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SUBPART 209.5—ORGANIZATIONAL AND CONSULTANT CONFLICTS OF INTEREST

(Revised December 29, 2010)

209.570 Limitations on contractors acting as lead system integrators.

209.570-1 Definitions.

“Lead system integrator,” as used in this section, is defined in the clause at 252.209-7007, Prohibited Financial Interests for Lead System Integrators. See PGI 209.570-1 for additional information.

209.570-2 Policy.

(a) Except as provided in paragraph (b) of this subsection, 10 U.S.C. 2410p prohibits any entity performing lead system integrator functions in the acquisition of a major system by DoD from having any direct financial interest in the development or construction of any individual system or element of any system of systems.

(b) The prohibition in paragraph (a) of this subsection does not apply if—

(1) The Secretary of Defense certifies to the Committees on Armed Services of the Senate and the House of Representatives that—

(i) The entity was selected by DoD as a contractor to develop or construct the system or element concerned through the use of competitive procedures; and

(ii) DoD took appropriate steps to prevent any organizational conflict of interest in the selection process; or

(2) The entity was selected by a subcontractor to serve as a lower-tier subcontractor, through a process over which the entity exercised no control.

(c) In accordance with Section 802 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181), DoD may award a new contract for lead system integrator functions in the acquisition of a major system only if—

(1) The major system has not yet proceeded beyond low-rate initial production; or

(2) The Secretary of Defense determines in writing that it would not be practicable to carry out the acquisition without continuing to use a contractor to perform lead system integrator functions and that doing so is in the best interest of DoD. The authority to make this determination may not be delegated below the level of the Under Secretary of Defense for Acquisition, Technology, and Logistics. (Also see 209.570-3(b).)

(d) Effective October 1, 2010, DoD is prohibited from awarding a new contract for lead system integrator functions in the acquisition of a major system to any entity that was not performing lead system integrator functions in the acquisition of the major system prior to January 28, 2008.

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209.570-3 Procedures.

(a) In making a responsibility determination before awarding a contract for the acquisition of a major system, the contracting officer shall—

(1) Determine whether the prospective contractor meets the definition of “lead system integrator”;

(2) Consider all information regarding the prospective contractor’s direct financial interests in view of the prohibition at 209.570-2(a); and

(3) Follow the procedures at PGI 209.570-3.

(b) A determination to use a contractor to perform lead system integrator functions in accordance with 209.570-2(c)(2)—

(1) Shall specify the reasons why it would not be practicable to carry out the acquisition without continuing to use a contractor to perform lead system integrator functions, including a discussion of alternatives, such as use of the DoD workforce or a system engineering and technical assistance contractor;

(2) Shall include a plan for phasing out the use of contracted lead system integrator functions over the shortest period of time consistent with the interest of the national defense; and

(3) Shall be provided to the Committees on Armed Services of the Senate and the House of Representatives at least 45 days before the award of a contract pursuant to the determination.

209.570-4 Solicitation provision and contract clause.

(a) Use the provision at 252.209-7006, Limitations on Contractors Acting as Lead System Integrators, in solicitations for the acquisition of a major system when the acquisition strategy envisions the use of a lead system integrator.

(b) Use the clause at 252.209-7007, Prohibited Financial Interests for Lead System Integrators—

(1) In solicitations that include the provision at 252.209-7006; and

(2) In contracts when the contractor will fill the role of a lead system integrator for the acquisition of a major system.

209.571 Organizational conflicts of interest in major defense acquisition programs.

209.571-0 Scope of subpart.

This subpart implements section 207 of the Weapons System Acquisition Reform Act of 2009 (Pub. L. 111-23).

209.571-1 Definitions.

As used in this section—

“Lead system integrator” is defined in the clause at 252.209-7007, Prohibited Financial Interests for Lead System Integrators.

“Major Defense Acquisition Program” is defined in 10 U.S.C. 2430.

“Major subcontractor” is defined in the clause at 252.209-7009, Organizational Conflict of Interest—Major Defense Acquisition Program.

“Pre-Major Defense Acquisition Program” means a program that is in the Materiel Solution Analysis or Technology Development Phases preceding Milestone B of the Defense Acquisition System and has been identified to have the potential to become a major defense acquisition program.

“Systems engineering and technical assistance.”

(1) “Systems engineering” means an interdisciplinary technical effort to evolve and verify an integrated and total life cycle balanced set of system, people, and process solutions that satisfy customer needs.

(2) “Technical assistance” means the acquisition support, program management support, analyses, and other activities involved in the management and execution of an acquisition program.

(3) “Systems engineering and technical assistance”—

(i) Means a combination of activities related to the development of technical information to support various acquisition processes. Examples of systems engineering and technical assistance activities include, but are not limited to, supporting acquisition efforts such as—

- (A) Deriving requirements;
- (B) Performing technology assessments;
- (C) Developing acquisition strategies;
- (D) Conducting risk assessments;

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- (E) Developing cost estimates;
- (F) Determining specifications;
- (G) Evaluating contractor performance and conducting independent verification and validation;
- (H) Directing other contractors' (other than subcontractors) operations;
- (I) Developing test requirements and evaluating test data;
- (J) Developing work statements (but see paragraph (ii)(B) of this definition).

(ii) Does not include—

(A) Design and development work of design and development contractors, in accordance with FAR 9.505-2(a)(3) or FAR 9.505-2(b)(3), and the guidance at PGI 209.571-7; or

(B) Preparation of work statements by contractors, acting as industry representatives, under the supervision and control of Government representatives, in accordance with FAR 9.505-2(b)(1)(ii).

209.571-2 Applicability.

(a) This subsection applies to major defense acquisition programs.

(b) To the extent that this section is inconsistent with FAR subpart 9.5, this section takes precedence.

209.571-3 Policy.

It is DoD policy that—

(a) Agencies shall obtain advice on major defense acquisition programs and pre-major defense acquisition programs from sources that are objective and unbiased; and

(b) Contracting officers generally should seek to resolve organizational conflicts of interest in a manner that will promote competition and preserve DoD access to the expertise and experience of qualified contractors. Accordingly, contracting officers should, to the extent feasible, employ organizational conflict of interest resolution strategies that do not unnecessarily restrict the pool of potential offerors in current or future acquisitions. Further, contracting activities shall not impose per se restrictions

or limitations on the use of particular resolution methods, except as may be required under 209.571-7 or as may be appropriate in particular acquisitions.

209.571-4 Mitigation.

(a) Mitigation is any action taken to minimize an organizational conflict of interest. Mitigation may require Government action, contractor action, or a combination of both.

(b) If the contracting officer and the contractor have agreed to mitigation of an organizational conflict of interest, a Government-approved Organizational Conflict of Interest Mitigation Plan, reflecting the actions a contractor has agreed to take to mitigate a conflict, shall be incorporated into the contract.

(c) If the contracting officer determines, after consultation with agency legal counsel, that the otherwise successful offeror is unable to effectively mitigate an organizational conflict of interest, then the contracting officer, taking into account both the instant contract and longer term Government needs, shall use another approach to resolve the organizational conflict of interest, select another offeror, or request a waiver in accordance with FAR 9.503 (but see statutory prohibition in 209.571-7, which cannot be waived).

(d) For any acquisition that exceeds \$1 billion, the contracting officer shall brief the senior procurement executive before determining that an offeror's mitigation plan is unacceptable.

209.571-5 Lead system integrators.

For limitations on contractors acting as lead systems integrators, see 209.570.

209.571-6 Identification of organizational conflicts of interest.

When evaluating organizational conflicts of interest for major defense acquisition programs or pre-major defense acquisition programs, contracting officers shall consider—

(a) The ownership of business units performing systems engineering and technical assistance, professional services, or management support services to a major defense acquisition program or a pre-major defense acquisition program by a contractor who simultaneously owns a business unit competing (or potentially competing) to perform as—

(1) The prime contractor for the same major defense acquisition program; or

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(2) The supplier of a major subsystem or component for the same major defense acquisition program.

(b) The proposed award of a major subsystem by a prime contractor to business units or other affiliates of the same parent corporate entity, particularly the award of a subcontract for software integration or the development of a proprietary software system architecture; and

(c) The performance by, or assistance of, contractors in technical evaluation.

209.571-7 Systems engineering and technical assistance contracts.

(a) Agencies shall obtain advice on systems architecture and systems engineering matters with respect to major defense acquisition programs or pre-major defense acquisition programs from Federally Funded Research and Development Centers or other sources independent of the major defense acquisition program contractor.

(b) *Limitation on Future Contracting.*

(1) Except as provided in paragraph (c) of this subsection, a contract for the performance of systems engineering and technical assistance for a major defense acquisition program or a pre-major defense acquisition program shall prohibit the contractor or any affiliate of the contractor from participating as a contractor or major subcontractor in the development or production of a weapon system under such program.

(2) The requirement in paragraph (b)(1) of this subsection cannot be waived.

(c) *Exception.*

(1) The requirement in paragraph (b)(1) of this subsection does not apply if the head of the contracting activity determines that—

(i) An exception is necessary because DoD needs the domain experience and expertise of the highly qualified, apparently successful offeror; and

(ii) Based on the agreed-to resolution strategy, the apparently successful offeror will be able to provide objective and unbiased advice, as required by 209.571-3(a), without a limitation on future participation in development and production.

(2) The authority to make this determination cannot be delegated.

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209.571-8 Solicitation provision and contract clause.

(a) Use the provision at 252.209-7008, Notice of Prohibition Relating to Organizational Conflict of Interest—Major Defense Acquisition Program, if the solicitation includes the clause at 252.209-7009, Organizational Conflict of Interest—Major Defense Acquisition Program; and

(b) Use the clause at 252.209-7009, Organizational Conflict of Interest—Major Defense Acquisition Program, in solicitations and contracts for systems engineering and technical assistance for major defense acquisition programs or pre-major defense acquisition programs.

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225.001 General.

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

225.003 Definitions.

As used in this part—

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

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

(3) "Domestic concern" means—

(i) 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

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

(4) "Domestic end product" has the meaning given in the clauses at 252.225-7001, Buy American Act and Balance of Payments Program; and 252.225-7036, Buy American Act—Free Trade Agreements—Balance of Payments Program, instead of the meaning in FAR 25.003.

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

(i) A foreign end product that—

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

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

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

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

(6) "Foreign concern" means any concern other than a domestic concern.

(7) "Free Trade Agreement country" does not include Oman.

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

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(9) “Nonqualifying country component” means a component mined, produced, or manufactured in a nonqualifying country.

(10) "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
Denmark
Egypt
Finland
France
Germany
Greece
Israel
Italy
Luxembourg
Netherlands
Norway
Portugal
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

(11) "Qualifying country component" and "qualifying country end product" are defined in the clauses at 252.225-7001, Buy American Act and Balance of Payments Program; and 252.225-7036, Buy American Act--Free Trade Agreements--Balance of Payments Program. "Qualifying country end product" is also defined in the clause at 252.225-7021, Trade Agreements.

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

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

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

(15) “South Caucasus/Central and South Asian (SC/CASA) state construction material” means construction material that—

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

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

(16) “South Caucasus/Central and South Asian (SC/CASA) state end product” means an article that—

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

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product, includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

225.004 Reporting of acquisition of end products manufactured outside the United States.

Follow the procedures at PGI 225.004 for entering the data upon which the report required by FAR 25.004 will be based.

SUBPART 225.4—TRADE AGREEMENTS

(Revised December 29, 2010)

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 Director of Defense Procurement and Acquisition Policy (OUSD(AT&L)DPAP). Approval by OUSD(AT&L)DPAP 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) Public interest exceptions for certain countries when acquiring products or services in support of operations in Afghanistan are in 225.7704-1.

225.401-70 End products subject to trade agreements.

Acquisitions of end products in the following Federal supply groups (FSG) 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.

<u>FSG</u>	<u>Category/Description</u>
22	Railway equipment
23	Motor vehicles, trailers, and cycles (except 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
39	Materials handling equipment
40	Rope, cable, chain and fittings
41	Refrigeration and air conditioning equipment

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- 42 Fire fighting, rescue and safety equipment
- 43 Pumps and compressors
- 44 Furnace, steam plant and drying equipment (except 4470)
- 45 Plumbing, heating, and sanitation equipment
- 46 Water purification and sewage treatment equipment
- 47 Piping, tubing, hose, and fitting
- 48 Valves
- 49 Maintenance and repair shop equipment (except 4920-4927, 4931-4935, 4960)
- 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 and signal 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 General purpose ADPE, software, supplies, and support equipment
- 71 Furniture
- 72 Household and commercial furnishings and appliances
- 73 Food preparation and serving equipment
- 74 Office machines, visible record equipment and ADP 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)
- 83 Pins, needles, and sewing kits (only part of 8315) and flag staffs, 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, oils, and waxes
- 93 Nonmetallic fabricated materials
- 94 Nonmetallic crude materials
- 96 Ores, minerals, and their primary products
- 99 Miscellaneous

225.401-71 Products or services in support of operations in Iraq or Afghanistan.

When acquiring products or services, other than small arms, in support of operations in Iraq or Afghanistan - -

- (a) If using the procedure specified in 225.7703-1(a) (1), the purchase restriction at FAR 25.403(c) does not apply with regard to products or services from Iraq.
- (b) If using a procedure specified in 225.7703-1(a) (2) or (3), the procedures of Subpart 25.4 are not applicable.

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 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 Director of Defense Procurement 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, if the waiver is supported by a written statement from the requiring activity that the products being acquired are critical for the support of U.S. forces stationed abroad.

(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.

(iii) The acquisition is in support of operations in Afghanistan (see 225.7704-1).

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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
(Revised December 29, 2010)

225.502 Application.

(a) Whenever the acquisition is in support of operations in Afghanistan, treat the offers of end products from South Caucasus or Central and South Asian states listed in 225.401-70 the same as qualifying country offers.

(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 or 225.7703-1.

(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 Act or the Balance of Payments Program:

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

(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 there are no domestic offers, award on the low offer (see example in 225.504(1)).

(C) If the low offer is a foreign offer that is exempt from application of the Buy American Act 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).

(D) If the low offer is a foreign offer that is not exempt from application of the Buy American Act or Balance of Payments Program evaluation factor, and there is another foreign offer that is exempt and is lower than the lowest domestic offer, award on the low foreign offer (see example in 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 225.504(3)).

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(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 225.504(4)).

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

(A) If there are domestic offers, apply the 50 percent Buy American Act 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, re-evaluate offers without the 50 percent factor. If this will result in award on an offer to which the Buy American Act 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), that domestic preference would be inconsistent with the public interest.

(iv) If the solicitation includes the provision at 252.225-7023, Preference for Products or Services from Iraq or Afghanistan, use the evaluation procedures at 225.7703-3.

225.503 Group offers.

Evaluate group offers in accordance with FAR 25.503, but 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 225.11—SOLICITATION PROVISIONS AND CONTRACT CLAUSES
(Revised December 29, 2010)

225.1100 Scope of subpart.

This subpart prescribes the clauses that implement Subparts 225.1 through 225.10. The clauses that implement Subparts 225.70 through 225.75 are prescribed within those subparts.

225.1101 Acquisition of supplies.

(1)(i) Use the provision at 252.225-7000, Buy American Act—Balance of Payments Program Certificate, instead of the provision at FAR 52.225-2, Buy American Act Certificate. Use the provision in any solicitation that includes the clause at 252.225-7001, Buy American Act and Balance of Payments Program.

(ii) Use the provision with its Alternate I when the acquisition is of end products listed in 225.401-70 in support of operations in Afghanistan.

(2)(i) Use the clause at 252.225-7001, Buy American Act and Balance of Payments Program, instead of the clause at FAR 52.225-1, Buy American Act—Supplies, in solicitations and contracts unless—

(A) All line items will be acquired from a particular source or sources under the authority of FAR 6.302-3;

(B) All line items must be domestic or qualifying country end products in accordance with Subpart 225.70. (However, the clause may still be required if Subpart 225.70 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) An exception to the Buy American Act or Balance of Payments Program applies (see FAR 25.103, 225.103, and 225.7501);

(D) One or both 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 Act—Free Trade Agreements—Balance of Payments Program; or

(E) All line items will be acquired using a procedure specified in 225.7703-1(a).

(ii) Use the clause with its Alternate I when the acquisition is of end products listed in 225.401-70 in support of operations in Afghanistan.

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

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

(ii) 252.225-7021, Trade Agreements.

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

(4) Use 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)(i) Except as provided in paragraph (7) of this section, use the provision at 252.225-7020, Trade Agreements Certificate, instead of the provision at FAR 52.225-6, Trade Agreements Certificate, in solicitations that include the clause at 252.225-7021, Trade Agreements.

(ii) Use the provision with its Alternate I when the acquisition is of end products in support of operations in Afghanistan.

(6)(i) Use the clause at 252.225-7021, Trade Agreements, instead of the clause at FAR 52.225-5, Trade Agreements, if the World Trade Organization Government Procurement Agreement applies.

(ii) Use the clause with its Alternate I in solicitations and contracts that include the clause at 252.225-7024, Requirement for Products or Services from Iraq or Afghanistan, unless the clause at 252.225-7024 has been modified to provide a preference only for the products of Afghanistan.

(iii) Use the clause with its Alternate II when the acquisition is of end products in support of operations in Afghanistan and Alternate I is not applicable.

(iv) Do not use the clause if—

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

(B) The clause at 252.225-7026, Acquisition Restricted to Products or Services from Iraq or Afghanistan, is included in the solicitation and contract.

(v) 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) Use the provision at 252.225-7022, Trade Agreements Certificate – Inclusion of Iraqi End Products, instead of the provision at FAR 52.225-6, Trade Agreements Certificate, in solicitations that include the clause at 252.225-7021, Trade Agreements, with its Alternate I.

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

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- (i) Submit an offer; or
- (ii) Receive a subcontract exceeding \$1 million.

(9) Use 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.

(10)(i) Use the provision at 252.225-7035, Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate, instead of the provision at FAR 52.225-4, Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, in solicitations that include the clause at 252.225-7036, Buy American Act—Free Trade Agreements—Balance of Payments Program.

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

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

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

(11)(i) Except as provided in paragraph (11)(ii) of this section, use the clause at 252.225-7036, Buy American Act—Free Trade Agreements—Balance of Payments Program, instead of the clause at FAR 52.225-3, Buy American Act—Free Trade Agreements—Israeli Trade Act, in solicitations and contracts for the items listed at 225.401-70, when the estimated value equals or exceeds \$25,000, but is less than \$203,000, and a Free Trade Agreement applies to the acquisition.

(A) Use the basic clause when the estimated value equals or exceeds \$70,079, except if the acquisition is of end products in support of operations in Afghanistan, use with its Alternate II.

(B) Use the clause with its Alternate I when the estimated value equals or exceeds \$25,000 but is less than \$70,079, except if the acquisition is of end products in support of operations in Afghanistan, use with its Alternate III.

- (ii) Do not use the clause if—

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

(B) Acquiring information technology that is a commercial item, 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); or

(C) Using a procedure specified in 225.7703-1(a).

(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 Act—Free Trade Agreements—Balance of Payments Program clause.

225.1103 Other provisions and clauses.

(1) Unless the contracting officer knows that the prospective contractor is not a domestic concern, use 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) Use 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) Use the provision at 252.225-7042, Authorization to Perform, in solicitations when contract performance will be wholly or in part in a foreign country.

(4) Unless an exception in 225.770-3 applies, use the clause at 252.225-7007, Prohibition on Acquisition of United States Munitions List Items from Communist Chinese Military Companies, in solicitations and contracts involving the delivery of items covered by the United States Munitions List.

SUBPART 225.75—BALANCE OF PAYMENTS PROGRAM

(Revised December 29, 2010)

225.7500 Scope of subpart.

This subpart provides 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 or 225.104(a)(iii);
 - (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 item, 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) Use of a procedure specified in 225.7703-1(a) is authorized for an acquisition in support of operations in Iraq or Afghanistan;
 - (6) The end product is acquired for commissary resale; or

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(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;

(iii) If the acquisition is in support of operations in Afghanistan, a South Caucasus/Central and South Asian state end product listed in 225.401-70 (see 225.7704-2); or

(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) The construction material is an eligible product or, if the acquisition is in support of operations in Afghanistan, the construction material is a South Caucasus/Central and South Asian state construction material (see 225.7704-2); or

(c) At any time during the acquisition process, the head of the agency determines that it is not in the public interest to apply the restrictions of the Balance of Payments Program to the end product or construction material.

225.7502 Procedures.

If the Balance of Payments Program applies to the acquisition, follow the procedures at PGI 225.7502.

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225.7503 Contract clauses.

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

(a)(1) Use 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 with a value greater than the simplified acquisition threshold but less than \$7,804,000.

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

(b)(1) Use 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 a value of \$7,804,000 or more, except as provided in 225.7503(b)(iv).

(2) For acquisitions with a value of \$7,804,000 or more, but less than \$9,110,318, use the clause with its Alternate I, unless the acquisition is in support of operations in Afghanistan, use the clause with its Alternate III.

(3) If the acquisition is for construction with a value of more than \$8,817,449 or more and is in support of operations in Afghanistan, use the clause with its Alternate II.

(4) If the acquisition is for construction with a value of \$7,443,000 or more, but less than \$8,817,449, and is in support of operations in Afghanistan, use the clause with its Alternate III.

**SUBPART 225.77—ACQUISITIONS IN SUPPORT OF OPERATIONS IN IRAQ
OR AFGHANISTAN**
(Revised December 29, 2010)

225.7700 Scope.

This subpart implements—

(a) Section 886 and section 892 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181); and

(b) The determinations by the Deputy Secretary of Defense regarding participation of the countries of the South Caucasus or Central and South Asia in acquisitions in support of operations in Afghanistan.

225.7701 Definitions.

As used in this subpart—

“Product from Iraq or Afghanistan” means a product that is mined, produced, or manufactured in Iraq or Afghanistan.

“Service from Iraq or Afghanistan” means a service including construction that is performed in Iraq or Afghanistan predominantly by citizens or permanent resident aliens of Iraq or Afghanistan.

“Small arms” means pistols and other weapons less than 0.50 caliber.

“Source from Iraq or Afghanistan” means a source that—

- (1) Is located in Iraq or Afghanistan; and
- (2) Offers products or services from Iraq or Afghanistan.

225.7702 Acquisition of small arms.

(a) Except as provided in paragraph (b) of this section, when acquiring small arms for assistance to the Army of Iraq, the Army of Afghanistan, the Iraqi Police Forces, the Afghani Police Forces, or other Iraqi or Afghani security organizations—

(1) Use full and open competition to the maximum extent practicable, consistent with the provisions of 10 U.S.C. 2304;

(2) If use of other than full and open competition is justified in accordance with FAR Subpart 6.3, ensure that—

(i) No responsible U.S. manufacturer is excluded from competing for the acquisition; and

(ii) Products manufactured in the United States are not excluded from the competition; and

(3) If the exception at FAR 6.302-2 (unusual and compelling urgency) applies,

do not exclude responsible U.S. manufacturers or products manufactured in the United States from the competition for the purpose of administrative expediency. However, such an offer may be rejected if it does not meet delivery schedule requirements.

(b) Paragraph (a)(2) of this section does not apply when—

(1) The exception at FAR 6.302-1 (only one or a limited number of responsible sources) applies, and the only responsible source or sources are not U.S. manufacturers or are not offering products manufactured in the United States; or

(2) The exception at FAR 6.302-4 (international agreement) applies, and United States manufacturers or products manufactured in the United States are not the source(s) specified in the written directions of the foreign government reimbursing the agency for the cost of the acquisition of the property or services for such government.

225.7703 Acquisition of products or services other than small arms.

225.7703-1 Acquisition procedures.

(a) Subject to the requirements of 225.7703-2, a product or service (including construction), other than small arms, in support of operations in Iraq or Afghanistan, may be acquired by—

(1) Providing a preference for products or services from Iraq or Afghanistan in accordance with the evaluation procedures at 225.7703-3;

(2) Limiting competition to products or services from Iraq or Afghanistan; or

(3) Using procedures other than competitive procedures to award a contract to a particular source or sources from Iraq or Afghanistan. When other than competitive procedures are used, the contracting officer shall document the contract file with the rationale for selecting the particular source(s).

(b) For acquisitions conducted using a procedure specified in paragraph (a) of this subsection, the justification and approval addressed in FAR Subpart 6.3 is not required.

225.7703-2 Determination requirements.

Before use of a procedure specified in 225.7703-1(a), a written determination must be prepared and executed as follows:

(a) For products or services to be used only by the military forces, police, or other security personnel of Iraq or Afghanistan, the contracting officer shall—

(1) Determine in writing that the product or service is to be used only by the military forces, police, or other security personnel of Iraq or Afghanistan; and

(2) Include the written determination in the contract file.

(b) For products or services not limited to use by the military forces, police, or other security personnel of Iraq or Afghanistan, the following requirements apply:

(1) The appropriate official specified in paragraph (b)(2) of this subsection must

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determine in writing that it is in the national security interest of the United States to use a procedure specified in 225.7703-1(a), because—

(i) The procedure is necessary to provide a stable source of jobs in Iraq or Afghanistan; and

(ii) Use of the procedure will not adversely affect—

(A) Operations in Iraq or Afghanistan (including security, transition, reconstruction, and humanitarian relief activities); or

(B) The U.S. industrial base. The authorizing official generally may presume that there will not be an adverse effect on the U.S. industrial base. However, when in doubt, the authorizing official should coordinate with the applicable subject matter expert specified in PGI 225.7703-2(b).

(2) Determinations may be made for an individual acquisition or a class of acquisitions meeting the criteria in paragraph (b)(1) of this subsection as follows:

(i) The head of the contacting activity is authorized to make a determination that applies to an individual acquisition with a value of less than \$85.5 million.

(ii) The Director, Defense Procurement and Acquisition Policy, and the following officials, without power of redelegation, are authorized to make a determination that applies to an individual acquisition with a value of \$85.5 million or more or to a class of acquisitions:

(A) Defense Logistics Agency Component Acquisition Executive.

(B) Army Acquisition Executive.

(C) Navy Acquisition Executive.

(D) Air Force Acquisition Executive.

(E) Commander of the Joint Contracting Command-Iraq/Afghanistan (JCC-IA).

(3) The contracting officer—

(i) Shall include the applicable written determination in the contract file; and

(ii) Shall ensure that each contract action taken pursuant to the authority of a class determination is within the scope of the class determination, and shall document the contract file for each action accordingly.

(c) See PGI 225.7703-2(c) for formats for use in preparation of the determinations required by this subsection.

225.7703-3 Evaluating offers.

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(a) Evaluate offers submitted in response to solicitations that include the provision at 252.225-7023, Preference for Products or Services from Iraq or Afghanistan, as follows:

(1) If the low offer is an offer of a product or service from Iraq or Afghanistan, award on that offer.

(2) If there are no offers of a product or service from Iraq or Afghanistan, award on the low offer.

(3) Otherwise, apply the evaluation factor specified in the solicitation to the low offer.

(i) If the price of the low offer of a product or service from Iraq or Afghanistan is less than the evaluated price of the low offer, award on the low offer of a product or service from Iraq or Afghanistan.

(ii) If the evaluated price of the low offer remains less than the low offer of a product or service from Iraq or Afghanistan, award on the low offer.

(b) If the provision at 252.225-7023 is modified to provide a preference exclusively for products or services from Iraq or Afghanistan, also modify the evaluation procedures in paragraph (a) of this subsection to remove “or Afghanistan” or “Iraq or”, respectively, wherever the phrase appears.

225.7703-4 Reporting requirement.

The following organizations shall submit periodic reports to the Deputy Director, Contingency Contracting & Acquisition Policy, Defense Procurement and Acquisition Policy, in accordance with PGI 225.7703-4, to address the organization’s use of the procedures authorized by this section:

(a) The Joint Contracting Command (Iraq/Afghanistan).

(b) The Department of the Army, except for contract actions reported by the Joint Contracting Command.

(c) The Department of the Navy.

(d) The Department of the Air Force.

(e) The Defense Logistics Agency.

(f) The other defense agencies and other DoD components that execute reportable contract actions.

225.7703-5 Solicitation provisions and contract clauses.

(a) Use the provision at 252.225-7023, Preference for Products or Services from Iraq or Afghanistan, in solicitations that provide a preference for products or services from Iraq or Afghanistan in accordance with 225.7703-1(a)(1). The contracting officer—

(1) May modify the provision to provide a preference exclusively for products or services from Iraq or exclusively for products or services from Afghanistan by removing

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“or Afghanistan” or “Iraq or”, respectively, wherever the phrase appears in the provision. If this provision is so modified, the clause at 252.225-7024 shall be modified accordingly; and

(2) May modify the 50 percent evaluation factor in accordance with contracting office procedures.

(b) Use the clause at 252.225-7024, Requirement for Products or Services from Iraq or Afghanistan, in solicitations that include the provision at 252.225-7023, Preference for Products or Services from Iraq or Afghanistan, and in the resulting contract. If the provision at 252.225-7023 has been modified to provide a preference exclusively for Iraq or exclusively for Afghanistan, in accordance with paragraph (a)(1) of this subsection, the clause at 252.225-7024 shall be modified accordingly.

(c)(1) Use the clause at 252.225-7026, Acquisition Restricted to Products or Services from Iraq or Afghanistan, in solicitations and contracts that—

(i) Are restricted to the acquisition of products or services from Iraq or Afghanistan in accordance with 225.7703-1(a)(2); or

(ii) Will be directed to a particular source or sources from Iraq or Afghanistan in accordance with 225.7703-1(a)(3).

(2) The contracting officer may modify the clause to restrict the acquisition to products or services from Iraq, or to restrict the acquisition to products or services from Afghanistan, by removing “or Afghanistan” or “Iraq or”, respectively, wherever the phrase appears in the clause.

(d) When the Trade Agreements Act applies to the acquisition, use the appropriate clause and provision as prescribed at 225.1101 (5), (6), or (7).

(e) Do not use any of the following provisions or clauses in solicitations or contracts that include the provision at 252.225-7023, the clause at 252.225-7024, or the clause at 252.225-7026:

(1) 252.225-7000, Buy American Act—Balance of Payments Program Certificate.

(2) 252.225-7001, Buy American Act and Balance of Payments Program.

(3) 252.225-7002, Qualifying Country Sources as Subcontractors.

(4) 252.225-7035, Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate.

(5) 252.225-7036, Buy American Act—Free Trade Agreements—Balance of Payments Program.

(6) 252.225-7044, Balance of Payments Program—Construction Material.

(7) 252.225-7045, Balance of Payments Program—Construction Material Under Trade Agreements.

(f) Do not use the following clause or provision in solicitations or contracts that include the clause at 252.225-7026:

- (1) 252.225-7020, Trade Agreements Certificate.
- (2) 252.225-7021, Trade Agreements.
- (3) 252.225-7022, Trade Agreements Certificate—Inclusion of Iraqi End Products.

225.7704 Acquisitions of products and services from South Caucasus/Central and South Asian (SC/CASA) state in support of operations in Afghanistan.

225.7704-1 Applicability of trade agreements.

As authorized by the United States Trade Representative, the Secretary of Defense has waived the prohibition in section 302(a) of the Trade Agreements Act (see subpart 225.4) for acquisitions by DoD, and by GSA on behalf of DoD, of products and services from SC/CASA states in direct support of operations in Afghanistan.

225.7704-2 Applicability of Balance of Payments Program.

The Deputy Secretary of Defense has determined, because of importance to national security, that it would be inconsistent with the public interest to apply the provisions of the Balance of Payments Program (see subpart 225.75) to offers of end products other than arms, ammunition, and war materials (i.e., end products listed in 225.401-70) and construction materials from the SC/CASA states that are being acquired by or on behalf of DoD in direct support of operations in Afghanistan.

225.7704-3 Solicitation provisions and contract clauses.

Appropriate solicitation provisions and contract clauses are prescribed as alternates to the Buy American-Trade Agreements-Balance of Payments Program solicitation provisions and contract clauses prescribed at 225.1101 and 225.7503.

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(Revised December 29, 2010)

252.209-7000 Reserved.

252.209-7001 Disclosure of Ownership or Control by the Government of a Terrorist Country.

As prescribed in 209.104-70(a), use the following provision:

DISCLOSURE OF OWNERSHIP OR CONTROL BY THE GOVERNMENT OF A TERRORIST COUNTRY (JAN 2009)

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

(1) “Government of a terrorist country” includes the state and the government of a terrorist country, as well as any political subdivision, agency, or instrumentality thereof.

(2) “Terrorist country” means a country determined by the Secretary of State, under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(i)(A)), to be a country the government of which has repeatedly provided support for acts of international terrorism. As of the date of this provision, terrorist countries subject to this provision include: Cuba, Iran, Sudan, and Syria.

(3) “Significant interest” means—

(i) Ownership of or beneficial interest in 5 percent or more of the firm’s or subsidiary’s securities. Beneficial interest includes holding 5 percent or more of any class of the firm’s securities in “nominee shares,” “street names,” or some other method of holding securities that does not disclose the beneficial owner;

(ii) Holding a management position in the firm, such as a director or officer;

(iii) Ability to control or influence the election, appointment, or tenure of directors or officers in the firm;

(iv) Ownership of 10 percent or more of the assets of a firm such as equipment, buildings, real estate, or other tangible assets of the firm; or

(v) Holding 50 percent or more of the indebtedness of a firm.

(b) *Prohibition on award.* In accordance with 10 U.S.C. 2327, no contract may be awarded to a firm or a subsidiary of a firm if the government of a terrorist country has a significant interest in the firm or subsidiary or, in the case of a subsidiary, the firm that owns the subsidiary, unless a waiver is granted by the Secretary of Defense.

(c) *Disclosure.* If the government of a terrorist country has a significant interest in the Offeror or a subsidiary of the Offeror, the Offeror shall disclose such interest in an attachment to its offer. If the Offeror is a subsidiary, it shall also disclose any significant interest the government of a terrorist country has in any firm that owns or controls the subsidiary. The disclosure shall include—

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- (1) Identification of each government holding a significant interest; and
- (2) A description of the significant interest held by each government.

(End of provision)

252.209-7002 Disclosure of Ownership or Control by a Foreign Government.
As prescribed in 209.104-70(b), use the following provision:

DISCLOSURE OF OWNERSHIP OR CONTROL BY A FOREIGN GOVERNMENT (JUN 2010)

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

(1) “Effectively owned or controlled” means that a foreign government or any entity controlled by a foreign government has the power, either directly or indirectly, whether exercised or exercisable, to control the election, appointment, or tenure of the Offeror’s officers or a majority of the Offeror’s board of directors by any means, e.g., ownership, contract, or operation of law (or equivalent power for unincorporated organizations).

(2) “Entity controlled by a foreign government”—

(i) Means—

(A) Any domestic or foreign organization or corporation that is effectively owned or controlled by a foreign government; or

(B) Any individual acting on behalf of a foreign government.

(ii) Does not include an organization or corporation that is owned, but is not controlled, either directly or indirectly, by a foreign government if the ownership of that organization or corporation by that foreign government was effective before October 23, 1992.

(3) “Foreign government” includes the state and the government of any country (other than the United States and its outlying areas) as well as any political subdivision, agency, or instrumentality thereof.

(4) “Proscribed information” means—

(i) Top Secret information;

(ii) Communications security (COMSEC) material, excluding controlled cryptographic items when unkeyed or utilized with unclassified keys;

(iii) Restricted Data as defined in the U.S. Atomic Energy Act of 1954, as amended;

(iv) Special Access Program (SAP) information; or

(v) Sensitive Compartmented Information (SCI).

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(b) *Prohibition on award.* No contract under a national security program may be awarded to an entity controlled by a foreign government if that entity requires access to proscribed information to perform the contract, unless the Secretary of Defense or a designee has waived application of 10 U.S.C. 2536(a).

(c) *Disclosure.* The Offeror shall disclose any interest a foreign government has in the Offeror when that interest constitutes control by a foreign government as defined in this provision. If the Offeror is a subsidiary, it shall also disclose any reportable interest a foreign government has in any entity that owns or controls the subsidiary, including reportable interest concerning the Offeror's immediate parent, intermediate parents, and the ultimate parent. Use separate paper as needed, and provide the information in the following format:

Offeror's Point of Contact for Questions about Disclosure
(Name and Phone Number with Country Code, City Code
and Area Code, as applicable)

Name and Address of Offeror

Name and Address of Entity Controlled by a Foreign Government	Description of Interest, Ownership Percentage, and Identification of Foreign Government
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(End of provision)

252.209-7003 Reserved.

252.209-7004 Subcontracting with Firms That Are Owned or Controlled by the Government of a Terrorist Country.

As prescribed in 209.409, use the following clause:

SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A TERRORIST COUNTRY (DEC 2006)

(a) Unless the Government determines that there is a compelling reason to do so, the Contractor shall not enter into any subcontract in excess of \$30,000 with a firm, or a subsidiary of a firm, that is identified in the Excluded Parties List System as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country.

(b) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is identified, on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country. The notice must include the name of the proposed subcontractor and the compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(End of clause)

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252.209-7005 Reserve Officer Training Corps and Military Recruiting on Campus.

As prescribed in 209.470-4, use the following clause:

RESERVE OFFICER TRAINING CORPS AND MILITARY RECRUITING ON CAMPUS (JAN 2000)

(a) *Definition.* "Institution of higher education," as used in this clause, means an institution that meets the requirements of 20 U.S.C. 1001 and includes all subelements of such an institution.

(b) *Limitation on contract award.* Except as provided in paragraph (c) of this clause, an institution of higher education is ineligible for contract award if the Secretary of Defense determines that the institution has a policy or practice (regardless of when implemented) that prohibits or in effect prevents—

(1) The Secretary of a military department from maintaining, establishing, or operating a unit of the Senior Reserve Officer Training Corps (ROTC) (in accordance with 10 U.S.C. 654 and other applicable Federal laws) at that institution;

(2) A student at that institution from enrolling in a unit of the Senior ROTC at another institution of higher education;

(3) The Secretary of a military department or the Secretary of Transportation from gaining entry to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting; or

(4) Military recruiters from accessing, for purposes of military recruiting, the following information pertaining to students (who are 17 years of age or older) enrolled at that institution:

- (i) Name.
- (ii) Address.
- (iii) Telephone number.
- (iv) Date and place of birth.
- (v) Educational level.
- (vi) Academic major.
- (vii) Degrees received.
- (viii) Most recent educational institution enrollment.

(c) *Exception.* The limitation in paragraph (b) of this clause does not apply to an institution of higher education if the Secretary of Defense determines that—

(1) The institution has ceased the policy or practice described in paragraph (b) of this clause; or

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(2) The institution has a long-standing policy of pacifism based on historical religious affiliation.

(d) *Agreement.* The Contractor represents that it does not now have, and agrees that during performance of this contract it will not adopt, any policy or practice described in paragraph (b) of this clause, unless the Secretary of Defense has granted an exception in accordance with paragraph (c)(2) of this clause.

(e) Notwithstanding any other clause of this contract, if the Secretary of Defense determines that the Contractor misrepresented its policies and practices at the time of contract award or has violated the agreement in paragraph (d) of this clause—

(1) The Contractor will be ineligible for further payments under this and any other contracts with the Department of Defense; and

(2) The Government will terminate this contract for default for the Contractor's material failure to comply with the terms and conditions of award.

(End of clause)

252.209-7006 Limitations on Contractors Acting as Lead System Integrators. As prescribed in 209.570-4(a), use the following provision:

LIMITATIONS ON CONTRACTORS ACTING AS LEAD SYSTEM INTEGRATORS (JAN 2008)

(a) *Definitions.* “Lead system integrator,” “lead system integrator with system responsibility,” and “lead system integrator without system responsibility,” as used in this provision, have the meanings given in the clause of this solicitation entitled “Prohibited Financial Interests for Lead System Integrators” (DFARS 252.209-7007).

(b) *General.* Unless an exception is granted, no contractor performing lead system integrator functions in the acquisition of a major system by the Department of Defense may have any direct financial interest in the development or construction of any individual system or element of any system of systems.

(c) *Representations.*

(1) The offeror represents that it does does not propose to perform this contract as a lead system integrator with system responsibility.

(2) The offeror represents that it does does not propose to perform this contract as a lead system integrator without system responsibility.

(3) If the offeror answered in the affirmative in paragraph (c)(1) or (2) of this provision, the offeror represents that it does does not have any direct financial interest as described in paragraph (b) of this provision with respect to the system(s), subsystem(s), system of systems, or services described in this solicitation.

(d) If the offeror answered in the affirmative in paragraph (c)(3) of this provision, the offeror should contact the Contracting Officer for guidance on the possibility of submitting a mitigation plan and/or requesting an exception.

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(e) If the offeror does have a direct financial interest, the offeror may be prohibited from receiving an award under this solicitation, unless the offeror submits to the Contracting Officer appropriate evidence that the offeror was selected by a subcontractor to serve as a lower-tier subcontractor through a process over which the offeror exercised no control.

(f) This provision implements the requirements of 10 U.S.C. 2410p, as added by Section 807 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364).

(End of provision)

252.209-7007 Prohibited Financial Interests for Lead System Integrators.
As prescribed in 209.570-4(b), use the following clause:

PROHIBITED FINANCIAL INTERESTS FOR LEAD SYSTEM INTEGRATORS (JUL 2009)

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

(1) “Lead system integrator” includes “lead system integrator with system responsibility” and “lead system integrator without system responsibility.”

(2) “Lead system integrator with system responsibility” means a prime contractor for the development or production of a major system, if the prime contractor is not expected at the time of award to perform a substantial portion of the work on the system and the major subsystems.

(3) “Lead system integrator without system responsibility” means a prime contractor under a contract for the procurement of services, the primary purpose of which is to perform acquisition functions closely associated with inherently governmental functions (see section 7.503(d) of the Federal Acquisition Regulation) with respect to the development or production of a major system.

(b) *Limitations.* The Contracting Officer has determined that the Contractor meets the definition of lead system integrator with without system responsibility. Unless an exception is granted, the Contractor shall not have any direct financial interest in the development or construction of any individual system or element of any system of systems while performing lead system integrator functions in the acquisition of a major system by the Department of Defense under this contract.

(c) *Agreement.* The Contractor agrees that during performance of this contract it will not acquire any direct financial interest as described in paragraph (b) of this clause, or, if it does acquire or plan to acquire such interest, it will immediately notify the Contracting Officer. The Contractor further agrees to provide to the Contracting Officer all relevant information regarding the change in financial interests so that the Contracting Officer can determine whether an exception applies or whether the Contractor will be allowed to continue performance on this contract. If a direct financial interest cannot be avoided, eliminated, or mitigated to the Contracting Officer’s satisfaction, the Contracting Officer may terminate this contract for default for the Contractor’s material failure to comply with the terms and conditions of award or

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may take other remedial measures as appropriate in the Contracting Officer's sole discretion.

(d) Notwithstanding any other clause of this contract, if the Contracting Officer determines that the Contractor misrepresented its financial interests at the time of award or has violated the agreement in paragraph (c) of this clause, the Government may terminate this contract for default for the Contractor's material failure to comply with the terms and conditions of award or may take other remedial measures as appropriate in the Contracting Officer's sole discretion.

(e) This clause implements the requirements of 10 U.S.C. 2410p, as added by Section 807 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364), and Section 802 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

(End of clause)

252.209-7008, Notice of Prohibition Relating to Organizational Conflict of Interest—Major Defense Acquisition Program.

As prescribed in 209.571-8(a), use the following provision:

NOTICE OF PROHIBITION RELATING TO ORGANIZATIONAL CONFLICT OF INTEREST—MAJOR DEFENSE ACQUISITION PROGRAM (DEC 2010)

(a) *Definitions.* "Major subcontractor" is defined in the clause at 252.209-7009, **Organizational Conflict of Interest—Major Defense Acquisition Program.**

(b) This solicitation is for the performance of systems engineering and technical assistance for a major defense acquisition program or a pre-major defense acquisition program.

(c) *Prohibition.* As required by paragraph (b)(3) of section 207 of the Weapons System Acquisition Reform Act of 2009 (Pub. L. 111-23), if awarded the contract, the contractor or any affiliate of the contractor is prohibited from participating as a prime contractor or a major subcontractor in the development or production of a weapon system under the major defense acquisition program or pre-major defense acquisition program, unless the offeror submits, and the Government approves, an Organizational Conflict of Interest Mitigation Plan.

(d) *Request for an exception.* If the offeror requests an exception to the prohibition of paragraph (c) of this provision, then the offeror shall submit an Organizational Conflict of Interest Mitigation Plan with its offer for evaluation.

(e) *Incorporation of Organizational Conflict of Interest Mitigation Plan in contract.* If the apparently successful offeror submitted an acceptable Organizational Conflict of Interest Mitigation Plan, and the head of the contracting activity determines that DoD

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needs the domain experience and expertise of the highly qualified, apparently successful offeror in accordance with FAR 209.571-7(c), then the Contracting Officer will incorporate the Organizational Conflict of Interest Mitigation Plan into the resultant contract, and paragraph (d) of the clause at 252.209-7009 will become applicable.

(End of provision)

252.209-7009, Organizational Conflict of Interest—Major Defense Acquisition Program.

As prescribed in 209.571-8(b), use the following clause:

ORGANIZATIONAL CONFLICT OF INTEREST— MAJOR DEFENSE ACQUISITION PROGRAM (DEC 2010)

(a) *Definition.*

“Major subcontractor,” as used in this clause, means a subcontractor that is awarded a subcontract that equals or exceeds—

- (1) Both the cost or pricing data threshold and 10 percent of the value of the contract under which the subcontracts are awarded; or
- (2) \$50 million.

(b) This contract is for the performance of systems engineering and technical assistance for a major defense acquisition program or a pre-major defense acquisition program.

(c) *Prohibition.* Except as provided in paragraph (d) of this clause, as required by paragraph (b)(3) of section 207 of the Weapons System Acquisition Reform Act of 2009 (Pub. L. 111-23), the Contractor or any affiliate of the Contractor is prohibited from participating as a prime contractor or major subcontractor in the development or production of a weapon system under the major defense acquisition program or pre-major defense acquisition program.

(d) *Organizational Conflict of Interest Mitigation Plan.* If the Contractor submitted an acceptable Organizational Conflict of Interest Mitigation Plan that has been incorporated into this contract, then the prohibition in paragraph (c) of this clause does not apply. The Contractor shall comply with the Organizational Conflict of Interest Mitigation Plan. Compliance with the Organizational Conflict of Interest Mitigation Plan is a material requirement of the contract. Failure to comply may result in the

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Contractor or any affiliate of the Contractor being prohibited from participating as a contractor or major subcontractor in the development or production of a weapon system under the program, in addition to any other remedies available to the Government for noncompliance with a material requirement of a contract.

(End of clause)

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(Revised December 29, 2010)

252.212-7000 Offeror Representations and Certifications—Commercial Items.

As prescribed in 212.301(f)(ii), use the following provision:

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL ITEMS (JUN 2005)

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

(1) “Foreign person” means any person other than a United States person as defined in Section 16(2) of the Export Administration Act of 1979 (50 U.S.C. App. Sec. 2415).

(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 Section 16(2) of the Export Administration Act of 1979 and means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern), and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President.

(b) *Certification.* By submitting this offer, the Offeror, if a foreign person, company or entity, certifies 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. Sec. 2407(a) prohibits a United States person from taking.

(c) *Representation of Extent of Transportation by Sea.* (This representation does not apply to solicitations for the direct purchase of ocean transportation services).

(1) The Offeror shall indicate by checking the appropriate blank in paragraph (c)(2) of this provision whether transportation of supplies by sea is anticipated under the resultant contract. The term “supplies” is defined in the Transportation of Supplies by Sea clause of this solicitation.

(2) Representation. The Offeror represents that it—

_____ Does anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

_____ Does not anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

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(3) Any contract resulting from this solicitation will include the Transportation of Supplies by Sea clause. If the Offeror represents that it will not use ocean transportation, the resulting contract will also include the Defense Federal Acquisition Regulation Supplement clause at 252.247-7024, Notification of Transportation of Supplies by Sea.

(End of provision)

252.212-7001 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items.

As prescribed in 212.301(f)(iii), use the following clause:

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL ITEMS (DEC 2010)

(a) The Contractor agrees to comply with the following Federal Acquisition Regulation (FAR) clause which, if checked, is included in this contract by reference to implement a provision of law applicable to acquisitions of commercial items or components.

___ 52.203-3, Gratuities (APR 1984) (10 U.S.C. 2207).

(b) The Contractor agrees to comply with any clause that is checked on the following list of Defense FAR Supplement clauses which, if checked, is included in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items or components.

(1) ___ 252.203-7000, Requirements Relating to Compensation of Former DoD Officials (JAN 2009) (Section 847 of Pub. L. 110-181).

(2) ___ 252.205-7000, Provision of Information to Cooperative Agreement Holders (DEC 1991) (10 U.S.C. 2416).

(3) ___ 252.219-7003, Small Business Subcontracting Plan (DoD Contracts) (OCT 2010) (15 U.S.C. 637).

(4) ___ 252.219-7004, Small Business Subcontracting Plan (Test Program) (OCT 2010) (15 U.S.C. 637 note).

(5)(i) ___ 252.225-7001, Buy American Act and Balance of Payments Program (JAN 2009) (41 U.S.C. 10a-10d, E.O. 10582).

(ii) ___ Alternate I (DEC 2010) of 252.225-7001.

(6) ___ 252.225-7008, Restriction on Acquisition of Specialty Metals (JUL 2009) (10 U.S.C. 2533b).

(7) ___ 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals (JUL 2009) (10 U.S.C. 2533b).

(8) ___ 252.225-7012, Preference for Certain Domestic Commodities

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(JUN 2010) (10 U.S.C. 2533a).

(9) ___ 252.225-7015, Restriction on Acquisition of Hand or Measuring Tools (JUN 2005) (10 U.S.C. 2533a).

(10) ___ 252.225-7016, Restriction on Acquisition of Ball and Roller Bearings (DEC 2010) (Section 8065 of Public Law 107-117 and the same restriction in subsequent DoD appropriations acts).

(11)(i) ___ 252.225-7021, Trade Agreements (NOV 2009) (19 U.S.C. 2501-2518 and 19 U.S.C. 3301 note).

(ii) ___ Alternate I (SEP 2008) of 252.225-7021.

(iii) ___ Alternate II (DEC 2010) of 252.225-7021.

(12) ___ 252.225-7027, Restriction on Contingent Fees for Foreign Military Sales (APR 2003) (22 U.S.C. 2779).

(13) ___ 252.225-7028, Exclusionary Policies and Practices of Foreign Governments (APR 2003) (22 U.S.C. 2755).

(14)(i) ___ 252.225-7036, Buy American Act—Free Trade Agreements—Balance of Payments Program (DEC 2010) (41 U.S.C. 10a-10d and 19 U.S.C. 3301 note).

(ii) ___ Alternate I (JUL 2009) of 252.225-7036.

(iii) ___ Alternate II (DEC 2010) of 252.225-7036.

(iv) ___ Alternate III (DEC 2010) of 252.225-7036

(15) ___ 252.225-7038, Restriction on Acquisition of Air Circuit Breakers (JUN 2005) (10 U.S.C. 2534(a)(3)).

(16) ___ 252.226-7001, Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns (SEP 2004) (Section 8021 of Public Law 107-248 and similar sections in subsequent DoD appropriations acts).

(17) ___ 252.227-7015, Technical Data—Commercial Items (NOV 1995) (10 U.S.C. 2320).

(18) ___ 252.227-7037, Validation of Restrictive Markings on Technical Data (SEP 1999) (10 U.S.C. 2321).

(19) ___ 252.232-7003, Electronic Submission of Payment Requests and Receiving Reports (MAR 2008) (10 U.S.C. 2227).

(20) ___ 252.237-7019, Training for Contractor Personnel Interacting with Detainees (SEP 2006) (Section 1092 of Public Law 108-375).

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(21) ____ 252.237-7010, Prohibition on Interrogation of Detainees by Contractor Personnel (NOV 2010) (Section 1038 of Pub. L. 111-84)

(22) ____ 252.243-7002, Requests for Equitable Adjustment (MAR 1998) (10 U.S.C. 2410).

(23) ____ 252.246-7004, Safety of Facilities, Infrastructure, and Equipment For Military Operations (OCT 2010) (Section 807 of Public Law 111-84).

(24) ____ 252.247-7003, Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer (SEP 2010) (Section 884 of Public Law 110-417).

(25)(i) ____ 252.247-7023, Transportation of Supplies by Sea (MAY 2002) (10 U.S.C. 2631).

(ii) ____ Alternate I (MAR 2000) of 252.247-7023.

(iii) ____ Alternate II (MAR 2000) of 252.247-7023.

(iv) ____ Alternate III (MAY 2002) of 252.247-7023.

(26) ____ 252.247-7024, Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).

(c) In addition to the clauses listed in paragraph (e) of the Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items clause of this contract (FAR 52.212-5), the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

(1) 252.237-7019, Training for Contractor Personnel Interacting with Detainees (SEP 2006) (Section 1092 of Public Law 108-375).

(2) 252.237-7010, Prohibition on Interrogation of Detainees by Contractor Personnel (NOV 2010) (Section 1038 of Pub. L. 111-84).

(3) 252.247-7003, Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer (SEP 2010) (Section 884 of Public Law 110-417).

(4) 252.247-7023, Transportation of Supplies by Sea (MAY 2002) (10 U.S.C. 2631).

(5) 252.247-7024, Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).

(End of clause)

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(Revised December 29, 2010)

252.225-7000 Buy American Act—Balance of Payments Program Certificate.

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

**BUY AMERICAN ACT—BALANCE OF PAYMENTS PROGRAM CERTIFICATE
(DEC 2009)**

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

(b) *Evaluation.* The Government—

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

(2) Will evaluate offers of qualifying country end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program.

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

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

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

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

(2) The offeror certifies that the following end products are qualifying country end products:

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

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products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (ii) of the definition of “domestic end product”:

Line Item Number

Country of Origin (If known)

(End of provision)

ALTERNATE I (DEC 2010)

As prescribed in 225.1101(1)(ii), add the terms “South Caucasus/Central and South Asian (SC/CASA) state” and “South Caucasus/Central and South Asian (SC/CASA) state end product” in paragraph (a) and replace the phrase “qualifying country end products” in paragraphs (b)(2) and (c)(2) with the phrase “qualifying country end products or SC/CASA state end products.”

252.225-7001 Buy American Act and Balance of Payments Program.

As prescribed in 225.1101(2)(i), use the following clause:

BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM (JAN 2009)

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

(1) “Commercially available off-the-shelf (COTS) item”—

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

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

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

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

(ii) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. 40102), such as agricultural products and petroleum products.

(2) “Component” means an article, material, or supply incorporated directly into an end product.

(3) “Domestic end product” means—

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

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

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

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

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

(B) The end product is a COTS item.

(4) “End product” means those articles, materials, and supplies to be acquired under this contract for public use.

(5) “Foreign end product” means an end product other than a domestic end product.

(6) “Qualifying country” means any country set forth in subsection 225.872-1 of the Defense Federal Acquisition Regulation Supplement (DFARS).

(7) “Qualifying country component” means a component mined, produced, or manufactured in a qualifying country.

(8) “Qualifying country end product” means—

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

(ii) An end product manufactured in a qualifying country if the cost of the following types of components exceeds 50 percent of the cost of all its components:

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(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.

(9) “United States” means the 50 States, the District of Columbia, and outlying areas.

(b) This clause implements the Buy American Act (41 U.S.C. Section 10a-d). In accordance with 41 U.S.C. 431, the component test of the Buy American Act is waived for an end product that is a COTS item (see section 12.505(a)(1) of the Federal Acquisition Regulation). 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 Act—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 (DEC 2010)

As prescribed in 225.1101(2)(ii), add the following definitions to paragraph (a) and substitute the following paragraphs (b) and (c) for paragraphs (b) and (c) of the basic clause:

(a)(10) “South Caucasus/Central and South Asian (SC/CASA) state” means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

(11) “South Caucasus/Central and South Asian (SC/CASA) state end product” means an article that—

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

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

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

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

252.225-7002 Qualifying Country Sources as Subcontractors.

As prescribed in 225.1101(3), use the following clause:

QUALIFYING COUNTRY SOURCES AS SUBCONTRACTORS (APR 2003)

(a) *Definition.* “Qualifying country,” as used in this clause, means any country set forth in subsection 225.872-1 of the Defense Federal Acquisition Regulation (FAR) Supplement.

(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:

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REPORT OF INTENDED PERFORMANCE OUTSIDE THE UNITED STATES AND CANADA—SUBMISSION WITH OFFER (OCT 2010)

- (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 \$12.5 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 \$650,000 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.

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As prescribed in 225.7204(b), use the following clause:

REPORT OF INTENDED PERFORMANCE OUTSIDE THE UNITED STATES AND CANADA—SUBMISSION AFTER AWARD (OCT 2010)

(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 \$650,000 in value; 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: Deputy Director of Defense Procurement and Acquisition Policy (Contract Policy and International Contracting), OUSD(AT&L)DPAP(CPIC), 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

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(2) May obtain copies 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 clause)

252.225-7005 Identification of Expenditures in the United States.

As prescribed in 225.1103(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;

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(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 Quarterly Reporting of Actual Contract Performance Outside the United States.

As prescribed in 225.7204(c), use the following clause:

QUARTERLY REPORTING OF ACTUAL CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES (OCT 2010)

(a) *Definition.* “United States,” as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) *Reporting requirement.* Except as provided in paragraph (c) of this clause, within 10 days after the end of each quarter of the Government’s fiscal year, the Contractor shall report any subcontract, purchase, or intracompany transfer that—

(1) Will be or has been performed outside the United States;

(2) Exceeds the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation; and

(3) Has not been identified in a report for a previous quarter.

(c) *Exception.* Reporting under this clause is not required if—

(1) A foreign place of performance is the principal place of performance of the contract; and

(2) The Contractor specified the foreign place of performance in its offer.

(d) *Submission of reports.* The Contractor shall submit the reports required by this clause to: Deputy Director of Defense Procurement and Acquisition Policy (Contract Policy and International Contracting), OUSD(AT&L)DPAP(CPIC), Washington, DC

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(e) *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

<http://www.dtic.mil/whs/directives/infomgt/forms/formsprogram.htm>.

(f) *Subcontracts.* The Contractor—

(1) Shall include the substance of this clause in all first-tier subcontracts exceeding \$650,000, except those for commercial items, construction, ores, natural gases, utilities, petroleum products and crudes, timber (logs), or subsistence;

(2) Shall provide the number of this contract to its subcontractors required to submit reports under this clause; and

(3) Shall require the subcontractor, with respect to performance of its subcontract, to comply with the requirements directed to the Contractor in paragraphs (b) through (e) of this clause.

(End of clause)

252.225-7007 Prohibition on Acquisition of United States Munitions List Items from Communist Chinese Military Companies.

As prescribed in 225.1103(4), use the following clause:

PROHIBITION ON ACQUISITION OF UNITED STATES MUNITIONS LIST ITEMS FROM COMMUNIST CHINESE MILITARY COMPANIES (SEP 2006)

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

“Communist Chinese military company” means any entity that is—

(1) A part of the commercial or defense industrial base of the People’s Republic

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of China; or

(2) Owned or controlled by, or affiliated with, an element of the Government or armed forces of the People's Republic of China.

“United States Munitions List” means the munitions list of the International Traffic in Arms Regulation in 22 CFR Part 121.

(b) Any supplies or services covered by the United States Munitions List that are delivered under this contract may not be acquired, directly or indirectly, from a Communist Chinese military company.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts for items covered by the United States Munitions List.

(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 (JUL 2009)

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

(1) “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).

(2) “Produce” means the application of forces or processes to a specialty metal to create the desired physical properties through quenching or tempering of steel plate, gas atomization or sputtering of titanium, or final consolidation of non-melt derived titanium powder or titanium alloy powder.

(3) “Specialty metal” means—

(i) Steel—

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(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.

(4) “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 (JUL 2009)

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

(1) “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).

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(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).

(2) “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.

(3) “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.

(4) “Commercially available off-the-shelf item”—

(i) Means any item of supply that is—

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

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

(C) Offered to the Government, under 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 section 3 of the Shipping Act of 1984 (46 U.S.C. App 1702), such as agricultural products and petroleum products.

(5) “Component” means any item supplied to the Government as part of an end item or of another component.

(6) “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.

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(7) “End item” means the final production product when assembled or completed and ready for delivery under a line item of this contract.

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

(9) “Produce” means the application of forces or processes to a specialty metal to create the desired physical properties through quenching or tempering of steel plate, gas atomization or sputtering of titanium, or final consolidation of non-melt derived titanium powder or titanium alloy powder.

(10) “Qualifying country” means any country listed in section 225.003(9) of the Defense Federal Acquisition Regulation Supplement (DFARS).

(11) “Required form” means in the form of mill product, such as bar, billet, wire, slab, plate, or sheet, and in the grade appropriate for the production of—

(i) A finished end item to be delivered to the Government under this contract; or

(ii) A finished component assembled into an end item to be delivered to the Government under this contract.

(12) “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;

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(iii) Titanium and titanium alloys; or

(iv) Zirconium and zirconium alloys.

(13) “Steel” means an iron alloy that includes between .02 and 2 percent carbon and may include other elements.

(14) “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 item 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.

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(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 items, 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;

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- (ii) A sufficient quantity; and
- (iii) The required form.

(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.

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(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.* The Contractor shall insert the substance of this clause in subcontracts for items containing specialty metals, to the extent necessary to ensure compliance of the end products that the Contractor will deliver to the Government. When inserting the substance of this clause in subcontracts, the Contractor shall—

(1) Modify paragraph (c)(6) of this clause as necessary to facilitate management of the minimal content exception;

(2) Exclude paragraph (d) of this clause; and

(3) Include this paragraph (e).

(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

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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 (JUN 2010)

(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.

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(2) “End product” means supplies delivered under a line item of this contract.

(3) “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
Denmark
Egypt
Finland
France
Germany
Greece
Israel
Italy
Luxembourg
Netherlands
Norway
Portugal
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

(4) “United States” means the 50 States, the District of Columbia, and outlying areas.

(5) “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.

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(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) Tents, tarpaulins, or 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 (FAR), 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 simplified acquisition threshold in FAR Part 2;

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(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.

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(End of clause)

252.225-7013 Duty-Free Entry.

As prescribed in 225.1101(4), use the following clause:

DUTY-FREE ENTRY (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) “Customs territory of the United States” means the 50 States, the District of Columbia, and Puerto Rico.
- (3) “Eligible product” means—
 - (i) “Designated country end product” as defined in the Trade Agreements clause of this contract;
 - (ii) “Free Trade Agreement country end product,” other than a “Bahrainian end product” or a “Moroccan end product,” as defined in the Buy American Act—Free Trade Agreements—Balance of Payments Program clause of this contract; or
 - (iii) “Canadian end product” as defined in Alternate I of the Buy American Act—Free Trade Agreements—Balance of Payments Program clause of this contract.
- (4) “Qualifying country” and “qualifying country end product” have the meanings given in the Trade Agreements clause, the Buy American Act and Balance of Payments Program clause, or the Buy American Act—Free Trade Agreements—Balance of Payments Program clause of this contract.

(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

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(3) Other supplies for which the Contractor estimates that duty will exceed \$200 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.

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(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 Commander, Defense Contract Management Agency (DCMA) New York, ATTN: Customs Team, DCMAE-GNTF, 207 New York Avenue, Staten Island, New York, 10305-5013, 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 Commander, DCMA New York, 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 Commander, DCMA New York, 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 NY for execution of any required duty-free entry certificates.

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(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;

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- (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

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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 (DEC 2010)

(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—

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(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 mined, produced, or 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 a noncommercial end product; or

(2) Commercial or noncommercial components of a commercial component of a noncommercial 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) The Contractor shall insert the substance of this clause, including this paragraph (f), in all subcontracts, except those for—

(1) Commercial items; or

(2) Items that do not contain ball or roller bearings.

(End of clause)

252.225-7017 Reserved.

252.225-7018 Notice of Prohibition of Certain Contracts with Foreign Entities for the Conduct of Ballistic Missile Defense Research, Development, Test, and Evaluation.

As prescribed in 225.7016-4, use the following provision:

NOTICE OF PROHIBITION OF CERTAIN CONTRACTS WITH FOREIGN
ENTITIES FOR THE CONDUCT OF BALLISTIC MISSILE DEFENSE RESEARCH,
DEVELOPMENT, TEST, AND EVALUATION
(JUN 2005)

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(a) *Definitions.*

(1) “Competent” means the ability of an offeror to satisfy the requirements of the solicitation. This determination is based on a comprehensive assessment of each offeror's proposal including consideration of the specific areas of evaluation criteria in the relative order of importance described in the solicitation.

(2) “Foreign firm” means a business entity owned or controlled by one or more foreign nationals or a business entity in which more than 50 percent of the stock is owned or controlled by one or more foreign nationals.

(3) “U.S. firm” means a business entity other than a foreign firm.

(b) Except as provided in paragraph (c) of this provision, the Department of Defense will not enter into or carry out any contract, including any contract awarded as a result of a broad agency announcement, with a foreign government or firm if the contract provides for the conduct of research, development, test, or evaluation in connection with the Ballistic Missile Defense Program. However, foreign governments and firms are encouraged to submit offers, since this provision is not intended to restrict access to unique foreign expertise if the contract will require a level of competency unavailable in the United States or its outlying areas.

(c) This prohibition does not apply to a foreign government or firm if—

(1) The contract will be performed within the United States or its outlying areas;

(2) The contract is exclusively for research, development, test, or evaluation in connection with antitactical ballistic missile systems;

(3) The foreign government or firm agrees to share a substantial portion of the total contract cost. The foreign share is considered substantial if it is equitable with respect to the relative benefits that the United States and the foreign parties will derive from the contract. For example, if the contract is more beneficial to the foreign party, its share of the costs should be correspondingly higher; or

(4) The U.S. Government determines that a U.S. firm cannot competently perform the contract at a price equal to or less than the price at which a foreign government or firm can perform the contract.

(d) The offeror (____) is (____) is not a U.S. firm.

(End of provision)

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252.225-7019 Restriction on Acquisition of Anchor and Mooring Chain.

As prescribed in 225.7007-3, use the following clause:

RESTRICTION ON ACQUISITION OF ANCHOR AND MOORING CHAIN (DEC 2009)

(a) “Component,” as used in this clause, means an article, material, or supply incorporated directly into an end product.

(b) Welded shipboard anchor and mooring chain, four inches or less in diameter, 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, four inches or less in diameter.

(End of clause)

252.225-7020 Trade Agreements Certificate.

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

TRADE AGREEMENTS CERTIFICATE (JAN 2005)

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

(b) *Evaluation.* The Government—

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

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(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 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 (DEC 2010)

As prescribed in 225.1101(5)(ii), substitute the following paragraphs (a), (b)(2), and (c) for paragraph (a), (b)(2), and (c) of the basic clause:

(a) *Definitions.* “Designated country end product,” “nondesignated country end product,” “qualifying country end product,” “South Caucasus/Central and South Asian (SC/CASA) state,” “South Caucasus/Central and South Asian (SC/CASA) state end product,” and “U.S.-made end product” have the meanings given in the Trade Agreements clause of this solicitation.

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

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

(1) For all line items subject to the Trade Agreement clause of this solicitation, the offeror certifies that each end product to be delivered under this contract, except those listed in paragraph (c)(2)(ii) of this provision, is a U.S.-made, qualifying country, SC/CASA state, or designated country end product.

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(2)(i) The following supplies are SC/CASA state end products:

(Line Item Number) (Country of Origin)

(ii) The following are other nondesignated country end products:

(Line Item Number) (Country of Origin)

252.225-7021 Trade Agreements.

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

TRADE AGREEMENTS (NOV 2009)

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

(1) “Caribbean Basin country end product”—

(i) Means an article that—

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

(B) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself; and

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

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

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

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

(2) “Component” means an article, material, or supply incorporated directly into an end product.

(3) “Designated country” means—

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

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

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

(iv) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago).

(4) “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.

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(5) “End product” means those articles, materials, and supplies to be acquired under this contract for public use.

(6) “Free Trade Agreement country end product” means an article that—

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

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(7) “Least developed country end product” means an article that—

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

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(8) “Nondesignated country end product” means any end product that is not a U.S.-made end product or a designated country end product.

(9) “Qualifying country” means any country set forth in subsection 225.872-1 of the Defense Federal Acquisition Regulation Supplement.

(10) “Qualifying country end product” means—

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

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(ii) An end product manufactured in a qualifying country if the cost of the following types of components exceeds 50 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.

(11) “United States” means the 50 States, the District of Columbia, and outlying areas.

(12) “U.S.-made end product” means an article that—

(i) Is mined, produced, or manufactured in the United States; or

(ii) Is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

(13) “WTO GPA country end product” means an article that—

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

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

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

(c) The Contractor shall deliver under this contract only U.S.-made, qualifying country, or designated country end products unless—

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

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

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

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

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

(End of clause)

ALTERNATE I (SEP 2008)

As prescribed in 225.1101(6)(ii), add the following paragraph (a)(14) to the basic clause and substitute the following paragraph (c) for paragraph (c) of the basic clause:

(a)(14) "Iraqi end product" means an article that—

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

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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.

(c) The Contractor shall deliver under this contract only U.S.-made, qualifying country, Iraqi, 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, Iraqi, 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.

ALTERNATE II (DEC 2010)

As prescribed in 225.1101(6)(iii), add the following new definitions to paragraph (a), substitute the following paragraph (c) for paragraph (c) of the basic clause, and add the following paragraph (d):

(a)(14) "South Caucasus/Central and South Asian (SC/CASA) state" means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

(15) "South Caucasus/Central and South Asian (SC/CASA) state end product" means an article that—

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

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(c) The Contractor shall deliver under this contract only U.S.-made, qualifying country, SC/CASA state, or designated country end products unless—

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(1) In its offer, the Contractor specified delivery of other nondesignated country end products in the Trade Agreements Certificate provision of the solicitation; and

(2)(i) Offers of U.S.-made, qualifying country, SC/CASA state, or designated country end products from responsive, responsible offerors are either not received or are insufficient to fill the Government's requirements; or

(ii) A national interest waiver has been granted.

(d) If the Contractor is from an SC/CASA state, the Contractor shall inform its government of its participation in this acquisition and that it generally will not have such opportunity in the future unless its government provides reciprocal procurement opportunities to U.S. products and services and suppliers of such products and services.

252.225-7022 Trade Agreements Certificate – Inclusion of Iraqi End Products.

As prescribed in 225.1101(7), use the following provision:

TRADE AGREEMENTS CERTIFICATE – INCLUSION OF IRAQI END PRODUCTS (SEP 2008)

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

(b) *Evaluation.* The Government—

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

(2) Will consider only offers of end products that are U.S.-made, qualifying country, Iraqi, 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.*

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(1) For all line items subject to the Trade Agreements clause of this solicitation, the offeror certifies that each end product to be delivered under a contract resulting from this solicitation, except those listed in paragraph (c)(2) of this provision, is a U.S.-made, qualifying country, Iraqi, or designated country end product.

(2) The following supplies are other nondesignated country end products:

(Line Item Number) (Country of Origin)

(End of provision)

252.225-7023 Preference for Products or Services from Iraq or Afghanistan.

As prescribed in 225.7703-5(a), use the following provision:

PREFERENCE FOR PRODUCTS OR SERVICES FROM IRAQ OR AFGHANISTAN (APR 2010)

(a) *Definitions.* “Product from Iraq or Afghanistan” and “service from Iraq or Afghanistan,” as used in this provision, are defined in the clause of this solicitation entitled “Requirement for Products or Services from Iraq or Afghanistan” (DFARS 252.225-7024).

(b) *Representation.* The offeror represents that all products or services to be delivered under a contract resulting from this solicitation are products from Iraq or Afghanistan or services from Iraq or Afghanistan, except those listed in—

(1) Paragraph (c) of this provision; or

(2) Paragraph (c)(2) of the provision entitled “Trade Agreements Certificate,” or “Trade Agreements Certificate – Inclusion of Iraqi End Products,” if included in this solicitation.

(c) *Other products or services.* The following offered products or services are not products from Iraq or Afghanistan or services from Iraq or Afghanistan:

(Line Item Number) (Country of Origin)

(d) *Evaluation.* For the purpose of evaluating competitive offers, the Contracting Officer will increase by 50 percent the prices of offers of products or services that are not products or services from Iraq or Afghanistan.

(End of provision)

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252.225-7024 Requirement for Products or Services from Iraq or Afghanistan.

As prescribed in 225.7703-5(b), use the following clause:

REQUIREMENT FOR PRODUCTS OR SERVICES FROM IRAQ OR AFGHANISTAN (APR 2010)

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

(1) “Product from Iraq or Afghanistan” means a product that is mined, produced, or manufactured in Iraq or Afghanistan.

(2) “Service from Iraq or Afghanistan” means a service including construction that is performed in Iraq or Afghanistan predominantly by citizens or permanent resident aliens of Iraq or Afghanistan.

(b) The Contractor shall provide only products from Iraq or Afghanistan or services from Iraq or Afghanistan under this contract, unless, in its offer, it specified that it would provide products or services other than products from Iraq or Afghanistan or services from Iraq or Afghanistan.

(End of clause)

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

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(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 Acquisition Restricted to Products or Services from Iraq or Afghanistan.

As prescribed in 225.7703-5(c), use the following clause:

ACQUISITION RESTRICTED TO PRODUCTS OR SERVICES FROM IRAQ OR AFGHANISTAN (APR 2010)

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

(1) “Product from Iraq or Afghanistan” means a product that is mined, produced, or manufactured in Iraq or Afghanistan.

(2) “Service from Iraq or Afghanistan” means a service including construction that is performed in Iraq or Afghanistan predominantly by citizens or permanent resident aliens of Iraq or Afghanistan.

(b) The Contractor shall provide only products from Iraq or Afghanistan or services from Iraq or Afghanistan under this contract.

(End of clause)

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

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(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)

252.225-7029 Reserved.

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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.

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(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 225.1101(8), 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

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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 225.1101(9), 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.

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(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 Act—Free Trade Agreements—Balance of Payments Program Certificate.

As prescribed in 225.1101(10)(i), use the following provision:

BUY AMERICAN ACT—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM CERTIFICATE (DEC 2010)

(a) *Definitions.* “Bahrainian end product,” “commercially available off-the-shelf (COTS) item,” “component,” “domestic end product,” “Free Trade Agreement country,” “Free Trade Agreement country end product,” “foreign end product,” “Moroccan end product,” “Peruvian end product,” “qualifying country end product,” and “United States,” as used in this provision, have the meanings given in the Buy American Act—Free Trade Agreements—Balance of Payments Program clause of this solicitation.

(b) *Evaluation.* The Government—

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

(2) For line items subject to Free Trade Agreements, will evaluate offers of qualifying country end products or Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, or Peruvian end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program.

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

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

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certifies that—

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

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

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

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

(Line Item Number)

(Country of Origin)

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

(Line Item Number)

(Country of Origin)

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

(Line Item Number)

(Country of Origin (If known))

(End of provision)

ALTERNATE I (DEC 2010)

As prescribed in 225.1101(10)(ii), substitute the phrase “Canadian end product” for the phrases “Bahrainian end product,” “Free Trade Agreement country,” “Free Trade Agreement country end product,” “Moroccan end product,” and “Peruvian end products” in paragraph (a) of the basic provision; and substitute the phrase “Canadian end products” for the phrase “Free Trade Agreement country end products other than Bahrainian end products or Moroccan end products” in paragraphs (b)(2) and (c)(2)(ii) of the basic provision; and delete the phrase “Australian or” from paragraph (c)(2)(i) of the basic provision.

ALTERNATE II (DEC 2010)

As prescribed in 225.1101(10)(iii), add the terms “South Caucasus/Central and South

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Asian (SC/CASA) state” and “South Caucasus/Central and South Asian (SC/CASA) state end product” in paragraph (a) and substitute the following paragraphs (b)(2) and (c)(2)(i) for paragraphs (b)(2) and (c)(2)(i) of the basic clause.

(b)(2) For line items subject to Free Trade Agreements, will evaluate offers of qualifying country end products, SC/CASA state end products, or Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, or Peruvian end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program.

(c)(2)(i) The offeror certifies that the following supplies are qualifying country (except Australian or Canadian) or SC/CASA state end products:

(Line Item Number) (Country of Origin)

(End of provision)

ALTERNATE III (DEC 2010)

As prescribed in 225.1101(10)(iv), substitute the following paragraphs (a), (b)(2), (c)(2)(i), and (c)(2)(ii) for paragraphs (a), (b)(2), (c)(2)(i), and (c)(2)(ii) of the basic clause:

(a) *Definitions.* “Canadian end product,” “commercially available off-the-shelf (COTS) item,” “domestic end product,” “foreign end product,” “qualifying country end product,” “South Caucasus/Central and South Asian (SC/CASA) state end product,” and “United States” have the meanings given in the Buy American Act—Free Trade Agreements—Balance of Payments Program clause of this solicitation.

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

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

(Line Item Number) (Country of Origin)

(ii) The offeror certifies that the following supplies are Canadian end products:

(Line Item Number) (Country of Origin)

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

As prescribed in 225.1101(11)(i)(A), use the following clause:

BUY AMERICAN ACT—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM (DEC 2010)

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

(1) “Bahrainian end product” means an article that—

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

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(2) “Commercially available off-the-shelf (COTS) item”—

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

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

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

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

(ii) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. 40102), such as agricultural products and petroleum products.

(3) “Component” means an article, material, or supply incorporated directly into an end product.

(4) “Domestic end product” means—

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

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

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

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

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

(B) The end product is a COTS item.

(5) “End product” means those articles, materials, and supplies to be acquired under this contract for public use.

(6) “Foreign end product” means an end product other than a domestic end product.

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

(8) “Free Trade Agreement country end product” means an article that—

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

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of

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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.

(9) “Moroccan end product” means an article that—

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

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Morocco into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(10) “Peruvian end product” means an article that—

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

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Peru into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(11) “Qualifying country” means any country set forth in the definition of “qualifying country” in Defense Federal Acquisition Regulation Supplement 225.003.

(12) “Qualifying country component” means a component mined, produced, or manufactured in a qualifying country.

(13) “Qualifying country end product” means—

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

(ii) An end product manufactured in a qualifying country if the cost of the following types of components exceeds 50 percent of the cost of all its components:

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(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.

(14) “United States” means the 50 States, the District of Columbia, and outlying areas.

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

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, Free Trade Agreement country end products other than Bahrainian end products or Moroccan end products, or other foreign end products in the Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product or a Free Trade Agreement country end product other than a Bahrainian end product or a Moroccan end product, the Contractor shall deliver a qualifying country end product, a Free Trade Agreement country end product other than a Bahrainian end product or a Moroccan 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 (JUL 2009)

As prescribed in 225.1101(11)(i)(B), substitute the following paragraphs (a)(8) and (c) for paragraphs (a)(8) and (c) of the basic clause:

(a)(8) “Canadian end product,” means an article that—

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

(ii) In the case of an article that consists in whole or in part of materials

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from another country, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country, Canadian, or other foreign end products in the Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product or a Canadian end product, the Contractor shall deliver a qualifying country end product, a Canadian end product, or, at the Contractor's option, a domestic end product.

ALTERNATE II (DEC 2010)

As prescribed in 225.1101(11)(i)(A), add the following new definitions to paragraph (a) and substitute the following paragraph (c) for paragraph (c) of the basic clause:

(a)(14) “South Caucasus/Central and South Asian (SC/CASA) state” means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

(15) “South Caucasus/Central and South Asian (SC/CASA) state end product” means an article that—

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

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, SC/CASA state end products, Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, or Peruvian end products, or other foreign end products in the Buy American Act—Free Trade Agreements—Balance of Payments

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Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, SC/CASA state end products, or a Free Trade Agreement country end product other than a Bahrainian end product, a Moroccan end product, or a Peruvian end product, the Contractor shall deliver a qualifying country end product, an SC/CASA state end product, a Free Trade Agreement country end product other than a Bahrainian end product, a Moroccan end product, or a Peruvian end product or, at the Contractor's option, a domestic end product.

ALTERNATE III (DEC 2010)

As prescribed in 225.1101(11)(i)(B), add the following definitions to paragraph (a) and substitute the following paragraph (c) for paragraph (c) of the basic clause:

(a)(14) "Canadian end product," means an article that—

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

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

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

(16) "South Caucasus/Central and South Asian (SC/CASA) state end product" means an article that—

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

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

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

252.225-7037 Evaluation of Offers for Air Circuit Breakers.

As prescribed in 225.7006-4(a), use the following provision:

EVALUATION OF OFFERS FOR AIR CIRCUIT BREAKERS (JUN 2005)

(a) The offeror shall specify, in its offer, any intent to furnish air circuit breakers that are not manufactured in the United States or its outlying areas, Canada, or the United Kingdom.

(b) The Contracting Officer will evaluate offers by adding a factor of 50 percent to the offered price of air circuit breakers that are not manufactured in the United States or its outlying areas, Canada, or the United Kingdom.

(End of provision)

252.225-7038 Restriction on Acquisition of Air Circuit Breakers.

As prescribed in 225.7006-4(b), use the following clause:

RESTRICTION ON ACQUISITION OF AIR CIRCUIT BREAKERS (JUN 2005)

Unless otherwise specified in its offer, the Contractor shall deliver under this contract air circuit breakers manufactured in the United States or its outlying areas, Canada, or the United Kingdom.

(End of clause)

252.225-7039 Reserved.

252.225-7040 Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States.

As prescribed in 225.7402-5(a), use the following clause:

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CONTRACTOR PERSONNEL AUTHORIZED TO ACCOMPANY U.S. ARMED FORCES DEPLOYED OUTSIDE THE UNITED STATES (JUL 2009)

(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.

“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.

“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.

“Subordinate joint force commander” means a sub-unified commander or joint task force commander.

(b) *General.*

(1) This clause applies when Contractor personnel are authorized to accompany U.S. Armed Forces deployed outside the United States in—

(i) Contingency operations;

(ii) Humanitarian or peacekeeping operations; or

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

(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) Contractor personnel are civilians accompanying the U.S. Armed Forces.

(i) Except as provided in paragraph (b)(3)(ii) of this clause, Contractor personnel are only authorized to use deadly force in self-defense.

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(ii) Contractor personnel performing security functions are also authorized to use deadly force when such force reasonably appears necessary to execute their security mission to protect assets/persons, consistent with the terms and conditions contained in their contract or with their job description and terms of employment.

(iii) Unless immune from host nation jurisdiction by virtue of an international agreement or international law, inappropriate use of force by contractor personnel authorized to accompany 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).

(4) 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) The Contracting Officer shall include in the contract the level of protection to be provided to Contractor personnel.

(iii) In appropriate cases, the Combatant Commander may provide security through military means, commensurate with the level of security provided DoD civilians.

(2)(i) Generally, all Contractor personnel authorized to accompany the U.S. Armed Forces in the designated operational area are authorized to receive resuscitative care, stabilization, hospitalization at level III military treatment facilities, and assistance with patient movement in emergencies where loss of life, limb, or eyesight could occur. 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

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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 unless specified elsewhere in this contract.

(3) 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.

(4) Contractor personnel must have a letter of authorization issued 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.

(d) *Compliance with laws and regulations.*

(1) The Contractor shall comply with, and shall ensure that its personnel authorized to accompany 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.

(e) *Pre-deployment requirements.*

(1) The Contractor shall ensure that the following requirements are met prior

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to deploying personnel authorized to accompany U.S. Armed Forces. Specific requirements for each category may 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 deploying personnel meet the minimum medical screening requirements and have received all required immunizations as specified in the contract. The Government will provide, at no cost to the Contractor, any theater-specific immunizations and/or medications not available to the general public.

(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. Any Common Access Card issued to deploying personnel shall contain the access permissions allowed by the letter of authorization issued in accordance with paragraph (c)(4) of this clause.

(iv) Special area, country, and theater clearance is obtained for personnel. Clearance requirements are in DoD Directive 4500.54, Official Temporary Duty Abroad, and DoD 4500.54-G, DoD Foreign Clearance Guide. Contractor personnel are considered non-DoD personnel traveling under DoD sponsorship.

(v) All 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 Contractor personnel authorized to accompany U.S. Armed Forces deployed outside the United States. The basic training will be provided through—

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(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, Contractor personnel authorized to accompany U.S. Armed Forces in the field are subject to the jurisdiction of the Uniform Code of Military Justice under 10 U.S.C. 802(a)(10).

(f) *Processing and departure points.* Deployed Contractor personnel 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

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(3) Process through a Joint Reception Center (JRC) upon arrival at the deployed location. The JRC 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 enter before deployment and maintain data for all Contractor personnel that are authorized to accompany U.S. Armed Forces deployed outside the United States as specified in paragraph (b)(1) of this clause. The Contractor shall use the Synchronized Predeployment and Operational Tracker (SPOT) web-based system, at <http://www.dod.mil/bta/products/spot.html>, to enter and maintain the data.

(2) The Contractor shall ensure that all employees in the database have a current DD Form 93, Record of Emergency Data Card, on file with both the Contractor and the designated Government official. The Contracting Officer will inform the Contractor of the Government official designated to receive this data card.

(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 have a plan on file showing how the Contractor would replace employees who are unavailable for deployment or who need to be replaced during deployment. The Contractor shall keep this plan current and shall provide a copy to the Contracting Officer upon request. The plan shall—

(i) Identify all personnel who are subject to military mobilization;

(ii) Detail how the position would be filled if the individual were mobilized;

and

(iii) Identify all personnel who occupy a position that the Contracting Officer has designated as mission essential.

(3) Contractor personnel shall report to the Combatant Commander or a designee, or through other channels such as the military police, a judge advocate, or an

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inspector general, any suspected or alleged conduct for which there is credible information that such conduct—

(i) Constitutes violation of the law of war; or

(ii) Occurred during any other military operations and would constitute a violation of the law of war if it occurred during an armed conflict.

(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, the request shall be made through the Contracting Officer to the Combatant Commander, in accordance with DoD Instruction 3020.41, paragraph 6.3.4.1 or, if the contract is for security services, paragraph 6.3.5.3. 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 the Contracting Officer, subject to the approval of the Combatant Commander, authorizes the carrying of weapons—

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(i) The Contracting Officer may authorize the Contractor to issue Contractor-owned weapons and ammunition to specified employees; or

(ii) The [Contracting Officer to specify the appropriate individual, e.g., Contracting Officer's Representative, Regional Security Officer] may issue Government-furnished weapons and ammunition to the Contractor for issuance to specified Contractor employees.

(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; and

(iii) Adhere to all guidance and orders issued by the Combatant Commander regarding possession, use, safety, and accountability of weapons and ammunition.

(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

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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.* Mortuary affairs for Contractor personnel who die while accompanying the U.S. Armed Forces will be handled in accordance with DoD Directive 1300.22, Mortuary Affairs Policy.

(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 authorized to accompany 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

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Combatant Commander.

(End of clause)

252.225-7041 Correspondence in English.

As prescribed in 225.1103(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 225.1103(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)

252.225-7043 Antiterrorism/Force Protection for Defense Contractors Outside the United States

As prescribed in 225.7403-2, use the following clause:

ANTITERRORISM/FORCE PROTECTION POLICY FOR DEFENSE CONTRACTORS OUTSIDE THE UNITED STATES (MAR 2006)

(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

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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 225.7403-1).

(End of clause)

252.225-7044 Balance of Payments Program—Construction Material.

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

BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL (OCT 2010)

(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 item (as defined in paragraph (1) of the definition of “commercial item” 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

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(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.

“Domestic construction material” means—

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

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

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

(ii) The construction material is a COTS item.

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

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(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 item; or

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

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

(End of clause)

ALTERNATE I (DEC 2010) As prescribed in 225.7503(a)(2), add the following definitions to paragraph (a) and replace the phrase “domestic construction material” in the second sentence of paragraph (b) with the phrase “domestic construction material or SC/CASA state construction material.”

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

“SC/CASA state construction material” means construction material that—

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

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

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

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

BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL UNDER TRADE AGREEMENTS (JAN 2009)

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

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(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 item (as defined in paragraph (1) of the definition of “commercial item” 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 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

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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.

“Designated country” means—

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

(2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, 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, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, 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—

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

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

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

(ii) The construction material is a COTS item.

“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.

“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

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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 item; or

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

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

(End of clause)

ALTERNATE I (DEC 2010).

As prescribed in 225.7503(b)(2), add the following definition of “Bahrainian or Mexican construction material” to paragraph (a) of the basic clause, and substitute the following paragraphs (b) and (c) for paragraphs (b) and (c) of the basic clause:

“Bahrainian 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.

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

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Payments Program restrictions are waived for designated country construction material other than Bahrainian or Mexican construction material.

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

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

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

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

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

ALTERNATE II (DEC 2010) As prescribed in 225.7503(b)(3), add the following definitions to paragraph (a); substitute the following paragraph (b) and the introductory text of paragraph (c) for paragraph (b) and the introductory text of paragraph (c) of the basic clause; and add the following paragraph (d):

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

“SC/CASA state construction material” means construction material that—

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

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

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

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

(d) The Contractor shall inform its government of its participation in this acquisition and that it generally will not have such opportunity in the future unless its government provides reciprocal procurement opportunities to U.S. products and services and suppliers of such products and services.

ALTERNATE III (DEC 2010)

As prescribed in 225.7503(b)(4), add the following definitions to paragraph(a); substitute the following paragraph (b) and the introductory text of paragraph (c) for paragraph (b) and the introductory text of paragraph (c) of the basic clause; and add the following paragraph (d):

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

“SC/CASA state construction material” means construction material that—

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

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

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

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

(d) The Contractor shall inform its government of its participation in this acquisition and that it generally will not have such opportunity in the future unless

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its government provides reciprocal procurement opportunities to U.S. products and services and suppliers of such products and services.