 225.7003-2 Restrictions.

(a)(i) This restriction applies to the item containing the specialty metal, not just the specialty metal, as was true when the restriction was part of 10 U.S.C. 4862. The previous practice of withholding payment while conditionally accepting noncompliant items is not permissible for—

(A) Contracts entered into on or after November 16, 2006; or

(B) New procurements or out-of-scope changes accomplished on or after November 16, 2006, through the use of bilateral modifications to contracts originally awarded prior to November 16, 2006.

(ii) Consistent with the definition of "component" in the clause at DFARS 252.225-7009, a component is any item supplied to the Government as part of an end item or of another component. Items that are not incorporated into any of the items listed in DFARS 225.7003-2(a) are not components of those items. For example, test equipment, ground support equipment, or shipping containers are not components of the missile system.

PGI 225.7003-3 Exceptions.

(b)(2) *Report of COTS items*.

If a department or agency uses the exception at DFARS 225.7003-3(b)(2) for an acquisition of COTS end items valued at $5 million or more per item, the department or agency must address use of the exception in a year-end report, to be prepared and submitted as follows:

(A) Entitle the report "COTS Specialty Metal Exceptions Granted During Fiscal Year ____."

(B) For each excepted COTS item purchased during the fiscal year, include in the report, at a minimum, the applicable—

(1) Contract number and any applicable delivery order number;

(2) Dollar value; and

(3) Item description.

(C) Submit the report by October 31 of each year to:

Principal Director, Defense Pricing, Contracting, and Acquisition Policy
ATTN: OUSD(A&S) DPCAP/CP
3060 Defense Pentagon
Washington, DC 20301-3060.

(4) For samarium-cobalt magnets contained in an item listed in 225.7003-2(a) manufactured in a qualifying country, see paragraph (b)(6)(C) of this section.

(5) Domestic specialty metals nonavailable as and when needed.

(A) *Determining availability*.

(*1*) FAR 15.402 requires that contracting officers purchase supplies and services at fair and reasonable prices. Thus, contracting officers must determine whether

any increase in contract price that results from providing compliant specialty metal is fair and reasonable, given the circumstances of the particular situation. In those cases where the contracting officer determines that the price would not be fair and reasonable, the Secretary of the military department concerned may use that information in determining whether the unreasonable price causes the compliant metal to be effectively "nonavailable." Where these "reasonableness" limits should be drawn is a case-by-case decision.

(*2*) A similar approach may be used to determine whether delays associated with incorporating compliant specialty metals into items being acquired results in the metals being effectively nonavailable.

(B)(*1*) A department or agency requesting a determination or approval from USD(A&S) in accordance with DFARS 225.7003-3(b)(5) must submit the request, including the proposed determination, to—

Principal Director, Defense Pricing, Contracting, and Acquisition Policy
ATTN: OUSD(A&S) DPCAP/CP
3060 Defense Pentagon
Washington, DC 20301-3060.

(2) The Principal Director, Defense Pricing, Contracting, and Acquisition Policy (DPCAP), will forward the request to USD(A&S) as appropriate.

(C) For domestic nonavailability determinations with regard to samarium-cobalt high performance magnets, see paragraph (b)(6)(D) of this section.

(6) *Application of specialty metals restrictions to magnets*.

(A) The two most common types of high performance magnets are samarium-cobalt magnets and neodymium-iron-boron magnets. Only samarium-cobalt magnets contain specialty metals and are subject to the restrictions of 10 U.S.C. 4863 in this section, as well as the restrictions of 10 U.S.C. 4872 at 225.7018. Neodymium-iron-boron magnets are only subject to the restrictions of 10 U.S.C. 4872 at 225.7018, because they do not contain specialty metals. There are no other commonly used magnets that contain specialty metals.

(B) Table.

HPM = High performance magnet
COTS = Commercially available off-the-shelf
SmCo = Samarium Cobalt

Magnet made of specialty metal is:	Commercially available, SmCo HPM	NOT Commercially available, SmCo HPM
Incorporated into COTS subsystem or COTS end item	NOT restricted	*
NOT incorporated into COTS subsystem or COTS end item	Restricted	Restricted

Included in 2 percent minimum content?	Cannot be included in 2 percent minimum content	Cannot be included in 2 percent minimum content

* By definition, COTS assemblies and COTS end items will not include a HPM that is not commercially available.

(C) Samarium-cobalt magnets contained in an item manufactured in a qualifying country are still subject to the requirements of 10 U.S.C. 4872, because there is no exception in 10 U.S.C. 4872 for items manufactured in a qualifying country comparable to the exception at 225.7003-3(b)(4) to the specialty metal restrictions of 10 U.S.C. 4863.

(D) Even if samarium-cobalt magnets are determined to be domestically nonavailable under this section, the restrictions of 10 U.S.C. 4872 still apply unless samarium-cobalt magnets melted or produced outside a covered country are also determined to be nonavailable in accordance with 225.7018-4.

(c) *Compliance for commercial derivative military articles*.

(i) A department or agency requesting a determination or approval from USD(A&S) in accordance with DFARS 225.7003-3(c) must submit the request, including the proposed determination, to—

Principal Director, Defense Pricing, Contracting, and Acquisition Policy
ATTN: OUSD(A&S) DPCAP/CP
3060 Defense Pentagon
Washington, DC 20301-3060.

(ii) The Principal Director, DPCAP, will forward the request to USD(A&S) as appropriate.

(d) *National security waiver*.

(i) A department or agency must request a national security waiver of the restrictions of 10 U.S.C. 4863 from USD(A&S) in accordance with DFARS 225.7003-3(d) in a timely manner after discovering or being informed of a specialty metals noncompliance in an item, or component thereof, listed at 225.7003-2(a) and covered by 10 U.S.C. 4863. The department or agency must submit the request, via the chain of command, including the draft determination and draft letters of notification to the congressional defense committees, as follows:

Principal Director, Defense Pricing, Contracting, and Acquisition Policy
ATTN: OUSD(A&S) DPCAP/CP
3060 Defense Pentagon
Washington, DC 20301-3060.

(ii) The request must include—

(A) The quantity of end items to which the waiver would apply;

(B) The time period that the waiver will cover;

(C) How and when the noncompliance was discovered—

(1) By the subcontractor(s);

(2) By the contractor; and

(3) By the department or agency;

(D) A complete description of all of the items or systems containing noncompliant specialty metals;

(E) The contract number(s), date(s), duration, and subcontractor(s) associated with the noncompliance;

(F) The manufacturer and country of origin of the noncompliant material, if known;

(G) Whether the contractor flowed down the DFARS clause to the subcontractors and in what format (e.g., exact quote or substantially the same?);

(H) A technical description of the affected parts, their role in the larger assembly, and their function in the end item;

(I) Estimated cost and schedule to replace noncompliant parts if a national security waiver is not granted;

(J) Operational and safety implications;

(K) Other national security considerations (such as how the requested waiver will contribute to national security policy or operational security);

(L) A description of the contractor's efforts to develop and implement a corrective plan to ensure future compliance; and

(M) Information helpful to a determination as to whether any noncompliance was knowing and willful.

(iii) The Director, Defense Procurement and Acquisition Policy, will forward the request to USD(AT&L) as appropriate.

PGI 225.7018 Restriction on acquisition of certain magnets, tantalum, and tungsten.

PGI 225.7018-3 Exceptions.

(c)(1) Commercially available off-the-shelf samarium-cobalt magnets are still subject to the restrictions of 10 U.S.C. 4863 unless incorporated into commercially available off-the-shelf end items or subsystems (see 225.7003-3(b)(2)(i)(C)).

(2) A samarium-cobalt magnet that is exempt from 10 U.S.C. 4872 because it is incorporated in an electronic device is still subject to the restrictions of 10 U.S.C. 4863, because the exemption under that statute applies to "electronic component," which excludes any high performance magnet used in the electronic component (see definition of "electronic component" at 225.7003-1).

PGI 225.7018-4 Nonavailability determination.

(a) Individual nonavailability determinations.

(2) Contracting officers may use the following template for individual nonavailability determinations under this section:

SUBJECT: Individual Nonavailability Determination Exception under DFARS 225.7018-4
PROGRAM, ITEM, OR PART DESCRIPTION: _____
CONTRACT OR SOLICITATION NUMBER: _____
BACKGROUND: Per the requirements of 10 U.S.C. 4872, DFARS 252.225-7052 prohibits acquisition of samarium-cobalt magnets, neodymium-iron-boron magnets, tantalum metal and alloys, tungsten metal powder, and tungsten heavy alloy or any finished or semi-finished component containing tungsten heavy alloy melted or produced in North Korea, China, Russia, and Iran.

Per DFARS 225.7018-4, the Head of Contracting Activity (HCA) can authorize an exception to DFARS 252.225-7052 through an 'Individual Nonavailability Determination' if they determine that covered materials of satisfactory quality and quantity, in the required form, cannot be procured as and when needed at a reasonable price from a source other than a covered country.

ANALYSIS OF ALTERNATIVES:

See Attachment A for an analysis of why alternatives that would not require a nonavailability determination are unacceptable.

CERTIFICATION: Based on the satisfactory quality, quantity, required form, timeliness, and/or reasonable price issues described in Attachment A, I hereby certify that the requirements for an individual nonavailability determination under DFARS 225.7018-4 have been met.

_____
Signature of Government Contracting Officer or Program Representative

_____
Date

Official Action on Request: __ Approved __ Disapproved *[If disapproved, give reason.]*

_____

_____
Signature of Head of Contracting Activity

_____
Date

ATTACHMENT A: Analysis of Alternatives Required for an Individual Nonavailability Determination as per DFARS 225.7018-4

PART A: Data on Alternative Sources. *[Can be completed either by Government or Contractor.]*
1. Detailed information on current or proposed non-compliant DFARS 225.7018 source(s).

ITEM #	COMPONENT NAME	COVERED MATERIAL	CURRENT MANUFACTURER(S)	COUNTRY OF ORIGIN	MATERIAL SPECIFICATION OR GRADE	DELIVERY DATE AND LEAD TIME	QUANTITY REQUIRED	PRICE PER UNIT	TOTAL PRICE
1									

2. Detailed market research conducted on alternative compliant DFARS 225.7018 source(s).

ITEM #	COVERED MATERIAL	POTENTIAL ALTERNATIVE MANUFACTURER(S)	COUNTRY OF ORIGIN	PROPOSED MATERIAL SPECIFICATION OR GRADE	DELIVERY DATE AND LEAD TIME	QUANTITY PROPOSED	PRICE PER UNIT	TOTAL PRICE	RE-DESIGN OR RE-QUALIFICATION COST	RE-DESIGN OR RE-QUALIFICATION COST TIMELINE
1										

3. Other pertinent information regarding the need for a nonavailability determination based on satisfactory quality, quantity, required form, timeliness, and/or reasonable price:

_____
_____
_____
_____

PART B: Analysis of Alternatives—Must be completed by a Government Representative
I have verified the information in Part A and a nonavailability determination is requested for the following reason(s):

ITEM #	COVERED MATERIAL	NON-SATISFACTORY QUALITY	INSUFFICENT AVAILABLE QUANTITY	DOES NOT MET REQUIRED FORM	DOES NOT MEET TIMELINESS REQUIREMENTS FOR PROGRAM/CUSTOMER	UNREASONABLE PRICE PER UNIT	UNREASONABLE PRICE FOR RE-DESIGN OR RE-QUALIFICATION
1							

_____
Signature of Government Contracting Officer or Program Representative

_____
Date:

ATTACHMENT B: Definitions and Instructions

As used in this document—

- "Number" means the National Stock Number (NSN) or other part number applicable to a given component name;
- "Component name" includes a description of the part and the name of the end item incorporating that part (e.g., "Actuator – Joint Direct Attack Munition" or "Sphere - M1028 Canister CTG");
- "Covered material" means samarium-cobalt magnets, neodymium-iron-boron magnets, tantalum metal and alloys, tungsten metal powder, and tungsten heavy alloy or any finished / semi-finished component containing tungsten heavy alloy;
- "Tungsten heavy alloy" means a tungsten base pseudo alloy that (1) meets the specifications of ASTM B777 or SAE-AMS-T-21014 for a particular class of tungsten heavy alloy or (2) contains at least 90% tungsten in a matrix of other metals (such as nickel-iron or nickel-copper) and has a density of at least 16.5 g/cm^3
- "Current manufacturer" means the entity that produces the covered material;
- "Country of origin" means the location of the facility in which the current manufacturer produces the covered material;
- Delivery date and lead time" includes (1) the date by which the covered material is required to produce the component name and (2) the administrative lead time and procurement lead time required by the manufacturer of the component name, to secure appropriate covered material; and
- "Price per unit" means the unit price of the covered material;

For any determination under "Part B", the Head of Contracting Activity is required to produce a separate report describing why a particular exception is applicable to a given action.

(3) Provide a copy of signed individual nonavailability determination and supporting documentation or notification when an individual waiver is requested, but denied to:

OUSD(A&S)
DASD, Industrial Policy
U.S. Department of Defense
3330 Defense Pentagon, Room 3B854
Washington, DC 20301-3330

(b)(i) When requesting a class nonavailability determination, submit the request, including the proposed determination, to—

Principal Director, Defense Pricing, Contracting, and Acquisition Policy
ATTN: OUSD(A&S) DPCAP/CP
3060 Defense Pentagon
Washington, DC 20301-3060.

(ii) The Principal Director, DPCAP, will forward the request to the Under Secretary of Defense (Acquisition and Sustainment) (USD(A&S)) as appropriate.

PGI 225.7019-3 Waiver.

(a) The following are factors to take into consideration for granting a waiver:

(1) The energy supply system is physically incapable of segregating Russian Federation energy from non-Russian Federation energy.

(2) The installation can only obtain the necessary energy from its current supplier without the unaffordable expense of constructing new supply lines.

(3) The price of requiring the supplier to segregate the energy is unaffordable and would result in the installation being unable to perform its mission within its budget authority.

(4) Consideration, by the requiring activity, of installation energy and security resilience has been taken into account (e.g., on-site sources of energy and fuel resupply would allow the installation to continue to perform its mission even with disruption of Russian Federation-sourced energy, the installation has addressed energy resilience and security risks and vulnerabilities, etc.).

(b) The head of the contracting activity must submit to the congressional defense committees a notice of the waiver with a copy to DPCAP, Contract Policy, via email at *osd.pentagon.ousd-a-s.mbx.dpc-cp@mail.mil*, at least 14 days before the award of an energy contract on the basis of an approved waiver. The notification must include a copy of the waiver. Include a copy of the approved waiver in the contract file.

PGI 225.7020 Prohibition on contracting with the Maduro regime.

PGI 225.7020-4 Joint determination.

(b)(1) Notify DPCAP, Contract Policy, via email at *osd.pentagon.ousd-a-s.mbx.dpc-cp@mail.mil*, upon entering into a contract on the basis of a joint determination made by the Secretary of Defense and the Secretary of State in accordance with agency procedures for the review and coordination, and include a copy of the joint determination in the notification; and

(2) Include a copy of the joint determination in the contract file.

PGI 225.7021 Disclosure requirements for employment transparency regarding individuals who perform work in the People's Republic of China.

Provide disclosures received from a covered entity in response to the provision at DFARS 252.225-7057 and the clause at DFARS 252.225-7058 to Defense Pricing, Contracting, and Acquisition Policy, Contract Policy (DPCAP/CP) via email at *osd.pentagon.ousd-a-s.mbx.dpc-cp@mail.mil*.

PGI 225.7021-3 National security waiver of disclosure.

(b) *Determination*. The national security waiver request to the senior procurement executive shall include—

(1) The disclosure requirements to which the national security waiver applies;

(2) The time period that the waiver will cover;

(3) A description of the contract requirement;

(4) Impacts if a national security waiver is not granted;

(5) Operational and national security implications;

(6) Other national security considerations, such as how the requested waiver will contribute to national security policy or operational security.

(c) Include a copy of the signed determination in the contract file.

(d) For a military department or defense agency provide a copy of the approved national security waiver to the Principal Director, Defense Pricing, Contracting, and Acquisition Policy, Contract Policy (DPCAP/CP) via email at *osd.pentagon.ousd-a-s.mbx.dpc-cp@mail.mil*.

(e) The following defense field activities must submit requests for national security waivers to DPCAP/CP via email at *osd.pentagon.ousd-a-s.mbx.dpc-cp@mail.mil*:

(1) Department of Defense Education Activity.

(2) Defense Human Resources Activity.

(3) Defense Microelectronics Activity.

(4) Defense Media Activity.

(5) Uniformed Services University of the Health Sciences.

PGI 225.72—REPORTING CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES

PGI 225.7203 Contracting officer distribution of reports.

(a) Before contract award, forward a copy of any reports that are submitted with offers in accordance with the provision at 252.225-7003, Report of Intended Performance Outside the United States and Canada—Submission with Offer, to the Office of the Principal Director, Defense Pricing, Contracting, and Acquisition Policy (Contract Policy) via email to *osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil*.

(b) Forwarding the reports as described in paragraph (a) of this section is necessary to satisfy the requirement of 10 U.S.C. 4603 that notifications (or copies) of contract performance outside the United States and Canada be maintained in compiled form for 5 years after the date of submission.

PGI 225.73--ACQUISITIONS FOR FOREIGN MILITARY SALES

PGI 225.7300 Scope of subpart.

(a) The Foreign Military Sales (FMS) acquisition infrastructure is also used to execute cases funded with U.S. appropriated funds under special authority to build international partner capacity. These Building Partner Capacity (BPC) cases are implemented using Pseudo Letter of Offer and Acceptance (LOA) documents.

PGI 225.7301 General.

(c)(i) Separately identify known FMS requirements and the FMS customer in solicitations.

(ii) For economies of scale and efficiency, combine U.S. and FMS requirements under the same contract whenever possible. It is not in the taxpayer's interest to concurrently use mixed contract types for the same or similar items.

(iii) Clearly identify contracts for known FMS requirements by the case identifier code in section B of the Schedule.

(iv) Ensure that the FMS LOA terms and conditions are incorporated into the signed contract.

(v) Ensure that the shipping terms for any contract for FMS materiel are stated as free on board (f.o.b.) origin.

(vi) For Pseudo LOAs, ensure that the period of performance in the contract is consistent with the period of availability of appropriated funds, as provided by the financial resource manager.

(vii) Consistent with the Defense Transportation Regulations (DTR) 4500.9-R-Part II, Cargo Movement, https://www.ustranscom.mil/dtr/part-ii/dtr_part_ii_toc.pdf , Appendix E, ensure that contracts involving the acquisition and delivery of FMS materiel comply with the policies, procedures, packaging, labeling, and documentation requirements specified by the DTR.

(viii) The Government representative responsible for acceptance must ensure that the contractor prepares material inspection and receiving reports in compliance with—

(A) Appendix F, F-301(b)(15)(iv)(K) for a Wide Area WorkFlow (WAWF) Receiving Report; or

(B) F-401(b)(16)(iv)(L) for a paper DD Form 250, Material Inspection and Receiving Report, if an exception to the use of WAWF at 232.7003 applies.

(ix) Prior to contract award, ensure that—

(A) If a contracting officer's representative is assigned, detailed point of contact information (email, phone number with international dialing protocols, and physical and mailing address) must be clearly visible;

(B) Unique country requirements are specified in the contract (i.e., additional documentation requirements for use in country customs clearance (Levy Exemption waiver));

(C) Commodity-unique requirements are specified in the contract (i.e., responsibility for obtaining/paying for/affixing active Radio Frequency Identification tags and Transportation Control Number construction/usage); and

(D) The FMS Transportation Accounting Code is stated in the contract.

PGI 225.7302 Preparation of Letter of Offer and Acceptance.

(2)(i) Assist the DoD implementing agency, as necessary, in preparation of the Letter of Offer and Acceptance;

(ii) Identify and explain all unusual contractual requirements or requests for deviations; and

(iii) Assist in preparing the price and availability data.

PGI 225.7303 Pricing acquisitions for FMS.

PGI 225.7303-2 Cost of doing business with a foreign government or an international organization.

(a)(3) *Offsets*.

(A) Offsets are the entire range of industrial and commercial benefits provided to foreign governments as an inducement or condition to purchase military supplies or services, including benefits such as coproduction, licensed production, subcontracting, technology transfer, in-county procurement, marketing and financial assistance, and joint ventures (Defense Offsets Disclosure Act of 1999, Pub. L. 106-113, section 1243(3)). There are two types of offsets: direct offsets and indirect offsets.

(i) A direct offset involves benefits, including supplies or services that are directly related to the item being purchased. For example, as a condition of a U.S. sale, the contractor may require or agree to permit the purchaser to produce in its country certain components or subsystems of the item being sold. Generally, direct offsets must be performed within a specified period because they are integral to the deliverable of the FMS contract.

(ii) An indirect offset involves benefits, including supplies or services that are unrelated to the item being purchased. For example, as a condition of a sale the contractor may agree to purchase certain of the customer's manufactured products, agricultural commodities, raw materials, or services. Indirect offsets may be accomplished without a clearly defined period of performance.

(B) Offset costs are the costs to the contractor of providing any direct or indirect offsets required (explicitly or implicitly) as a condition of purchase in a government-to-government sale of defense articles and/or defense services as defined by the Arms Export Control Act and the International Traffic in Arms Regulations.

(C) An offset agreement is the contractual arrangement between the FMS customer and the U.S. defense contractor that identifies the offset obligation imposed by the FMS customer that has been accepted by the U.S. defense contractor as a condition of the FMS customer's purchase. These agreements are distinct and independent of the LOA and the FMS contract. Further information about offsets and LOAs may be found in the Defense Security Cooperation Agency (DSCA) Security Assistance Management Manual (DSCA 5105.38-M), chapter 6, paragraph 6.3.9. (http://samm.dsca.mil/chapter/chapter-6).

PGI 225.75—BALANCE OF PAYMENTS PROGRAM

PGI 225.7502 Procedures.

If the Balance of Payments Program applies, use the following procedures:

(1) *Solicitation of offers*. Identify, in the solicitation, supplies and construction material known in advance to be exempt from the Balance of Payments Program.

(2) *Evaluation of offers*.

(i) *Supplies*. Unless the entire acquisition is exempt from the Balance of Payments Program, evaluate offers for supplies that are subject to the Balance of Payments Program using the evaluation procedures in DFARS Subpart 225.5. However, treatment of duty may differ when delivery is overseas.

(A) Duty may not be applicable to nonqualifying country offers.

(B) The U.S. Government cannot guarantee the exemption of duty for components or end products imported into foreign countries.

(C) Foreign governments may impose duties. Evaluate offers including such duties as offered.

(ii) *Construction*. Because the contracting officer evaluates the estimated cost of foreign and domestic construction material in accordance with DFARS 225.7501(a)(7)(iv) before issuing the solicitation, no special procedures are required for evaluation of construction offers.

(3) *Postaward*. For construction contracts, the procedures at FAR 25.206, for noncompliance under the Buy American statute, also apply to noncompliance under the Balance of Payments Program.

PGI 225.76—SECONDARY ARAB BOYCOTT OF ISRAEL

PGI 225.7604 Waivers.

Forward waiver requests to the Office of the Principal Director, Defense Pricing, Contracting, and Acquisition Policy (Contract Policy) via email to *osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil*.

PGI 225.78—ACQUISITIONS IN SUPPORT OF GEOGRAPHIC COMBATANT COMMAND'S THEATER SECURITY COOPERATION EFFORTS

PGI 225.7801 Policy.

DoD components are responsible for providing procurement and contracting support of theater security cooperation efforts conducted in support of combatant commander/Chief of Mission, to include military exercises/training, base operations, weapons procurement, aviation fuels and construction and the President's Emergency Plan for Aids relief. By Director, Defense Procurement and Acquisition Policy (DPAP) memorandum dated May 6, 2011 and its attachment, Department of State (DoS) Cable 11 STATE 030953, "Procurement Roles and Responsibilities – General Services Officer and DoD Personnel," DoS procurement support is normally restricted to those routine non-complex supplies and services used by U. S. Government personnel permanently assigned at post and acquired for U. S. Government employee direct use. Follow all guidance set forth in this Director, DPAP-approved cable and associated planning considerations at PGI 207.105 (b)(20)(E).

PGI 225.79—EXPORT CONTROL

PGI 225.7901 Export-controlled items.

PGI 225.7901-2 General.

(1) *DoD Focal Point on Export Controls.*

(i) Within DoD, the focal point on export controls is the Defense Technology Security Administration (DTSA). Official authorities and responsibilities of DTSA are established in DoD Directive 5105.72.

(ii) Initial DoD acquisition workforce questions regarding the applicability of the Export Administration Regulations (EAR) or the International Traffic in Arms Regulations (ITAR) to specific procurements or items, or interpretation of DoD issuances regarding export controls, may be directed to the DTSA Policy Directorate, by phone at 571-372-2438/2377 or by visiting the DTSA web site at: http://www.dtsa.mil/SitePages/contact-us/default.aspx.

(2) *Regulations*. The Department of State and the Department of Commerce are the lead agencies responsible for regulations governing the export of defense articles, commercial products or commercial services, and dual use items.

(i) *The International Traffic in Arms Regulations (ITAR)*, issued by the Department of State, control the export of defense-related articles and services, including technical data, ensuring compliance with the Arms Export Control Act (22 U.S.C. 2751 *et seq*.). The United States Munitions List (USML) identifies defense articles, services, and related technical data that are inherently military in character and could, if exported, jeopardize national security or foreign policy interests of the United States.

(A) The ITAR is published in Title 22 of the Code of Federal Regulations (CFR), Parts 120 through 130 (22 CFR 120-130). The official version of the ITAR is maintained at https://www.ecfr.gov/current/title-22.

(B) The USML is part of the ITAR, in 22 CFR Part 121, and is available at the web sites in paragraph (2) (i) (A) of this section.

(C) The Department of State is responsible for compliance with the ITAR. Depending on the nature of questions you may have, you may contact the following Department of State office to obtain additional information:

U.S. Department of State
Bureau of Political Military Affairs
Directorate of Defense Trade Controls
Office of Defense Trade Controls Compliance
https://www.state.gov/bureaus-offices/under-secretary-for-arms-control-and-international-security-affairs/bureau-of-political-military-affairs/directorate-of-defense-trade-controls-pm-ddtc/.

(D) Contracting officers should not answer any questions a contractor may ask regarding how to comply with the ITAR. If asked, the contracting officer should direct the contractor's attention to paragraph (c) of the clause at DFARS 252.225-7048 and may inform the contractor that the Department of State publishes guidance regarding ITAR compliance at https://www.state.gov/bureaus-offices/under-secretary-for-arms-control-and-international-security-affairs/bureau-of-political-military-affairs/directorate-of-defense-trade-controls-pm-ddtc/.

(E) Contracting officers should not answer any questions a contractor may ask regarding the State Department requirement, mentioned in the clause at 252.225-7048, for contractors to register with the Department of State in accordance with the ITAR. If asked, the contracting officer should direct the contractor's attention to paragraph (b) of the clause, which directs the contractor to consult with the Department of State regarding any questions relating to compliance with the ITAR. (The registration requirements are in Subpart 122.1 of the ITAR. Subpart 122.1 requires any person who engages in the United States in the business of either manufacturing or exporting defense articles or furnishing defense services to register with the Directorate of Defense Trade Controls.)

(ii) *The Export Administration Regulations (EAR)*, issued by the Department of Commerce, control the export of dual-use items, (items that have both commercial and military or proliferation applications) and purely commercial products or commercial services. These items include commodities, software, and technology. Many items subject to the EAR are set forth by Export Control Classification Number on the Commerce Control List.

(A) The EAR is published in Title 15 of the Code of Federal Regulations, Parts 730 through 774 (15 CFR Parts 730-774), available at https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-C.

(B) The Commerce Control List is part of the EAR, in Supplement No. 1 to 15 CFR Part 774, and is available at https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-C.

(C) The Department of Commerce is responsible for compliance with the EAR. Depending on the nature of questions you may have, you may contact the following Department of Commerce office to obtain additional information:

U.S. Department of Commerce
Bureau of Industry and Security
Office of Exporter Services (OExS)
OExS Hotline: 202-482-4811.

(D) Contracting officers should not answer any questions a contractor may ask regarding how to comply with the EAR. If asked, the contracting officer should direct the contractor's attention to paragraph (b) of the clause at DFARS 252.225-7048 and may inform the contractor that the Department of Commerce publishes guidance regarding EAR compliance at http://www.bis.doc.gov/.

(3) *National Security Decision Directive (NSDD) 189, National Policy on the Transfer of Scientific, Technical, and Engineering Information*.

(i) NSDD 189 establishes a national policy that, to the maximum extent possible, the products of fundamental research must remain unrestricted. NSDD 189 provides that no restrictions may be placed upon the conduct or reporting of federally funded fundamental research that has not received national security classification, except as provided in applicable U.S. statutes. As a result, contracts confined to the performance of unclassified fundamental research generally do not involve any export-controlled items, as defined in paragraph (a) of the clause at DFARS 252.225-7048.

(ii) NSDD 189 does not take precedence over statutes. NSDD 189 does not exempt any research, whether basic, fundamental, or applied, from statutes that apply to export controls such as the Arms Export Control Act, the Export Administration Act of 1979, as amended, or the U.S. International Emergency Economic Powers Act, or the regulations that implement those statutes (the ITAR and the EAR). Thus, if export-controlled items are used to conduct research or are generated as part of the research efforts, the export control laws and regulations apply to the controlled items.

(iii) NSDD 189 is available at http://www.fas.org/irp/offdocs/nsdd/nsdd-189.htm.

(4) *DoD Instruction 2040.02, International Transfers of Technology, Articles, and Services*. This DoD instruction provides guidance to manage and control transfers of technology, articles, and services consistent with U.S. foreign policy and national security objectives. DoD Instruction 2040.02 is available at https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/204002p.pdf?ver=2019-01-28-141235-830.

(5) *Other DoD Issuances.* Other DoD issuances that address export control matters include those listed below. Except as otherwise noted, these issuances are available at *https://www.esd.whs.mil/DD/*.

• DoD Instruction 2015.4, Defense Research, Development, Test and Evaluation (RDT&E) Information Exchange Program (IEP).

• DoD Directive 5000.1, The Defense Acquisition System.

• DoD Instruction 5000.2, Operation of the Defense Acquisition System.

• DoD Directive 5105.72, Defense Technology Security Administration (DTSA).

• DoD Publication 5200.1-M, Acquisition Systems Protection Program.

• DoD Instruction 5200.39, Critical Program Information (CPI) Protection Within the Department of Defense.

• The National Industrial Security Program Operating Manual (NISPOM) at 32 CFR part 117.

• DoD Directive 5230.25, Withholding of Unclassified Technical Data From Public Disclosure.

• DoD Instruction 5230.27, Presentation of DoD-Related Scientific and Technical Papers at Meetings.

• Acquisition Guidebooks & References, available at https://aaf.dau.edu/guidebooks/ .

• Under Secretary of Defense (Intelligence) Memorandum, Subject: Policy and Procedures for Sanitization of Department of Defense (DoD) Classified or Controlled Unclassified Information Prior to Public Release, is available here

Link to online training on export controls:

CLI 007 Technology Transfer and Export Control, https://www.dau.edu/courses/cli-007

PGI 225.7902 Defense Trade Cooperation Treaties.
The following documents are accessible at: http://pmddtc.state.gov/:

- DTC Treaties.
- Implementing Arrangements.
- The provisions of the International Traffic in Arms Regulations (ITAR) (22 CFR 126.16 (Australia) and 22 CFR 126.17 (United Kingdom)) pertaining to the DTC Treaties.
- List of Defense Articles Exempted from DTC Treaty Coverage (also in 22 CFR 126 Supplement No. 1).
- List of Approved Community Members.
- Definitions.

PGI 225.7902-2 Purpose.

(1) Background.

(i) The U.S. Government controls exports of defense articles, technical data, and defense services. The controls are imposed by the Arms Export Control Act (AECA) and the Department of State regulation that implements the AECA export controls, also known as the ITAR.

(ii) Under the ITAR, the Department of State manages an export licensing system in which government approvals are often necessary for companies to hold discussions about potential projects, pursue joint activities, ship hardware, or transfer know-how to one another, and even sometimes to move engineers and other personnel within branches of the same company located in different countries. This process can be challenging for U.S. exporters and for foreign firms in their supply chains.

(iii) Given the close allied relationship of the United States with Australia and the United Kingdom, the President and the respective Prime Ministers decided to reform the defense trade system between their countries with the goal of facilitating the exchange of certain defense articles, technical data, and defense services between their militaries and security authorities, and their industries. They negotiated bilateral Defense Trade Cooperation DTC Treaties to achieve this goal. These bilateral DTC Treaties establish permissions for export without export licenses for each country, if an export meets the DTC Treaty requirements. Other exports remain under the AECA and the ITAR. The DTC Treaties are intended solely to waive certain requirements of the ITAR for specific transactions within the scope of the DTC Treaties not remove any requirements for contractors to comply with domestic U.S. law.

(iv) The Department of State regulations implementing the DTC Treaties are in the ITAR.

(2) How the DTC Treaties work.

(i) The DTC Treaties establish Approved Communities. The “Approved Community” for each DTC Treaty is defined in DFARS clause 252.225-7047. Exports of most U.S. defense articles, technical data, and defense services are permitted to go into and to move within the Approved Community, without the need for government approvals and export licenses (provided that all persons comply with statutory and regulatory requirements outside of DFARS and ITAR concerning the import of defense articles and defense services or the possession or transfer of defense articles, including, but not limited to, regulations issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives found at 27 C.F.R. Parts 447, 478, and 479, which are unaffected by the DTC Treaties) when in support of the following:

- Combined U.S.-Australia or U.S.-U.K. military or counterterrorism operations.
- U.S.-Australia or U.S.-U.K. cooperative security and defense research, development, production, and support programs.
- Specific security and defense projects that are for the government of Australia or the government of the United Kingdom use only.
- U.S. Government end use.

(ii) Under the DTC Treaties, instead of a U.S. exporter preparing and requesting Department of State approval of an export license or other written authorization for a project, the exporter may elect to use the applicable DTC Treaty if Treaty conditions are met. If

using a DTC Treaty, the exporter will check the Department of State website or other appropriate reference and verify that—

- The Australian or U.K. partner is on the list of approved companies/facilities (i.e., a member of the Approved Community);
- The effort is in support of at least one of the scope areas identified in paragraph (2)(i) of this section; and
- The defense article is not on the exempted technology list. (Also in 22 CFR 126 Supplement No. 1).

If all three conditions are met, then the U.S. exporter and the Australian or U.K. partner may use the DTC Treaty exemptions in the ITAR to move qualifying defense articles without the need to obtain export licenses or other written authorizations, provided compliance with paragraph (2)(i) of this section.

(iii) A company using a DTC Treaty, in addition to checking the three lists (as explained in paragraph (2)(ii) of this section), must also comply with requirements in the applicable DTC Treaty and the associated Implementing Arrangements, and the provisions of the ITAR pertaining to the DTC Treaty. These include marking and recordkeeping requirements to ensure that export-controlled items are recognized as such and treated accordingly. For example, instead of normal ITAR requirements, the provisions of the ITAR pertaining to the DTC Treaties establish the requirements that apply. Similarly, DFARS 225.7902 implements requirements that relate to exports that a prospective contractor may make under a DoD solicitation or that a contractor may make in performance of a DoD contract. The company must continue to comply with domestic laws and regulations, including those pertaining to the movement of defense articles within the United States.

PGI 225.7902-4 Procedures.

(1) Since the DTC Treaties apply only to eligible items, a solicitation or contract falls within the scope of the DTC Treaties, and is thus eligible for DTC Treaty coverage (i.e., falls within the scope of the DTC Treaties) if it will acquire at least one defense article that is not otherwise exempt from the DTC Treaties and is required for—

(i) Combined military or counterterrorism operations as described in the Implementing Arrangements;

(ii) Cooperative security and defense research, development, production, and support programs that are identified pursuant to the Implementing Arrangements;

(iii) Cases where the government or Australia or the government of the United Kingdom is the end user in mutually agreed specific security and defense projects, that are identified pursuant to the Implementing Arrangements; or

(iv) U.S. Government end use under a solicitation or contract.

(2) Since the DTC Treaties apply only to eligible items, a solicitation or contract falls within the scope of the DTC Treaties and is thus eligible for DTC Treaty coverage when it will acquire at least one defense article that is DTC Treaty-eligible and the contract falls within the scope of the DTC Treaties. Article 3, section (2) of each DTC Treaty and Section

4 of each Implementing Arrangement require the DTC Treaty Participants to maintain lists of defense articles to be exempted from the scope of the DTC Treaties. These exempted technology lists are incorporated in Supplement No. 1 to part of the ITAR.

(3) The DTC Treaties do not apply to defense articles initially being acquired pursuant to the U.S. Foreign Military Sales (FMS) program, although, once the defense articles are acquired by the Australia or United Kingdom under an FMS case, the DTC Treaty applies as though the defense articles were exported under the DTC Treaty, subject to PGI 225.7902-2.

(4) If a company obtains an export license, or other authorization, for the export of defense articles that might otherwise have been eligible for export without a license under a DTC Treaty, the terms of the export license, or other authorization, must apply unless and until the company obtains approval to transition to DTC Treaty coverage. The process and requirements for transition are described in 22 CFR 126.16(i) and 22 CFR 126.17(i), respectively.