

(Revised June 26, 2015)

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(Revised June 26, 2015)

201.301 Policy.

(a)(1) DoD implementation and supplementation of the FAR is issued in the Defense Federal Acquisition Regulation Supplement (DFARS) under authorization and subject to the authority, direction, and control of the Secretary of Defense. The DFARS contains—

- (i) Requirements of law;
- (ii) DoD-wide policies;
- (iii) Delegations of FAR authorities;
- (iv) Deviations from FAR requirements; and

(v) Policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors.

(2) Relevant procedures, guidance, and information that do not meet the criteria in paragraph (a)(1) of this section are issued in the DFARS Procedures, Guidance, and Information (PGI).

(b) When Federal Register publication is required for any policy, procedure, clause, or form, the department or agency requesting Under Secretary of Defense (Acquisition, Technology, and Logistics) (USD(AT&L)) approval for use of the policy, procedure, clause, or form (see [201.304\(1\)](#)) must include an analysis of the public comments in the request for approval. Information on determining when a clause requires publication in the Federal Register and approval in accordance with [201.304\(1\)](#) is provided at [PGI 201.301\(b\)](#).

201.303 Publication and codification.

(a)(i) The DFARS is codified under chapter 2 in Title 48, Code of Federal Regulations.

(ii) To the extent possible, all DFARS text (whether implemental or supplemental) is numbered as if it were implemental. Supplemental numbering is used only when the text cannot be integrated intelligibly with its FAR counterpart.

(A) Implemental numbering is the same as its FAR counterpart, except when the text exceeds one paragraph, the subdivisions are numbered by skipping a unit in the FAR 1.105-2(b)(2) prescribed numbering sequence. For example, three paragraphs implementing FAR 19.501 would be numbered [219.501\(1\)](#), (2), and (3) rather than (a), (b), and (c). Three paragraphs implementing FAR 19.501(a) would be numbered [219.501\(a\)\(i\)](#), (ii), and (iii) rather than (a)(1), (2), and (3). Further subdivision of the paragraphs follows the prescribed numbering sequence, e.g., [219.501\(1\)\(i\)\(A\)\(1\)\(i\)](#).

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(B) Supplemental numbering is the same as its FAR counterpart, with the addition of a number of 70 and up or (S-70) and up. Parts, subparts, sections, or subsections are supplemented by the addition of a number of 70 and up. Lower divisions are supplemented by the addition of a number of (S-70) and up. When text exceeds one paragraph, the subdivisions are numbered using the FAR 1.105-2(b)(2) prescribed sequence, without skipping a unit. For example, DFARS text supplementing FAR 19.501 would be numbered 219.501-70. Its subdivisions would be numbered 219.501-70(a), (b), and (c).

(C) Subdivision numbering below the 4th level does not repeat the numbering sequence. It uses italicized Arabic numbers and then italicized lower case Roman numerals.

(D) An example of DFARS numbering is in Table 1-1, DFARS Numbering.

(iii) Department/agency and component supplements must parallel the FAR and DFARS numbering, except department/agency supplemental numbering uses subsection numbering of 90 and up, instead of 70 and up.

FAR	Is Implemented As	Is Supplemented As
19	219	219.70
19.5	219.5	219.570
19.501	219.501	219.501-70
19.501-1	219.501-1	219.501-1-70
19.501-1(a)	219.501-1(a)	219.501-1(a)(S-70)
19.501-1(a)(1)	219.501-1(a)(1)	219.501-1(a)(1)(S-70)

201.304 Agency control and compliance procedures.

Departments and agencies and their component organizations may issue acquisition regulations as necessary to implement or supplement the FAR or DFARS.

(1)(i) Approval of the USD(AT&L) is required before including in a department/agency or component supplement, or any other contracting regulation document such as a policy letter or clause book, any policy, procedure, clause, or form that—

(A) Has a significant effect beyond the internal operating procedures of the agency; or

(B) Has a significant cost or administrative impact on contractors or offerors.

(ii) Except as provided in paragraph (2) of this section, the USD(AT&L) has delegated authority to the Director of Defense Procurement and Acquisition Policy (OUSD(AT&L)DPAP) to approve or disapprove the policies, procedures, clauses, and forms subject to paragraph (1)(i) of this section.

(2) In accordance with 41 U.S.C. 1304, a new requirement for a certification by a

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contractor or offeror may not be included in a department/agency or component procurement regulation unless—

- (i) The certification requirement is specifically imposed by statute; or
 - (ii) Written justification for such certification is provided to the Secretary of Defense by USD(AT&L), and the Secretary of Defense approves in writing the inclusion of such certification requirement.
- (3) Contracting activities must obtain the appropriate approval (see [201.404](#)) for any class deviation (as defined in FAR Subpart 1.4) from the FAR or DFARS, before its inclusion in a department/agency or component supplement or any other contracting regulation document such as a policy letter or clause book.
- (4) Each department and agency must develop and, upon approval by OUSD(AT&L)DPAP, implement, maintain, and comply with a plan for controlling the use of clauses other than those prescribed by FAR or DFARS. Additional information on department and agency clause control plan requirements is available at [PGI 201.304\(4\)](#).
- (5) Departments and agencies must submit requests for the Secretary of Defense, USD(AT&L), and OUSD(AT&L)DPAP approvals required by this section through the Director of the DAR Council. Procedures for requesting approval of department and agency clauses are provided at [PGI 201.304\(5\)](#).
- (6) The Director of Defense Procurement and Acquisition Policy publishes changes to the DFARS in the Federal Register and electronically via the World Wide Web. Each change includes an effective date. Unless guidance accompanying a change states otherwise, contracting officers must include any new or revised clauses, provisions, or forms in solicitations issued on or after the effective date of the change.

SUBPART 204.8—CONTRACT FILES

(Revised June 26, 2015)

204.802 Contract files.

Official contract files shall consist of—

(1) Only original, authenticated or conformed copies of contractual instruments—

(i) “Authenticated copies” means copies that are shown to be genuine in one of two ways—

(A) Certification as true copy by signature of an authorized person; or

(B) Official seal.

(ii) “Conformed copies” means copies that are complete and accurate, including the date signed and the names and titles of the parties who signed them.

(2) Signed or official record copies of correspondence, memoranda, and other documents.

204.804 Closeout of contract files.

(1) Contracting officers shall close out contracts in accordance with the procedures at [PGI 204.804](#). The closeout date for file purposes shall be determined and documented by the procuring contracting officer.

(2) The head of the contracting activity shall assign the highest priority to close out of contracts awarded for performance in a contingency area. Heads of contracting activities must monitor and assess on a regular basis the progress of contingency contract closeout activities and take appropriate steps if a backlog occurs. For guidance on the planning and execution of closing out such contracts, see [PGI 207.105\(b\)\(20\)\(C\)\(8\)](#) and [PGI 225.373\(e\)](#).

204.805 Disposal of contract files.

(1) The sources of the period for which official contract files must be retained are General Records Schedule 3 (Procurement, Supply, and Grant Records) and General Records Schedule 6 (Accountable Officers' Accounts Records). Copies of the General Records Schedule may be obtained from the National Archives and Records Administration, Washington, DC 20408.

(2) Deviations from the periods cannot be granted by the Defense Acquisition Regulations Council. Forward requests for deviations to both the Government Accountability Office and the National Archives and Records Administration.

(3) Hold completed contract files in the office responsible for maintaining them for a period of 12 months after completion. After the initial 12 month period, send the records to the local records holding or staging area until they are eligible for destruction. If no space is available locally, transfer the files to the General Services Administration Federal Records Center that services the area.

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(4) Duplicate or working contract files should contain no originals of materials that properly belong in the official files. Destroy working files as soon as practicable once they are no longer needed.

(5) Retain pricing review files, containing documents related to reviews of the contractor's price proposals, subject to certified cost or pricing data (see FAR 15.403-4), for six years. If it is impossible to determine the final payment date in order to measure the six-year period, retain the files for nine years.

**SUBPART 212.3—SOLICITATION PROVISIONS AND CONTRACT CLAUSES
FOR THE ACQUISITION OF COMMERCIAL ITEMS**

(Revised June 26, 2015)

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

See DoD Class Deviation [2013-O0019](#), Commercial Item Omnibus Clause for Acquisitions Using the Standard Procurement System, issued September 25, 2013. This class deviation allows the contracting officer to use the SPS clause logic capability to automatically select the clauses that are applicable to the specific solicitation and contract. The contracting officer shall ensure that the deviation clause is incorporated into these solicitations and contracts because the deviation clause fulfills the statutory requirements on auditing and subcontract clauses applicable to commercial items. The deviation also authorizes adjustments to the deviation clause required by future changes to the clause at 52.212-5 that are published in the FAR. This deviation is effective for five years, or until otherwise rescinded.

(f) The following additional provisions and clauses apply to DoD solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items. If the offeror has completed any of the following provisions listed in this paragraph electronically as part of its annual representations and certifications at <https://www.acquisition.gov>, the contracting officer shall consider this information instead of requiring the offeror to complete these provisions for a particular solicitation.

(i) *Part 203—Improper Business Practices and Personal Conflicts of Interest.*

(A) Use the FAR clause at 52.203-3, Gratuities, as prescribed in FAR 3.202, to comply with 10 U.S.C. 2207.

(B) Use the clause at [252.203-7000](#), Requirements Relating to Compensation of Former DoD Officials, as prescribed in [203.171-4\(a\)](#), to comply with section 847 of Pub. L. 110-181.

(C) Use the clause at [252.203-7003](#), Agency Office of the Inspector General, as prescribed in [203.1004\(a\)](#), to comply with section 6101 of Pub. L. 110-252 and 41 U.S.C. 3509.

(D) Use the provision at [252.203-7005](#), Representation Relating to Compensation of Former DoD Officials, as prescribed in [203.171-4\(b\)](#).

(ii) *Part 204—Administrative Matters.*

(A) Use the provision at [252.204-7011](#), Alternative Line Item Structure, as prescribed in [204.7109\(b\)](#).

(B) Use the clause at [252.204-7012](#), Safeguarding of Unclassified Controlled Technical Information, as prescribed in [204.7303](#).

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(C) Use the provision at [252.204-7013](#), Limitations on the Use or Disclosure of Information by Litigation Support Solicitation Offerors, as prescribed in [204.7403\(a\)](#), to comply with 10 U.S.C. 129d.

(D) Use the clause at [252.204-7014](#), Limitations on the Use or Disclosure of Information by Litigation Support Contractors, as prescribed in [204.7403\(b\)](#), to comply with 10 U.S.C. 129d.

(E) Use the clause at [252.204-7015](#), Disclosure of Information to Litigation Support Contractors, as prescribed in [204.7403\(c\)](#), to comply with 10 U.S.C. 129d.

(iii) *Part 205—Publicizing Contract Actions.*

Use the clause at [252.205-7000](#), Provision of Information to Cooperative Agreement Holders, as prescribed in [205.470](#), to comply with 10 U.S.C. 2416.

(iv) *Part 211—Describing Agency Needs.*

(A) Use the clause at [252.211-7003](#), Item Unique Identification and Valuation, as prescribed in [211.274-6\(a\)\(1\)](#).

(B) Use the provision at [252.211-7006](#), Passive Radio Frequency Identification, as prescribed in [211.275-3](#).

(C) Use the clause at [252.211-7007](#), Reporting of Government-Furnished Property, as prescribed in [211.274-6](#).

(D) Use the clause at [252.211-7008](#), Use of Government-Assigned Serial Numbers, as prescribed in [211.274-6\(c\)](#).

(v) *Part 213—Simplified Acquisition Procedures.*

Use the provision at [252.213-7000](#), Notice to Prospective Suppliers on Use of Past Performance Information Retrieval System—Statistical Reporting in Past Performance Evaluations, as prescribed in [213.106-2-70](#).

(vi) *Part 215—Contracting by Negotiation.*

(A) Use the provision at [252.215-7003](#), Requirements for Submission of Data Other Than Certified Cost or Pricing Data—Canadian Commercial Corporation, as prescribed at [215.408\(3\)\(i\)](#).

(B) Use the clause at [252.215-7004](#), Requirement for Submission of Data other Than Certified Cost or Pricing Data—Modifications—Canadian Commercial Corporation, as prescribed at [215.408\(3\)\(ii\)](#).

(C) Use the provision at [252.215-7007](#), Notice of Intent to Resolicit, as prescribed in [215.371-6](#).

(D) Use the provision [252.215-7008](#), Only One Offer, as prescribed at [215.408\(4\)](#).

(vii) *Part 219—Small Business Programs.*

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(A) Use the clause at [252.219-7003](#), Small Business Subcontracting Plan (DoD Contracts), as prescribed in [219.708\(b\)\(1\)\(A\)\(1\)](#), to comply with 15 U.S.C. 637. Use the clause with its Alternate I when prescribed in [219.708\(b\)\(1\)\(A\)\(2\)](#).

(B) Use the clause at [252.219-7004](#), Small Business Subcontracting Plan (Test Program), as prescribed in [219.708\(b\)\(1\)\(B\)](#), to comply with 15 U.S.C. 637 note.

(C) Use the provision at [252.219-7000](#), Advancing Small Business Growth, as prescribed in [219.309\(1\)](#), to comply with 10 U.S.C. 2419.

(viii) *Part 222—Application of Labor Laws to Government Acquisitions.* Use the provision at [252.222-7007](#), Representation Regarding Combating Trafficking in Persons, as prescribed in [222.1771](#).

(ix) *Part 223—Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace.* Use the clause at [252.223-7008](#), Prohibition of Hexavalent Chromium, as prescribed in [223.7306](#).

(x) *Part 225—Foreign Acquisition.*

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

(1) Use the basic provision as prescribed in [225.1101\(1\)\(i\)](#).

(2) Use the alternate I provision as prescribed in [225.1101\(1\)\(ii\)](#).

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

(1) Use the basic clause as prescribed in [225.1101\(2\)\(ii\)](#).

(2) Use the alternate I clause as prescribed in [225.1101\(2\)\(iii\)](#).

(C) Use the clause at [252.225-7008](#), Restriction on Acquisition of Specialty Metals, as prescribed in [225.7003-5\(a\)\(1\)](#), to comply with 10 U.S.C. 2533b.

(D) Use the clause at [252.225-7009](#), Restriction on Acquisition of Certain Articles Containing Specialty Metals, as prescribed in [225.7003-5\(a\)\(2\)](#), to comply with 10 U.S.C. 2533b.

(E) Use the provision at [252.225-7010](#), Commercial Derivative Military Article—Specialty Metals Compliance Certificate, as prescribed in [225.7003-5\(b\)](#), to comply with 10 U.S.C. 2533b.

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(F) Use the clause at [252.225-7012](#), Preference for Certain Domestic Commodities, as prescribed in [225.7002-3\(a\)](#), to comply with 10 U.S.C. 2533a.

(G) Use the clause at [252.225-7015](#), Restriction on Acquisition of Hand or Measuring Tools, as prescribed in [225.7002-3\(b\)](#), to comply with 10 U.S.C. 2533a.

(H) Use the clause at [252.225-7016](#), Restriction on Acquisition of Ball and Roller Bearings, as prescribed in [225.7009-5](#), to comply with section 8065 of Pub. L. 107-117 and the same restriction in subsequent DoD appropriations acts.

(I) Use the clause at [252.225-7017](#), Photovoltaic Devices, as prescribed in [225.7017-4\(a\)](#), to comply with section 846 of Pub. L. 111-383.

(J) Use the provision at [252.225-7018](#), Photovoltaic Devices—Certificate, as prescribed in [225.7017-4\(b\)](#), to comply with section 846 of Pub. L. 111-383.

(K) Use the provision at [252.225-7020](#), Trade Agreements Certificate, to comply with 19 U.S.C. 2501-2518 and 19 U.S.C. 3301 note. Alternate I also implements section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

(1) Use the basic provision as prescribed in [225.1101\(5\)\(i\)](#).

(2) Use the alternate I provision as prescribed in [225.1101\(5\)\(ii\)](#).

(L) Use the clause at [252.225-7021](#), Trade Agreements to comply with 19 U.S.C. 2501-2518 and 19 U.S.C. 3301 note.

(1) Use the basic clause as prescribed in [225.1101\(6\)\(i\)](#).

(2) Use the alternate II clause as prescribed in [225.1101\(6\)\(iii\)](#).

(M) Use the provision at [252.225-7023](#), Preference for Products or Services from Afghanistan, as prescribed in [225.7703-4\(a\)](#), to comply with section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

(N) Use the clause at [252.225-7024](#), Requirement for Products or Services from Afghanistan, as prescribed in [225.7703-4\(b\)](#), to comply with section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

(O) Use the clause at [252.225-7026](#), Acquisition Restricted to Products or Services from Afghanistan, as prescribed in [225.7703-4\(c\)](#), to comply with section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

(P) Use the clause at [252.225-7027](#), Restriction on Contingent Fees for Foreign Military Sales, as prescribed in [225.7307\(a\)](#), to comply with 22 U.S.C. 2779.

(Q) Use the clause at [252.225-7028](#), Exclusionary Policies and Practices of Foreign Governments, as prescribed in [225.7307\(b\)](#), to comply with 22 U.S.C. 2755.

(R) Use the clause at [252.225-7029](#), Acquisition of Uniform Components for Afghan Military or Afghan National Police, as prescribed in [225.7703-4\(d\)](#).

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(S) Use the provision at [252.225-7031](#), Secondary Arab Boycott of Israel, as prescribed in [225.7605](#), to comply with 10 U.S.C. 2410i.

(T) Use the provision at [252.225-7035](#), Buy American—Free Trade Agreements—Balance of Payments Program Certificate, to comply with 41 U.S.C. chapter 83 and 19 U.S.C. 3301 note. Alternates II, III, and V also implement section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

- (1) Use the basic provision as prescribed in [225.1101\(9\)\(i\)](#).
- (2) Use the alternate I provision as prescribed in [225.1101\(9\)\(ii\)](#).
- (3) Use the alternate II provision as prescribed in [225.1101\(9\)\(iii\)](#).
- (4) Use the alternate III provision as prescribed in [225.1101\(9\)\(iv\)](#).
- (5) Use the alternate IV provision as prescribed in [225.1101\(9\)\(v\)](#).
- (6) Use the alternate V provision as prescribed in [225.1101\(9\)\(vi\)](#).

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

- (1) Use the basic clause as prescribed in [225.1101\(10\)\(i\)\(A\)](#).
- (2) Use the alternate I clause as prescribed in [225.1101\(10\)\(i\)\(B\)](#).
- (3) Use the alternate II clause as prescribed in [225.1101\(10\)\(i\)\(C\)](#).
- (4) Use the alternate III clause as prescribed in [225.1101\(10\)\(i\)\(D\)](#).
- (5) Use the alternate IV clause as prescribed in [225.1101\(10\)\(i\)\(E\)](#).
- (6) Use the alternate V clause as prescribed in [225.1101\(10\)\(i\)\(F\)](#).

(V) Use the provision at [252.225-7037](#), Evaluation of Offers for Air Circuit Breakers, as prescribed in [225.7006-4\(a\)](#), to comply with 10 U.S.C. 2534(a)(3).

(W) Use the clause at [252.225-7038](#), Restriction on Acquisition of Air Circuit Breakers, as prescribed in [225.7006-4\(b\)](#), to comply with 10 U.S.C. 2534(a)(3).

(X) Use the clause at [252.225-7039](#), Defense Contractors Performing Private Security Functions Outside the United States, as prescribed in [225.302-6](#), to comply with section 2 of Pub. L. 110-181, as amended.

(Y) Use the clause at [252.225-7040](#), Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States, as prescribed in [225.371-5\(a\)](#).

(Z) Use the clause at [252.225-7043](#), Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States, as prescribed in [225.372-2](#).

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(AA) Use the provision at [252.225-7049](#), Prohibition on Acquisition of Commercial Satellite Services from Certain Foreign Entities—Representations, as prescribed at [225.772-5](#), to comply with 10 U.S.C. 2327(b).

(BB) Use the provision at [252.225-7050](#), Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism, as prescribed in [225.771-5](#), to comply with 10 U.S.C. 2327(b).

(xi) *Part 226--Other Socioeconomic Programs.*
Use the clause at [252.226-7001](#), Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns, as prescribed in [226.104](#), to comply with section 8021 of Pub. L. 107-248 and similar sections in subsequent DoD appropriations acts.

(xii) *Part 227—Patents, Data, and Copyrights.*

(A) Use the clause at [252.227-7013](#), Rights in Technical Data—Noncommercial Items, as prescribed in [227.7103-6\(a\)](#). Use the clause with its Alternate I as prescribed in [227.7103-6\(b\)\(1\)](#). Use the clause with its Alternate II as prescribed in [227.7103-6\(b\)\(2\)](#), to comply with 10 U.S.C. 7317 and 17 U.S.C. 1301, et. seq.

(B) Use the clause at [252.227-7015](#), Technical Data—Commercial Items, as prescribed in [227.7102-4\(a\)\(1\)](#), to comply with 10 U.S.C. 2320. Use the clause with its Alternate I as prescribed in [227.7102-4\(a\)\(2\)](#), to comply with 10 U.S.C. 7317 and 17 U.S.C. 1301, et. seq.

(C) Use the clause at [252.227-7037](#), Validation of Restrictive Markings on Technical Data, as prescribed in [227.7102-4\(c\)](#).

(xiii) *Part 232—Contract Financing.*

(A) Use the clause at [252.232-7003](#), Electronic Submission of Payment Requests and Receiving Reports, as prescribed in [232.7004](#), to comply with 10 U.S.C. 2227.

(B) Use the clause at [252.232-7006](#), Wide Area WorkFlow Payment Instructions, as prescribed in [232.7004\(b\)](#).

(C) Use the clause at [252.232-7009](#), Mandatory Payment by Governmentwide Commercial Purchase Card, as prescribed in [232.1110](#).

(D) Use the clause at [252.232-7010](#), Levies on Contract Payments, as prescribed in [232.7102](#).

(E) Use the clause at [252.232-7011](#), Payments in Support of Emergencies and Contingency Operations, as prescribed in [232.908](#).

(F) Use the provision at [252.232-7014](#), Notification of Payment in Local Currency (Afghanistan), as prescribed in [232.7202](#).

(xiv) *Part 237—Service Contracting.*

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(A) Use the clause at [252.237-7010](#), Prohibition on Interrogation of Detainees by Contractor Personnel, as prescribed in [237.173-5](#), to comply with section 1038 of Pub. L. 111-84.

(B) Use the clause at [252.237-7019](#), Training for Contractor Personnel Interacting with Detainees, as prescribed in [237.171-4](#), to comply with section 1092 of Pub. L. 108-375.

(xv) *Part 239—Acquisition of Information Technology.*

(A) Use the provision at [252.239-7017](#), Notice of Supply Chain Risk, as prescribed in [239.7306\(a\)](#), to comply with section 806 of Pub. L. 111-383, in all solicitations for contracts involving the development or delivery of any information technology, whether acquired as a service or as a supply.

(B) Use the clause at [252.239-7018](#), Supply Chain Risk, as prescribed in [239.7306\(b\)](#), to comply with section 806 of Pub. L. 111-383, in all solicitations and contracts involving the development or delivery of any information technology, whether acquired as a service or as a supply.

(xvi) *Part 243—Contract Modifications.*

Use the clause at [252.243-7002](#), Requests for Equitable Adjustment, as prescribed in [243.205-71](#), to comply with 10 U.S.C. 2410.

(xvii) *Part 244—Subcontracting Policies and Procedures.*

Use the clause at [252.244-7000](#), Subcontracts for Commercial Items, as prescribed in [244.403](#).

(xviii) *Part 246—Quality Assurance.*

(A) Use the clause at [252.246-7003](#), Notification of Potential Safety Issues, as prescribed in [246.371\(a\)](#).

(B) Use the clause at [252.246-7004](#), Safety of Facilities, Infrastructure, and Equipment for Military Operations, as prescribed in [246.270-4](#), to comply with section 807 of Pub. L. 111-84.

(xix) *Part 247—Transportation.*

(A) Use the clause at [252.247-7003](#), Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer, as prescribed in [247.207](#), to comply with section 884 of Pub. L. 110-417.

(B) Use the provision at [252.247-7022](#), Representation of Extent of Transportation by Sea, as prescribed in [247.574\(a\)](#).

(C) Use the basic or one of the alternates of the clause at [252.247-7023](#), Transportation of Supplies by Sea, as prescribed in [247.574\(b\)](#), to comply with the Cargo Preference Act of 1904 (10 U.S.C. 2631(a)).

(1) Use the basic clause as prescribed in [247.574\(b\)\(1\)](#).

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(2) Use the alternate I clause as prescribed in [247.574\(b\)\(2\)](#).

(3) Use the alternate II clause as prescribed in [247.574\(b\)\(3\)](#).

(D) Use the clause at [252.247-7024](#), Notification of Transportation of Supplies by Sea, as prescribed in [247.574\(c\)](#).

(E) Use the clause [252.247-7025](#), Reflagging or Repair Work, as prescribed in [247.574\(d\)](#), to comply with 10 U.S.C. 2631(b).

(F) Use the provision at [252.247-7026](#), Evaluation Preference for Use of Domestic Shipyards—Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade, as prescribed in [247.574\(e\)](#), to comply with section 1017 of Pub. L. 109-364.

(G) Use the clause at [252.247-7027](#), Riding Gang Member Requirements, as prescribed in [247.574\(f\)](#), to comply with section 3504 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417).

(H) Use the clause at [252.247-7028](#), Application for U.S Government Shipping Documentation/Instructions, as prescribed in [247.207](#).

212.302 Tailoring of provisions and clauses for the acquisition of commercial items.

(c) *Tailoring inconsistent with customary commercial practice.*
The head of the contracting activity is the approval authority within the DoD for waivers under FAR 12.302(c).

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Part 213—Simplified Acquisition Procedures

SUBPART 213.5—TEST PROGRAM FOR CERTAIN COMMERCIAL ITEMS (Revised June 26, 2015)

213.500-70 Only one offer.

If only one offer is received in response to a competitive solicitation issued using simplified acquisition procedures authorized under FAR subpart 13.5, follow the procedures at [PGI 215.371-2](#).

213.501 Special documentation requirements.

(a) *Sole source (including brand name) acquisitions.* For non-competitive follow-on acquisitions of supplies or services previously awarded on a non-competitive basis, include the additional documentation required by [206.303-2\(b\)\(i\)](#) and follow the procedures at [PGI 206.304\(a\)\(S-70\)](#).

SUBPART 217.5—INTERAGENCY ACQUISITIONS

(Revised June 26, 2015)

217.500 Scope of subpart.

(a) Unless more specific statutory authority exists, the procedures in FAR subpart 17.5 and this subpart apply to all purchases, except micro-purchases, made for DoD by another agency. This includes orders under a task or delivery order contract entered into by the other agency. (Pub. L. 105-261, section 814.)

217.503 Ordering procedures.

(d) When the requesting agency is within DoD, a copy of the executed determination and findings required by FAR 17.502-2 shall be furnished to the servicing agency as an attachment to the order. When a DoD contracting office is acting as the servicing agency, a copy of the executed determination and findings shall be obtained from the requesting agency and placed in the contract file for the Economy Act order.

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Part 225—Foreign Acquisition

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(Revised June 26, 2015)

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

225.301-1 Scope.

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

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

225.301-4 Contract clause.

(1) Use the clause at FAR 52.225-19, Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States, in accordance with the prescription at FAR 25.301-4, except that—

(i) The clause shall also be used in personal services contracts with individuals; and

(ii) The clause shall not be used when all contractor personnel performing outside the United States will be covered by the clause at [252.225-7040](#).

(2) When using the clause at FAR 52.225-19, the contracting officer shall inform the contractor that the Synchronized Predeployment and Operational Tracker (SPOT) is the appropriate automated system to use for the list of contractor personnel required by paragraph (g) of the clause. Information on the SPOT system is available at <http://www.dod.mil/bta/products/spot.html> and <http://www.acq.osd.mil/log/PS/spot.html>.

225.302 Contractors performing private security functions outside the United States.

225.302-6 Contract clause.

Use the clause at [252.225-7039](#), Defense Contractors Performing Private Security Functions Outside the United States, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when private security functions are to be performed outside the United States in—

(1) Contingency operations;

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

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

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

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

225.370 Contracts requiring performance or delivery in a foreign country.

(a) If the acquisition requires the performance of services or delivery of supplies in an area outside the United States, follow the procedures at [PGI 225.370\(a\)](#).

(b) For work performed in Germany, eligibility for logistics support or base privileges of contractor employees is governed by U.S.-German bilateral agreements. Follow the procedures at Army in Europe Regulation 715-9, available at http://www.eur.army.mil/g1/content/CPD/docper/docper_germanyLinks.html under “AE Regs & Resources.”

(c) For work performed in Japan or Korea, see [PGI 225.370\(b\)](#) for information on bilateral agreements and policy relating to contractor employees in Japan or Korea.

(d) For work performed in the U.S. Central Command area of responsibility, follow the procedures for theater business clearance/contract administration delegation instructions at [PGI 225.370\(c\)](#).

225.371 Contractor personnel supporting U.S. Armed Forces deployed outside the United States.

For additional information on contractor personnel supporting U.S. Armed Forces, see [PGI 225.371](#).

225.371-1 Scope.

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

(1) Contingency operations;

(2) Humanitarian or peacekeeping operations; or

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

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

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

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

225.371-2 Definition.

“Designated operational area” is defined in the clause at [252.225-7040](#). See [PGI 225.371-2](#) for additional information on designated operational areas.

225.371-3 Government support.

(a) Government support that may be authorized or required for contractor personnel performing in a designated operational area may include, but is not limited to, the types of support listed in [PGI 225.371-3\(a\)](#).

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

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

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

(c) The contracting officer shall specify in the solicitation and contract—

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

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

(d) *Medical support of contractor personnel.* The contracting officer shall provide direction to the contractor when the contractor is required to reimburse the Government for medical treatment or transportation of contractor personnel to a selected civilian facility in accordance with paragraph (c)(2)(ii) of the clause at [252.225-7040](#). For additional information, see [PGI 225.371-3\(d\)](#).

(e) *Letter of authorization.* Contractor personnel must have a Synchronized Predeployment and Operational Tracker (SPOT)–generated letter of authorization (LOA) signed by the contracting officer in order to process through a deployment center or to travel to, from, or within the designated operational area. The LOA also will identify any additional authorizations, privileges, or Government support that the contractor personnel are entitled to under the contract. For additional information on LOAs, see [PGI 225.371-3\(e\)](#).

225.371-4 Law of war training.

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

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Acquisition University at

<https://acc.dau.mil/CommunityBrowser.aspx?id=18014&lang=en-US>.

(b) *Advanced law of war training.*

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

(i) Private security contractors.

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

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

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

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

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

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

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

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

225.371-5 Contract clauses.

Use the clause 252.225-7995, Contractor Personnel Performing in the United States Central Command Area of Responsibility ([DEVIATION 2015-O0009](#))(JAN 2015), in lieu of DFARS 252.225-7040, in all solicitations and contracts that require performance in the United States Central Command Area of Responsibility. This class deviation remains in effect until incorporated in the DFARS or otherwise rescinded

Use the clause 252.225-7985, Contractor Personnel Performing in Support of Operation United Assistance (OUA) in the United States Africa Command (USAFRICOM) Theater of Operations ([DEVIATION 2015-O0003](#)), in solicitations and contracts that will require contractor personnel to perform construction or services, or to deliver supplies, in support of OUA in the USAFRICOM theater of operations

Use the clause [252.225-7987, Requirements for Contractor Personnel Performing in USSOUTHCOM Area of Responsibility \(DEVIATION 2014-00016\)](#)(OCT 2014), in all solicitations and contracts that require performance in the USSOUTHCOM Area of Responsibility, unless the clause at DFARS [252.225-7040](#) applies. This class deviation remains in effect until incorporated in the DFARS or otherwise rescinded.

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

- (1) Contingency operations;
- (2) Humanitarian assistance operations;
- (3) Peace operations consistent with Joint Publication 3-07.3; or

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

(b) For additional guidance on clauses to consider when using the clause at [252.225-7040](#), see [PGI 225.371-5](#)(b).

225.372 Antiterrorism/force protection.

225.372-1 General.

Information and guidance pertaining to DoD antiterrorism/force protection policy for contracts that require performance or travel outside the United States can be obtained from the offices listed in [PGI 225.372-1](#).

225.372-2 Contract clause.

Use the clause at [252.225-7043](#), Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that require performance or travel outside the United States, except for contracts with—

- (a) Foreign governments;
- (b) Representatives of foreign governments; or
- (c) Foreign corporations wholly owned by foreign governments.

225.373 Contract administration in support of contingency operations.

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For additional guidance on contract administration considerations when supporting contingency operations, see [PGI 225.373](#).

225.374 Use of electronic business tools.

See [218.272](#) concerning the use of electronic business tools in support of a contingency operation or humanitarian or peacekeeping operation.

**SUBPART 225.8—OTHER INTERNATIONAL AGREEMENTS AND
COORDINATION**

(Revised June 26, 2015)

225.802 Procedures.

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

225.802-70 Contracts for performance outside the United States and Canada. Follow the procedures at [PGI 225.802-70](#) when placing a contract requiring performance outside the United States and Canada. Also see subpart [225.3](#), Contracts Performed Outside the United States.

225.802-71 End use certificates.

Contracting officers considering the purchase of an item from a foreign source may encounter a request for the signing of a certificate to indicate that the Armed Forces of the United States is the end user of the item, and that the U.S. Government will not transfer the item to third parties without authorization from the Government of the country selling the item. When encountering this situation, refer to DoD Directive 2040.3, End Use Certificates, for guidance.

225.870 Contracting with Canadian contractors.

225.870-1 General.

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

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

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

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

(2) Acquisitions of unusual or compelling urgency;

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

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

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

225.870-2 Solicitation of Canadian contractors.

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

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

225.870-3 Submission of offers.

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

(1) Name of the Canadian offeror.

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

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

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

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

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

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

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

225.870-4 Contracting procedures.

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

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

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(c) *Requirement for data other than certified cost or pricing data.*

(1) DoD has waived the requirement for submission of certified cost or pricing data for the Canadian Commercial Corporation and its subcontractors (see [215.403-1\(c\)\(4\)\(C\)](#)).

(2) The Canadian Commercial Corporation is not exempt from the requirement to submit data other than certified cost or pricing data, as defined in FAR 2.101. In accordance with FAR 15.403-3(a)(1)(ii), the contracting officer shall require submission of data other than certified cost or pricing data from the offeror, to the extent necessary to determine a fair and reasonable price.

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

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

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

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

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

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

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

(ii) In any circumstances other than those specified in paragraph (2)(i) of this section, the contracting officer shall only require data other than certified cost or pricing data from the Canadian Commercial Corporation if the head of the contracting activity, or designee no lower than two levels above the contracting officer, determines that data other than certified cost or pricing data are needed (or in the case of modifications that it is reasonably certain that data other than certified cost or pricing data will be needed) in order to determine that the price is fair and reasonable) (see FAR 15.403-3(a)).

(3) The contracting officer shall use the provision at [252.215-7003](#), Requirement for Data Other Than Certified Cost or Pricing Data—Canadian Commercial Corporation, and the clause at [252.215-7004](#), Requirement for Data Other Than Certified Cost or Pricing Data—Modifications—Canadian Commercial Corporation, as prescribed at [215.408\(3\)\(i\)](#) and (ii), respectively.

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

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(5) As specified in FAR 15.403-3(a)(4), an offeror who does not comply with a requirement to submit data that the contracting officer has deemed necessary to determine price reasonableness or cost realism is ineligible for award, unless the head of the contracting activity determines that it is in the best interest of the Government to make the award to that offeror, based on consideration of the following:

- (i) The effort made to obtain the data.
- (ii) The need for the item or service.
- (iii) Increased cost or significant harm to the Government if award is not made.

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

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

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

225.870-5 Contract administration.

Follow the contract administration procedures at [PGI 225.870-5](#).

225.870-6 Termination procedures.

When contract termination is necessary, follow the procedures at [249.7000](#).

225.870-7 Acceptance of Canadian supplies.

For information on the acceptance of Canadian supplies, see [PGI 225.870-7](#).

225.870-8 Industrial security.

Industrial security for Canada shall be in accordance with the U.S.-Canada Industrial Security Agreement of March 31, 1952, as amended.

225.871 North Atlantic Treaty Organization (NATO) cooperative projects.

225.871-1 Scope.

This section implements 22 U.S.C. 2767 and 10 U.S.C. 2350b.

225.871-2 Definitions.

As used in this section--

- (a) “Cooperative project” means a jointly managed arrangement—
 - (1) Described in a written agreement between the parties;
 - (2) Undertaken to further the objectives of standardization, rationalization, and interoperability of the armed forces of NATO member countries; and

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(3) Providing for—

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

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

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

(b) “Other participant” means a cooperative project participant other than the United States.

225.871-3 General.

(a) *Cooperative project authority.*

(1) Departments and agencies, that have authority to do so, may enter into cooperative project agreements with NATO or with one or more member countries of NATO under DoDD 5530.3, International Agreements.

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

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

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

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

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

(3) Is approved by the appropriate DoD official.

225.871-4 Statutory waivers.

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

(1) Procedures for the formation of contracts;

(2) Terms and conditions for inclusion in contracts;

(3) Requirements or preferences for—

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

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

(4) Requirements regulating the performance of contracts.

(b) There is no authority for waiver of—

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

(2) Any provision of 10 U.S.C. 2304;

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

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

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

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

225.871-5 Directed subcontracting.

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

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

225.871-6 Disposal of property.

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

225.871-7 Congressional notification.

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

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(1) Departments and agencies shall provide a proposed Congressional notice to the Director of Defense Procurement and Acquisition Policy in sufficient time to forward to Congress before the time of contract award.

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

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

225.872 Contracting with qualifying country sources.

225.872-1 General.

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

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

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

Austria

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

225.872-2 Applicability.

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

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

(2) U.S. defense mobilization base requirements purchased under the authority of FAR 6.302-3(a)(2)(i), except for quantities in excess of that required to maintain the defense mobilization base. This restriction does not apply to Canadian planned producers.

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

(ii) Information concerning restricted items may be obtained from the Deputy Under Secretary of Defense (Industrial Affairs);

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

(4) U.S. industrial security requirements.

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

225.872-3 Solicitation procedures.

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

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

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

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

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

(1) Consider the adequacy of qualifying country service testing on a case-by-case basis. Departments or agencies that must limit solicitations to sources whose items have been tested and evaluated by the department or agency shall consider supplies from qualifying country sources that have been tested and accepted by the qualifying country for service use.

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

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

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

(f) Permit industry representatives from a qualifying country to attend symposia, program briefings, prebid conferences (see FAR 14.207 and 15.201(c)), and similar meetings that address U.S. defense equipment needs and requirements. When practical, structure these meetings to allow attendance by representatives of qualifying country concerns.

225.872-4 Individual determinations.

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

225.872-5 Contract administration.

(a) Arrangements exist with some qualifying countries to provide reciprocal contract administration services. Some arrangements are at no cost to either government. To determine whether such an arrangement has been negotiated and what contract administration functions are covered, contact the Deputy Director of Defense Procurement and Acquisition Policy (Contract Policy and International Contracting), ((703) 697-9351, DSN 227-9351).

(b) Follow the contract administration procedures at [PGI 225.872-5\(b\)](#).

(c) Information on quality assurance delegations to foreign governments is in Subpart [246.4](#), Government Contract Quality Assurance.

225.872-6 Audit.

(a) Memoranda of understanding with some qualifying countries contain annexes that provide for reciprocal “no-cost” audits of contracts and subcontracts (pre- and post-award).

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(b) To determine if such an annex is applicable to a particular qualifying country, contact the Deputy Director of Defense Procurement and Acquisition Policy (Contract Policy and International Contracting), ((703) 697-9351, DSN 227-9351).

(c) Handle requests for audits in qualifying countries in accordance with [215.404-2\(c\)](#), but follow the additional procedures at [PGI 225.872-6\(c\)](#).

225.872-7 Industrial security for qualifying countries.

The required procedures for safeguarding classified defense information necessary for the performance of contracts awarded to qualifying country sources are in the DoD Industrial Security Regulation DoD 5220.22-R (implemented for the Army by AR 380-49; for the Navy by SECNAV Instruction 5510.1H; for the Air Force by AFI 31-601; for the Defense Information Systems Agency by DCA Instruction 240-110-8; and for the National Imagery and Mapping Agency by NIMA Instruction 5220.22).

225.872-8 Subcontracting with qualifying country sources.

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

225.873 Waiver of United Kingdom commercial exploitation levies.

225.873-1 Policy.

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

225.873-2 Procedures.

When an offeror or a contractor identifies a levy included in an offered or contract price, follow the procedures at [PGI 225.873-2](#).

SUBPART 225.11—SOLICITATION PROVISIONS AND CONTRACT CLAUSES
(Revised June 26, 2015)

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

(i) Use the basic provision when the solicitation includes the basic clause at [252.225-7001](#).

(ii) Use the alternate I provision when the solicitation includes alternate I of the clause at [252.225-7001](#).

(2)(i) Use the basic or the alternate of the clause at [252.225-7001](#), Buy American and Balance of Payments Program, instead of the clause at FAR 52.225-1, Buy American—Supplies, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, 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 require domestic or qualifying country end products in accordance with subpart [225.70](#), but note that this exception does not apply if subpart [225.70](#) only requires manufacture of the end product in the United States or in the United States or Canada, without a corresponding requirement for use of domestic components;

(C) An exception to the Buy American statute or Balance of Payments Program applies (see FAR 25.103, 225.103, and [225.7501](#));

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

(1) [252.225-7021](#), Trade Agreements.

(2) [252.225-7036](#), Buy American—Free Trade Agreements—Balance of Payments Program; or

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

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

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

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

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

(ii) [252.225-7021](#), Trade Agreements.

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

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

(i) Use the basic provision if the solicitation includes the basic clause at [252.225-7021](#).

(ii) Use the alternate I provision if the solicitation includes alternate II of the clause at [252.225-7021](#).

(6) Except as provided in paragraph (6)(iv) of this section, use the basic or an alternate of the clause at [252.225-7021](#), Trade Agreements, instead of the clause at FAR 52.225-5, Trade Agreements, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, if the World Trade Organization Government Procurement Agreement applies, i.e., the acquisition is of end products listed at [225.401-70](#), the value of the acquisition equals or exceeds \$204,000, and none of the exceptions at 25.401(a) applies.

(i) Use the basic clause in solicitations and contracts that are not of end products in support of operations in Afghanistan, or that include the clause at [252.225-7024](#), Requirement for Products or Services from Afghanistan.

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

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

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(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 Afghanistan, is included in the solicitation and contract.

(iv) 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 [252.225-7032](#), Waiver of United Kingdom Levies—Evaluation of Offers, in solicitations if a U.K. firm is expected to—

(i) Submit an offer; or

(ii) Receive a subcontract exceeding \$1 million.

(8) 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.

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

(i) Use the basic provision in solicitations when the basic of the clause at [252.225-7036](#) is used.

(ii) Use the alternate I provision when the solicitation includes alternate I of the clause at [252.225-7036](#).

(iii) Use the alternate II provision when the solicitation includes alternate II of the clause at [252.225-7036](#).

(iv) Use the alternate III provision when the solicitation includes alternate III of the clause at [252.225-7036](#).

(v) Use the alternate IV provision when the solicitation includes alternate IV of the clause at [252.225-7036](#).

(vi) Use the alternate V provision when the solicitation includes alternate V of the clause at [252.225-7036](#).

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

(A) Use the basic clause in solicitations and contracts when the estimated value equals or exceeds \$100,000, but is less than \$204,000, except if the acquisition is of end products in support of operations in Afghanistan.

(B) Use the alternate I clause in solicitations and contracts when the estimated value equals or exceeds \$25,000, but is less than \$79,507, except if the acquisition is of end products in support of operations in Afghanistan.

(C) Use the alternate II clause in solicitations and contracts when the estimated value equals or exceeds \$100,000, but is less than \$204,000, and the acquisition is of end products in support of operations in Afghanistan.

(D) Use the alternate III clause in solicitations and contracts when the estimated value equals or exceeds \$25,000, but is less than \$79,507, and the acquisition is of end products in support of operations in Afghanistan.

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

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

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

(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—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. If the solicitation includes the provision at FAR 52.204-7, do not separately list the provision [252.225-7042](#) in the solicitation.

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

(Revised June 26, 2015)

225.7000 Scope of subpart.

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

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

225.7001 Definitions.

As used in this subpart—

(a) “Bearing components” is defined in the clause at [252.225-7016](#), Restriction on Acquisition of Ball and Roller Bearings.

(b) “Component” is defined in the clauses at [252.225-7009](#), Restriction on Acquisition of Certain Articles Containing Specialty Metals; [252.225-7012](#), Preference for Certain Domestic Commodities; and [252.225-7016](#), Restriction on Acquisition of Ball and Roller Bearings except that for use in [225.7007](#), the term has the meaning given in the clause at [252.225-7019](#), Restriction on Acquisition of Anchor and Mooring Chain.

(c) “End product” is defined in the clause at [252.225-7012](#), Preference for Certain Domestic Commodities.

(d) “Hand or measuring tools” means those tools listed in Federal supply classifications 51 and 52, respectively.

(e) “Structural component of a tent” is defined in the clause at [252.225-7012](#), Preference for Certain Domestic Commodities.

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

225.7002-1 Restrictions.

The following restrictions implement 10 U.S.C. 2533a (the “Berry Amendment”). Except as provided in subsection [225.7002-2](#), do not acquire—

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

(1) Food.

(2) Clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing and the materials and components thereof. Clothing includes items such as outerwear, headwear, underwear, nightwear, footwear, hosiery, handwear, belts, badges, and insignia. For additional guidance and examples, see [PGI 225.7002-1\(a\)\(2\)](#).

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- (3)(i) Tents and the structural components of tents;
 - (ii) Tarpaulins; or
 - (iii) Covers.
 - (4) Cotton and other natural fiber products.
 - (5) Woven silk or woven silk blends.
 - (6) Spun silk yarn for cartridge cloth.
 - (7) Synthetic fabric or 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 any of the fibers, yarns, fabrics, or materials listed in this paragraph (a).
- (b) Hand or measuring tools, unless the tools were produced in the United States. For additional guidance, see [PGI 225.7002-1\(b\)](#).

225.7002-2 Exceptions.

Acquisitions in the following categories are not subject to the restrictions in [225.7002-1](#):

- (a) Acquisitions at or below the simplified acquisition threshold.
- (b) Acquisitions of any of the items in [225.7002-1](#), if the Secretary concerned determines that items grown, reprocessed, reused, or produced in the United States cannot be acquired as and when needed in a satisfactory quality and sufficient quantity at U.S. market prices. (See the requirement in [205.301](#) for synopsis within 7 days after contract award when using this exception.)
 - (1) The following officials are authorized, without power of redelegation, to make such a domestic nonavailability determination:
 - (i) The Under Secretary of Defense (Acquisition, Technology, and Logistics).
 - (ii) The Secretary of the Army.
 - (iii) The Secretary of the Navy.
 - (iv) The Secretary of the Air Force.

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- (v) The Director of the Defense Logistics Agency.
- (2) The supporting documentation for the determination shall include—
 - (i) An analysis of alternatives that would not require a domestic nonavailability determination; and
 - (ii) A written certification by the requiring activity, with specificity, why such alternatives are unacceptable.
- (3) Defense agencies other than the Defense Logistics Agency shall follow the procedures at [PGI 225.7002-2\(b\)\(3\)](#) when submitting a request for a domestic nonavailability determination.
- (c) Acquisitions of items listed in FAR 25.104(a).
- (d) Acquisitions outside the United States in support of combat operations.
- (e) Acquisitions of perishable foods by or for activities located outside the United States for personnel of those activities.
- (f) Acquisitions of food or hand or measuring tools—
 - (1) In support of contingency operations; or
 - (2) For which the use of other than competitive procedures has been approved on the basis of unusual and compelling urgency in accordance with FAR 6.302-2.
- (g) Emergency acquisitions by activities located outside the United States for personnel of those activities.
- (h) Acquisitions by vessels in foreign waters.
- (i) Acquisitions of items specifically for commissary resale.
- (j) Acquisitions of incidental amounts of cotton, other natural fibers, or wool incorporated in an end product, for which the estimated value of the cotton, other natural fibers, or wool—
 - (1) Is not more than 10 percent of the total price of the end product; and
 - (2) Does not exceed the simplified acquisition threshold.
- (k) Acquisitions of waste and byproducts of cotton or wool fiber for use in the production of propellants and explosives.
- (l) Acquisitions of foods manufactured or processed in the United States, regardless of where the foods (and any component if applicable) were grown or produced. However, in accordance with Section 8118 of the DoD Appropriations Act for Fiscal Year 2005 (Pub. L. 108-287), this exception does not apply to fish, shellfish, or seafood manufactured or processed in the United States or fish, shellfish, or seafood contained in foods manufactured or processed in the United States.

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

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

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

(ii) 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;

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

(iv) Parachutes (Federal Supply Class 1670); or

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

(n) Acquisitions of chemical warfare protective clothing when the acquisition furthers an agreement with a qualifying country. (See [225.872](#) and the requirement in [205.301](#) for synopsis within 7 days after contract award when using this exception.)

225.7002-3 Contract clauses.

See DoD [Class Deviation 2014-O0010](#), Acquisition of the American Flag, issued February 21, 2014. This deviation is effective for contract actions issued using DoD funds appropriated by the Department of Defense Appropriations Act, 2014 (Pub. L. 113-76, Division C).

See DoD [Class Deviation 2015-O0007](#), Acquisition of the American Flag, issued December 29, 2014. This deviation is effective for contract actions issued using DoD funds appropriated by the Department of Defense Appropriations Act, 2015 (Pub. L. 113-235, Division C). This class deviation remains in effect until incorporated in the DFARS or otherwise rescinded.

Unless an exception applies—

(a) Use the clause at [252.225-7012](#), Preference for Certain Domestic Commodities, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that exceed the simplified acquisition threshold.

(b) Use the clause at [252.225-7015](#), Restriction on Acquisition of Hand or Measuring Tools, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that exceed the simplified acquisition threshold that require delivery of hand or measuring tools.

225.7003 Restrictions on acquisition of specialty metals.

225.7003-1 Definitions.

As used in this section—

(a) “Assembly,” “commercial derivative military article,” “commercially available off-the-shelf item,” “component,” “electronic component,” “end item,” “high performance magnet,” “required form,” and “subsystem” are defined in the clause at [252.225-7009](#), Restriction on Acquisition of Certain Articles Containing Specialty Metals.

(b) “Automotive item”—

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

- (i) A high-mobility multipurpose wheeled vehicle;
- (ii) An armored personnel carrier; or
- (iii) A troop/cargo-carrying truckcar, truck, or van; and

(2) Does not include—

- (i) A commercially available off-the-shelf vehicle; or
- (ii) Construction equipment (such as bulldozers, excavators, lifts, or loaders) or other self-propelled equipment (such as cranes or aircraft ground support equipment).

(c) “Produce” and “specialty metal” are defined in the clauses at [252.225-7008](#), Restriction on Acquisition of Specialty Metals, and [252.225-7009](#), Restriction on Acquisition of Certain Articles Containing Specialty Metals.

225.7003-2 Restrictions.

The following restrictions implement 10 U.S.C. 2533b. Except as provided in [225.7003-3](#)—

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

- (1) Aircraft.
- (2) Missile or space systems.
- (3) Ships.
- (4) Tank or automotive items.
- (5) Weapon systems.
- (6) Ammunition.

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

225.7003-3 Exceptions.

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

- (1) Acquisitions at or below the simplified acquisition threshold.
- (2) Acquisitions outside the United States in support of combat operations.
- (3) Acquisitions in support of contingency operations.
- (4) Acquisitions for which the use of other than competitive procedures has been approved on the basis of unusual and compelling urgency in accordance with FAR 6.302-2.
- (5) Acquisitions of items specifically for commissary resale.
- (6) Acquisitions of items for test and evaluation under the foreign comparative testing program (10 U.S.C. 2350a(g)). However, this exception does not apply to any acquisitions under follow-on production contracts.

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

(1) Electronic components, unless the Secretary of Defense, upon the recommendation of the Strategic Materials Protection Board pursuant to 10 U.S.C. 187, determines that the domestic availability of a particular electronic component is critical to national security.

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

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

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

(C) Commercially available high performance magnets that contain specialty metal, unless such high performance magnets are incorporated into COTS end

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items or subsystems (see [PGI 225.7003-3\(b\)\(6\)](#) for a table of applicability of specialty metals restrictions to magnets); and

(D) COTS fasteners, unless—

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

(2) The fasteners qualify for the commercial item exception in paragraph (b)(3) of this subsection.

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

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

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

(5) Specialty metal in any of the items listed in [225.7003-2](#) if the USD(AT&L), or an official authorized in accordance with paragraph (b)(5)(i) of this subsection, determines that specialty metal melted or produced in the United States cannot be acquired as and when needed at a fair and reasonable price in a satisfactory quality, a sufficient quantity, and the required form (i.e., a domestic nonavailability determination). See guidance in [PGI 225.7003-3\(b\)\(5\)](#).

(i) The Secretary of the military department concerned is authorized, without power of re delegation, to make a domestic nonavailability determination that applies to only one contract. The supporting documentation for the determination shall include—

(A) An analysis of alternatives that would not require a domestic nonavailability determination; and

(B) Written documentation by the requiring activity, with specificity, why such alternatives are unacceptable.

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

(A) At least 30 days before making a domestic nonavailability determination that would apply to more than one contract, the USD(AT&L) will, to the

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maximum extent practicable, and in a manner consistent with the protection of national security and confidential business information—

(1) Publish a notice on the Federal Business Opportunities website (www.FedBizOpps.gov or any successor site) of the intent to make the domestic nonavailability determination; and

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

(B) The USD(AT&L)—

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

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

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

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

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

(1) The offeror has certified, and subsequently demonstrates, that the offeror and its subcontractor(s) will individually or collectively enter into a contractual agreement or agreements to purchase a sufficient quantity of domestically melted or produced specialty metal in accordance with the provision at [252.225-7010](#); and

(2) The USD(AT&L), or the Secretary of the military department concerned, determines that the item is a commercial derivative military article (defense agencies see procedures at [PGI 225.7003-3\(c\)](#)). The contracting officer shall submit the offeror's certification and a request for a determination to the appropriate official, through agency channels, and shall notify the offeror when a decision has been made.

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

(1) The written determination of the USD(AT&L)—

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

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

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

(2) After making such a determination, the USD(AT&L) will—

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

(ii) Determine whether or not the noncompliance was knowing and willful. If the USD(AT&L) determines that the noncompliance was knowing and willful, the appropriate debarring and suspending official shall consider suspending or debarring the contractor or subcontractor until such time as the contractor or subcontractor has effectively addressed the issues that led to the noncompliance.

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

225.7003-4 One-time waiver.

DoD may accept articles containing specialty metals that are not in compliance with the specialty metals clause of the contract if—

(a) Final acceptance takes place before September 30, 2010;

(b) The specialty metals were incorporated into items (whether end items or components) produced, manufactured, or assembled in the United States before October 17, 2006;

(c) The contracting officer determines in writing that—

(1) It would not be practical or economical to remove or replace the specialty metals incorporated in such items or to substitute items containing compliant materials;

(2) The contractor and any subcontractor responsible for providing items containing non-compliant specialty metals have in place an effective plan to ensure compliance with the specialty metals clause of the contract for future items produced, manufactured, or assembled in the United States; and

(3) The non-compliance was not knowing or willful;

(d) The determination is approved by—

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- (1) The USD(AT&L); or
- (2) The service acquisition executive of the military department concerned; and

(e) Not later than 15 days after approval of the determination, the contracting officer posts a notice on the Federal Business Opportunities website at www.FedBizOpps.gov, stating that a waiver for the contract has been granted under Section 842(b) of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364).

225.7003-5 Solicitation provision and contract clauses.

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

(1) Use the clause at [252.225-7008](#), Restriction on Acquisition of Specialty Metals, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that—

- (i) Exceed the simplified acquisition threshold; and
- (ii) Require the delivery of specialty metals as end items.

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

- (i) Exceed the simplified acquisition threshold; and
- (ii) Require delivery of any of the following items, or components of the following items, if such items or components contain specialty metal:

- (A) Aircraft.
- (B) Missile or space systems.
- (C) Ships.
- (D) Tank or automotive items.
- (E) Weapon systems.
- (F) Ammunition.

(b) Use the provision at [252.225-7010](#), Commercial Derivative Military Article—Specialty Metals Compliance Certificate, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items,—

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

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

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

(d) If the solicitation and contract require delivery of a variety of contract line items containing specialty metals, but only some of the items are subject to domestic specialty metals restrictions, identify in the Schedule those items that are subject to the restrictions.

225.7004 Restriction on acquisition of foreign buses.

225.7004-1 Restriction.

In accordance with 10 U.S.C. 2534, do not acquire a multipassenger motor vehicle (bus) unless it is manufactured in the United States or Canada.

225.7004-2 Applicability.

Apply this restriction if the buses are purchased, leased, rented, or made available under contracts for transportation services.

225.7004-3 Exceptions.

This restriction does not apply in any of the following circumstances:

(a) Buses manufactured outside the United States and Canada are needed for temporary use because buses manufactured in the United States or Canada are not available to satisfy requirements that cannot be postponed. Such use may not, however, exceed the lead time required for acquisition and delivery of buses manufactured in the United States or Canada.

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

(c) Buses manufactured outside the United States and Canada are available at no cost to the U.S. Government.

(d) The acquisition is for an amount at or below the simplified acquisition threshold.

225.7004-4 Waiver.

The waiver criteria at [225.7008\(a\)](#) apply to this restriction.

225.7005 Restriction on certain chemical weapons antidote.

225.7005-1 Restriction.

In accordance with 10 U.S.C. 2534, do not acquire chemical weapons antidote contained in automatic injectors, or the components for such injectors, unless the chemical

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weapons antidote or component is manufactured in the United States or Canada by a company that—

(a) Has received all required regulatory approvals; and

(b) Has the plant, equipment, and personnel to perform the contract in the United States or Canada at the time of contract award.

225.7005-2 Exception.

This restriction does not apply if the acquisition is for an amount at or below the simplified acquisition threshold.

225.7005-3 Waiver.

The waiver criteria at [225.7008\(a\)](#) apply to this restriction.

225.7006 Restriction on air circuit breakers for naval vessels.

225.7006-1 Restriction.

In accordance with 10 U.S.C. 2534, do not acquire air circuit breakers for naval vessels unless they are manufactured in the United States or Canada.

225.7006-2 Exceptions.

This restriction does not apply if the acquisition is—

(a) For an amount at or below the simplified acquisition threshold; or

(b) For spare or repair parts needed to support air circuit breakers manufactured outside the United States. Support includes the purchase of spare air circuit breakers when those from alternate sources are not interchangeable.

225.7006-3 Waiver.

(a) The waiver criteria at [225.7008\(a\)](#) apply to this restriction.

(b) The Under Secretary of Defense (Acquisition, Technology, and Logistics) has waived the restriction for air circuit breakers manufactured in the United Kingdom. See [225.7008](#).

225.7006-4 Solicitation provision and contract clause.

(a) Use the provision at [252.225-7037](#), Evaluation of Offers for Air Circuit Breakers, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, that require air circuit breakers for naval vessels unless--

(1) An exception applies; or

(2) A waiver has been granted, other than the waiver for the United Kingdom, which has been incorporated into the provision.

(b) Use the clause at [252.225-7038](#), Restriction on Acquisition of Air Circuit Breakers, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that require air circuit breakers for naval vessels unless—

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(1) An exception at [225.7006-2](#) applies; or

(2) A waiver has been granted, other than the waiver for the United Kingdom, which has been incorporated into the clause.

225.7007 Restrictions on anchor and mooring chain.

225.7007-1 Restrictions.

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

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

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

(b) 10 U.S.C. 2534 also restricts acquisition of welded shipboard anchor and mooring chain, four inches or less in diameter, when used as a component of a naval vessel. However, the Appropriations Act restriction described in paragraph (a) of this subsection takes precedence over the restriction of 10 U.S.C. 2534.

225.7007-2 Waiver.

(a) The Secretary of the department responsible for acquisition may waive the restriction in [225.7007-1\(a\)](#), on a case-by-case basis, if--

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

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

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

(1) The factors supporting the waiver; and

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

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

225.7007-3 Contract clause.

Unless a waiver has been granted, use the clause at [252.225-7019](#), Restriction on Acquisition of Anchor and Mooring Chain, in solicitations and contracts requiring welded shipboard anchor or mooring chain four inches or less in diameter.

225.7008 Waiver of restrictions of 10 U.S.C. 2534.

(a) When specifically authorized by reference elsewhere in this subpart, the restrictions on certain foreign purchases under 10 U.S.C. 2534(a) may be waived as follows:

(1)(i) The Under Secretary of Defense (Acquisition, Technology, and Logistics) (USD(AT&L)), without power of delegation, may waive a restriction for a particular item for a particular foreign country upon determination that—

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

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

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

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

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

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

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

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

(i) The restriction would cause unreasonable delays.

(ii) Satisfactory quality items manufactured in the United States or Canada are not available.

(iii) Application of the restriction would result in the existence of only one source for the item in the United States or Canada.

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

the United States.

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

(3) A restriction is waived when it would cause unreasonable costs. The cost of an item of U.S. or Canadian origin is unreasonable if it exceeds 150 percent of the offered price, inclusive of duty, of items that are not of U.S. or Canadian origin.

(b) In accordance with the provisions of paragraphs (a)(1)(i) through (iii) of this section, the USD(AT&L) has waived the restrictions of 10 U.S.C. 2534(a) for certain items manufactured in the United Kingdom, including air circuit breakers for naval vessels (see [225.7006](#)) and the naval vessel components listed at 225.7010-1.

225.7009 Restriction on ball and roller bearings.

225.7009-1 Scope.

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

225.7009-2 Restriction.

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

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

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

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

225.7009-3 Exception.

The restriction in [225.7009-2](#) does not apply to contracts or subcontracts for the acquisition of commercial items, except for commercial ball and roller bearings acquired as end items.

225.7009-4 Waiver.

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

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

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

225.7009-5 Contract clause.

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Use the clause at [252.225-7016](#), Restriction on Acquisition of Ball and Roller Bearings, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, unless—

- (a) The items being acquired are commercial items other than ball or roller bearings acquired as end items;
- (b) The items being acquired do not contain ball and roller bearings; or
- (c) A waiver has been granted in accordance with [225.7009-4](#).

225.7010 Restriction on certain naval vessel components.

225.7010-1 Restriction.

In accordance with 10 U.S.C. 2534, do not acquire the following components of naval vessels, to the extent they are unique to marine applications, unless manufactured in the United States or Canada:

- (a) Gyrocompasses.
- (b) Electronic navigation chart systems.
- (c) Steering controls.
- (d) Pumps.
- (e) Propulsion and machinery control systems.
- (f) Totally enclosed lifeboats.

225.7010-2 Exceptions.

This restriction does not apply to—

- (a) Contracts or subcontracts that do not exceed the simplified acquisition threshold; or
- (b) Acquisition of spare or repair parts needed to support components for naval vessels manufactured outside the United States. Support includes the purchase of spare gyrocompasses, electronic navigation chart systems, steering controls, pumps, propulsion and machinery control systems, or totally enclosed lifeboats, when those from alternate sources are not interchangeable.

225.7010-3 Waiver.

- (a) The waiver criteria at [225.7008](#)(a) apply to this restriction.
- (b) The Under Secretary of Defense (Acquisition, Technology, and Logistics) has waived the restriction of 10 U.S.C. 2534 for certain items manufactured in the United Kingdom, including the items listed in section 225.7010-1. See [225.7008](#).

225.7010-4 Implementation.

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(a) 10 U.S.C. 2534(h) prohibits the use of contract clauses or certifications to implement this restriction.

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

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

225.7011-1 Restriction.

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

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

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

(b) This restriction—

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

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

225.7011-2 Waiver.

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

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

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

225.7011-3 Contract clause.

Unless a waiver has been granted, use the clause at [252.225-7030](#), Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate, in solicitations and contracts that—

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

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

225.7012 Restriction on supercomputers.

225.7012-1 Restriction.

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

225.7012-2 Waiver.

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

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

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

225.7012-3 Contract clause.

Unless a waiver has been granted, use the clause at [252.225-7011](#), Restriction on Acquisition of Supercomputers, in solicitations and contracts for the acquisition of supercomputers.

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

In accordance with 10 U.S.C. 7309 and 7310—

(a) Do not award a contract to construct in a foreign shipyard—

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

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

(b) Do not overhaul, repair, or maintain in a foreign shipyard, a naval vessel (or any other vessel under the jurisdiction of the Secretary of the Navy) homeported in the United States. This restriction does not apply to voyage repairs.

225.7014 Restrictions on military construction.

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

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

225.7015 Restriction on overseas architect-engineer services.

For restriction on award of architect-engineer contracts to be performed in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf, see [236.602-70](#).

225.7016 Prohibition on requiring the use of fire-resistant rayon fiber.

In accordance with section 821 of the National Defense Authorization Act for Fiscal Year 2011, do not include in any solicitation issued before January 1, 2015, a requirement that proposals submitted pursuant to such solicitation shall include the use of fire-resistant rayon fiber. However, this does not preclude issuing a solicitation that allows offerors to propose the use of fire-resistant rayon fiber.

225.7017 Utilization of domestic photovoltaic devices.

225.7017-1 Definitions. As used in this section—

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

- (1) Installed on DoD property or in a facility owned by DoD; and
- (2) Reserved for the exclusive use of DoD for the full economic life of the device.

“Designated country photovoltaic device,” “domestic photovoltaic device,” “foreign photovoltaic device,” “Free Trade Agreement country photovoltaic device,” “photovoltaic device,” “qualifying country photovoltaic device,” and “U.S.-made photovoltaic device” are defined in the clause at [252.225-7017](#), Photovoltaic Devices.

225.7017-2 Restriction.

In accordance with section 846 of the National Defense Authorization Act for Fiscal Year 2011, photovoltaic devices provided under any covered contract shall comply with 41 U.S.C. chapter 83, Buy American, subject to the exceptions to that statute provided in the Trade Agreements Act of 1979 (19 U.S.C. 2501 *et seq.*) or otherwise provided by law.

225.7017-3 Exceptions.

DoD requires the contractor to utilize domestic photovoltaic devices in covered contracts, with the following exceptions:

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

(b) *Buy American—unreasonable cost.* For a covered contract that utilizes photovoltaic devices valued at less than \$204,000, the exception for unreasonable cost may apply (see FAR 25.103(c)). If the cost of a foreign photovoltaic device plus 50 percent is less than the cost of a domestic photovoltaic device, then the foreign photovoltaic device may be utilized.

(c) *Trade agreements.*

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(1) *Free Trade Agreements.* For a covered contract that utilizes photovoltaic devices valued at \$25,000 or more, photovoltaic devices may be utilized from a country covered under the acquisition by a Free Trade Agreement, depending upon dollar threshold (see FAR subpart 25.4).

(2) *World Trade Organization—Government Procurement Agreement.* For covered contracts that utilize photovoltaic devices that are valued at \$204,000 or more, only U.S.-made photovoltaic devices, designated country photovoltaic devices, or qualifying country photovoltaic devices may be utilized.

225.7017-4 Solicitation provisions and contract clauses.

(a)(1) Use the clause at [252.225-7017](#), Photovoltaic Devices, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, for a contract that—

(i) Is expected to exceed the simplified acquisition threshold; and

(ii) May be a covered contract, i.e., an energy savings performance contract, a utility service contract, or a private housing contract awarded by DoD, if such contract results in DoD ownership of photovoltaic devices, by means other than DoD purchase as end products.

(2) Use the clause in the resultant contract, including contracts using FAR part 12 procedures for the acquisition of commercial items, if it is a covered contract (i.e., will result in DoD ownership of photovoltaic devices, by means other than DoD purchase as end products).

(b) Use the provision at [252.225-7018](#), Photovoltaic Devices—Certificate, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, that contain the clause at [252.225-7017](#).

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SUBPART 225.74—DEFENSE CONTRACTORS OUTSIDE THE UNITED STATES

(Removed June 26, 2015)

SUBPART 242.3—CONTRACT ADMINISTRATION OFFICE FUNCTIONS
(Revised June 26, 2015)

242.301 General.

Contract administration services performed outside the United States should be performed in accordance with FAR 42.301 unless there are no policies and procedures covering a given situation. In this case, coordinate proposed actions with the appropriate U.S. country teams or commanders of unified and specified commands.

242.302 Contract administration functions.

(a)(7) See [242.7502](#) for ACO responsibilities with regard to receipt of an audit report identifying significant accounting system or related internal control deficiencies.

(9) For additional contract administration functions related to IR&D/B&P projects performed by major contractors, see [242.771-3\(a\)](#).

(12) Also perform all payment administration in accordance with any applicable payment clauses.

(13)(A) Do not delegate the responsibility to make payments to the Defense Contract Management Agency (DCMA).

(B) Follow the procedures at [PGI 242.302\(a\)\(13\)\(B\)](#) for designation of payment offices.

(39) See [223.370](#) for contract administration responsibilities on contracts for ammunition and explosives.

(67) Also support program offices and buying activities in precontractual efforts leading to a solicitation or award.

(S-70) Serve as the single point of contact for all Single Process Initiative (SPI) Management Council activities. The ACO shall negotiate and execute facilitywide class modifications and agreements for SPI processes, when authorized by the affected components.

(S-71) DCMA has responsibility for reviewing earned value management system (EVMS) plans and for verifying initial and continuing contractor compliance with DoD EVMS criteria. The contracting officer shall not retain this function.

(S-72) Ensure implementation of the Synchronized Predeployment and Operational Tracker (SPOT) by the contractor and maintain surveillance over contractor compliance with SPOT business rules available at the website provided at [PGI 207.105\(b\)\(20\)\(C\)\(9\)](#) for contracts incorporating the clause at [252.225-7040](#), Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States. See [PGI 242.302\(a\)\(S-72\)](#) for guidance on assessing contractor's implementation of SPOT.

(S-73) Maintain surveillance over contractor compliance with trafficking in persons requirements for all DoD contracts for services incorporating the clause at FAR

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52.222-50, Combating Trafficking in Persons, and, when necessary, its Alternate I, as identified in the clause prescription at FAR 22.1705. (See [PGI 222.1703](#).)

(S-74) Approve or disapprove contractor business systems, as identified in the clause at [252.242-7005](#), Contractor Business Systems.

(S-75) See [PGI 242.302\(a\)](#)(S-75) for guidelines for monitoring contractor costs.

(b)(S-70) Issue, negotiate, and execute orders under basic ordering agreements for overhaul, maintenance, and repair.

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SUBPART 252.1—INSTRUCTIONS FOR USING PROVISIONS AND CLAUSES *(Revised June 26, 2015)*

252.101 Using Part 252.

(b) *Numbering.*

(2) *Provisions or clauses that supplement the FAR.*

(ii)(B) DFARS provisions or clauses use a four digit sequential number in the 7000 series, e.g., -7000, -7001, -7002. Department or agency supplemental provisions or clauses use four digit sequential numbers in the 9000 series.

252.103 Identification of provisions and clauses.

For guidance on numbering department or agency provisions and clauses, see [PGI 252.103](#)

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(Revised June 26, 2015)

252.213-7000 Notice to Prospective Suppliers on Use of Past Performance Information Retrieval System—Statistical Reporting in Past Performance Evaluations.

As prescribed in [213.106-2-70](#), use the following provision:

NOTICE TO PROSPECTIVE SUPPLIERS ON USE OF PAST PERFORMANCE INFORMATION RETRIEVAL SYSTEM—STATISTICAL REPORTING IN PAST PERFORMANCE EVALUATIONS (JUN 2015)

(a) The Past Performance Information Retrieval System-Statistical Reporting (PPIRS-SR) application (<http://www.ppirs.gov/>) will be used in the evaluation of suppliers' past performance in accordance with DFARS [213.106-2\(b\)\(i\)](#).

(b) PPIRS-SR collects quality and delivery data on previously awarded contracts and orders from existing Department of Defense reporting systems to classify each supplier's performance history by Federal supply class (FSC) and product or service code (PSC). The PPIRS-SR application provides the contracting officer quantifiable past performance information regarding a supplier's quality and delivery performance for the FSC and PSC of the supplies being purchased.

(c) The quality and delivery classifications identified for a supplier in PPIRS-SR will be used by the contracting officer to evaluate a supplier's past performance in conjunction with the supplier's references (if requested) and other provisions of this solicitation under the past performance evaluation factor. The Government reserves the right to award to the supplier whose quotation or offer represents the best value to the Government.

(d) PPIRS-SR classifications are generated monthly for each contractor and can be reviewed by following the access instructions in the PPIRS-SR User's Manual found at https://www.ppirs.gov/pdf/PPIRS-SR_UserMan.pdf. Contractors are granted access to PPIRS-SR for their own classifications only. Suppliers are encouraged to review their own classifications, the PPIRS-SR reporting procedures and classification methodology detailed in the PPIRS-SR User's Manual, and PPIRS-SR Evaluation Criteria available from the references at https://www.ppirs.gov/pdf/PPIRS-SR_DataEvaluationCriteria.pdf. The method to challenge a rating generated by PPIRS-SR is provided in the User's Manual.

(End of provision)

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(Revised June 26, 2015)

252.216-7000 Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products.

As prescribed in [216.203-4-70](#)(a)(1), use the following clause:

ECONOMIC PRICE ADJUSTMENT—BASIC STEEL, ALUMINUM, BRASS, BRONZE, OR COPPER MILL PRODUCTS (MAR 2012)

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

“Established price” means a price which is an established catalog or market price for a commercial item sold in substantial quantities to the general public.

“Unit price” excludes any part of the price which reflects requirements for preservation, packaging, and packing beyond standard commercial practice.

(b) As represented by the Contractor in its offer, the unit price stated for _____ (*Identify the item*) is not in excess of the Contractor's established price in effect on the date set for opening of bids (or the contract date if this is a negotiated contract) for like quantities of the same item. This price is the net price after applying any applicable standard trade discounts offered by the Contractor from its catalog, list, or schedule price.

(c) The Contractor shall promptly notify the Contracting Officer of the amount and effective date of each decrease in any established price.

(1) Each corresponding contract unit price shall be decreased by the same percentage that the established price is decreased.

(2) This decrease shall apply to items delivered on or after the effective date of the decrease in the Contractor's established price.

(3) This contract shall be modified accordingly.

(d) If the Contractor's established price is increased after the date set for opening of bids (or the contract date if this is a negotiated contract), upon the Contractor's written request to the Contracting Officer, the corresponding contract unit price shall be increased by the same percentage that the established price is increased, and this contract shall be modified accordingly, provided—

(1) The aggregate of the increases in any contract unit price under this contract shall not exceed 10 percent of the original contract unit price;

(2) The increased contract unit price shall be effective on the effective date of the increase in the applicable established price if the Contractor's written request is received by the Contracting Officer within ten days of the change. If it is not, the effective date of the increased unit price shall be the date of receipt of the request by the Contracting Officer; and

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(3) The increased contract unit price shall not apply to quantities scheduled for delivery before the effective date of the increased contract unit price unless the Contractor's failure to deliver before that date results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the Default clause of this contract.

(4) The Contracting Officer shall not execute a modification incorporating an increase in a contract unit price under this clause until the increase is verified.

(e) Within 30 days after receipt of the Contractor's written request, the Contracting Officer may cancel, without liability to either party, any portion of the contract affected by the requested increase and not delivered at the time of such cancellation, except as follows—

(1) The Contractor may, after that time, deliver any items that were completed or in the process of manufacture at the time of receipt of the cancellation notice, provided the Contractor notifies the Contracting Officer of such items within 10 days after the Contractor receives the cancellation notice.

(2) The Government shall pay for those items at the contract unit price increased to the extent provided by paragraph (d) of this clause.

(3) Any standard steel supply item shall be deemed to be in the process of manufacture when the steel for that item is in the state of processing after the beginning of the furnace melt.

(f) Pending any cancellation of this contract under paragraph (e) of this clause, or if there is no cancellation, the Contractor shall continue deliveries according to the delivery schedule of the contract. The Contractor shall be paid for those deliveries at the contract unit price increased to the extent provided by paragraph (d) of this clause.

(End of clause)

252.216-7001 Economic Price Adjustment—Nonstandard Steel Items.

As prescribed in [216.203-4-70\(b\)](#), use the following clause:

ECONOMIC PRICE ADJUSTMENT--NONSTANDARD STEEL ITEMS (JUL 1997)

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

“Base labor index” means the average of the labor indices for the three months which consist of the month of bid opening (or offer submission) and the months immediately preceding and following that month.

“Base steel index” means the Contractor's established price (see Note 6) including all applicable extras of \$ _____ per _____ (see Note 1) for _____ (see Note 2) on the date set for bid opening (or the date of submission of the offer).

“Current labor index” means the average of the labor indices for the month in which delivery of supplies is required to be made and the month preceding.

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“Current steel index” means the Contractor's established price (see Note 6) for that item, including all applicable extras in effect ___ days (see Note 3) prior to the first day of the month in which delivery is required.

“Established price” is—

(1) A price which is an established catalog or market price of a commercial item sold in substantial quantities to the general public; and

(2) The net price after applying any applicable standard trade discounts offered by the Contractor from its catalog, list, or schedule price. (But see Note 6.)

“Labor index” means the average straight time hourly earnings of the Contractor's employees in the _____ shop of the Contractor's _____ plant (see Note 4) for any particular month.

“Month” means calendar month. However, if the Contractor's accounting period does not coincide with the calendar month, then that accounting period shall be used in lieu of “month.”

(b) Each contract unit price shall be subject to revision, under the terms of this clause, to reflect changes in the cost of labor and steel. For purpose of this price revision, the proportion of the contract unit price attributable to costs of labor not otherwise included in the price of the steel item identified under the “base steel index” definition in paragraph (a) shall be _____ percent, and the proportion of the contract unit price attributable to the cost of steel shall be _____ percent. (See Note 5.)

(c)(1) Unless otherwise specified in this contract, the labor index shall be computed by dividing the total straight time earnings of the Contractor's employees in the shop identified in paragraph (a) for any given month by the total number of straight time hours worked by those employees in that month.

(2) Any revision in a contract unit price to reflect changes in the cost of labor shall be computed solely by reference to the “base labor index” and the “current labor index.”

(d) Any revision in a contract unit price to reflect changes in the cost of steel shall be computed solely by reference to the “base steel index” and the “current steel index.”

(e)(1) Each contract unit price shall be revised for each month in which delivery of supplies is required to be made.

(2) The revised contract unit price shall apply to the deliveries of those quantities required to be made in that month regardless of when actual delivery is made.

(3) Each revised contract unit price shall be computed by adding—

(i) The adjusted cost of labor (obtained by multiplying _____ percent of the contract unit price by a fraction, of which the numerator shall be the current labor index and the denominator shall be the base labor index);

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(ii) The adjusted cost of steel (obtained by multiplying ____ percent of the contract unit price by a fraction, of which the numerator shall be the current steel index and the denominator shall be the base steel index); and

(iii) The amount equal to ____ percent of the original contract unit price (representing that portion of the unit price which relates neither to the cost of labor nor the cost of steel, and which is therefore not subject to revision (see Note 5)).

(4) The aggregate of the increases in any contract unit price under this contract shall not exceed ten percent of the original contract unit price.

(5) Computations shall be made to the nearest one-hundredth of one cent.

(f)(1) Pending any revisions of the contract unit prices, the Contractor shall be paid the contract unit price for deliveries made.

(2) Within 30 days after final delivery (or such other period as may be authorized by the Contracting Officer), the Contractor shall furnish a statement identifying the correctness of—

(i) The average straight time hourly earnings of the Contractor's employees in the shop identified in paragraph (a) that are relevant to the computations of the “base labor index” and the “current labor index;” and

(ii) The Contractor's established prices (see Note 6), including all applicable extras for like quantities of the item that are relevant to the computation of the “base steel index” and the “current steel index.”

(3) Upon request of the Contracting Officer, the Contractor shall make available all records used in the computation of the labor indices.

(4) Upon receipt of the statement, the Contracting Officer will compute the revised contract unit prices and modify the contract accordingly. No modification to this contract will be made pursuant to this clause until the Contracting Officer has verified the revised established price (see Note 6).

(g)(1) In the event any item of this contract is subject to a total or partial termination for convenience, the month in which the Contractor receives notice of the termination, if prior to the month in which delivery is required, shall be considered the month in which delivery of the terminated item is required for the purposes of determining the current labor and steel indices under paragraphs (c) and (d).

(2) For any item which is not terminated for convenience, the month in which delivery is required under the contract shall continue to apply for determining those indices with respect to the quantity of the non-terminated item.

(3) If this contract is terminated for default, any price revision shall be limited to the quantity of the item which has been delivered by the Contractor and accepted by the Government prior to receipt by the Contractor of the notice of termination.

(h) If the Contractor's failure to make delivery of any required quantity arises out of causes beyond the control and without the fault or negligence of the Contractor, within

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the meaning of the clause of this contract entitled “Default,” the quantity not delivered shall be delivered as promptly as possible after the cessation of the cause of the failure, and the delivery schedule set forth in this contract shall be amended accordingly.

NOTES:

- 1 Offeror insert the unit price and unit measure of the standard steel mill item to be used in the manufacture of the contract item.
- 2 Offeror identify the standard steel mill item to be used in the manufacture of the contract item.
- 3 Offeror insert best estimate of the number of days required for processing the standard steel mill item in the shop identified under the “labor index” definition.
- 4 Offeror identify the shop and plant in which the standard steel mill item identified under the “base steel index” definition will be finally fabricated or processed into the contract item.
- 5 Offeror insert the same percentage figures for the corresponding blanks in paragraphs (b), (e)(3)(i), and (e)(3)(ii). In paragraph (e)(3)(iii), insert the percentage representing the difference between the sum of the percentages inserted in paragraph (b) and 100 percent.
- 6 In negotiated acquisitions of nonstandard steel items, when there is no “established price” or when it is not desirable to use this price, this paragraph may refer to another appropriate price basis, e.g., an established interplant price.

(End of clause)

252.216-7002 Alternate A, Time-and-Materials/Labor-Hour Proposal Requirements – Non-Commercial Item Acquisition with Adequate Price Competition.

As prescribed in [216.601](#)(e), substitute the following paragraph (c) for paragraph (c) of the provision at FAR 52.216-29:

ALTERNATE A, TIME-AND-MATERIALS/LABOR-HOUR PROPOSAL REQUIREMENTS—NON-COMMERCIAL ITEM ACQUISITION WITH ADEQUATE PRICE COMPETITION (FEB 2007)

(c) The offeror must establish fixed hourly rates using separate rates for each category of labor to be performed by each subcontractor and for each category of labor to be performed by the offeror, and for each category of labor to be transferred between divisions, subsidiaries, or affiliates of the offeror under a common control.

252.216-7003 Economic Price Adjustment—Wage Rates or Material Prices Controlled by a Foreign Government.

As prescribed in [216.203-4-70](#)(c)(1), use the following clause:

ECONOMIC PRICE ADJUSTMENT—WAGE RATES OR MATERIAL PRICES CONTROLLED BY A FOREIGN GOVERNMENT (MAR 2012)

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(a) As represented by the Contractor in its offer, the prices set forth in this contract—

(1) Are based on the wage rate(s) or material price(s) established and controlled by the government of the country specified by the Contractor in its offer; and

(2) Do not include contingency allowances to pay for possible increases in wage rates or material prices.

(b) If wage rates or material prices are revised by the government named in paragraph (a) of this clause, the Contracting Officer shall make an equitable adjustment in the contract price and shall modify the contract to the extent that the Contractor's actual costs of performing this contract are increased or decreased, as a direct result of the revision, subject to the following:

(1) For increases in established wage rates or material prices, the increase in contract unit price(s) shall be effective on the same date that the government named in paragraph (a) of this clause increased the applicable wage rate(s) or material price(s), but only if the Contracting Officer receives the Contractor's written request for contract adjustment within 10 days of the change. If the Contractor's request is received later, the effective date shall be the date that the Contracting Officer received the Contractor's request.

(2) For decreases in established wage rates or material prices, the decrease in contract unit price(s) shall be effective on the same date that the government named in paragraph (a) of this clause decreased the applicable wage rate(s) or material price(s). The decrease in contract unit price(s) shall apply to all items delivered on and after the effective date of the government's rate or price decrease.

(c) No modification changing the contract unit price(s) shall be executed until the Contracting Officer has verified the applicable change in the rates or prices set by the government named in paragraph (a) of this clause. The Contractor shall make available its books and records that support a requested change in contract price.

(d) Failure to agree to any adjustment shall be a dispute under the Disputes clause of this contract.

(End of clause)

252.216–7004 Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel.

As prescribed in [216.406](#), use the following clause:

AWARD FEE REDUCTION OR DENIAL FOR JEOPARDIZING THE HEALTH OR SAFETY OF GOVERNMENT PERSONNEL (SEP 2011)

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

“Covered incident”–

(i) Means any incident in which the Contractor, through a criminal, civil, or

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administrative proceeding that results in a disposition listed in paragraph (a) (ii) of this definition –

(A) Has been determined in the performance of this contract to have caused serious bodily injury or death of any civilian or military personnel of the Government through gross negligence or with reckless disregard for the safety of such personnel; or

(B) Has been determined to be liable for actions of a subcontractor of the Contractor that caused serious bodily injury or death of any civilian or military personnel of the Government through gross negligence or with reckless disregard for the safety of such personnel.

(ii) Includes those incidents that have resulted in any of the following dispositions:

(A) In a criminal proceeding, a conviction.

(B) In a civil proceeding, a finding of fault or liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damage of \$5,000 or more.

(C) In an administrative proceeding, a finding of fault and liability that results in –

(1) The payment of a monetary fine or penalty of \$5,000 or more; or

(2) The payment of a reimbursement, restitution, or damages in excess of \$100,000.

(D) In a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the Contractor if the proceeding could have led to any of the outcomes specified in subparagraphs (a)(ii)(A), (a) (ii)(B), or (a)(ii)(C).

(E) In a DoD investigation of the Contractor or its subcontractors at any tier not subject to the jurisdiction of the U.S. courts, a final determination by the Secretary of Defense of Contractor or subcontractor fault (see DFARS [216.405-2-70](#)).

“Serious bodily injury” means a grievous physical harm that results in a permanent disability.

(b) If, in the performance of this contract, the Contractor’s or its subcontractor’s actions cause serious bodily injury or death of civilian or military Government personnel, the Government may reduce or deny the award fee for the relevant award fee period in which the covered incident occurred, including the recovery of all or part of any award fees paid for any previous period during which the covered incident occurred.

(End of clause)

252.216-7005 Award Fee.

As prescribed in [216.406\(e\)\(2\)](#), insert the following clause:

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AWARD FEE (FEB 2011)

The Contractor may earn award fee from a minimum of zero dollars to the maximum amount stated in the award-fee plan in this contract. In no event will award fee be paid to the Contractor for any evaluation period in which the Government rates the Contractor's overall cost, schedule, and technical performance below satisfactory. The Contracting Officer may unilaterally revise the award-fee plan prior to the beginning of any rating period in order to redirect contractor emphasis.

(End of clause)

252.216-7006 Ordering.

As prescribed in [216.506\(a\)](#), use the following clause:

ORDERING (MAY 2011)

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the contract schedule. Such orders may be issued from _____ through _____ *[insert dates]*.

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c)(1) If issued electronically, the order is considered "issued" when a copy has been posted to the Electronic Document Access system, and notice has been sent to the Contractor.

(2) If mailed or transmitted by facsimile, a delivery order or task order is considered "issued" when the Government deposits the order in the mail or transmits by facsimile. Mailing includes transmittal by U.S. mail or private delivery services.

(3) Orders may be issued orally only if authorized in the schedule.

(End of Clause)

252.216-7007 Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products—Representation.

As prescribed in [216.203-4-70\(a\)\(2\)](#), use the following provision:

ECONOMIC PRICE ADJUSTMENT—BASIC STEEL, ALUMINUM, BRASS, BRONZE, OR COPPER MILL PRODUCTS—REPRESENTATION (MAR 2012)

(a) *Definitions.* The terms "established price" and "unit price," as used in this provision, have the meaning given in the clause [252.216-7000](#), Economic Price Adjustment--Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products.

(b) By submission of its offer, the offeror represents that the unit price stated in this offer for _____ (*Identify the item*) is not in excess of the offeror's established price in effect on the date set for opening of bids (or the contract date if this

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is to be a negotiated contract) for like quantities of the same item. This price is the net price after applying any applicable standard trade discounts offered by the offeror from its catalog, list, or schedule price.

(End of provision)

252.216-7008 Economic Price Adjustment—Wage Rates or Material Prices Controlled by a Foreign Government—Representation.

As prescribed in [216.203-4-70\(c\)\(2\)](#), use the following provision:

ECONOMIC PRICE ADJUSTMENT—WAGE RATES OR MATERIAL PRICES CONTROLLED BY A FOREIGN GOVERNMENT—REPRESENTATION (MAR 2012)

(a) By submission of its offer, the offeror represents that the prices set forth in this offer—

(1) Are based on the wage rate(s) or material price(s) established and controlled by the government of _____ (*Offeror insert name of host country*); and

(2) Do not include contingency allowances to pay for possible increases in wage rates or material prices.

(End of provision)

252.216-7009 Allowability of Legal Costs Incurred in Connection With a Whistleblower Proceeding.

As prescribed in [216.307\(a\)](#), use the following clause:

ALLOWABILITY OF LEGAL COSTS INCURRED IN CONNECTION WITH A WHISTLEBLOWER PROCEEDING (SEP 2013)

Pursuant to section 827 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239), notwithstanding FAR clause 52.216-7, Allowable Cost and Payment—

(1) The restrictions of FAR 31.205-47(b) on allowability of costs related to legal and other proceedings also apply to any proceeding brought by a contractor employee submitting a complaint under 10 U.S.C. 2409, entitled “Contractor employees: protection from reprisal for disclosure of certain information;” and

(2) Costs incurred in connection with a proceeding that is brought by a contractor employee submitting a complaint under 10 U.S.C. 2409 are also unallowable if the result is an order to take corrective action under 10 U.S.C. 2409.

(End of clause)

252.216-7010 Requirements.

Basic. As prescribed in [216.506\(d\)](#) and (d)(1), use the following clause:

REQUIREMENTS—BASIC (APR 2014)

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(a) This is a requirements contract for the supplies or services specified and effective for the period stated in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government's requirements do not result in orders in the quantities described as "estimated" or "maximum" in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the Order Limitations clause or elsewhere in this contract, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the Ordering clause. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(c) Except as this contract otherwise provides, the Government shall order from the Contractor all the supplies or services specified in the Schedule that are required to be purchased by the Government activity or activities specified in the Schedule.

(d) The Government is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.

(e) If the Government urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Government may acquire the urgently required goods or services from another source.

(f) Orders issued during the effective period of this contract and not completed within that time shall be completed by the Contractor within the time specified in the order. The rights and obligations of the Contractor and the Government for those orders shall be governed by the terms of this contract to the same extent as if completed during the effective period.

(End of clause)

Alternate I. As prescribed in [216.506](#)(d) and (d)(2), use the following clause, which uses a different paragraph (c) than the basic clause:

REQUIREMENTS—ALTERNATE I (APR 2014)

(a) This is a requirements contract for the supplies or services specified and effective for the period stated in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government's requirements do not result in orders in the quantities described as "estimated" or "maximum" in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the

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Order Limitations clause or elsewhere in this contract, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the Ordering clause. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(c) The Government's requirements for each item or subitem of supplies or services described in the Schedule are being purchased through one non-set-aside contract and one set-aside contract. Therefore, the Government shall order from each Contractor approximately one-half of the total supplies or services specified in the Schedule that are required to be purchased by the specified Government activity or activities. The Government may choose between the set-aside Contractor and the non-set-aside Contractor in placing any particular order. However, the Government shall allocate successive orders, in accordance with its delivery requirements, to maintain as close a ratio as is reasonably practicable between the total quantities ordered from the two Contractors.

(d) The Government is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.

(e) If the Government urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Government may acquire the urgently required goods or services from another source.

(f) Orders issued during the effective period of this contract and not completed within that time shall be completed by the Contractor within the time specified in the order. The rights and obligations of the Contractor and the Government for those orders shall be governed by the terms of this contract to the same extent as if completed during the effective period.

(End of clause)

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(Revised June 26, 2015)

252.217-7000 Exercise of Option to Fulfill Foreign Military Sales Commitments.

Basic. As prescribed in [217.208-70](#)(a) and (a)(1), use the following clause:

EXERCISE OF OPTION TO FULFILL FOREIGN MILITARY SALES
COMMITMENTS—BASIC (NOV 2014)

(a) The Government may exercise the option(s) of this contract to fulfill foreign military sales commitments.

(b) The foreign military sales commitments are for:

(Insert name of country)

(Insert applicable CLIN)

(End of clause)

Alternate I. As prescribed in [217.208-70](#)(a) and (a)(2), use the following clause, which uses a different paragraph (b) than paragraph (b) of the basic clause:

EXERCISE OF OPTION TO FULFILL FOREIGN MILITARY SALES
COMMITMENTS—ALTERNATE I (NOV 2014)

(a) The Government may exercise the option(s) of this contract to fulfill foreign military sales commitments.

(b) On the date the option is exercised, the Government shall identify the foreign country for the purpose of negotiating any equitable adjustment attributable to foreign military sales. Failure to agree on an equitable adjustment shall be treated as a dispute under the Disputes clause of this contract.

(End of clause)

252.217-7001 Surge Option.

As prescribed in [217.208-70](#)(b), use the following clause:

SURGE OPTION (AUG 1992)

(a) *General.* The Government has the option to—

(1) Increase the quantity of supplies or services called for under this contract by no more than ___ percent; and/or

(2) Accelerate the rate of delivery called for under this contract, at a price or cost established before contract award or to be established by negotiation as provided in this clause.

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(b) *Schedule.*

(1) When the Production Surge Plan (DI-MGMT-80969) is included in the contract, the option delivery schedule shall be the production rate provided with the Plan. If the Plan was negotiated before contract award, then the negotiated schedule shall be used.

(2) If there is no Production Surge Plan in the contract, the Contractor shall, within 30 days from the date of award, furnish the Contracting Officer a delivery schedule showing the maximum sustainable rate of delivery for items in this contract. This delivery schedule shall provide acceleration by month up to the maximum sustainable rate of delivery achievable within the Contractor's existing facilities, equipment, and subcontracting structure.

(3) The Contractor shall not revise the option delivery schedule without approval from the Contracting Officer.

(c) *Exercise of option.*

(1) The Contracting Officer may exercise this option at any time before acceptance by the Government of the final scheduled delivery.

(2) The Contracting Officer will provide a preliminary oral or written notice to the Contractor stating the quantities to be added or accelerated under the terms of this clause, followed by a contract modification incorporating the transmitted information and instructions. The notice and modification will establish a not-to-exceed price equal to the highest contract unit price or cost of the added or accelerated items as of the date of the notice.

(3) The Contractor will not be required to deliver at a rate greater than the maximum sustainable delivery rate under paragraph (b)(2) of this clause, nor will the exercise of this option extend delivery more than 24 months beyond the scheduled final delivery.

(d) *Price negotiation.*

(1) Unless the option cost or price was previously agreed upon, the Contractor shall, within 30 days from the date of option exercise, submit to the Contracting Officer a cost or price proposal (including a cost breakdown) for the added or accelerated items.

(2) Failure to agree on a cost or price in negotiations resulting from the exercise of this option shall constitute a dispute concerning a question of fact within the meaning of the Disputes clause of this contract. However, nothing in this clause shall excuse the Contractor from proceeding with the performance of the contract, as modified, while any resulting claim is being settled.

(End of clause)

252.217-7002 Offering Property for Exchange.

As prescribed in [217.7005](#), use the following provision:

OFFERING PROPERTY FOR EXCHANGE (JUN 2012)

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(a) The property described in item number _____, is being offered in accordance with the exchange provisions of 40 U.S.C. 503.

(b) The property is located at _____ (insert address) _____. Offerors may inspect the property during the period _____ (insert beginning and ending dates and insert hours during day) _____.

(End of provision)

252.217-7003 Changes.

As prescribed in [217.7104](#)(a), use the following clause:

CHANGES (DEC 1991)

(a) The Contracting Officer may, at any time and without notice to the sureties, by written change order, make changes within the general scope of any job order issued under the Master Agreement in—

- (1) Drawings, designs, plans, and specifications;
- (2) Work itemized;
- (3) Place of performance of the work;
- (4) Time of commencement or completion of the work; and
- (5) Any other requirement of the job order.

(b) If a change causes an increase or decrease in the cost of, or time required for, performance of the job order, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the price or date of completion, or both, and shall modify the job order in writing.

(1) Within ten days after the Contractor receives notification of the change, the Contractor shall submit to the Contracting Officer a request for price adjustment, together with a written estimate of the increased cost.

(2) The Contracting Officer may grant an extension of this period if the Contractor requests it within the ten day period.

(3) If the circumstances justify it, the Contracting Officer may accept and grant a request for equitable adjustment at any later time prior to final payment under the job order, except that the Contractor may not receive profit on a payment under a late request.

(c) If the Contractor includes in its claim the cost of property made obsolete or excess as a result of a change, the Contracting Officer shall have the right to prescribe the manner of disposition of that property.

(d) Failure to agree to any adjustment shall be a dispute within the meaning of the Disputes clause.

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(e) Nothing in this clause shall excuse the Contractor from proceeding with the job order as changed.

(End of clause)

252.217-7004 Job Orders and Compensation.

As prescribed in [217.7104\(a\)](#), use the following clause:

JOB ORDERS AND COMPENSATION (MAY 2006)

(a) The Contracting Officer shall solicit bids or proposals and make award of job orders. The issuance of a job order signed by the Contracting Officer constitutes award. The job order shall incorporate the terms and conditions of the Master Agreement.

(b) Whenever the Contracting Officer determines that a vessel, its cargo or stores, would be endangered by delay, or whenever the Contracting Officer determines that military necessity requires that immediate work on a vessel is necessary, the Contracting Officer may issue a written order to perform that work and the Contractor hereby agrees to comply with that order and to perform work on such vessel within its capabilities.

(1) As soon as practicable after the issuance of the order, the Contracting Officer and the Contractor shall negotiate a price for the work and the Contracting Officer shall issue a job order covering the work.

(2) The Contractor shall, upon request, furnish the Contracting Officer with a breakdown of costs incurred by the Contractor and an estimate of costs expected to be incurred in the performance of the work. The Contractor shall maintain, and make available for inspection by the Contracting Officer or the Contracting Officer's representative, records supporting the cost of performing the work.

(3) Failure of the parties to agree upon the price of the work shall constitute a dispute within the meaning of the Disputes clause of the Master Agreement. In the meantime, the Contractor shall diligently proceed to perform the work ordered.

(c)(1) If the nature of any repairs is such that their extent and probable cost cannot be ascertained readily, the Contracting Officer may issue a job order (on a sealed bid or negotiated basis) to determine the nature and extent of required repairs.

(2) Upon determination by the Contracting Officer of what work is necessary, the Contractor, if requested by the Contracting Officer, shall negotiate prices for performance of that work. The prices agreed upon shall be set forth in a modification of the job order.

(3) Failure of the parties to agree upon the price shall constitute a dispute under the Disputes clause. In the meantime, the Contractor shall diligently proceed to perform the work ordered.

(End of clause)

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252.217-7005 Inspection and Manner of Doing Work.

As prescribed in [217.7104\(a\)](#), use the following clause:

INSPECTION AND MANNER OF DOING WORK (JUL 2009)

(a) The Contractor shall perform work in accordance with the job order, any drawings and specifications made a part of the job order, and any change or modification issued under the Changes clause of the Master Agreement.

(b)(1) Except as provided in paragraph (b)(2) of this clause, and unless otherwise specifically provided in the job order, all operational practices of the Contractor and all workmanship, material, equipment, and articles used in the performance of work under the Master Agreement shall be in accordance with the best commercial marine practices and the rules and requirements of the American Bureau of Shipping, the U.S. Coast Guard, and the Institute of Electrical and Electronic Engineers, in effect at the time of Contractor's submission of bid (or acceptance of the job order, if negotiated).

(2) When Navy specifications are specified in the job order, the Contractor shall follow Navy standards of material and workmanship. The solicitation shall prescribe the Navy standard whenever applicable.

(c) The Government may inspect and test all material and workmanship at any time during the Contractor's performance of the work.

(1) If, prior to delivery, the Government finds any material or workmanship is defective or not in accordance with the job order, in addition to its rights under the Guarantees clause of the Master Agreement, the Government may reject the defective or nonconforming material or workmanship and require the Contractor to correct or replace it at the Contractor's expense.

(2) If the Contractor fails to proceed promptly with the replacement or correction of the material or workmanship, the Government may replace or correct the defective or nonconforming material or workmanship and charge the Contractor the excess costs incurred.

(3) As specified in the job order, the Contractor shall provide and maintain an inspection system acceptable to the Government.

(4) The Contractor shall maintain complete records of all inspection work and shall make them available to the Government during performance of the job order and for 90 days after the completion of all work required.

(d) The Contractor shall not permit any welder to work on a vessel unless the welder is, at the time of the work, qualified to the standards established by the U.S. Coast Guard, American Bureau of Shipping, or Department of the Navy for the type of welding being performed. Qualifications of a welder shall be as specified in the job order.

(e) The Contractor shall—

(1) Exercise reasonable care to protect the vessel from fire;

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(2) Maintain a reasonable system of inspection over activities taking place in the vicinity of the vessel's magazines, fuel oil tanks, or storerooms containing flammable materials;

(3) Maintain a reasonable number of hose lines ready for immediate use on the vessel at all times while the vessel is berthed alongside the Contractor's pier or in dry dock or on a marine railway;

(4) Unless otherwise provided in a job order, provide sufficient security patrols to reasonably maintain a fire watch for protection of the vessel when it is in the Contractor's custody;

(5) To the extent necessary, clean, wash, and steam out or otherwise make safe, all tanks under alteration or repair;

(6) Furnish the Contracting Officer or designated representative with a copy of the "gas-free" or "safe-for-hotwork" certificate, provided by a Marine Chemist or Coast Guard authorized person in accordance with Occupational Safety and Health Administration regulations (29 CFR 1915.14) before any hot work is done on a tank;

(7) Treat the contents of any tank as Government property in accordance with the Government Property clause; and

(8) Dispose of the contents of any tank only at the direction, or with the concurrence, of the Contracting Officer.

(f) Except as otherwise provided in the job order, when the vessel is in the custody of the Contractor or in dry dock or on a marine railway and the temperature is expected to go as low as 35 °F, the Contractor shall take all necessary steps to—

(1) Keep all hose pipe lines, fixtures, traps, tanks, and other receptacles on the vessel from freezing; and

(2) Protect the stern tube and propeller hubs from frost damage.

(g) The Contractor shall, whenever practicable—

(1) Perform the required work in a manner that will not interfere with the berthing and messing of Government personnel attached to the vessel; and

(2) Provide Government personnel attached to the vessel access to the vessel at all times.

(h) Government personnel attached to the vessel shall not interfere with the Contractor's work or workers.

(i)(1) The Government does not guarantee the correctness of the dimensions, sizes, and shapes set forth in any job order, sketches, drawings, plans, or specifications prepared or furnished by the Government, unless the job order requires that the Contractor perform the work prior to any opportunity to inspect.

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(2) Except as stated in paragraph (i)(1) of this clause, and other than those parts furnished by the Government, the Contractor shall be responsible for the correctness of the dimensions, sizes, and shapes of parts furnished under this agreement.

(j) The Contractor shall at all times keep the site of the work on the vessel free from accumulation of waste material or rubbish caused by its employees or the work. At the completion of the work, unless the job order specifies otherwise, the Contractor shall remove all rubbish from the site of the work and leave the immediate vicinity of the work area “broom clean.”

(End of clause)

252.217-7006 Title.

As prescribed in [217.7104\(a\)](#), use the following clause:

TITLE (DEC 1991)

(a) Unless otherwise provided, title to all materials and equipment to be incorporated in a vessel in the performance of a job order shall vest in the Government upon delivery at the location specified for the performance of the work.

(b) Upon completion of the job order, or with the approval of the Contracting Officer during performance of the job order, all Contractor-furnished materials and equipment not incorporated in, or placed on, any vessel, shall become the property of the Contractor, unless the Government has reimbursed the Contractor for the cost of the materials and equipment.

(c) The vessel, its equipment, movable stores, cargo, or other ship's materials shall not be considered Government-furnished property.

(End of clause)

252.217-7007 Payments.

As prescribed in [217.7104\(a\)](#), use the following clause:

PAYMENTS (DEC 1991)

(a) “Progress payments,” as used in this clause, means payments made before completion of work in progress under a job order.

(b) Upon submission by the Contractor of invoices in the form and number of copies directed by the Contracting Officer, and as approved by the Contracting Officer, the Government will make progress payments as work progresses under the job order.

(1) Generally, the Contractor may submit invoices on a semi-monthly basis, unless expenditures justify a more frequent submission.

(2) The Government need not make progress payments for invoices aggregating less than \$5,000.

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(3) The Contracting Officer shall approve progress payments based on the value, computed on the price of the job order, of labor and materials incorporated in the work, materials suitably stored at the site of the work, and preparatory work completed, less the aggregate of any previous payments.

(4) Upon request, the Contractor will furnish the Contracting Officer any reports concerning expenditures on the work to date that the Contracting Officer may require.

(c) The Government will retain until final completion and acceptance of all work covered by the job order, an amount estimated or approved by the Contracting Officer under paragraph (b) of this clause. The amount retained will be in accordance with the rate authorized by Congress for Naval vessel repair contracts at the time of job order award.

(d) The Contracting Officer may direct that progress payments be based on the price of the job order as adjusted as a result of change orders under the Changes clause of the Master Agreement. If the Contracting Officer does not so direct—

(1) Payments of any increases shall be made from time to time after the amount of the increase is determined under the Changes clause of the Master Agreement; and

(2) Reductions resulting from decreases shall be made for the purposes of subsequent progress payments as soon as the amounts are determined under the Changes clause of the Master Agreement.

(e) Upon completion of the work under a job order and final inspection and acceptance, and upon submission of invoices in such form and with such copies as the Contracting Officer may prescribe, the Contractor shall be paid for the price of the job order, as adjusted pursuant to the Changes clause of the Master Agreement, less any performance reserves deemed necessary by the Contracting Officer, and less the amount of any previous payments.

(f) All materials, equipment, or any other property or work in process covered by the progress payments made by the Government, upon the making of those progress payments, shall become the sole property of the Government, and are subject to the provisions of the Title clause of the Master Agreement.

(End of clause)

252.217-7008 Bonds.

As prescribed in [217.7104\(a\)](#), use the following clause:

BONDS (DEC 1991)

(a) If the solicitation requires an offeror to submit a bid bond, the Offeror may furnish, instead, an annual bid bond (or evidence thereof) or an annual performance and payment bond (or evidence thereof).

(b) If the solicitation does not require a bid bond, the Offeror shall not include in the price any contingency to cover the premium of such a bond.

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(c) Even if the solicitation does not require bonds, the Contracting Officer may nevertheless require a performance and payment bond, in form, amount, and with a surety acceptable to the Contracting Officer. Where performance and payment bond is required, the offer price shall be increased upon the award of the job order in an amount not to exceed the premium of a corporate surety bond.

(d) If any surety upon any bond furnished in connection with a job order under this agreement fails to submit requested reports as to its financial condition or otherwise becomes unacceptable to the Government, the Contracting Officer may require the Contractor to furnish whatever additional security the Contracting Officer determines necessary to protect the interests of the Government and of persons supplying labor or materials in the performance of the work contemplated under the Master Agreement.

(End of clause)

252.217-7009 Default.

As prescribed in [217.7104\(a\)](#), use the following clause:

DEFAULT (DEC 1991)

(a) The Government may, subject to the provisions of paragraph (b) of this clause, by written notice of default to the Contractor, terminate the whole or any part of a job order if the Contractor fails to—

(1) Make delivery of the supplies or to perform the services within the time specified in a job order or any extension;

(2) Make progress, so as to endanger performance of the job order; or

(3) Perform any of the other provisions of this agreement or a job order.

(b) Except for defaults of subcontractors, the Contractor shall not be liable for any excess costs if failure to perform the job order arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

(c) If the Contractor's failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to perform the job order within the time specified.

(d) If the Government terminates the job order in whole or in part as provided in paragraph (a) of this clause—

(1) The Government may, upon such terms and in such manner as the Contracting Officer may deem appropriate, arrange for the completion of the work so terminated, at such plant or plants, including that of the Contractor, as may be designated by the Contracting Officer.

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(i) The Contractor shall continue the performance of the job order to the extent not terminated under the provisions of this clause.

(ii) If the work is to be completed at the plant, the Government may use all tools, machinery, facilities, and equipment of the Contractor determined by the Contracting Office to be necessary for that purpose.

(iii) If the cost to the Government of the work procured or completed (after adjusting such cost to exclude the effect of changes in the plans and specifications made subsequent to the date of termination) exceeds the price fixed for work under the job order (after adjusting such price on account of changes in the plans and specifications made before the date of termination), the Contractor, or the Contractor's surety, if any, shall be liable for such excess.

(2) The Government, in addition to any other rights provided in this clause, may require the Contractor to transfer title and delivery to the Government, in the manner and to the extent directed by the Contracting Officer, any completed supplies and such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (hereinafter called “manufacturing materials”) as the Contractor has specifically produced or specifically acquired for the performance of the terminated part of the job order.

(i) The Contractor shall, upon direction of the Contracting Officer, protect and preserve property in possession of the Contractor in which the Government has an interest.

(ii) The Government shall pay to the Contractor the job order price for completed items of work delivered to and accepted by the Government, and the amount agreed upon by the Contractor and the Contracting Officer for manufacturing materials delivered to and accepted by the Government, and for the protection and preservation of property. Failure to agree shall be a dispute concerning a question of fact within the meaning of the Disputes clause.

(e) If, after notice of termination of the job order, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued for the convenience of the Government.

(f) If the Contractor fails to complete the performance of a job order within the time specified, or any extension, the actual damage to the Government for the delay will be difficult or impossible to determine.

(1) In lieu of actual damage, the Contractor shall pay to the Government as fixed, agreed, and liquidated damages for each calendar day of delay the amount, if any, set forth in the job order (prorated to the nearest hour for fractional days).

(2) If the Government terminates the job order, the Contractor shall be liable, in addition to the excess costs provided in paragraph (d) of this clause, for liquidated damages accruing until such time as the Government may reasonably obtain completion of the work.

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(3) The Contractor shall not be charged with liquidated damages when the delay arises out of causes beyond the control and without the fault or negligence of the Contractor. Subject to the provisions of the Disputes clause of the Master Agreement, the Contracting Officer shall ascertain the facts and the extent of the delay and shall extend the time for performance when in the judgment of the Contracting Officer, the findings of fact justify an extension.

(g) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law under this agreement.

(End of clause)

252.217-7010 Performance.

As prescribed in [217.7104\(a\)](#), use the following clause:

PERFORMANCE (JUL 2009)

(a) Upon the award of a job order, the Contractor shall promptly start the work specified and shall diligently prosecute the work to completion. The Contractor shall not start work until the job order has been awarded except in the case of emergency work ordered by the Contracting Officer under the Job Orders and Compensation clause of the Master Agreement.

(b) The Government shall deliver the vessel described in the job order at the time and location specified in the job order. Upon completion of the work, the Government shall accept delivery of the vessel at the time and location specified in the job order.

(c) The Contractor shall, without charge and without specific requirement in a job order—

(1) Make available at the plant to personnel of the vessel while in dry dock or on a marine railway, sanitary lavatory and similar facilities acceptable to the Contracting Officer;

(2) Supply and maintain suitable brows and gangways from the pier, dry dock, or marine railway to the vessel;

(3) Treat salvage, scrap or other ship's material of the Government resulting from performance of the work as items of Government-furnished property, in accordance with the Government Property clause;

(4) Perform, or pay the cost of, any repair, reconditioning or replacement made necessary as the result of the use by the Contractor of any of the vessel's machinery, equipment or fittings, including, but not limited to, winches, pumps, rigging, or pipe lines; and

(5) Furnish suitable offices, office equipment and telephones at or near the site of the work for the Government's use.

(d) The job order will state whether dock and sea trials are required to determine whether or not the Contractor has satisfactorily performed the work.

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(1) If dock and sea trials are required, the vessel shall be under the control of the vessel's commander and crew.

(2) The Contractor shall not conduct dock and sea trials not specified in the job order without advance approval of the Contracting Officer. Dock and sea trials not specified in the job order shall be at the Contractor's expense and risk.

(3) The Contractor shall provide and install all fittings and appliances necessary for dock and sea trials. The Contractor shall be responsible for care, installation, and removal of instruments and apparatus furnished by the Government for use in the trials.

(End of clause)

252.217-7011 Access to Vessel.

As prescribed at [217.7104](#)(a), use the following clause:

ACCESS TO VESSEL (DEC 1991)

(a) Upon the request of the Contracting Officer, the Contractor shall grant admission to the Contractor's facilities and access to vessel, on a non-interference basis, as necessary to perform their respective responsibilities, to a reasonable number of:

(1) Government and other Government contractor employees (in addition to those Government employees attached to the vessel); and

(2) Representatives of offerors on other contemplated Government work.

(b) All personnel granted access shall comply with Contractor rules governing personnel at its shipyard.

(End of clause)

252.217-7012 Liability and Insurance.

As prescribed in [217.7104](#)(a), use the following clause:

LIABILITY AND INSURANCE (AUG 2003)

(a) The Contractor shall exercise its best efforts to prevent accidents, injury, or damage to all employees, persons, and property, in and about the work, and to the vessel or part of the vessel upon which work is done.

(b) *Loss or damage to the vessel, materials, or equipment.*

(1) Unless otherwise directed or approved in writing by the Contracting Officer, the Contractor shall not carry insurance against any form of loss or damage to the vessel(s) or to the materials or equipment to which the Government has title or which have been furnished by the Government for installation by the Contractor. The Government assumes the risks of loss of and damage to that property.

(2) The Government does not assume any risk with respect to loss or damage compensated for by insurance or otherwise or resulting from risks with respect to which

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the Contractor has failed to maintain insurance, if available, as required or approved by the Contracting Officer.

(3) The Government does not assume risk of and will not pay for any costs of the following:

(i) Inspection, repair, replacement, or renewal of any defects in the vessel(s) or material and equipment due to—

(A) Defective workmanship performed by the Contractor or its subcontractors;

(B) Defective materials or equipment furnished by the Contractor or its subcontracts; or

(C) Workmanship, materials, or equipment which do not conform to the requirements of the contract, whether or not the defect is latent or whether or not the nonconformance is the result of negligence.

(ii) Loss, damage, liability, or expense caused by, resulting from, or incurred as a consequence of any delay or disruption, willful misconduct or lack of good faith by the Contractor or any of its representatives that have supervision or direction of—

(A) All or substantially all of the Contractor's business; or

(B) All or substantially all of the Contractor's operation at any one plant.

(4) As to any risk that is assumed by the Government, the Government shall be subrogated to any claim, demand or cause of action against third parties that exists in favor of the Contractor. If required by the Contracting Officer, the Contractor shall execute a formal assignment or transfer of the claim, demand, or cause of action.

(5) No party other than the Contractor shall have any right to proceed directly against the Government or join the Government as a co-defendant in any action.

(6) Notwithstanding the foregoing, the Contractor shall bear the first \$50,000 of loss or damage from each occurrence or incident, the risk of which the Government would have assumed under the provisions of this paragraph (b).

(c) *Indemnification.* The Contractor indemnifies the Government and the vessel and its owners against all claims, demands, or causes of action to which the Government, the vessel or its owner(s) might be subject as a result of damage or injury (including death) to the property or person of anyone other than the Government or its employees, or the vessel or its owner, arising in whole or in part from the negligence or other wrongful act of the Contractor or its agents or employees, or any subcontractor, or its agents or employees.

(1) The Contractor's obligation to indemnify under this paragraph shall not exceed the sum of \$300,000 as a consequence of any single occurrence with respect to any one vessel.

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(2) The indemnity includes, without limitation, suits, actions, claims, costs, or demands of any kind, resulting from death, personal injury, or property damage occurring during the period of performance of work on the vessel or within 90 days after redelivery of the vessel. For any claim, etc., made after 90 days, the rights of the parties shall be as determined by other provisions of this agreement and by law. The indemnity does apply to death occurring after 90 days where the injury was received during the period covered by the indemnity.

(d) *Insurance.*

(1) The Contractor shall, at its own expense, obtain and maintain the following insurance—

(i) Casualty, accident, and liability insurance, as approved by the Contracting Officer, insuring the performance of its obligations under paragraph (c) of this clause.

(ii) Workers Compensation Insurance (or its equivalent) covering the employees engaged on the work.

(2) The Contractor shall ensure that all subcontractors engaged on the work obtain and maintain the insurance required in paragraph (d)(1) of this clause.

(3) Upon request of the Contracting Officer, the Contractor shall provide evidence of the insurance required by paragraph (d) of this clause.

(e) The Contractor shall not make any allowance in the job order price for the inclusion of any premium expense or charge for any reserve made on account of self-insurance for coverage against any risk assumed by the Government under this clause.

(f) The Contractor shall give the Contracting Officer written notice as soon as practicable after the occurrence of a loss or damage for which the Government has assumed the risk.

(1) The notice shall contain full details of the loss or damage.

(2) If a claim or suit is later filed against the Contractor as a result of the event, the Contractor shall immediately deliver to the Government every demand, notice, summons, or other process received by the Contractor or its employees or representatives.

(3) The Contractor shall cooperate with the Government and, upon request, shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses, and in the conduct of suits. The Government shall reimburse the Contractor for expenses incurred in this effort, other than the cost of maintaining the Contractor's usual organization.

(4) The Contractor shall not, except at its own expense, voluntarily make any payment, assume any obligation, or incur any expense other than what would be imperative for the protection of the vessel(s) at the time of the event.

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(g) In the event of loss of or damage to any vessel(s), material, or equipment which may result in a claim against the Government under the insurance provisions of this contract, the Contractor shall promptly notify the Contracting Officer of the loss or damage. The Contracting Officer may, without prejudice to any other right of the Government, either—

(1) Order the Contractor to proceed with replacement or repair, in which event the Contractor shall effect the replacement or repair;

(i) The Contractor shall submit to the Contracting Officer a request for reimbursement of the cost of the replacement or repair together with whatever supporting documentation the Contracting Officer may reasonably require, and shall identify the request as being submitted under the Insurance clause of the agreement.

(ii) If the Government determines that the risk of the loss or damage is within the scope of the risks assumed by the Government under this clause, the Government will reimburse the Contractor for the reasonable, allowable cost of the replacement or repair, plus a reasonable profit (if the work or replacement or repair was performed by the Contractor) less the deductible amount specified in paragraph (b) of this clause.

(iii) Payments by the Government to the Contractor under this clause are outside the scope of and shall not affect the pricing structure of the contract, and are additional to the compensation otherwise payable to the Contractor under this contract; or

(2) In the event the Contracting Officer decides that the loss or damage shall not be replaced or repaired, the Contracting Officer shall—

(i) Modify the contract appropriately, consistent with the reduced requirements reflected by the unreplaced or unrepaired loss or damage; or

(ii) Terminate the repair of any part or all of the vessel(s) under the Termination for Convenience of the Government clause of this agreement.

(End of clause)

252.217-7013 Guarantees.

As prescribed in [217.7104\(a\)](#), use the following clause:

GUARANTEES (DEC 1991)

(a) In the event any work performed or materials furnished by the contractor under the Master Agreement prove defective or deficient within 90 days from the date of redelivery of the vessel(s), the Contractor, as directed by the Contracting Officer and at its own expense, shall correct and repair the deficiency to the satisfaction of the Contracting Officer.

(b) If the Contractor or any subcontractor has a guarantee for work performed or materials furnished that exceeds the 90 day period, the Government shall be entitled to rely upon the longer guarantee until its expiration.

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(c) With respect to any individual work item identified as incomplete at the time of redelivery of the vessel(s), the guarantee period shall run from the date the item is completed.

(d) If practicable, the Government shall give the Contractor an opportunity to correct the deficiency.

(1) If the Contracting Officer determines it is not practicable or is otherwise not advisable to return the vessel(s) to the Contractor, or the Contractor fails to proceed with the repairs promptly, the Contracting Officer may direct that the repairs be performed elsewhere, at the Contractor's expense.

(2) If correction and repairs are performed by other than the Contractor, the Contracting Officer may discharge the Contractor's liability by making an equitable deduction in the price of the job order.

(e) The Contractor's liability shall extend for an additional 90 day guarantee period on those defects or deficiencies that the Contractor corrected.

(f) At the option of the Contracting Officer, defects and deficiencies may be left uncorrected. In that event, the Contractor and Contracting Officer shall negotiate an equitable reduction in the job price. Failure to agree upon an equitable reduction shall constitute a dispute under the Disputes clause of this agreement.

(End of clause)

252.217-7014 Discharge of Liens.

As prescribed in [217.7104](#)(a), use the following clause:

DISCHARGE OF LIENS (DEC 1991)

(a) The Contractor shall immediately discharge, or cause to be discharged, any lien or right *in rem* of any kind, other than in favor of the Government, that exists or arises in connection with work done or material furnished under any job order under this agreement.

(b) If any lien or right *in rem* is not immediately discharged, the Government, at the expense of the Contractor, may discharge, or cause to be discharged, the lien or right.

(End of clause)

252.217-7015 Safety and Health.

As prescribed in [217.7104](#)(a), use the following clause:

SAFETY AND HEALTH (DEC 1991)

Nothing contained in the Master Agreement or any job order shall relieve the Contractor of any obligations it may have to comply with—

(a) The Occupational Safety and Health Act of 1970 (29 U.S.C. 651, et seq.);

(b) The Safety and Health Regulations for Ship Repairing (29 CFR 1915); or

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(c) Any other applicable Federal, State, and local laws, codes, ordinances, and regulations.

(End of clause)

252.217-7016 Plant Protection.

As prescribed in [217.7104](#)(a), use the following clause:

PLANT PROTECTION (DEC 1991)

(a) The Contractor shall provide, for the plant and work in process, reasonable safeguards against all hazards, including unauthorized entry, malicious mischief, theft, vandalism, and fire.

(b) The Contractor shall also provide whatever additional safeguards are necessary to protect the plant and work in process from espionage, sabotage, and enemy action.

(1) The Government shall reimburse the Contractor for that portion of the costs of the additional safeguards that is allocable to the contract in the same manner as if the Contracting Officer had issued a change order for the additional safeguards.

(2) The costs reimbursed shall not include any overhead allowance, unless the overhead is incident to the construction or installation of necessary security devices or equipment.

(c) Upon payment by the Government of the cost of any device or equipment required or approved under paragraph (b) of this clause, title shall vest in the Government.

(1) The Contractor shall comply with the instructions of the Contracting Officer concerning its identification and disposition.

(2) No such device or equipment shall become a fixture as a result of its being affixed to realty not owned by the Government.

(End of clause)

252.217-7017 Reserved.

252.217-7018 Reserved.

252.217-7019 Reserved.

252.217-7020 Reserved.

252.217-7021 Reserved.

252.217-7022 Reserved.

252.217-7023 Reserved.

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252.217-7024 Reserved.

252.217-7025 Reserved.

252.217-7026 Identification of Sources of Supply.

As prescribed in [217.7303](#), use the following provision:

IDENTIFICATION OF SOURCES OF SUPPLY (NOV 1995)

(a) The Government is required under 10 U.S.C. 2384 to obtain certain information on the actual manufacturer or sources of supplies it acquires.

(b) The apparently successful Offeror agrees to complete and submit the following table before award:

TABLE						
Line Items	National Stock Number	Commercial Item (Y or N)	Source of Supply Company	Address	Part No.	Actual Mfg?
(1)	(2)	(3)	(4)	(4)	(5)	(6)
(1) List each deliverable item of supply and item of technical data.						
(2) If there is no national stock number, list "none."						
(3) Use "Y" if the item is a commercial item; otherwise use "N." If "Y" is listed, the Offeror need not complete the remaining columns in the table.						
(4) For items of supply, list all sources. For technical data, list the source.						
(5) For items of supply, list each source's part number for the item.						
(6) Use "Y" if the source of supply is the actual manufacturer; "N" if it is not; and "U" if unknown.						

(End of provision)

252.217-7027 Contract Definitization.

As prescribed in [217.7406](#)(b), use the following clause:

CONTRACT DEFINITIZATION (DEC 2012)

(a) A _____ (*insert specific type of contract action*) is contemplated. The Contractor agrees to begin promptly negotiating with the Contracting Officer the terms of a definitive contract that will include (1) all clauses required by the Federal Acquisition Regulation (FAR) on the date of execution of the undefinitized contract action, (2) all clauses required by law on the date of execution of the definitive contract action, and (3) any other mutually agreeable clauses, terms, and conditions. The Contractor agrees to submit a _____ (*insert type of proposal; e.g., fixed-price or cost-and-fee*) proposal and certified cost or pricing data supporting its proposal.

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(b) The schedule for definitizing this contract action is as follows (*insert target date for definitization of the contract action and dates for submission of proposal, beginning of negotiations, and, if appropriate, submission of the make-or-buy and subcontracting plans and certified cost or pricing data*):

(c) If agreement on a definitive contract action to supersede this undefinitized contract action is not reached by the target date in paragraph (b) of this clause, or within any extension of it granted by the Contracting Officer, the Contracting Officer may, with the approval of the head of the contracting activity, determine a reasonable price or fee in accordance with Subpart 15.4 and Part 31 of the FAR, subject to Contractor appeal as provided in the Disputes clause. In any event, the Contractor shall proceed with completion of the contract, subject only to the Limitation of Government Liability clause.

(1) After the Contracting Officer’s determination of price or fee, the contract shall be governed by—

(i) All clauses required by the FAR on the date of execution of this undefinitized contract action for either fixed-price or cost-reimbursement contracts, as determined by the Contracting Officer under this paragraph (c);

(ii) All clauses required by law as of the date of the Contracting Officer’s determination; and

(iii) Any other clauses, terms, and conditions mutually agreed upon.

(2) To the extent consistent with paragraph (c)(1) of this clause, all clauses, terms, and conditions included in this undefinitized contract action shall continue in effect, except those that by their nature apply only to an undefinitized contract action.

(d) The definitive contract resulting from this undefinitized contract action will include a negotiated _____ (*insert “cost/price ceiling” or “firm-fixed price”*) in no event to exceed _____ (*insert the not-to-exceed amount*).

(End of clause)

252.217-7028 Over and Above Work.

As prescribed in [217.7702](#), use a clause substantially as follows:

OVER AND ABOVE WORK (DEC 1991)

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

(1) “Over and above work” means work discovered during the course of performing overhaul, maintenance, and repair efforts that is—

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- (i) Within the general scope of the contract;
- and
- (ii) Not covered by the line item(s) for the basic work under the contract;
- (iii) Necessary in order to satisfactorily complete the contract.

(2) “Work request” means a document prepared by the Contractor which describes over and above work being proposed.

(b) The Contractor and Administrative Contracting Officer shall mutually agree to procedures for Government administration and Contractor performance of over and above work requests. If the parties cannot agree upon the procedures, the Administrative Contracting Officer has the unilateral right to direct the over and above work procedures to be followed. These procedures shall, as a minimum, cover—

(1) The format, content, and submission of work requests by the Contractor. Work requests shall contain data on the type of discrepancy disclosed, the specific location of the discrepancy, and the estimated labor hours and material required to correct the discrepancy. Data shall be sufficient to satisfy contract requirements and obtain the authorization of the Contracting Officer to perform the proposed work;

(2) Government review, verification, and authorization of the work; and

(3) Proposal pricing, submission, negotiation, and definitization.

(c) Upon discovery of the need for over and above work, the Contractor shall prepare and furnish to the Government a work request in accordance with the agreed-to procedures.

(d) The Government shall—

(1) Promptly review the work request;

(2) Verify that the proposed work is required and not covered under the basic contract line item(s);

(3) Verify that the proposed corrective action is appropriate; and

(4) Authorize over and above work as necessary.

(e) The Contractor shall promptly submit to the Contracting Officer, a proposal for the over and above work. The Government and Contractor will then negotiate a settlement for the over and above work. Contract modifications will be executed to definitize all over and above work.

(f) Failure to agree on the price of over and above work shall be a dispute within the meaning of the Disputes clause of this contract.

(End of clause)

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(Revised June 26, 2015)

252.223-7000 Reserved.

252.223-7001 Hazard Warning Labels.

As prescribed in [223.303](#), use the following clause:

HAZARD WARNING LABELS (DEC 1991)

(a) “Hazardous material,” as used in this clause, is defined in the Hazardous Material Identification and Material Safety Data clause of this contract.

(b) The Contractor shall label the item package (unit container) of any hazardous material to be delivered under this contract in accordance with the Hazard Communication Standard (29 CFR 1910.1200 et seq). The Standard requires that the hazard warning label conform to the requirements of the standard unless the material is otherwise subject to the labelling requirements of one of the following statutes:

- (1) Federal Insecticide, Fungicide and Rodenticide Act;
- (2) Federal Food, Drug and Cosmetics Act;
- (3) Consumer Product Safety Act;
- (4) Federal Hazardous Substances Act; or
- (5) Federal Alcohol Administration Act.

(c) The Offeror shall list which hazardous material listed in the Hazardous Material Identification and Material Safety Data clause of this contract will be labelled in accordance with one of the Acts in paragraphs (b)(1) through (5) of this clause instead of the Hazard Communication Standard. Any hazardous material not listed will be interpreted to mean that a label is required in accordance with the Hazard Communication Standard.

MATERIAL (If None, Insert “None.”)	ACT
_____	_____
_____	_____

(d) The apparently successful Offeror agrees to submit, before award, a copy of the hazard warning label for all hazardous materials not listed in paragraph (c) of this clause. The Offeror shall submit the label with the Material Safety Data Sheet being furnished under the Hazardous Material Identification and Material Safety Data clause of this contract.

(e) The Contractor shall also comply with MIL-STD-129, Marking for Shipment and Storage (including revisions adopted during the term of this contract).

(End of clause)

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252.223-7002 Safety Precautions for Ammunition and Explosives.

As prescribed in [223.370-5](#), use the following clause:

SAFETY PRECAUTIONS FOR AMMUNITION AND EXPLOSIVES (MAY 1994)

(a) *Definition.* “Ammunition and explosives,” as used in this clause—

(1) Means liquid and solid propellants and explosives, pyrotechnics, incendiaries and smokes in the following forms:

- (i) Bulk,
- (ii) Ammunition;
- (iii) Rockets;
- (iv) Missiles;
- (v) Warheads;
- (vi) Devices; and
- (vii) Components of (i) through (vi), except for wholly inert items.

(2) This definition does not include the following, unless the Contractor is using or incorporating these materials for initiation, propulsion, or detonation as an integral or component part of an explosive, an ammunition or explosive end item, or of a weapon system—

- (i) Inert components containing no explosives, propellants, or pyrotechnics;
- (ii) Flammable liquids;
- (iii) Acids;
- (iv) Oxidizers;
- (v) Powdered metals; or
- (vi) Other materials having fire or explosive characteristics.

(b) *Safety requirements.*

(1) The Contractor shall comply with the requirements of the DoD Contractors' Safety Manual for Ammunition and Explosives, DoD 4145.26-M, hereafter referred to as “the manual,” in effect on the date of the solicitation for this contract. The Contractor shall also comply with any other additional requirements included in the schedule of this contract.

(2) The Contractor shall allow the Government access to the Contractor's facilities, personnel, and safety program documentation. The Contractor shall allow

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authorized Government representatives to evaluate safety programs, implementation, and facilities.

(c) *Noncompliance with the manual.*

(1) If the Contracting Officer notifies the Contractor of any noncompliance with the manual or schedule provisions, the Contractor shall take immediate steps to correct the noncompliance. The Contractor is not entitled to reimbursement of costs incurred to correct noncompliances unless such reimbursement is specified elsewhere in the contract.

(2) The Contractor has 30 days from the date of notification by the Contracting Officer to correct the noncompliance and inform the Contracting Officer of the actions taken. The Contracting Officer may direct a different time period for the correction of noncompliances.

(3) If the Contractor refuses or fails to correct noncompliances within the time period specified by the Contracting Officer, the Government has the right to direct the Contractor to cease performance on all or part of this contract. The Contractor shall not resume performance until the Contracting Officer is satisfied that the corrective action was effective and the Contracting Officer so informs the Contractor.

(4) The Contracting Officer may remove Government personnel at any time the Contractor is in noncompliance with any safety requirement of this clause.

(5) If the direction to cease work or the removal of Government personnel results in increased costs to the Contractor, the Contractor shall not be entitled to an adjustment in the contract price or a change in the delivery or performance schedule unless the Contracting Officer later determines that the Contractor had in fact complied with the manual or schedule provisions. If the Contractor is entitled to an equitable adjustment, it shall be made in accordance with the Changes clause of this contract.

(d) *Mishaps.* If a mishap involving ammunition or explosives occurs, the Contractor shall—

- (1) Notify the Contracting Officer immediately;
- (2) Conduct an investigation in accordance with other provisions of this contract or as required by the Contracting Officer; and
- (3) Submit a written report to the Contracting Officer.

(e) *Contractor responsibility for safety.*

(1) Nothing in this clause, nor any Government action or failure to act in surveillance of this contract, shall relieve the Contractor of its responsibility for the safety of—

- (i) The Contractor's personnel and property;

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(ii) The Government's personnel and property; or

(iii) The general public.

(2) Nothing in this clause shall relieve the Contractor of its responsibility for complying with applicable Federal, State, and local laws, ordinances, codes, and regulations (including those requiring the obtaining of licenses and permits) in connection with the performance of this contract.

(f) *Contractor responsibility for contract performance.*

(1) Neither the number or frequency of inspections performed by the Government, nor the degree of surveillance exercised by the Government, relieve the Contractor of its responsibility for contract performance.

(2) If the Government acts or fails to act in surveillance or enforcement of the safety requirements of this contract, this does not impose or add to any liability of the Government.

(g) *Subcontractors.*

(1) The Contractor shall insert this clause, including this paragraph (g), in every subcontract that involves ammunition or explosives.

(i) The clause shall include a provision allowing authorized Government safety representatives to evaluate subcontractor safety programs, implementation, and facilities as the Government determines necessary.

(ii) **NOTE:** The Government Contracting Officer or authorized representative shall notify the prime Contractor of all findings concerning subcontractor safety and compliance with the manual. The Contracting Officer or authorized representative may furnish copies to the subcontractor. The Contractor in turn shall communicate directly with the subcontractor, substituting its name for references to “the Government”. The Contractor and higher tier subcontractors shall also include provisions to allow direction to cease performance of the subcontract if a serious uncorrected or recurring safety deficiency potentially causes an imminent hazard to DoD personnel, property, or contract performance.

(2) The Contractor agrees to ensure that the subcontractor complies with all contract safety requirements. The Contractor will determine the best method for verifying the adequacy of the subcontractor's compliance.

(3) The Contractor shall ensure that the subcontractor understands and agrees to the Government's right to access to the subcontractor's facilities, personnel, and safety program documentation to perform safety surveys. The Government performs these safety surveys of subcontractor facilities solely to prevent the occurrence of any mishap which would endanger the safety of DoD personnel or otherwise adversely impact upon the Government's contractual interests.

(4) The Contractor shall notify the Contracting Officer or authorized representative before issuing any subcontract when it involves ammunition or explosives. If the proposed subcontract represents a change in the place of performance,

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the Contractor shall request approval for such change in accordance with the clause of this contract entitled “Change in Place of Performance--Ammunition and Explosives”.

(End of clause)

252.223-7003 Change in Place of Performance—Ammunition and Explosives.

As prescribed in [223.370-5](#), use the following clause:

CHANGE IN PLACE OF PERFORMANCE—AMMUNITION AND EXPLOSIVES (DEC 1991)

(a) The Offeror shall identify, in the “Place of Performance” provision of this solicitation, the place of performance of all ammunition and explosives work covered by the Safety Precautions for Ammunition and Explosives clause of this solicitation. Failure to furnish this information with the offer may result in rejection of the offer.

(b) The Offeror agrees not to change the place of performance of any portion of the offer covered by the Safety Precautions for Ammunition and Explosives clause contained in this solicitation after the date set for receipt of offers without the written approval of the Contracting Officer. The Contracting Officer shall grant approval only if there is enough time for the Government to perform the necessary safety reviews on the new proposed place of performance.

(c) If a contract results from this offer, the Contractor agrees not to change any place of performance previously cited without the advance written approval of the Contracting Officer.

(End of clause)

252.223-7004 Drug-Free Work Force.

As prescribed in [223.570-2](#), use the following clause:

DRUG-FREE WORK FORCE (SEP 1988)

(a) *Definitions.*

(1) “Employee in a sensitive position,” as used in this clause, means an employee who has been granted access to classified information; or employees in other positions that the Contractor determines involve national security, health or safety, or functions other than the foregoing requiring a high degree of trust and confidence.

(2) “Illegal drugs,” as used in this clause, means controlled substances included in Schedules I and II, as defined by section 802(6) of Title 21 of the United States Code, the possession of which is unlawful under Chapter 13 of that Title. The term “illegal drugs” does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

(b) The Contractor agrees to institute and maintain a program for achieving the objective of a drug-free work force. While this clause defines criteria for such a program, contractors are encouraged to implement alternative approaches comparable to the criteria in paragraph (c) that are designed to achieve the objectives of this clause.

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(c) Contractor programs shall include the following, or appropriate alternatives:

(1) Employee assistance programs emphasizing high level direction, education, counseling, rehabilitation, and coordination with available community resources;

(2) Supervisory training to assist in identifying and addressing illegal drug use by Contractor employees;

(3) Provision for self-referrals as well as supervisory referrals to treatment with maximum respect for individual confidentiality consistent with safety and security issues;

(4) Provision for identifying illegal drug users, including testing on a controlled and carefully monitored basis. Employee drug testing programs shall be established taking account of the following:

(i) The Contractor shall establish a program that provides for testing for the use of illegal drugs by employees in sensitive positions. The extent of and criteria for such testing shall be determined by the Contractor based on considerations that include the nature of the work being performed under the contract, the employee's duties, the efficient use of Contractor resources, and the risks to health, safety, or national security that could result from the failure of an employee adequately to discharge his or her position.

(ii) In addition, the Contractor may establish a program for employee drug testing—

(A) When there is a reasonable suspicion that an employee uses illegal drugs; or

(B) When an employee has been involved in an accident or unsafe practice;

(C) As part of or as a follow-up to counseling or rehabilitation for illegal drug use;

(D) As part of a voluntary employee drug testing program.

(iii) The Contractor may establish a program to test applicants for employment for illegal drug use.

(iv) For the purpose of administering this clause, testing for illegal drugs may be limited to those substances for which testing is prescribed by section 2.1 of Subpart B of the “Mandatory Guidelines for Federal Workplace Drug Testing Programs” (53 FR 11980 (April 11, 1988)), issued by the Department of Health and Human Services.

(d) Contractors shall adopt appropriate personnel procedures to deal with employees who are found to be using drugs illegally. Contractors shall not allow any employee to remain on duty or perform in a sensitive position who is found to use illegal drugs until such time as the Contractor, in accordance with procedures established by the Contractor, determines that the employee may perform in such a position.

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(e) The provisions of this clause pertaining to drug testing programs shall not apply to the extent they are inconsistent with state or local law, or with an existing collective bargaining agreement; provided that with respect to the latter, the Contractor agrees that those issues that are in conflict will be a subject of negotiation at the next collective bargaining session.

(End of clause)

252.223-7005 Reserved.

252.223-7006 Prohibition on Storage, Treatment, and Disposal of Toxic or Hazardous Materials.

Basic. As prescribed in [223.7106](#) and [223.7106\(a\)](#), use the following clause:

PROHIBITION ON STORAGE, TREATMENT, AND DISPOSAL OF TOXIC OR HAZARDOUS MATERIALS—BASIC (SEP 2014)

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

“Storage” means a non-transitory, semi-permanent or permanent holding, placement, or leaving of material. It does not include a temporary accumulation of a limited quantity of a material used in or a waste generated or resulting from authorized activities, such as servicing, maintenance, or repair of Department of Defense (DoD) items, equipment, or facilities.

“Toxic or hazardous materials” means—

(i) Materials referred to in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (42 U.S.C. 9601(14)) and materials designated under section 102 of CERCLA (42 U.S.C. 9602) (40 CFR Part 302);

(ii) Materials that are of an explosive, flammable, or pyrotechnic nature; or

(iii) Materials otherwise identified by the Secretary of Defense as specified in DoD regulations.

(b) In accordance with 10 U.S.C. 2692, the Contractor is prohibited from storing, treating, or disposing of toxic or hazardous materials not owned by DoD on a DoD installation, except to the extent authorized by a statutory exception to 10 U.S.C. 2692 or as authorized by the Secretary of Defense. A charge may be assessed for any storage or disposal authorized under any of the exceptions to 10 U.S.C. 2692. If a charge is to be assessed, then such assessment shall be identified elsewhere in the contract with payment to the Government on a reimbursable cost basis.

(c) The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts that require, may require, or permit a subcontractor access to a DoD installation, at any subcontract tier.

(End of clause)

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Alternate I. As prescribed in [223.7106](#) and 223.7106(b), use the following clause, which adds a new paragraph (c) and revises and redesignates paragraph (c) of the basic clause as paragraph (d):

PROHIBITION ON STORAGE, TREATMENT, AND DISPOSAL OF TOXIC OR HAZARDOUS MATERIALS—ALTERNATE I (SEP 2014)

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

“Storage” means a non-transitory, semi-permanent or permanent holding, placement, or leaving of material. It does not include a temporary accumulation of a limited quantity of a material used in or a waste generated or resulting from authorized activities, such as servicing, maintenance, or repair of Department of Defense (DoD) items, equipment, or facilities.

“Toxic or hazardous materials” means—

(i) Materials referred to in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (42 U.S.C. 9601(14)) and materials designated under section 102 of CERCLA (42 U.S.C. 9602) (40 CFR Part 302);

(ii) Materials that are of an explosive, flammable, or pyrotechnic nature; or

(iii) Materials otherwise identified by the Secretary of Defense as specified in DoD regulations.

(b) In accordance with 10 U.S.C. 2692, the Contractor is prohibited from storing, treating, or disposing of toxic or hazardous materials not owned by DoD on a DoD installation, except to the extent authorized by a statutory exception to 10 U.S.C. 2692 or as authorized by the Secretary of Defense. A charge may be assessed for any storage or disposal authorized under any of the exceptions to 10 U.S.C. 2692. If a charge is to be assessed, then such assessment shall be identified elsewhere in the contract with payment to the Government on a reimbursable cost basis.

(c) With respect to treatment or disposal authorized pursuant to DFARS [223.7104](#)(10) (10 U.S.C. 2692(b)(10)), and notwithstanding any other provision of the contract, the Contractor assumes all financial and environmental responsibility and liability resulting from any treatment or disposal of toxic or hazardous materials not owned by DoD on a military installation. The Contractor shall indemnify, defend, and hold the Government harmless for all costs, liability, or penalties resulting from the Contractor’s treatment or disposal of toxic or hazardous materials not owned by DoD on a military installation.

(d) The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts that require, may require, or permit a subcontractor access to a DoD installation, at any tier. Inclusion of the substance of this clause in subcontracts does not relieve the prime Contractor of liability to the Government under paragraph (c).

(End of clause)

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252.223-7007 Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives.

As prescribed in [223.7203](#), use the following clause:

SAFEGUARDING SENSITIVE CONVENTIONAL ARMS, AMMUNITION, AND EXPLOSIVES (SEP 1999)

(a) *Definition.* “Arms, ammunition, and explosives (AA&E),” as used in this clause, means those items within the scope (chapter 1, paragraph B) of DoD 5100.76-M, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives.

(b) The requirements of DoD 5100.76-M apply to the following items of AA&E being developed, produced, manufactured, or purchased for the Government, or provided to the Contractor as Government-furnished property under this contract:

NOMENCLATURE	NATIONAL STOCK NUMBER	SENSITIVITY/ CATEGORY

(c) The Contractor shall comply with the requirements of DoD 5100.76-M, as specified in the statement of work. The edition of DoD 5100.76-M in effect on the date of issuance of the solicitation for this contract shall apply.

(d) The Contractor shall allow representatives of the Defense Security Service (DSS), and representatives of other appropriate offices of the Government, access at all reasonable times into its facilities and those of its subcontractors, for the purpose of performing surveys, inspections, and investigations necessary to review compliance with the physical security standards applicable to this contract.

(e) The Contractor shall notify the cognizant DSS field office of any subcontract involving AA&E within 10 days after award of the subcontract.

(f) The Contractor shall ensure that the requirements of this clause are included in all subcontracts, at every tier—

(1) For the development, production, manufacture, or purchase of AA&E; or

(2) When AA&E will be provided to the subcontractor as Government-furnished property.

(g) Nothing in this clause shall relieve the Contractor of its responsibility for complying with applicable Federal, state, and local laws, ordinances, codes, and regulations (including requirements for obtaining licenses and permits) in connection with the performance of this contract.

(End of clause)

252.223-7008 Prohibition of Hexavalent Chromium.

As prescribed in [223.7306](#), use the following clause:

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PROHIBITION OF HEXAVALENT CHROMIUM (JUN 2013)

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

“Homogeneous material” means a material that cannot be mechanically disjointed into different materials and is of uniform composition throughout.

(1) Examples of homogeneous materials include individual types of plastics, ceramics, glass, metals, alloys, paper, board, resins, and surface coatings.

(2) Homogeneous material does not include conversion coatings that chemically modify the substrate.

“Mechanically disjointed” means that the materials can, in principle, be separated by mechanical actions such as unscrewing, cutting, crushing, grinding, and abrasive processes.

(b) *Prohibition.*

(1) Unless otherwise specified by the Contracting Officer, the Contractor shall not provide any deliverable or construction material under this contract that—

(i) Contains hexavalent chromium in a concentration greater than 0.1 percent by weight in any homogenous material; or

(ii) Requires the removal-or reapplication of hexavalent chromium materials during subsequent sustainment phases of the deliverable or construction material.

(2) This prohibition does not apply to hexavalent chromium produced as a by-product of manufacturing processes.

(c) If authorization for incorporation of hexavalent chromium in a deliverable or construction material is required, the Contractor shall submit a request to the Contracting Officer.

(d) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts, including subcontracts for commercial items, that are for supplies, maintenance and repair services, or construction materials.

(End of clause)

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(Revised June 26, 2015)

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

Basic. As prescribed in [225.1101](#)(1) and (1)(i), use the following provision:

BUY AMERICAN—BALANCE OF PAYMENTS PROGRAM CERTIFICATE—BASIC (NOV 2014)

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

(b) *Evaluation.* The Government—

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

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

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

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

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

(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 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”:

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Line Item Number

Country of Origin (If known)

(End of provision)

Alternate I. As prescribed in [225.1101](#)(1) and (1)(ii), use the following provision, which adds “South Caucasus/Central and South Asian (SC/CASA) state” and “South Caucasus/Central and South Asian (SC/CASA) state end product” in paragraph (a), and replaces “qualifying country end products” in paragraphs (b)(2) and (c)(2) with “qualifying country end products or SC/CASA state end products”:

BUY AMERICAN—BALANCE OF PAYMENTS PROGRAM CERTIFICATE—
ALTERNATE I (NOV 2014)

(a) *Definitions.* “Commercially available off-the-shelf (COTS) item,” “component,” “domestic end product,” “foreign end product,” “qualifying country,” “qualifying country end product,” “South Caucasus/Central and South Asian (SC/CASA) state,” “South Caucasus/Central and South Asian (SC/CASA) state end product,” and “United States,” as used in this provision, have the meanings given in the Buy American and Balance of Payments Program—Alternate I clause of this solicitation.

(b) *Evaluation.* The Government—

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

(2) Will evaluate offers of qualifying country end products or SC/CASA state end products without regard to the restrictions of the Buy American statute or the Balance of Payments Program.

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

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

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

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

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

Line Item Number

Country of Origin

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

<u>Line Item Number</u>	<u>Country of Origin (If known)</u>
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(End of provision)

252.225-7001 Buy American and Balance of Payments Program.

Basic. As prescribed in [225.1101](#)(2)(i) and (2)(ii), use the following clause:

BUY AMERICAN AND BALANCE OF PAYMENTS PROGRAM—BASIC
(NOV 2014)

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

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

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

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

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

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

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

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

“Domestic end product” means—

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

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

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

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mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

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

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

(B) The end product is a COTS item.

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

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

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

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Finland
France
Germany
Greece
Israel
Italy
Luxembourg
Netherlands
Norway
Poland
Portugal
Spain
Sweden
Switzerland
Turkey

United Kingdom of Great Britain and Northern Ireland.

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

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“Qualifying country end product” means—

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

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

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

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

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

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

(B) The end product is a COTS item.

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

(b) This clause implements 41 U.S.C chapter 83, Buy American. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for an end product that is a COTS item (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—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. As prescribed in [225.1101](#)(2)(i) and (2)(iii), use the following clause, which adds “South Caucasus/Central and South Asian (SC/CASA) state” and “South Caucasus/Central and South Asian (SC/CASA) state end product” to paragraph (a), and uses different paragraphs (b) and (c) than the basic clause:

BUY AMERICAN AND BALANCE OF PAYMENTS PROGRAM—ALTERNATE I
(NOV 2014)

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

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

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

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

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

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

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

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

“Domestic end product” means—

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

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

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

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

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

(B) The end product is a COTS item.

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

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

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

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

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

“Qualifying country end product” means—

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

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

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

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

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

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

(B) The end product is a COTS item.

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

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

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

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

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

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

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

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

(End of clause)

252.225-7002 Qualifying Country Sources as Subcontractors.

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

QUALIFYING COUNTRY SOURCES AS SUBCONTRACTORS (DEC 2012)

(a) *Definition.* “Qualifying country,” as used in this clause, means a country with a reciprocal defense procurement memorandum of understanding or international

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

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

(b) Subject to the restrictions in section [225.872](#) of the Defense FAR Supplement, the Contractor shall not preclude qualifying country sources or U.S. sources from competing for subcontracts under this contract.

(End of clause)

252.225-7003 Report of Intended Performance Outside the United States and Canada—Submission with Offer.

As prescribed in [225.7204](#)(a), use the following provision:

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

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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.

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;

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(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

(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

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(3) Shall state the full amount of the payment requested, subdivided into the following categories:

(i) U.S. products—expenditures for material and equipment manufactured or produced in the United States, including end products, components, or construction material, but excluding transportation;

(ii) U.S. services—expenditures for services performed in the United States, including all charges for overhead, other indirect costs, and profit under construction or service contracts;

(iii) Transportation on U.S. carriers—expenditures for transportation furnished by U.S. flag, ocean, surface, and air carriers; and

(iv) Expenditures not identified under paragraphs (c)(3)(i) through (iii) of this clause.

(d) Nothing in this clause requires the establishment or maintenance of detailed accounting records or gives the U.S. Government any right to audit the Contractor's books or records.

(End of clause)

252.225-7006 Reserved.

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 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.

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(End of clause)

252.225-7008 Restriction on Acquisition of Specialty Metals.

As prescribed in [225.7003-5](#)(a)(1), use the following clause:

RESTRICTION ON ACQUISITION OF SPECIALTY METALS (MAR 2013)

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

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

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

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

“Produce” means—

- (i) Atomization;
- (ii) Sputtering; or

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

“Specialty metal” means—

(i) Steel—

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

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

(ii) Metal alloys consisting of—

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

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

(iii) Titanium and titanium alloys; or

(iv) Zirconium and zirconium alloys.

“Steel” means an iron alloy that includes between .02 and 2 percent carbon and

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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 (OCT 2014)

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

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

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

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

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

- (i) Can be provisioned and replaced as an entity; and
- (ii) Incorporates multiple, replaceable parts.

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

“Commercially available off-the-shelf item”—

- (i) Means any item of supply that is—
 - (A) A commercial 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 46 U.S.C. 40102(4), such as

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agricultural products and petroleum products.

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

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

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

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

“Produce” means—

- (i) Atomization;
- (ii) Sputtering; or
- (iii) Final consolidation of non-melt derived metal powders.

“Qualifying country” means any country listed in the definition of “Qualifying country” at [225.003](#) of the Defense Federal Acquisition Regulation Supplement (DFARS).

“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.

“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

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than nickel and iron in excess of 10 percent; or

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

(iii) Titanium and titanium alloys; or

(iv) Zirconium and zirconium alloys.

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

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

(b) *Restriction.* Except as provided in paragraph (c) of this clause, any specialty metals incorporated in items delivered under this contract shall be melted or produced in the United States, its outlying areas, or a qualifying country.

(c) *Exceptions.* The restriction in paragraph (b) of this clause does not apply to—

(1) Electronic components.

(2)(i) Commercially available off-the-shelf (COTS) items, other than—

(A) Specialty metal mill products, such as bar, billet, slab, wire, plate, or sheet, that have not been incorporated into COTS end items, subsystems, assemblies, or components;

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

(C) Commercially available high performance magnets that contain specialty metal, unless such high performance magnets are incorporated into COTS end items or subsystems; and

(D) COTS fasteners, unless—

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

(2) The fasteners qualify for the commercial 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.

(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).

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(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;
- (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,

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the Contractor may purchase an amount of domestically melted or produced specialty metals in the required form, for use during the period of contract performance in the production of the commercial derivative military article and the related commercial article, if—

(i) The Contracting Officer has notified the Contractor of the items to be delivered under this contract that have been determined by the Government to meet the definition of “commercial derivative military article”; and

(ii) For each item that has been determined by the Government to meet the definition of “commercial derivative military article,” the Contractor has certified, as specified in the provision of the solicitation entitled “Commercial Derivative Military Article—Specialty Metals Compliance Certificate” (DFARS [252.225-7010](#)), that the Contractor and its subcontractor(s) will enter into a contractual agreement or agreements to purchase an amount of domestically melted or produced specialty metal in the required form, for use during the period of contract performance in the production of each commercial derivative military article and the related commercial article, that is not less than the Contractor’s good faith estimate of the greater of—

(A) An amount equivalent to 120 percent of the amount of specialty metal that is required to carry out the production of the commercial derivative military article (including the work performed under each subcontract); or

(B) An amount equivalent to 50 percent of the amount of specialty metal that will be purchased by the Contractor and its subcontractors for use during such period in the production of the commercial derivative military article and the related commercial article.

(2) For the purposes of this alternative, the amount of specialty metal that is required to carry out production of the commercial derivative military article includes specialty metal contained in any item, including COTS items.

(e) *Subcontracts.*

(1) The Contractor shall exclude and reserve paragraph (d) and this paragraph (e)(1) when flowing down this clause to subcontracts.

(2) The Contractor shall insert paragraphs (a) through (c) and this paragraph (e)(2) of this clause in subcontracts, including subcontracts for commercial items, that are for items containing specialty metals to ensure compliance of the end products that the Contractor will deliver to the Government. When inserting this clause in subcontracts, the Contractor shall—

(i) Modify paragraph (c)(6) of this clause only as necessary to facilitate management of the minimal content exception at the prime contract level. The minimal content exception does not apply to specialty metals contained in high-performance magnets; and

(ii) Not further alter the clause other than to identify the appropriate parties.

(End of clause)

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252.225-7010 Commercial Derivative Military Article—Specialty Metals Compliance Certificate.

As prescribed in [225.7003-5\(b\)](#), use the following provision:

COMMERCIAL DERIVATIVE MILITARY ARTICLE—SPECIALTY METALS COMPLIANCE CERTIFICATE (JUL 2009)

(a) *Definitions.* “Commercial derivative military article,” “commercially available off-the-shelf item,” “produce,” “required form,” and “specialty metal,” as used in this provision, have the meanings given in the clause of this solicitation entitled “Restriction on Acquisition of Certain Articles Containing Specialty Metals” (DFARS [252.225-7009](#)).

(b) The offeror shall list in this paragraph any commercial derivative military articles it intends to deliver under any contract resulting from this solicitation using the alternative compliance for commercial derivative military articles, as specified in paragraph (d) of the clause of this solicitation entitled “Restriction on Acquisition of Certain Articles Containing Specialty Metals” (DFARS [252.225-7009](#)). The offeror’s designation of an item as a “commercial derivative military article” will be subject to Government review and approval.

(c) If the offeror has listed any commercial derivative military articles in paragraph (b) of this provision, the offeror certifies that, if awarded a contract as a result of this solicitation, and if the Government approves the designation of the listed item(s) as commercial derivative military articles, the offeror and its subcontractor(s) will demonstrate that individually or collectively they have entered into a contractual agreement or agreements to purchase an amount of domestically melted or produced specialty metal in the required form, for use during the period of contract performance in the production of each commercial derivative military article and the related commercial article, that is not less than the Contractor’s good faith estimate of the greater of—

(1) An amount equivalent to 120 percent of the amount of specialty metal that is required to carry out the production of the commercial derivative military article (including the work performed under each subcontract); or

(2) An amount equivalent to 50 percent of the amount of specialty metal that will be purchased by the Contractor and its subcontractors for use during such period in the production of the commercial derivative military article and the related commercial article.

(d) For the purposes of this provision, the amount of specialty metal that is required to carry out the production of the commercial derivative military article includes specialty metal contained in any item, including commercially available off-the-shelf items, incorporated into such commercial derivative military articles.

(End of provision)

252.225-7011 Restriction on Acquisition of Supercomputers.

As prescribed in [225.7012-3](#), use the following clause:

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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 (FEB 2013)

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

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

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

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

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

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“Structural component of a tent”—

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

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

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

“U.S.-flag vessel” means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b) The Contractor shall deliver under this contract only such of the following items, either as end products or components, that have been grown, reprocessed, reused, or produced in the United States:

(1) Food.

(2) Clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing and the materials and components thereof. Clothing includes items such as outerwear, headwear, underwear, nightwear, footwear, hosiery, handwear, belts, badges, and insignia.

(3)(i) Tents and structural components of tents;

(ii) Tarpaulins; or

(iii) Covers.

(4) Cotton and other natural fiber products.

(5) Woven silk or woven silk blends.

(6) Spun silk yarn for cartridge cloth.

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

(8) Canvas products.

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

(10) Any item of individual equipment (Federal Supply Class 8465) manufactured from or containing fibers, yarns, fabrics, or materials listed in this paragraph (b).

(c) This clause does not apply—

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(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;

(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

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(ii) If not taken from the sea, shall be obtained from fishing within the United States; and

(2) Any processing or manufacturing of the fish, shellfish, or seafood shall be performed on a U.S.-flag vessel or in the United States.

(End of clause)

252.225-7013 Duty-Free Entry.

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

DUTY-FREE ENTRY (NOV 2014)

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

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

“Customs territory of the United States” means the 50 States, the District of Columbia, and Puerto Rico.

“Eligible product” means—

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

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

(iii) “Canadian end product,” as defined in the Buy American—Free Trade Agreements—Balance of Payments Program (either alternate I or alternate III) clause of this Contract; or

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

“Qualifying country” and “qualifying country end product” have the meanings given in the Trade Agreements clause, the Buy American and Balance of Payments Program clause, or the Buy American—Free Trade Agreements—Balance of Payments Program clause of this contract, basic or alternate.

(b) Except as provided in paragraph (i) of this clause, or unless supplies were imported into the customs territory of the United States before the date of this contract or the applicable subcontract, the price of this contract shall not include any amount for duty on—

(1) End items that are eligible products or qualifying country end products;

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(2) Components (including, without limitation, raw materials and intermediate assemblies) produced or made in qualifying countries, that are to be incorporated in U.S.- made end products to be delivered under this contract; or

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

(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:

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“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.

(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;

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(2) Consign the shipment as specified in paragraph (e) of this clause; and

(3) Mark on the exterior of all packages—

(i) “UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE”;
and

(ii) The activity address number of the contract administration office administering the prime contract.

(h) The Contractor shall notify the Administrative Contracting Officer (ACO) in writing of any purchase of eligible products or qualifying country supplies to be accorded duty-free entry, that are to be imported into the customs territory of the United States for delivery to the Government or for incorporation in end items to be delivered to the Government. The Contractor shall furnish the notice to the ACO immediately upon award to the supplier and shall include in the notice—

(1) The Contractor’s name, address, and Commercial and Government Entity (CAGE) code;

(2) Prime contract number and, if applicable, delivery order number;

(3) Total dollar value of the prime contract or delivery order;

(4) Date of the last scheduled delivery under the prime contract or delivery order;

(5) Foreign supplier's name and address;

(6) Number of the subcontract for foreign supplies;

(7) Total dollar value of the subcontract for foreign supplies;

(8) Date of the last scheduled delivery under the subcontract for foreign supplies;

(9) List of items purchased;

(10) An agreement that the Contractor will pay duty on supplies, or any portion thereof, that are diverted to nongovernmental use other than—

(i) Scrap or salvage; or

(ii) Competitive sale made, directed, or authorized by the Contracting Officer;

(11) Country of origin; and

(12) Scheduled delivery date(s).

(i) This clause does not apply to purchases of eligible products or qualifying country

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supplies in connection with this contract if—

(1) The supplies are identical in nature to supplies purchased by the Contractor or any subcontractor in connection with its commercial business; and

(2) It is not economical or feasible to account for such supplies so as to ensure that the amount of the supplies for which duty-free entry is claimed does not exceed the amount purchased in connection with this contract.

(j) The Contractor shall—

(1) Insert the substance of this clause, including this paragraph (j), in all subcontracts for—

(i) Qualifying country components; or

(ii) Nonqualifying country components for which the Contractor estimates that duty will exceed \$200 per unit;

(2) Require subcontractors to include the number of this contract on all shipping documents submitted to Customs for supplies for which duty-free entry is claimed pursuant to this clause; and

(3) Include in applicable subcontracts—

(i) The name and address of the ACO for this contract;

(ii) The name, address, and activity address number of the contract administration office specified in this contract; and

(iii) The information required by paragraphs (h)(1), (2), and (3) of this clause.

(End of clause)

252.225-7014 Reserved.

252.225-7015 Restriction on Acquisition of Hand or Measuring Tools.

As prescribed in [225.7002-3\(b\)](#), use the following clause:

RESTRICTION ON ACQUISITION OF HAND OR MEASURING TOOLS (JUN 2005)

Hand or measuring tools delivered under this contract shall be produced in the United States or its outlying areas.

(End of clause)

252.225-7016 Restriction on Acquisition of Ball and Roller Bearings.

As prescribed in [225.7009-5](#), use the following clause:

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RESTRICTION ON ACQUISITION OF BALL AND ROLLER BEARINGS (JUN 2011)

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

(1) “Bearing components” means the bearing element, retainer, inner race, or outer race.

(2) “Component,” other than a bearing component, means any item supplied to the Government as part of an end product or of another component.

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

(b) Except as provided in paragraph (c) of this clause—

(1) Each ball and roller bearing delivered under this contract shall be manufactured in the United States, its outlying areas, or Canada; and

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

(c) The restriction in paragraph (b) of this clause does not apply to ball or roller bearings that are acquired as—

(1) Commercial components of 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 Photovoltaic Devices.

As prescribed in [225.7017-4](#)(a), use the following clause:

PHOTOVOLTAIC DEVICES (JAN 2014)

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

“Bahrainian photovoltaic device” means an article that—

(i) Is wholly manufactured in 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, provided that the photovoltaic device is not subsequently substantially transformed outside of Bahrain.

“Canadian photovoltaic device” means an article that 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, provided that the photovoltaic device is not subsequently substantially transformed outside of Canada.

“Caribbean Basin country photovoltaic device” means an article that—

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

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of a Caribbean Basin country.

“Designated country” means—

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

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

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

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

“Designated country photovoltaic device” means a WTO GPA country photovoltaic device, a Free Trade Agreement country photovoltaic device, a least developed country photovoltaic device, or a Caribbean Basin country photovoltaic device.

“Domestic photovoltaic device” means a photovoltaic device manufactured in the United States.

“Foreign photovoltaic device” means a photovoltaic device other than a domestic photovoltaic device.

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

“Free Trade Agreement country photovoltaic device” means an article that—

(i) Is wholly manufactured in 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, provided that the photovoltaic device is not subsequently substantially transformed outside of a Free Trade Agreement country.

“Korean photovoltaic device” means an article that—

(i) Is wholly manufactured in Korea (Republic of); or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Korea (Republic of) into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of Korea (Republic of).

“Least developed country photovoltaic device” means an article that—

(i) Is wholly manufactured in 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, provided that the photovoltaic device is not subsequently substantially transformed outside of a least developed country.

“Moroccan photovoltaic device” means an article that—

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(i) Is wholly manufactured in 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, provided that the photovoltaic device is not subsequently substantially transformed outside of Morocco.

“Panamanian photovoltaic device” means an article that—

(i) Is wholly manufactured in Panama; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Panama into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of Panama.

“Peruvian photovoltaic device” means an article that—

(i) Is wholly manufactured in 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, provided that the photovoltaic device is not subsequently substantially transformed outside of Peru.

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

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

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Finland
France
Germany
Greece
Israel
Italy

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Luxembourg
Netherlands
Norway
Poland
Portugal
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

“Qualifying country photovoltaic device” means a photovoltaic device manufactured in a qualifying country.

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

“U.S.-made photovoltaic device” means a photovoltaic device that—

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

“WTO GPA country photovoltaic device” means an article that—

- (i) Is wholly manufactured in 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, provided that the photovoltaic device is not subsequently substantially transformed outside of a WTO GPA country.

(b) This clause implements section 846 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111-383).

(c) *Restriction.* If the Contractor specified in its offer in the Photovoltaic Devices—Certificate provision of the solicitation that the estimated value of the photovoltaic devices to be utilized in performance of this contract would be—

(1) More than \$3,000 but less than \$25,000, then the Contractor shall utilize only domestic or qualifying country photovoltaic devices unless, in its offer, it specified utilization of other foreign photovoltaic devices in paragraph (c)(2)(ii) of the Photovoltaic Devices—Certificate provision of the solicitation;

(2) \$25,000 or more but less than \$79,507, then the Contractor shall utilize in the performance of this contract only domestic or qualifying country photovoltaic devices unless, in its offer, it specified utilization of Canadian or other foreign photovoltaic devices in paragraph (c)(3)(ii) of the Photovoltaic Devices—Certificate provision of the solicitation. If the Contractor certified in its offer that it will utilize a

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qualifying country photovoltaic device or a Canadian photovoltaic device, the Contractor shall utilize a qualifying country photovoltaic device, a Canadian photovoltaic device, or, at the Contractor's option, a domestic photovoltaic device;

(3) \$79,507 or more but less than \$100,000, then the Contractor shall utilize under this contract only domestic photovoltaic devices, qualifying country photovoltaic devices, or Free Trade Agreement country photovoltaic devices (other than Bahrainian, Korean, Moroccan, Panamanian, or Peruvian photovoltaic devices), unless, in its offer, it specified utilization of other foreign photovoltaic devices in paragraph (c)(4)(ii) of the Photovoltaic Devices—Certificate provision of the solicitation. If the Contractor certified in its offer that it will utilize a qualifying country photovoltaic device or a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Korean, Moroccan, Panamanian, or Peruvian photovoltaic device), the Contractor shall utilize a qualifying country photovoltaic device; a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Korean, Moroccan, Panamanian, or Peruvian photovoltaic device), or, at the Contractor's option, a domestic photovoltaic device;

(4) \$100,000 or more but less than \$204,000, then the Contractor shall utilize under this contract only domestic photovoltaic devices, qualifying country photovoltaic devices, or Free Trade Agreement country photovoltaic devices (other than Bahrainian, Moroccan, Panamanian, or Peruvian photovoltaic devices), unless, in its offer, it specified utilization of other foreign photovoltaic devices in paragraph (c)(4)(ii) of the Photovoltaic Devices—Certificate provision of the solicitation. If the Contractor certified in its offer that it will utilize a qualifying country photovoltaic device or a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Moroccan, Panamanian, or Peruvian photovoltaic device), the Contractor shall utilize a qualifying country photovoltaic device; a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Moroccan, Panamanian, or Peruvian photovoltaic device), or, at the Contractor's option, a domestic photovoltaic device; or

(5) \$204,000 or more, then the Contractor shall utilize under this contract only U.S.-made, qualifying country, or designated country photovoltaic devices.

(End of clause)

252.225-7018 Photovoltaic Devices—Certificate.

As prescribed in [225.7017-4\(b\)](#), use the following provision:

PHOTOVOLTAIC DEVICES—CERTIFICATE (JAN 2014)

(a) *Definitions.* “Bahrainian photovoltaic device,” “Canadian photovoltaic device,” “Caribbean Basin photovoltaic device,” “designated country,” “designated country photovoltaic device,” “domestic photovoltaic device,” “foreign photovoltaic device,” “Free Trade Agreement country,” “Free Trade Agreement photovoltaic device,” “Korean photovoltaic device,” “least developed country photovoltaic device,” “Moroccan photovoltaic device,” “Panamanian photovoltaic device,” “Peruvian photovoltaic device,” “photovoltaic device,” “qualifying country,” “qualifying country photovoltaic device,” “United States,” “U.S.-made photovoltaic device,” and “WTO GPA country photovoltaic device” have the meanings given in the Photovoltaic Devices clause of this solicitation.

(b) *Restrictions.* The following restrictions apply, depending on the estimated value of any photovoltaic devices to be utilized under a resultant contract:

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(1) If more than \$3,000 but less than \$204,000, then the Government will not accept an offer specifying the use of other foreign photovoltaic devices in paragraph (d)(2)(ii), (d)(3)(ii) or (d)(4)(ii) of this provision, unless the offeror documents to the satisfaction of the Contracting Officer that the price of the foreign photovoltaic device plus 50 percent is less than the price of a comparable domestic photovoltaic device.

(2) If \$204,000 or more, then the Government will consider only offers that utilize photovoltaic devices that are U.S.-made, qualifying country, or designated country photovoltaic devices.

(c) *Country in which a designated country photovoltaic device was wholly manufactured or was substantially transformed.* If the estimated value of the photovoltaic devices to be utilized under a resultant contract exceeds \$25,000, the Offeror's certification that such photovoltaic device (e.g., solar panel) is a designated country photovoltaic device shall be consistent with country of origin determinations by the U.S. Customs and Border Protection with regard to importation of the same or similar photovoltaic devices into the United States. If the Offeror is uncertain as to what the country of origin would be determined to be by the U.S. Customs and Border Protection, the Offeror shall request a determination from U.S. Customs and Border Protection. (See <http://www.cbp.gov/xp/cgov/trade/legal/rulings/>.)

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

[The offeror shall check the block and fill in the blank for one of the following paragraphs, based on the estimated value and the country of origin of photovoltaic devices to be utilized in performance of the contract:]

____(1) No photovoltaic devices will be utilized in performance of the contract, or such photovoltaic devices have an estimated value of \$3,000 or less.

(2) If more than \$3,000 but less than \$25,000—

____(i) The offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device or a qualifying country photovoltaic device [*Offeror to specify country of origin* _____]; or

____(ii) The foreign (other than qualifying country) photovoltaic devices to be utilized in performance of the contract are the product of _____. [*Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device.*]

(3) If \$25,000 or more but less than \$79,507—

____(i) The offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device; a qualifying country photovoltaic device; or a Canadian photovoltaic device [*Offeror to specify country of origin* _____]; or

____(ii) The foreign (other than qualifying country or Canadian) photovoltaic devices to be utilized in performance of the contract are the product of _____

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_____. *[Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device.]*

(4) If \$79,507 or more but less than \$100,000—

_____(i) The offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device; a qualifying country (except Australian or Canadian) photovoltaic device; a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Korean, Moroccan, Panamanian, or Peruvian photovoltaic device) *[Offeror to specify country of origin _____];* or

_____(ii) The offered foreign photovoltaic devices (other than those from countries listed in paragraph (d)(4)(i) of this provision) are the product of _____. *[Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device.]*

(5) If \$100,000 or more but less than \$204,000—

_____(i) The offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device; a qualifying country (except Australian or Canadian) photovoltaic device; a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Moroccan, Panamanian, or Peruvian photovoltaic device) *[Offeror to specify country of origin _____];* or

_____(ii) The offered foreign photovoltaic devices (other than those from countries listed in paragraph (d)(4)(i) of this provision) are the product of _____. *[Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device.]*

(6) If \$204,000 or more—

_____ The offeror certifies that each photovoltaic device to be utilized in performance of the contract is a U.S.-made, qualifying country, or designated country photovoltaic device. *[Offeror to specify country of origin _____.]*

(End of provision)

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

As prescribed in [252.7007-3](#), 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—

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(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.

Basic. As prescribed in [225.1101](#)(5) and (5)(i), use the following provision:

TRADE AGREEMENTS CERTIFICATE—BASIC (NOV 2014)

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

(b) *Evaluation.* The Government—

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

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

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

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

(iii) A national interest waiver has been granted.

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

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

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

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(Line Item Number)

(Country of Origin)

(End of provision)

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

TRADE AGREEMENTS CERTIFICATE—ALTERNATE I (NOV 2014)

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

(b) *Evaluation.* The Government—

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

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

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

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

(iii) A national interest waiver has been granted.

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

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

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

(Line Item Number)

(Country of Origin)

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

(Line Item Number)

(Country of Origin)

(End of provision)

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252.225-7021 Trade Agreements.

Basic. As prescribed in [225.1101](#)(6) and (6)(i), use the following clause:

TRADE AGREEMENTS—BASIC (NOV 2014)

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

“Caribbean Basin country end product”—

(i) Means an article that—

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

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

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

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

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

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

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

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

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

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

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

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

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

“Designated country” means—

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

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

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

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

“Designated country end product” means a WTO GPA country end product, a Free Trade Agreement country end product, a least developed country end product, or a Caribbean Basin country end product.

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

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

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

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

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

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

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

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

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

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Finland
France
Germany
Greece
Israel
Italy
Luxembourg
Netherlands
Norway
Poland
Portugal

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Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

“Qualifying country end product” means—

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

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

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

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

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

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

(B) The end product is a COTS item.

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

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

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

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

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

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

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

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

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

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

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

(ii) A national interest waiver has been granted.

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

(e) The HTSUS is available 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 Reserved

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

TRADE AGREEMENTS—ALTERNATE II (NOV 2014)

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

“Caribbean Basin country end product”—

(i) Means an article that—

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

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

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

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

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

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

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

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

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

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

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

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

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

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“Designated country” means—

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

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

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

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

“Designated country end product” means a WTO GPA country end product, a Free Trade Agreement country end product, a least developed country end product, or a Caribbean Basin country end product.

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

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

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

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

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

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

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

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

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

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

“Qualifying country end product” means—

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

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

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

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

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

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

(B) The end product is a COTS item.

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

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

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

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

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

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

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

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

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

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

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new

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

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

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

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

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

(ii) A national interest waiver has been granted.

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

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

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

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

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

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

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

(End of clause)

252.225-7023 Preference for Products or Services from Afghanistan.

As prescribed in [225.7703-4](#)(a), use the following provision:

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PREFERENCE FOR PRODUCTS OR SERVICES FROM AFGHANISTAN (SEP 2013)

(a) *Definitions.* “Product from Afghanistan” and “service from Afghanistan,” as used in this provision, are defined in the clause of this solicitation entitled “Requirement for Products or Services from 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 Afghanistan or services from Afghanistan, except those listed in—

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

(2) Paragraph (c)(2) of the provision entitled “Trade Agreements Certificate,” if included in this solicitation.

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

<u>(Line Item Number)</u>	<u>(Country of Origin)</u>
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(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 Afghanistan.

(End of provision)

252.225-7024 Requirement for Products or Services from Afghanistan.

As prescribed in [225.7703-4](#)(b), use the following clause:

REQUIREMENT FOR PRODUCTS OR SERVICES FROM AFGHANISTAN (SEP 2013)

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

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

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

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

(End of clause)

252.225-7025 Restriction on Acquisition of Forgings.

As prescribed in [225.7102-4](#), use the following clause:

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RESTRICTION ON ACQUISITION OF FORGINGS (DEC 2009)

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

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

(2) “Domestic manufacture” means manufactured in the United States, its outlying areas; or Canada.

(3) “Forging items” means—

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

(b) End products and their components delivered under this contract shall contain forging items that are of domestic manufacture only.

(c) The restriction in paragraph (b) of this clause may be waived upon request from the Contractor in accordance with subsection [225.7102-3](#) of the Defense Federal Acquisition Regulation Supplement.

(d) The Contractor shall retain records showing compliance with the restriction in paragraph (b) of this clause until 3 years after final payment and shall make the records available upon request of the Contracting Officer.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e), in subcontracts for forging items or for other items that contain forging items.

(End of clause)

252.225-7026 Acquisition Restricted to Products or Services from Afghanistan.

As prescribed in [225.7703-4](#)(c), use the following clause:

ACQUISITION RESTRICTED TO PRODUCTS OR SERVICES FROM AFGHANISTAN (SEP 2013)

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

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

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

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(b) The Contractor shall provide only products from Afghanistan or services from 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 (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 Acquisition of Uniform Components for Afghan Military or Afghan National Police.

As prescribed in [225.7703-4](#)(d), use the following clause:

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ACQUISITION OF UNIFORM COMPONENTS FOR AFGHAN MILITARY OR AFGHAN NATIONAL POLICE (SEP 2013)

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

“Textile component” means any item consisting of fibers, yarns, or fabric, supplied for incorporation into a uniform or a component of a uniform. It does not include items that do not contain fibers, yarns, or fabric, such as the metallic or plastic elements of buttons, zippers, or other clothing fasteners.

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

(b) As required by section 826 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239), the Contractor shall deliver under this contract only textile components that have been produced in the United States.

(c) There are no exceptions or waivers to this requirement.

(End of clause)

252.225-7030 Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate.

As prescribed in [225.7011-3](#), use the following clause:

RESTRICTION ON ACQUISITION OF CARBON, ALLOY, AND ARMOR STEEL PLATE (DEC 2006)

(a) Carbon, alloy, and armor steel plate shall be melted and rolled in the United States or Canada if the carbon, alloy, or armor steel plate—

(1) Is in Federal Supply Class 9515 or is described by specifications of the American Society for Testing Materials or the American Iron and Steel Institute; and

(2)(i) Will be delivered to the Government for use in a Government-owned facility or a facility under the control of the Department of Defense; or

(ii) Will be purchased by the Contractor for use in a Government-owned facility or a facility under the control of the Department of Defense.

(b) This restriction—

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

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

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(End of clause)

252.225-7031 Secondary Arab Boycott of Israel.

As prescribed in [225.7605](#), use the following provision:

SECONDARY ARAB BOYCOTT OF ISRAEL (JUN 2005)

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

(1) “Foreign person” means any person (including any individual, partnership, corporation, or other form of association) other than a United States person.

(2) “United States” means the 50 States, the District of Columbia, outlying areas, and the outer Continental Shelf as defined in 43 U.S.C. 1331.

(3) “United States person” is defined in 50 U.S.C. App. 2415(2) and means—

(i) Any United States resident or national (other than an individual resident outside the United States who is employed by other than a United States person);

(ii) Any domestic concern (including any permanent domestic establishment of any foreign concern); and

(iii) Any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern that is controlled in fact by such domestic concern.

(b) *Certification.* If the offeror is a foreign person, the offeror certifies, by submission of an offer, that it—

(1) Does not comply with the Secondary Arab Boycott of Israel; and

(2) Is not taking or knowingly agreeing to take any action, with respect to the Secondary Boycott of Israel by Arab countries, which 50 U.S.C. App. 2407(a) prohibits a United States person from taking.

(End of provision)

252.225-7032 Waiver of United Kingdom Levies—Evaluation of Offers.

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

WAIVER OF UNITED KINGDOM LEVIES – EVALUATION OF OFFERS (APR 2003)

(a) Offered prices for contracts or subcontracts with United Kingdom (U.K.) firms may contain commercial exploitation levies assessed by the Government of the U.K. The offeror shall identify to the Contracting Officer all levies included in the offered price by describing—

(1) The name of the U.K. firm;

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- (2) The item to which the levy applies and the item quantity; and
- (3) The amount of levy plus any associated indirect costs and profit or fee.

(b) In the event of difficulty in identifying levies included in a price from a prospective subcontractor, the offeror may seek advice through the Director of Procurement, United Kingdom Defence Procurement Office, British Embassy, 3100 Massachusetts Avenue NW, Washington, DC 20006.

(c) The U.S. Government may attempt to obtain a waiver of levies pursuant to the U.S./U.K. reciprocal waiver agreement of July 1987.

(1) If the U.K. waives levies before award of a contract, the Contracting Officer will evaluate the offer without the levy.

(2) If levies are identified but not waived before award of a contract, the Contracting Officer will evaluate the offer inclusive of the levies.

(3) If the U.K. grants a waiver of levies after award of a contract, the U.S. Government reserves the right to reduce the contract price by the amount of the levy waived plus associated indirect costs and profit or fee.

(End of provision)

252.225-7033 Waiver of United Kingdom Levies.

As prescribed in [225.1101\(8\)](#), use the following clause:

WAIVER OF UNITED KINGDOM LEVIES (APR 2003)

(a) The U.S. Government may attempt to obtain a waiver of any commercial exploitation levies included in the price of this contract, pursuant to the U.S./United Kingdom (U.K.) reciprocal waiver agreement of July 1987. If the U.K. grants a waiver of levies included in the price of this contract, the U.S. Government reserves the right to reduce the contract price by the amount of the levy waived plus associated indirect costs and profit or fee.

(b) If the Contractor contemplates award of a subcontract exceeding \$1 million to a U.K. firm, the Contractor shall provide the following information to the Contracting Officer before award of the subcontract:

- (1) Name of the U.K. firm.
- (2) Prime contract number.
- (3) Description of item to which the levy applies.
- (4) Quantity being acquired.
- (5) Amount of levy plus any associated indirect costs and profit or fee.

(c) In the event of difficulty in identifying levies included in a price from a prospective subcontractor, the Contractor may seek advice through the Director of

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Procurement, United Kingdom Defence Procurement Office, British Embassy, 3100 Massachusetts Avenue NW, Washington, DC 20006.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in any subcontract for supplies where a lower-tier subcontract exceeding \$1 million with a U.K. firm is anticipated.

(End of clause)

252.225-7034 Reserved.

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

Basic. As prescribed in [225.1101](#)(9) and (9)(i), use the following provision:

BUY AMERICAN—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM CERTIFICATE—BASIC (NOV 2014)

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

(b) *Evaluation.* The Government—

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

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

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

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

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

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

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(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, Panamanian end products, or Peruvian end products:

(Line Item Number) (Country of Origin)

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

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

(End of provision)

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

BUY AMERICAN—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM CERTIFICATE—ALTERNATE I (NOV 2014)

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

(b) *Evaluation.* The Government—

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

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

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

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

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

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

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

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

<u>(Line Item Number)</u>	<u>(Country of Origin)</u>
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(ii) The offeror certifies that the following supplies are Canadian end products:

<u>(Line Item Number)</u>	<u>(Country of Origin)</u>
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(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”:

<u>(Line Item Number)</u>	<u>(Country of Origin (If known))</u>
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(End of provision)

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

**BUY AMERICAN—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS
PROGRAM CERTIFICATE—ALTERNATE II (NOV 2014)**

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

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(b) *Evaluation.* The Government—

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

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

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

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

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

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

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

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

<u>(Line Item Number)</u>	<u>(Country of Origin)</u>
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(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, Panamanian end products, or Peruvian end products:

<u>(Line Item Number)</u>	<u>(Country of Origin)</u>
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(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”:

<u>(Line Item Number)</u>	<u>(Country of Origin (If known))</u>
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(End of provision)

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

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PROGRAM CERTIFICATE—ALTERNATE III (NOV 2014)

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

(b) *Evaluation.* The Government—

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

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

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

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

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

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

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

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

<u>(Line Item Number)</u>	<u>(Country of Origin)</u>
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(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, Panamanian end products, or Peruvian end products:

<u>(Line Item Number)</u>	<u>(Country of Origin)</u>
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(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”:

<u>(Line Item Number)</u>	<u>(Country of Origin (If known))</u>
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(End of provision)

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

BUY AMERICAN—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM CERTIFICATE—ALTERNATE IV (NOV 2014)

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

(b) *Evaluation.* The Government—

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

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

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

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

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

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

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

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

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(except Australian or Canadian) end products:

(Line Item Number)

(Country of Origin)

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

(Line Item Number)

(Country of Origin)

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

(Line Item Number)

(Country of Origin (If known))

(End of provision)

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

BUY AMERICAN—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM CERTIFICATE—ALTERNATE V (NOV 2014)

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

(b) *Evaluation.* The Government—

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

(2) For line items subject to the Buy American—Free Trade Agreements—Balance of Payments Program—Alternate V clause of this solicitation, will evaluate offers of qualifying country end products, SC/CASA state end products, or Free Trade Agreement end products other than Bahrainian end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products without regard to the restrictions of the Buy American statute or the Balance of Payments Program.

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

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

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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) or SC/CASA state end products:

(Line Item Number)

(Country of Origin)

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

(Line Item Number)

(Country of Origin)

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

(Line Item Number)

(Country of Origin (If known))

(End of provision)

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

Basic. As prescribed in [252.1101](#)(10)(i) and (10)(i)(A), use the following clause:

BUY AMERICAN—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS
PROGRAM—BASIC (NOV 2014)

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

“Bahrainian end product” means an article that—

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

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

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value of the product itself.

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

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

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

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

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

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

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

“Domestic end product” means—

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

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

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

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

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

(B) The end product is a COTS item.

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

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

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

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

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

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

“Moroccan end product” means an article that—

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

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

“Panamanian end product” means an article that—

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

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

“Peruvian end product” means an article that—

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

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

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purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

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

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

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

“Qualifying country end product” means—

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

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

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

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

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

(B) The end product is a COTS item.

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

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

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

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

(End of clause)

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

BUY AMERICAN—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM—ALTERNATE I (NOV 2014)

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

“Bahrainian end product” means an article that—

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

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

“Canadian end product” means an article that—

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

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

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

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

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

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

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

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

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

“Domestic end product” means—

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

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

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free

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entry certificate is issued). Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

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

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

(B) The end product is a COTS item.

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

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

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

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

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

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

“Moroccan end product” means an article that—

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

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

“Panamanian end product” means an article that—

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

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

“Peruvian end product” means an article that—

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

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

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

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Finland
France
Germany
Greece
Israel
Italy
Luxembourg
Netherlands
Norway
Poland
Portugal
Spain
Sweden

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Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

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

“Qualifying country end product” means—

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

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

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

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

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

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

(B) The end product is a COTS item.

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

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

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

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

(End of clause)

Alternate II. As prescribed in [225.1101](#)(10)(i) and (10)(i)(C), use the following clause, which adds “South Caucasus/Central and South Asian (SC/CASA) state” and

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“South Caucasus/Central and South Asian (SC/CASA) state end product” to paragraph (a), and uses a different paragraph (c) than the basic clause:

BUY AMERICAN—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM—ALTERNATE II (NOV 2014)

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

“Bahrainian end product” means an article that—

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

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

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

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

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

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

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

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

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

“Domestic end product” means—

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

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

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Scrap generated, collected, and prepared for processing in

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the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

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

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

(B) The end product is a COTS item.

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

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

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

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

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

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

“Moroccan end product” means an article that—

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

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

“Panamanian end product” means an article that—

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

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

“Peruvian end product” means an article that—

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

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

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

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Finland
France
Germany
Greece
Israel
Italy
Luxembourg
Netherlands
Norway
Poland
Portugal
Spain
Sweden
Switzerland

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Turkey
United Kingdom of Great Britain and Northern Ireland.

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

“Qualifying country end product” means—

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

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

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

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

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

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

(B) The end product is a COTS item.

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

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

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

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

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

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

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

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

(End of clause)

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

BUY AMERICAN—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM—ALTERNATE III (NOV 2014)

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

“Bahrainian end product” means an article that—

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

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

“Canadian end product” means an article that—

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

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Canada into a new and

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

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

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

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

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

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

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

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

“Domestic end product” means—

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

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

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

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

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

(B) The end product is a COTS item.

“End product” means those articles, materials, and supplies to be acquired under

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this contract for public use.

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

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

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

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

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

“Moroccan end product” means an article that—

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

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

“Panamanian end product” means an article that—

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

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

“Peruvian end product” means an article that—

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

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

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

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

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

“Qualifying country end product” means—

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

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

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

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

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

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

(B) The end product is a COTS item.

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

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

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

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

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

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

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

(d) The contract price does not include duty for end products or components for

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which the Contractor will claim duty-free entry.

(End of clause)

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

BUY AMERICAN—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM—ALTERNATE IV (NOV 2014)

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

“Bahrainian end product” means an article that—

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

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

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

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

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

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

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

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

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

“Domestic end product” means—

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

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

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

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

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

(B) The end product is a COTS item.

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

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

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

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

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

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

“Korean end product” means an article that—

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

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

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the product itself.

“Moroccan end product” means an article that—

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

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

“Panamanian end product” means an article that—

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

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

“Peruvian end product” means an article that—

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

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

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

Australia
Austria
Belgium

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

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

“Qualifying country end product” means—

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

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

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

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

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

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

(B) The end product is a COTS item.

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

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

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

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

(End of clause)

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

BUY AMERICAN—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM—ALTERNATE V (NOV 2014)

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

“Bahrainian end product” means an article that—

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

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

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

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

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

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

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

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

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

“Domestic end product” means—

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

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

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

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

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

(B) The end product is a COTS item.

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

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

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

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

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

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement

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

“Korean end product” means an article that—

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

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

“Moroccan end product” means an article that—

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

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

“Panamanian end product” means an article that—

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

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

“Peruvian end product” means an article that—

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

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Peru into a new and different

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

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

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Finland
France
Germany
Greece
Israel
Italy
Luxembourg
Netherlands
Norway
Poland
Portugal
Spain
Sweden
Switzerland
Turkey

United Kingdom of Great Britain and Northern Ireland.

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

“Qualifying country end product” means—

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

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

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

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

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

(B) The end product is a COTS item.

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

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

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

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

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

(b) Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, SC/CASA state end products, Free Trade Agreement country end products other than Bahrainian end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products, or other foreign end products in the Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate V provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, SC/CASA state end products, or a Free Trade Agreement country end product other than a Bahrainian end product, a Korean end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product, the Contractor shall deliver a qualifying country end product, an SC/CASA state end product, a Free

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Trade Agreement country end product other than a Bahrainian end product, a Korean end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product or, at the Contractor's option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

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 Defense Contractors Performing Private Security Functions Outside the United States.

As prescribed in [225.302-6](#), insert the following clause:

DEFENSE CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS OUTSIDE THE UNITED STATES (JAN 2015)

(a) *Requirements.* The Contractor shall—

(1) Register in the Synchronized Predeployment and Operational Tracker (SPOT)—

(i) Weapons to be carried by or available to be used by personnel performing private security functions; and

(ii) Armored vehicles, helicopters, and other vehicles operated by personnel performing private security functions; and

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(2) Comply with ANSI/ASIS PSC.1-2012, American National Standard, Management System for Quality of Private Security Company Operations—Requirements with Guidance (located at www.acq.osd.mil/log/PS/p_vault/item_1997-PSC_1_STD.PDF).

(b) *Subcontracts*. The Contractor shall include the substance of this clause, including this paragraph (b), in subcontracts, including subcontracts for commercial items, when private security functions will be performed outside the United States in areas of—

- (1) Contingency operations;
- (2) Combat operations, as designated by the Secretary of Defense;
- (3) Other significant military operations (as defined in 32 CFR part 159), designated by the Secretary of Defense upon agreement of the Secretary of State;
- (4) Peace operations, consistent with Joint Publication 3-07.3; or
- (5) Other military operations or military exercises, when designated by the Combatant Commander.

(End of clause)

252.225-7040 Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States.

As prescribed in [225.371-5\(a\)](#), use the following clause:

CONTRACTOR PERSONNEL SUPPORTING U.S. ARMED FORCES DEPLOYED OUTSIDE THE UNITED STATES (JUN 2015)

(a) *Definitions*. As used in this clause—

“Combatant Commander” means the commander of a unified or specified combatant command established in accordance with 10 U.S.C. 161.

“Contractors authorized to accompany the Force,” or “CAAF,” means contractor personnel, including all tiers of subcontractor personnel, who are authorized to accompany U.S. Armed Forces in applicable operations and have been afforded CAAF status through a letter of authorization. CAAF generally include all U.S. citizen n and third-country national employees not normally residing within the operational area whose area of performance is in the direct vicinity of U.S. Armed Forces and who routinely are collocated with the U.S. Armed Forces (especially in non-permissive environments). Personnel collocated with U.S. Armed Forces shall be afforded CAAF status through a letter of authorization. In some cases, Combatant Commander subordinate commanders may designate mission-essential host nation or local national contractor employees (e.g., interpreters) as CAAF. CAAF includes contractors previously identified as contractors deploying with the U.S. Armed Forces. CAAF status does not apply to contractor personnel in support of applicable operations within the boundaries and territories of the United States.

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“Designated operational area” means a geographic area designated by the combatant commander or subordinate joint force commander for the conduct or support of specified military operations.

“Designated reception site” means the designated place for the reception, staging, integration, and onward movement of contractors deploying during a contingency. The designated reception site includes assigned joint reception centers and other Service or private reception sites.

“Law of war” means that part of international law that regulates the conduct of armed hostilities. The law of war encompasses all international law for the conduct of hostilities binding on the United States or its individual citizens, including treaties and international agreements to which the United States is a party, and applicable customary international law.

“Non-CAAF” means personnel who are not designated as CAAF, such as local national (LN) employees and non-LN employees who are permanent residents in the operational area or third-country nationals not routinely residing with U.S. Armed Forces (and third-country national expatriates who are permanent residents in the operational area) who perform support functions away from the close proximity of, and do not reside with, U.S. Armed Forces. Government-furnished support to non-CAAF is typically limited to force protection, emergency medical care, and basic human needs (e.g., bottled water, latrine facilities, security, and food when necessary) when performing their jobs in the direct vicinity of U.S. Armed Forces. Non-CAAF status does not apply to contractor personnel in support of applicable operations within the boundaries and territories of the United States.

“Subordinate joint force commander” means a sub-unified commander or joint task force commander.

(b) *General.*

(1) This clause applies to both CAAF and non-CAAF when performing in a designated operational area outside the United States to support U.S. Armed Forces deployed outside the United States in—

- (i) Contingency operations;
- (ii) Humanitarian assistance operations;
- (iii) Peace operations, consistent with Joint Publication 3-07.3; or

(iv) Other military operations or military exercises, when designated by the Combatant Commander or as directed by the Secretary of Defense.

(2) Contract performance in support of U.S. Armed Forces deployed outside the United States may require work in dangerous or austere conditions. Except as otherwise provided in the contract, the Contractor accepts the risks associated with required contract performance in such operations.

(3) When authorized in accordance with paragraph (j) of this clause to carry arms for personal protection, Contractor personnel are only authorized to use force for

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individual self-defense.

(4) Unless immune from host nation jurisdiction by virtue of an international agreement or international law, inappropriate use of force by contractor personnel supporting the U.S. Armed Forces can subject such personnel to United States or host nation prosecution and civil liability (see paragraphs (d) and (j)(3) of this clause).

(5) Service performed by Contractor personnel subject to this clause is not active duty or service under 38 U.S.C. 106 note.

(c) *Support.*

(1)(i) The Combatant Commander will develop a security plan for protection of Contractor personnel in locations where there is not sufficient or legitimate civil authority, when the Combatant Commander decides it is in the interests of the Government to provide security because—

- (A) The Contractor cannot obtain effective security services;
- (B) Effective security services are unavailable at a reasonable cost; or
- (C) Threat conditions necessitate security through military means.

(ii) In appropriate cases, the Combatant Commander may provide security through military means, commensurate with the level of security provided DoD civilians.

(2)(i) Generally, CAAF will be afforded emergency medical and dental care if injured while supporting applicable operations. Additionally, non-CAAF employees who are injured while in the vicinity of U. S. Armed Forces will normally receive emergency medical and dental care. Emergency medical and dental care includes medical care situations in which life, limb, or eyesight is jeopardized. Examples of emergency medical and dental care include examination and initial treatment of victims of sexual assault; refills of prescriptions for life-dependent drugs; repair of broken bones, lacerations, infections; and traumatic injuries to the dentition. Hospitalization will be limited to stabilization and short-term medical treatment with an emphasis on return to duty or placement in the patient movement system.

(ii) When the Government provides medical treatment or transportation of Contractor personnel to a selected civilian facility, the Contractor shall ensure that the Government is reimbursed for any costs associated with such treatment or transportation.

(iii) Medical or dental care beyond this standard is not authorized.

(3) Contractor personnel must have a Synchronized Predeployment and Operational Tracker (SPOT)-generated letter of authorization signed by the Contracting Officer in order to process through a deployment center or to travel to, from, or within the designated operational area. The letter of authorization also will identify any additional authorizations, privileges, or Government support that Contractor personnel are entitled to under this contract. Contractor personnel who are issued a letter of authorization shall carry it with them at all times while deployed.

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(4) Unless specified elsewhere in this contract, the Contractor is responsible for all other support required for its personnel engaged in the designated operational area under this contract.

(d) *Compliance with laws and regulations.*

(1) The Contractor shall comply with, and shall ensure that its personnel supporting U.S. Armed Forces deployed outside the United States as specified in paragraph (b)(1) of this clause are familiar with and comply with, all applicable—

(i) United States, host country, and third country national laws;

(ii) Provisions of the law of war, as well as any other applicable treaties and international agreements;

(iii) United States regulations, directives, instructions, policies, and procedures; and

(iv) Orders, directives, and instructions issued by the Combatant Commander, including those relating to force protection, security, health, safety, or relations and interaction with local nationals.

(2) The Contractor shall institute and implement an effective program to prevent violations of the law of war by its employees and subcontractors, including law of war training in accordance with paragraph (e)(1)(vii) of this clause.

(3) The Contractor shall ensure that CAAF are aware—

(i) Of the DoD definition of “sexual assault” in DoDD 6495.01, Sexual Assault Prevention and Response Program;

(ii) That the offenses addressed by the definition are covered under the Uniform Code of Military Justice (see paragraph (e)(2)(iv) of this clause). Other sexual misconduct may constitute offenses under the Uniform Code of Military Justice, Federal law, such as the Military Extraterritorial Jurisdiction Act, or host nation laws; and

(iii) That the offenses not covered by the Uniform Code of Military Justice may nevertheless have consequences to the contractor employees (see paragraph (h)(1) of this clause).

(4) The Contractor shall report to the appropriate investigative authorities, identified in paragraph (d)(6) of this clause, any alleged offenses under—

(i) The Uniform Code of Military Justice (chapter 47 of title 10, United States Code) (applicable to contractors serving with or accompanying an armed force in the field during a declared war or contingency operations); or

(ii) The Military Extraterritorial Jurisdiction Act (chapter 212 of title 18, United States Code).

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(5) The Contractor shall provide to all contractor personnel who will perform work on a contract in the deployed area, before beginning such work, information on the following:

(i) How and where to report an alleged crime described in paragraph (d)(4) of this clause.

(ii) Where to seek victim and witness protection and assistance available to contractor personnel in connection with an alleged offense described in paragraph (d)(4) of this clause.

(6) The appropriate investigative authorities to which suspected crimes shall be reported include the following—

(i) US Army Criminal Investigation Command at <http://www.cid.army.mil/reportacrime.html>;

(ii) Air Force Office of Special Investigations at <http://www.osi.andrews.af.mil/library/factsheets/factsheet.asp?id=14522>;

(iii) Navy Criminal Investigative Service at <http://www.ncis.navy.mil/Pages/publicdefault.aspx>;

(iv) Defense Criminal Investigative Service at <http://www.dodig.mil/HOTLINE/index.html>;

(v) To any command of any supported military element or the command of any base.

(7) Personnel seeking whistleblower protection from reprisals for reporting criminal acts shall seek guidance through the DoD Inspector General hotline at 800-424-9098 or www.dodig.mil/HOTLINE/index.html. Personnel seeking other forms of victim or witness protections should contact the nearest military law enforcement office.

(8)(i) The Contractor shall ensure that Contractor employees supporting the U.S. Armed Forces are aware of their rights to—

(A) Hold their own identity or immigration documents, such as passport or driver's license, regardless of the documents' issuing authority;

(B) Receive agreed upon wages on time;

(C) Take lunch and work-breaks;

(D) Elect to terminate employment at any time;

(E) Identify grievances without fear of reprisal;

(F) Have a copy of their employment contract in a language they understand;

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(G) Receive wages that are not below the legal host-country minimum wage;

(H) Be notified of their rights, wages, and prohibited activities prior to signing their employment contract; and

(I) If housing is provided, live in housing that meets host-country housing and safety standards.

(ii) The Contractor shall post these rights in employee work spaces in English and in any foreign language(s) spoken by a significant portion of the workforce.

(iii) The Contractor shall enforce the rights of Contractor personnel supporting the U.S. Armed Forces.

(e) *Preliminary personnel requirements.*

(1) The Contractor shall ensure that the following requirements are met prior to deploying CAAF (specific requirements for each category will be specified in the statement of work or elsewhere in the contract):

(i) All required security and background checks are complete and acceptable.

(ii) All CAAF deploying in support of an applicable operation—

(A) Are medically, dentally, and psychologically fit for deployment and performance of their contracted duties;

(B) Meet the minimum medical screening requirements, including theater-specific medical qualifications as established by the geographic Combatant Commander (as posted to the Geographic Combatant Commander's website or other venue); and

(C) Have received all required immunizations as specified in the contract.

(1) During predeployment processing, the Government will provide, at no cost to the Contractor, any military-specific immunizations and/or medications not available to the general public.

(2) All other immunizations shall be obtained prior to arrival at the deployment center.

(3) All CAAF and selected non-CAAF, as specified in the statement of work, shall bring to the designated operational area a copy of the Public Health Service Form 791, "International Certificate of Vaccination" that shows vaccinations are current.

(iii) Deploying personnel have all necessary passports, visas, and other

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documents required to enter and exit a designated operational area and have a Geneva Conventions identification card, or other appropriate DoD identity credential, from the deployment center.

(iv) Special area, country, and theater clearance is obtained for all personnel deploying. Clearance requirements are in DoD Directive 4500.54, Official Temporary Duty Abroad, and DoD 4500.54-G, DoD Foreign Clearance Guide. For this purpose, CAAF are considered non-DoD contractor personnel traveling under DoD sponsorship.

(v) All deploying personnel have received personal security training. At a minimum, the training shall—

- (A) Cover safety and security issues facing employees overseas;
- (B) Identify safety and security contingency planning activities; and
- (C) Identify ways to utilize safety and security personnel and other resources appropriately.

(vi) All personnel have received isolated personnel training, if specified in the contract, in accordance with DoD Instruction 1300.23, Isolated Personnel Training for DoD Civilian and Contractors.

(vii) Personnel have received law of war training as follows:

(A) Basic training is required for all CAAF. The basic training will be provided through—

- (1) A military-run training center; or
- (2) A web-based source, if specified in the contract or approved by the Contracting Officer.

(B) Advanced training, commensurate with their duties and responsibilities, may be required for some Contractor personnel as specified in the contract.

(2) The Contractor shall notify all personnel who are not a host country national, or who are not ordinarily resident in the host country, that—

(i) Such employees, and dependents residing with such employees, who engage in conduct outside the United States that would constitute an offense punishable by imprisonment for more than one year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States, may potentially be subject to the criminal jurisdiction of the United States in accordance with the Military Extraterritorial Jurisdiction Act of 2000 (18 U.S.C. 3621, *et seq.*);

(ii) Pursuant to the War Crimes Act (18 U.S.C. 2441), Federal criminal jurisdiction also extends to conduct that is determined to constitute a war crime when committed by a civilian national of the United States;

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(iii) Other laws may provide for prosecution of U.S. nationals who commit offenses on the premises of U.S. diplomatic, consular, military or other U.S. Government missions outside the United States (18 U.S.C. 7(9)); and

(iv) In time of declared war or a contingency operation, CAAF are subject to the jurisdiction of the Uniform Code of Military Justice under 10 U.S.C. 802(a)(10).

(v) Such employees are required to report offenses alleged to have been committed by or against Contractor personnel to appropriate investigative authorities.

(vi) Such employees will be provided victim and witness protection and assistance.

(f) *Processing and departure points.* CAAF shall—

(1) Process through the deployment center designated in the contract, or as otherwise directed by the Contracting Officer, prior to deploying. The deployment center will conduct deployment processing to ensure visibility and accountability of Contractor personnel and to ensure that all deployment requirements are met, including the requirements specified in paragraph (e)(1) of this clause;

(2) Use the point of departure and transportation mode directed by the Contracting Officer; and

(3) Process through a designated reception site (DRS) upon arrival at the deployed location. The DRS will validate personnel accountability, ensure that specific designated operational area entrance requirements are met, and brief Contractor personnel on theater-specific policies and procedures.

(g) *Personnel data.*

(1) The Contractor shall use the Synchronized Predeployment and Operational Tracker (SPOT) web-based system, to enter and maintain the data for all CAAF and, as designated by USD(AT&L) or the Combatant Commander, non-CAAF supporting U.S. Armed Forces deployed outside the United States as specified in paragraph (b)(1) of this clause.

(2) The Contractor shall enter the required information about their contractor personnel prior to deployment and shall continue to use the SPOT web-based system at <https://spot.altess.army.mil/privacy.aspx> to maintain accurate, up-to-date information throughout the deployment for all Contractor personnel. Changes to status of individual Contractor personnel relating to their in-theater arrival date and their duty location, to include closing out the deployment with their proper status (e.g., mission complete, killed, wounded) shall be annotated within the SPOT database in accordance with the timelines established in the [SPOT business rules](#).

(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

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contract. Such action may be taken at the Government's discretion without prejudice to its rights under any other provision of this contract, including the Termination for Default clause.

(2) The Contractor shall identify all personnel who occupy a position designated as mission essential and ensure the continuity of essential Contractor services during designated operations, unless, after consultation with the Contracting Officer, Contracting Officer's representative, or local commander, the Contracting Officer directs withdrawal due to security conditions.

(3) The Contractor shall ensure that Contractor personnel follow the guidance at paragraph (e)(2)(v) of this clause and any specific Combatant Commander guidance on reporting offenses alleged to have been committed by or against Contractor personnel to appropriate investigative authorities.

(4) Contractor personnel shall return all U.S. Government-issued identification, to include the Common Access Card, to appropriate U.S. Government authorities at the end of their deployment (or, for non-CAAF, at the end of their employment under this contract).

(i) *Military clothing and protective equipment.*

(1) Contractor personnel are prohibited from wearing military clothing unless specifically authorized in writing by the Combatant Commander. If authorized to wear military clothing, Contractor personnel must—

(i) Wear distinctive patches, arm bands, nametags, or headgear, in order to be distinguishable from military personnel, consistent with force protection measures; and

(ii) Carry the written authorization with them at all times.

(2) Contractor personnel may wear military-unique organizational clothing and individual equipment (OCIE) required for safety and security, such as ballistic, nuclear, biological, or chemical protective equipment.

(3) The deployment center, or the Combatant Commander, shall issue OCIE and shall provide training, if necessary, to ensure the safety and security of Contractor personnel.

(4) The Contractor shall ensure that all issued OCIE is returned to the point of issue, unless otherwise directed by the Contracting Officer.

(j) *Weapons.*

(1) If the Contractor requests that its personnel performing in the designated operational area be authorized to carry weapons for individual self-defense, the request shall be made through the Contracting Officer to the Combatant Commander, in accordance with DoD Instruction 3020.41. The Combatant Commander will determine whether to authorize in-theater Contractor personnel to carry weapons and what weapons and ammunition will be allowed.

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(2) If Contractor personnel are authorized to carry weapons in accordance with paragraph (j)(1) of this clause, the Contracting Officer will notify the Contractor what weapons and ammunition are authorized.

(3) The Contractor shall ensure that its personnel who are authorized to carry weapons—

(i) Are adequately trained to carry and use them—

(A) Safely;

(B) With full understanding of, and adherence to, the rules of the use of force issued by the Combatant Commander; and

(C) In compliance with applicable agency policies, agreements, rules, regulations, and other applicable law;

(ii) Are not barred from possession of a firearm by 18 U.S.C. 922;

(iii) Adhere to all guidance and orders issued by the Combatant Commander regarding possession, use, safety, and accountability of weapons and ammunition;

(iv) Comply with applicable Combatant Commander and local commander force-protection policies; and

(v) Understand that the inappropriate use of force could subject them to U.S. or host-nation prosecution and civil liability.

(4) Whether or not weapons are Government-furnished, all liability for the use of any weapon by Contractor personnel rests solely with the Contractor and the Contractor employee using such weapon.

(5) Upon redeployment or revocation by the Combatant Commander of the Contractor's authorization to issue firearms, the Contractor shall ensure that all Government-issued weapons and unexpended ammunition are returned as directed by the Contracting Officer.

(k) *Vehicle or equipment licenses.* Contractor personnel shall possess the required licenses to operate all vehicles or equipment necessary to perform the contract in the designated operational area.

(l) *Purchase of scarce goods and services.* If the Combatant Commander has established an organization for the designated operational area whose function is to determine that certain items are scarce goods or services, the Contractor shall coordinate with that organization local purchases of goods and services designated as scarce, in accordance with instructions provided by the Contracting Officer.

(m) *Evacuation.*

(1) If the Combatant Commander orders a mandatory evacuation of some or all

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personnel, the Government will provide assistance, to the extent available, to United States and third country national Contractor personnel.

(2) In the event of a non-mandatory evacuation order, unless authorized in writing by the Contracting Officer, the Contractor shall maintain personnel on location sufficient to meet obligations under this contract.

(n) *Next of kin notification and personnel recovery.*

(1) The Contractor shall be responsible for notification of the employee-designated next of kin in the event an employee dies, requires evacuation due to an injury, or is isolated, missing, detained, captured, or abducted.

(2) In the case of isolated, missing, detained, captured, or abducted Contractor personnel, the Government will assist in personnel recovery actions in accordance with DoD Directive 3002.01E, Personnel Recovery in the Department of Defense.

(o) *Mortuary affairs.* Contractor personnel who die while in support of the U.S. Armed Forces shall be covered by the DoD mortuary affairs program as described in DoD Directive 1300.22, Mortuary Affairs Policy, and DoD Instruction 3020.41, Operational Contractor Support.

(p) *Changes.* In addition to the changes otherwise authorized by the Changes clause of this contract, the Contracting Officer may, at any time, by written order identified as a change order, make changes in the place of performance or Government-furnished facilities, equipment, material, services, or site. Any change order issued in accordance with this paragraph (p) shall be subject to the provisions of the Changes clause of this contract.

(q) *Subcontracts.* The Contractor shall incorporate the substance of this clause, including this paragraph (q), in all subcontracts when subcontractor personnel are supporting U.S. Armed Forces deployed outside the United States in—

- (1) Contingency operations;
- (2) Humanitarian assistance operations;
- (3) Peace operations consistent with Joint Publication 3-07.3; or

(4) Other military operations or military exercises, when designated by the Combatant Commander or as directed by the Secretary of Defense.

(End of clause)

252.225-7041 Correspondence in English.

As prescribed in [225.1103\(2\)](#), 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.

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(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 [225.372-2](#), use the following clause:

ANTITERRORISM/FORCE PROTECTION POLICY FOR DEFENSE CONTRACTORS OUTSIDE THE UNITED STATES (JUN 2015)

(a) *Definition.* “United States,” as used in this clause, means, the 50 States, the District of Columbia, and outlying areas.

(b) Except as provided in paragraph (c) of this clause, the Contractor and its subcontractors, if performing or traveling outside the United States under this contract, shall—

(1) Affiliate with the Overseas Security Advisory Council, if the Contractor or subcontractor is a U.S. entity;

(2) Ensure that Contractor and subcontractor personnel who are U.S. nationals and are in-country on a non-transitory basis, register with the U.S. Embassy, and that Contractor and subcontractor personnel who are third country nationals comply with any security related requirements of the Embassy of their nationality;

(3) Provide, to Contractor and subcontractor personnel, antiterrorism/force protection awareness information commensurate with that which the Department of Defense (DoD) provides to its military and civilian personnel and their families, to the extent such information can be made available prior to travel outside the United States; and

(4) Obtain and comply with the most current antiterrorism/force protection guidance for Contractor and subcontractor personnel.

(c) The requirements of this clause do not apply to any subcontractor that is—

(1) A foreign government;

(2) A representative of a foreign government; or

(3) A foreign corporation wholly owned by a foreign government.

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(d) Information and guidance pertaining to DoD antiterrorism/force protection can be obtained from *(Contracting Officer to insert applicable information cited in PGI 225.372-1)*.

(End of clause)

252.225-7044 Balance of Payments Program—Construction Material.

Basic. As prescribed in [225.7503](#)(a) and (a)(1), use the following clause:

BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL—BASIC (NOV 2014)

(a) *Definitions.* As used in this clause—

“Commercially available off-the-shelf (COTS) item”—

(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of “commercial item” in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

“Component” means any article, material, or supply incorporated directly into construction material.

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Cost of components” means—

(i) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

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(ii) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

“Domestic construction material” means—

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or

(B) The construction material is a COTS item.

“United States” means the 50 States, the District of Columbia, and outlying areas.

(b) *Domestic preference.* This clause implements the Balance of Payments Program by providing a preference for domestic construction material. The Contractor shall use only domestic construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation;

(2) Information technology that is a commercial 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. As prescribed in [225.7503\(a\)](#) and (a)(2), use the following clause, which adds definitions for “South Caucasus/Central and South Asian (SC/CASA) state” and “SC/CASA state construction material” to paragraph (a), and uses “domestic construction material or SC/CASA state construction material” instead of “domestic construction material” in the second sentence of paragraph (b):

BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL— ALTERNATE I (NOV 2014)

(a) *Definitions.* As used in this clause—

“Commercially available off-the-shelf (COTS) item”—

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(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of “commercial item” in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

“Component” means any article, material, or supply incorporated directly into construction material.

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Cost of components” means—

(i) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(ii) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

“Domestic construction material” means—

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or

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(B) The construction material is a COTS item.

“South Caucasus/Central and South Asian (SC/CASA) state” means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

“SC/CASA state construction material” means construction material that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different construction material distinct from the material from which it was transformed.

“United States” means the 50 States, the District of Columbia, and outlying areas.

(b) *Domestic preference.* This clause implements the Balance of Payments Program by providing a preference for domestic construction material. The Contractor shall use only domestic construction material or SC/CASA state construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation;

(2) Information technology that is a commercial item; or

(3) The construction material or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate “none”].

(End of clause)

252.225-7045 Balance of Payments Program—Construction Material Under Trade Agreements.

Basic. As prescribed in [225.7503](#)(b) and (b)(1), use the following clause:

BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL UNDER TRADE AGREEMENTS—BASIC (NOV 2014)

(a) *Definitions.* As used in this clause—

“Caribbean Basin country construction material” means a construction material that—

(i) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(ii) In the case of a construction material that consists in whole or in part of

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materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

“Commercially available off-the-shelf (COTS) item”—

(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of “commercial item” in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. 40102), such as agricultural products and petroleum products.

“Component” means any article, material, or supply incorporated directly into construction material.

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Cost of components” means—

(i) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(ii) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

“Designated country” means—

(i) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong

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Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as “the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu” (Chinese Taipei)), or the United Kingdom);

(ii) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore);

(iii) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(iv) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

“Designated country construction material” means a construction material that is a WTO GPA country construction material, a Free Trade Agreement country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

“Domestic construction material” means—

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or

(B) The construction material is a COTS item.

“Free Trade Agreement country construction material” means a construction material that—

(i) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different construction material distinct from the material from which it was transformed.

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“Least developed country construction material” means a construction material that—

(i) Is wholly the growth, product, or manufacture of a least developed country; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“WTO GPA country construction material” means a construction material that—

(i) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and 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. As prescribed in [225.7503](#)(b) and (b)(2), use the following clause, which adds “Bahrainian or Mexican construction material” to paragraph (a), and uses a different paragraph (b) and (c) than the basic clause:

BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL UNDER

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TRADE AGREEMENTS—ALTERNATE I (NOV 2014)

(a) *Definitions.* As used in this clause—

“Bahrainian or Mexican construction material” means a construction material that—

(i) Is wholly the growth, product, or manufacture of Bahrain or Mexico; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain or Mexico into a new and different construction material distinct from the materials from which it was transformed.

“Caribbean Basin country construction material” means a construction material that—

(i) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

“Commercially available off-the-shelf (COTS) item”—

(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of “commercial item” in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. 40102), such as agricultural products and petroleum products.

“Component” means any article, material, or supply incorporated directly into construction material.

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction

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site. Materials purchased directly by the Government are supplies, not construction material.

“Cost of components” means—

(i) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(ii) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

“Designated country” means—

(i) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as “the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu” (Chinese Taipei)), or the United Kingdom);

(ii) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore);

(iii) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(iv) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

“Designated country construction material” means a construction material that is a WTO GPA country construction material, a Free Trade Agreement country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

“Domestic construction material” means—

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(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or

(B) The construction material is a COTS item.

“Free Trade Agreement country construction material” means a construction material that—

(i) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different construction material distinct from the material from which it was transformed.

“Least developed country construction material” means a construction material that—

(i) Is wholly the growth, product, or manufacture of a least developed country; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“WTO GPA country construction material” means a construction material that—

(i) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and all Free Trade Agreements except NAFTA and the Bahrain Free Trade Agreement apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for designated country construction material other than Bahrainian or Mexican construction material.

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(c) The Contractor shall use only domestic or designated country construction material other than Bahrainian or Mexican construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation; or

(2) Information technology that is a commercial item; or

(3) The construction material or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate “none”].

(End of clause)

Alternate II. As prescribed in [225.7503](#)(b) and (b)(3), use the following clause, which adds “South Caucasus/Central and South Asian (SC/CASA) state” and “SC/CASA state construction material” to paragraph (a), uses a different paragraph (b) and introductory text for paragraph (c) than the basic clause, and adds paragraph (d):

BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL UNDER TRADE AGREEMENTS—ALTERNATE II (NOV 2014)

(a) *Definitions.* As used in this clause—

“Caribbean Basin country construction material” means a construction material that—

(i) Is wholly the growth, product, or manufacture of a Caribbean Basin country;
or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

“Commercially available off-the-shelf (COTS) item”—

(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of “commercial item” in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

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(ii) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. 40102), such as agricultural products and petroleum products.

“Component” means any article, material, or supply incorporated directly into construction material.

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Cost of components” means—

(i) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(ii) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

“Designated country” means—

(i) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as “the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu” (Chinese Taipei)), or the United Kingdom);

(ii) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore);

(iii) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

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(iv) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

“Designated country construction material” means a construction material that is a WTO GPA country construction material, a Free Trade Agreement country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

“Domestic construction material” means—

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or

(B) The construction material is a COTS item.

“Free Trade Agreement country construction material” means a construction material that—

(i) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different construction material distinct from the material from which it was transformed.

“Least developed country construction material” means a construction material that—

(i) Is wholly the growth, product, or manufacture of a least developed country; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

“South Caucasus/Central and South Asian (SC/CASA) state” means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

“SC/CASA state construction material” means construction material that—

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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.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“WTO GPA country construction material” means a construction material that—

(i) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA, Free Trade Agreements, and other waivers relating to acquisitions in support of operations in Afghanistan apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for SC/CASA state and designated country construction materials.

(c) The Contractor shall use only domestic, SC/CASA state, or designated country construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation;

(2) Information technology that is a commercial item; or

(3) The construction material or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate “none”].

(d) If the Contractor is from an SC/CASA state, the Contractor shall inform its government of its participation in this acquisition and that it generally will not have such opportunity in the future unless its government provides reciprocal procurement opportunities to U.S. products and services and suppliers of such products and services.

(End of clause)

Alternate III. As prescribed in [225.7503](#)(b) and (b)(4), use the following clause, which adds “South Caucasus/Central and South Asian (SC/CASA state”

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and “SC/CASA state construction material” to paragraph(a), uses a different paragraph (b) and introductory text for paragraph (c) than the basic clause, and adds paragraph (d):

BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL UNDER TRADE AGREEMENTS—ALTERNATE III (NOV 2014)

(a) *Definitions.* As used in this clause—

“Caribbean Basin country construction material” means a construction material that—

(i) Is wholly the growth, product, or manufacture of a Caribbean Basin country;
or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

“Commercially available off-the-shelf (COTS) item”—

(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of “commercial item” in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. 40102), such as agricultural products and petroleum products.

“Component” means any article, material, or supply incorporated directly into construction material.

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Cost of components” means—

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(i) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(ii) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

“Designated country” means—

(i) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as “the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu” (Chinese Taipei)), or the United Kingdom);

(ii) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore);

(iii) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(iv) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

“Designated country construction material” means a construction material that is a WTO GPA country construction material, a Free Trade Agreement country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

“Domestic construction material” means—

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

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(A) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or

(B) The construction material is a COTS item.

“Free Trade Agreement country construction material” means a construction material that—

(i) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different construction material distinct from the material from which it was transformed.

“Least developed country construction material” means a construction material that—

(i) Is wholly the growth, product, or manufacture of a least developed country; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

“South Caucasus/Central and South Asian (SC/CASA) state” means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

“SC/CASA state construction material” means construction material that—

(i) Is wholly the growth, product, or manufacture of An SC/CASA state; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different construction material distinct from the material from which it was transformed.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“WTO GPA country construction material” means a construction material that—

(i) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA

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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, all Free Trade Agreements except NAFTA and the Bahrain Free Trade Agreement, and other waivers relating to acquisitions in support of operations in Afghanistan apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for SC/CASA state and designated country construction material other than Bahrainian or Mexican construction material.

(c) The Contractor shall use only domestic, SC/CASA state, or designated country construction material other than Bahrainian or Mexican construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation;

(2) Information technology that is a commercial item; or

(3) The construction material or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate “none”].

(d) If the Contractor is from an SC/CASA state, the Contractor shall inform its government of its participation in this acquisition and that it generally will not have such opportunity in the future unless its government provides reciprocal procurement opportunities to U.S. products and services and suppliers of such products and services.

(End of clause)

252.225-7046 Exports by Approved Community Members in Response to the Solicitation.

As prescribed in [252.7902-5\(a\)](#), use the following provision:

EXPORTS BY APPROVED COMMUNITY MEMBERS IN RESPONSE TO THE SOLICITATION (JUNE 2013)

(a) *Definitions.* The definitions of "Approved Community", "defense articles", "Defense Trade Cooperation (DTC) Treaty", "export", "Implementing Arrangement", "qualifying defense articles", "transfer", and "U.S. DoD Treaty-eligible requirements" in DFARS clause [252.225-7047](#) apply to this provision.

(b) All contract line items in the contemplated contract, except any identified in this paragraph, are intended to satisfy U.S. DoD Treaty-eligible requirements. Specific defense articles that are not U.S. DoD Treaty-eligible will be identified as such in those contract line items that are otherwise U.S. DoD Treaty-eligible.

CONTRACT LINE ITEMS NOT INTENDED TO SATISFY

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U.S. DoD TREATY-ELIGIBLE REQUIREMENTS:

[Enter Contract Line Item Number(s) or enter "None"]

(c) Approved Community members responding to the solicitation may only export or transfer defense articles that specifically respond to the stated requirements of the solicitation.

(d) Subject to the other terms and conditions of the solicitation and the contemplated contract that affect the acceptability of foreign sources or foreign end products, components, parts, or materials, Approved Community members are permitted, but not required, to use the DTC Treaties for exports or transfers of qualifying defense articles in preparing a response to this solicitation.

(e) Any conduct by an offeror responding to this solicitation that falls outside the scope of the DTC Treaties, the Implementing Arrangements, and the implementing regulations of the Department of State in 22 CFR 126.16 (Australia), 22 C.F.R. 126.17 (United Kingdom), and 22 C.F.R. 126 Supplement No. 1 (exempted technologies list) is subject to all applicable International Traffic in Arms Regulations (ITAR) requirements, including any criminal, civil, and administrative penalties or sanctions, as well as all other United States statutory and regulatory requirements outside of ITAR.

(f) If the offeror uses the procedures established pursuant to the DTC Treaties, the offeror agrees that, with regard to the export or transfer of a qualifying defense article associated with responding to the solicitation, the offeror shall—

(1) Comply with the requirements and provisions of the applicable DTC Treaties, the Implementing Arrangements, and corresponding regulations (including the ITAR) of the U.S. Government and the government of Australia or of the United Kingdom, as applicable;

(2) Prior to the export or transfer of a qualifying defense article—

(i) Mark, identify, transmit, store, and handle any defense articles provided for the purpose of responding to such solicitations, as well as any defense articles provided with or developed pursuant to their responses to such solicitations, in accordance with the DTC Treaties, the Implementing Arrangements, and corresponding regulations of the United States Government and the government of Australia or the government of the United Kingdom, as applicable, including, but not limited to, the marking and classification requirements described in the applicable regulations;

(ii) Comply with the re-transfer or re-export provisions of the DTC Treaties, the Implementing Arrangements, and corresponding regulations of the United States Government and the government of Australia or the government of the United Kingdom, as applicable, including, but not limited to, the re-transfer and re-export requirements described in the applicable regulations; and

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(iii) Acknowledge that any conduct that falls outside or in violation of the DTC Treaties, Implementing Arrangements, and implementing regulations of the applicable government including, but not limited to, unauthorized re-transfer or re-export in violation of the procedures established in the applicable Implementing Arrangement and implementing regulations, remains subject to applicable licensing requirements of the government of Australia, the government of the United Kingdom, and the United States Government, as applicable, including any criminal, civil, and administrative penalties or sanctions contained therein; and

(g) *Representation.* The offeror shall check one of the following boxes and sign the representation:

The offeror represents that export(s) or transfer(s) of qualifying defense articles were made in preparing its response to this solicitation and that such export(s) or transfer(s) complied with the requirements of this provision.

Name/Title of Duly Authorized Representative Date

The offeror represents that no export(s) or transfer(s) of qualifying defense articles were made in preparing its response to this solicitation.

Name/Title of Duly Authorized Representative Date

(h) *Subcontracts.* Flow down the substance of this provision, including this paragraph (h), but excluding the representation at paragraph (g), to any subcontractor at any tier intending to use the DTC Treaties in responding to this solicitation.

(End of provision)

252.225-7047 Exports by Approved Community Members in Performance of the Contract.

As prescribed in [225.7902-5\(b\)](#), use the following clause:

EXPORTS BY APPROVED COMMUNITY MEMBERS IN PERFORMANCE OF THE CONTRACT (JUNE 2013)

(a) *Definitions.* As used in this clause—

"Approved Community" means the U.S. Government, U.S. entities that are registered and eligible exporters, and certain government and industry facilities in Australia or the United Kingdom that are approved and listed by the U.S. Government.

"Australia Community member" means an Australian government authority or nongovernmental entity or facility on the Australia Community list accessible at <http://pmddtc.state.gov/treaties/index.html>.

"Defense articles" means articles, services, and related technical data, including software, in tangible or intangible form, listed on the United States Munitions List of the International Traffic in Arms Regulations (ITAR), as modified or amended.

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“Defense Trade Cooperation (DTC) Treaty” means—

(1) The Treaty Between the Government of the United States of America and the government of the United Kingdom of Great Britain and Northern Ireland concerning Defense Trade Cooperation, signed at Washington and London on June 21 and 26, 2007; or

(2) The Treaty Between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation, signed at Sydney on September 5, 2007.

"Export" means the initial movement of defense articles from the United States Community to the United Kingdom Community and the Australia community.

"Implementing Arrangement" means –

(1) The Implementing Arrangement Pursuant to the Treaty between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation, signed on February 14, 2008; or

(2) The Implementing Arrangement Pursuant to the Treaty between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation, signed on March 14, 2008.

“Qualifying defense articles” means defense articles that are not exempt from the scope of the DTC Treaties as defined in 22 CFR 126.16(g) and 22 CFR 126.17(g).

"Transfer" means the movement of previously exported defense articles within the Approved Community.

“United Kingdom Community member” means a United Kingdom government authority or nongovernmental entity or facility on the United Kingdom Community list accessible at <http://pmdtdc.state.gov>.

"United States Community" means—

(1) Departments and agencies of the U.S. Government, including their personnel, with, as appropriate, security accreditation and a need-to-know; and

(2) Nongovernmental U.S. entities registered with the Department of State and eligible to export defense articles under U.S. law and regulation, including their employees, with, as appropriate, security accreditation and a need-to-know.

"U.S. DoD Treaty-eligible requirements" means any defense article acquired by the DoD for use in a combined military or counterterrorism operation, cooperative research, development, production or support program, or DoD end use, as described in Article 3 of the U.S.-U.K. DTC Treaty and sections 2 and 3 of the associated Implementing Arrangement; and Article 3 of the U.S.-Australia DTC Treaty and sections 2 and 3 of the associated Implementing Arrangement.

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(b) All contract line items in this contract, except any identified in this paragraph, are intended to satisfy U.S. DoD Treaty-eligible requirements. Specific defense articles that are not U.S. DoD Treaty-eligible will be identified as such in those contract line items that are otherwise U.S. DoD Treaty-eligible.

CONTRACT LINE ITEMS NOT INTENDED TO SATISFY U.S. DoD TREATY-ELIGIBLE REQUIREMENTS:

[Enter Contract Line Item Number(s) or enter "None"]

(c) Subject to the other terms and conditions of this contract that affect the acceptability of foreign sources or foreign end products, components, parts, or materials, Approved Community members are permitted, but not required, to use the DTC Treaties for exports or transfers of qualifying defense articles in performance of the contract.

(d) Any conduct by the Contractor that falls outside the scope of the DTC Treaties, the Implementing Arrangements, and 22 CFR 126.16(g) and 22 CFR 126.17(g) is subject to all applicable ITAR requirements, including any criminal, civil, and administrative penalties or sanctions, as well as all other United States statutory and regulatory requirements outside of ITAR, including, but not limited to, regulations issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives found at 27 C.F.R. Parts 447, 478, and 479, which are unaffected by the DTC Treaties.

(e) If the Contractor is an Approved Community member, the Contractor agrees that—

(1) The Contractor shall comply with the requirements of the DTC Treaties, the Implementing Arrangements, the ITAR, and corresponding regulations of the U.S. Government and the government of Australia or the government of the United Kingdom, as applicable; and

(2) Prior to the export or transfer of a qualifying defense article the Contractor—

(i) Shall mark, identify, transmit, store, and handle any defense articles provided for the purpose of responding to such solicitations, as well as any defense articles provided with or developed pursuant to their responses to such solicitations, in accordance with the DTC Treaties, the Implementing Arrangements, and corresponding regulations of the United States Government and the government of Australia or the government of the United Kingdom, as applicable, including, but not limited to, the marking and classification requirements described in the applicable regulations;

(ii) Shall comply with the re-transfer or re-export provisions of the DTC Treaties, the Implementing Arrangements, and corresponding regulations of the United States Government and the government of Australia or the government of the United Kingdom, as applicable, including, but not limited to, the re-transfer and re-export requirements described in the applicable regulations; and

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(iii) Shall acknowledge that any conduct that falls outside or in violation of the DTC Treaties, Implementing Arrangements, and implementing regulations of the applicable government including, but not limited to, unauthorized re-transfer or re-export in violation of the procedures established in the applicable Implementing Arrangement and implementing regulations, remains subject to applicable licensing requirements of the government of Australia, the government of the United Kingdom, and the United States Government, including any criminal, civil, and administrative penalties or sanctions contained therein.

(f) The contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts that may require exports or transfers of qualifying defense articles in connection with deliveries under the contract.

(End of clause)

252.225-7048 Export-Controlled Items.

As prescribed in [225.7901-4](#), use the following clause:

EXPORT CONTROLLED ITEMS (JUNE 2013)

(a) *Definition.* “Export-controlled items,” as used in this clause, means items subject to the Export Administration Regulations (EAR) (15 CFR Parts 730-774) or the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130). The term includes:

(1) “Defense items,” defined in the Arms Export Control Act, 22 U.S.C. 2778(j)(4)(A), as defense articles, defense services, and related technical data, and further defined in the ITAR, 22 CFR Part 120.

(2) “Items,” defined in the EAR as “commodities”, “software”, and “technology,” terms that are also defined in the EAR, 15 CFR 772.1.

(b) The Contractor shall comply with all applicable laws and regulations regarding export-controlled items, including, but not limited to, the requirement for contractors to register with the Department of State in accordance with the ITAR. The Contractor shall consult with the Department of State regarding any questions relating to compliance with the ITAR and shall consult with the Department of Commerce regarding any questions relating to compliance with the EAR.

(c) The Contractor's responsibility to comply with all applicable laws and regulations regarding export-controlled items exists independent of, and is not established or limited by, the information provided by this clause.

(d) Nothing in the terms of this contract adds, changes, supersedes, or waives any of the requirements of applicable Federal laws, Executive orders, and regulations, including but not limited to—

(1) The Export Administration Act of 1979, as amended (50 U.S.C. App. 2401, *et seq.*);

(2) The Arms Export Control Act (22 U.S.C. 2751, *et seq.*);

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- (3) The International Emergency Economic Powers Act (50 U.S.C. 1701, et seq.);
- (4) The Export Administration Regulations (15 CFR Parts 730-774);
- (5) The International Traffic in Arms Regulations (22 CFR Parts 120-130); and
- (6) Executive Order 13222, as extended.

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in all subcontracts.

(End of clause)

252.225-7049 Prohibition on Acquisition of Commercial Satellite Services from Certain Foreign Entities—Representations.

As prescribed in [225.772-5](#), use the following provision:

PROHIBITION ON ACQUISITION OF COMMERCIAL SATELLITE SERVICES FROM CERTAIN FOREIGN ENTITIES—REPRESENTATIONS (DEC 2014)

(a) *Definitions.* As used in this provision—

“Covered foreign country” means—

- (i) The People’s Republic of China;
- (ii) North Korea; or
- (iii) Any country that is a state sponsor of terrorism. (10 U.S.C. 2279)

“Foreign entity” means—

(i) Any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization organized under the laws of a foreign state if either its principal place of business is outside the United States or its equity securities are primarily traded on one or more foreign exchanges.

(ii) Notwithstanding paragraph (i) of this definition, any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization that demonstrates that a majority of the equity interest in such entity is ultimately owned by U.S. nationals is not a foreign entity. (31 CFR 800.212)

“Government of a covered foreign country” includes the state and the government of a covered foreign country, as well as any political subdivision, agency, or instrumentality thereof.

“Satellite services” means communications capabilities that utilize an on-orbit satellite for transmitting the signal from one location to another.

“State sponsor of terrorism” means a country determined by the Secretary of

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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, state sponsors of terrorism subject to this provision are Cuba, Iran, Sudan, and Syria. (10 U.S.C. 2327)

(b) *Prohibition on award.* In accordance with 10 U.S.C. 2279, unless an exception is determined to apply in accordance with DFARS [225.772-4](#), no contract for commercial satellite services may be awarded to—

(1) A foreign entity if the Under Secretary of Defense for Acquisition, Technology, and Logistics or the Under Secretary of Defense for Policy reasonably believes that the foreign entity—

(i) Is an entity in which the government of a covered foreign country has an ownership interest that enables the government to affect satellite operations; or

(ii) Plans to, or is expected to, provide or use launch or other satellite services under the contract from a covered foreign country; or

(2) An offeror that is offering to provide the commercial satellite services of a foreign entity as described in paragraph (b)(1) of this section.

(c) *Representations.* The Offeror represents that—

(1) It [] is, [] is not a foreign entity in which the government of a covered foreign country has an ownership interest that enables the government to affect satellite operations;

(2) It [] is, [] is not a foreign entity that plans to provide or use launch or other satellite services under the contract from a covered foreign country;

(3) It [] is, [] is not offering commercial satellite services provided by a foreign entity in which the government of a covered foreign country has an ownership interest that enables the government to affect satellite operations; and

(4) It [] is, [] is not offering commercial satellite services provided by a foreign entity that plans to or is expected to provide or use launch or other satellite services under the contract from a covered foreign country.

(d) *Disclosure.* If the Offeror has responded affirmatively to any of the above representations, provide the following information, as applicable:

(1) Identification of the foreign entity proposed to provide the commercial satellite services, if other than the Offeror.

(2) To the extent practicable, a description of any ownership interest that the government of a covered foreign country has in the foreign entity proposed to provide the satellite services, including identification of the covered foreign country.

(3) Identification of any covered foreign country in which launch or other

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satellite services will be provided or used, and a description of any satellite services planned to be provided or used in that country.

(e) The representations in paragraph (c) of this provision are a material representation of fact upon which reliance will be placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous representation, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

(End of provision)

252.225-7050 Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism.

As prescribed in [225.771-5](#), use the following provision:

DISCLOSURE OF OWNERSHIP OR CONTROL BY THE GOVERNMENT OF A COUNTRY THAT IS A STATE SPONSOR OF TERRORISM (DEC 2014)

(a) *Definitions.* As used in this provision—

“Government of a country that is a state sponsor of terrorism” includes the state and the government of a country that is a state sponsor of terrorism, as well as any political subdivision, agency, or instrumentality thereof.

“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.

“State sponsor of terrorism” 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)(1)(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, state sponsors of terrorism include: Cuba, Iran, Sudan, and Syria.

(b) *Prohibition on award.* In accordance with 10 U.S.C. 2327, unless a waiver is granted by the Secretary of Defense, no contract may be awarded to a firm if the government of a country that is a state sponsor of terrorism owns or controls a significant interest in—

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- (1) The firm;
- (2) A subsidiary of the firm; or
- (3) Any other firm that owns or controls the firm.

(c) *Representation.* Unless the Offeror submits with its offer the disclosure required in paragraph (d) of this provision, the Offeror represents, by submission of its offer, that the government of a country that is a state sponsor of terrorism does not own or control a significant interest in—

- (1) The Offeror;
- (2) A subsidiary of the Offeror; or
- (3) Any other firm that owns or controls the Offeror.

(d) *Disclosure.*

(1) The Offeror shall disclose in an attachment to its offer if the government of a country that is a state sponsor of terrorism owns or controls a significant interest in the Offeror; a subsidiary of the Offeror; or any other firm that owns or controls the Offeror.

(2) The disclosure shall include—

- (i) Identification of each government holding a significant interest; and
- (ii) A description of the significant interest held by each government.

(End of provision)

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(Revised June 26, 2015)

252.229-7000 Invoices Exclusive of Taxes or Duties.

As prescribed in [229.402-1](#), use the following clause:

INVOICES EXCLUSIVE OF TAXES OR DUTIES (JUN 1997)

Invoices submitted in accordance with the terms and conditions of this contract shall be exclusive of all taxes or duties for which relief is available.

(End of clause)

252.229-7001 Tax Relief.

Basic. As prescribed in [229.402-70](#)(a) and (a)(1), use the following clause:

TAX RELIEF—BASIC (SEP 2014)

(a) Prices set forth in this contract are exclusive of all taxes and duties from which the United States Government is exempt by virtue of tax agreements between the United States Government and the Contractor's government. The following taxes or duties have been excluded from the contract price:

NAME OF TAX: *(Offeror insert)* RATE (PERCENTAGE): *(Offeror insert)*

(b) The Contractor's invoice shall list separately the gross price, amount of tax deducted, and net price charged.

(c) When items manufactured to United States Government specifications are being acquired, the Contractor shall identify the materials or components intended to be imported in order to ensure that relief from import duties is obtained. If the Contractor intends to use imported products from inventories on hand, the price of which includes a factor for import duties, the Contractor shall ensure the United States Government's exemption from these taxes. The Contractor may obtain a refund of the import duties from its government or request the duty-free import of an amount of supplies or components corresponding to that used from inventory for this contract.

(End of clause)

Alternate I. As prescribed in [229.402-70](#)(a) and (a)(2), use the following clause, which adds a paragraph (d) not included in the basic clause:

TAX RELIEF—ALTERNATE I (SEP 2014)

(a) Prices set forth in this contract are exclusive of all taxes and duties from which the United States Government is exempt by virtue of tax agreements between the United States Government and the Contractor's government. The following taxes or duties have been excluded from the contract price:

NAME OF TAX: *[Offeror insert]* RATE (PERCENTAGE): *[Offeror insert]*

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(b) The Contractor's invoice shall list separately the gross price, amount of tax deducted, and net price charged.

(c) When items manufactured to United States Government specifications are being acquired, the Contractor shall identify the materials or components intended to be imported in order to ensure that relief from import duties is obtained. If the Contractor intends to use imported products from inventories on hand, the price of which includes a factor for import duties, the Contractor shall ensure the United States Government's exemption from these taxes. The Contractor may obtain a refund of the import duties from its government or request the duty-free import of an amount of supplies or components corresponding to that used from inventory for this contract.

(d) Tax relief will be claimed in Germany pursuant to the provisions of the Agreement Between the United States of America and Germany Concerning Tax Relief to be Accorded by Germany to United States Expenditures in the Interest of Common Defense. The Contractor shall use Abwicklungsschein fuer abgabenbeguenstigte Lieferungen/Leistungen nach dem Offshore Steuerabkommen (Performance Certificate for Tax-Free Deliveries/Performance according to the Offshore Tax Relief Agreement) or other documentary evidence acceptable to the German tax authorities. All purchases made and paid for on a tax-free basis during a 30-day period may be accumulated, totaled, and reported as tax-free.

End of clause)

252.229-7002 Customs Exemptions (Germany).

As prescribed in [229.402-70\(b\)](#), use the following clause:

CUSTOMS EXEMPTIONS (GERMANY) (JUN 1997)

Imported products required for the direct benefit of the United States Forces are authorized to be acquired duty-free by the Contractor in accordance with the provisions of the Agreement Between the United States of America and Germany Concerning Tax Relief to be Accorded by Germany to United States Expenditures in the Interest of Common Defense.

(End of clause)

252.229-7003 Tax Exemptions (Italy).

As prescribed in [229.402-70\(c\)\(1\)](#), use the following clause:

TAX EXEMPTIONS (ITALY) (MAR 2012)

(a) As the Contractor represented in its offer, the contract price, including the prices in subcontracts awarded under this contract, does not include taxes from which the United States Government is exempt.

(b) The United States Government is exempt from payment of Imposta Valore Aggiunto (IVA) tax in accordance with Article 72 of the IVA implementing decree on all supplies and services sold to United States Military Commands in Italy.

(1) The Contractor shall include the following information on invoices submitted to the United States Government:

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(i) The contract number.

(ii) The IVA tax exemption claimed pursuant to Article 72 of Decree Law 633, dated October 26, 1972.

(iii) The following fiscal code(s): *[Contracting Officer must insert the applicable fiscal code(s) for military activities within Italy: 80028250241 for Army, 80156020630 for Navy, or 91000190933 for Air Force].*

(2)(i) Upon receipt of the invoice, the paying office will include the following certification on one copy of the invoice:

“I certify that this invoice is true and correct and reflects expenditures made in Italy for the Common Defense by the United States Government pursuant to international agreements. The amount to be paid does not include the IVA tax, because this transaction is not subject to the tax in accordance with Article 72 of Decree Law 633, dated October 26, 1972.”

An authorized United States Government official will sign the copy of the invoice containing this certification.

(ii) The paying office will return the certified copy together with payment to the Contractor. The payment will not include the amount of the IVA tax.

(iii) The Contractor shall retain the certified copy to substantiate non-payment of the IVA tax.

(3) The Contractor may address questions regarding the IVA tax to the Ministry of Finance, IVA Office, Rome (06) 520741.

(c) In addition to the IVA tax, purchases by the United States Forces in Italy are exempt from the following taxes:

- (1) Imposta di Fabbricazione (Production Tax for Petroleum Products).
- (2) Imposta di Consumo (Consumption Tax for Electrical Power).
- (3) Dazi Doganali (Customs Duties).
- (4) Tassa di Sbarco e d'Imbarco sulle Merci Transportate per Via Aerea e per Via Maritima (Port Fees).
- (5) Tassa de Circolazione sui Veicoli (Vehicle Circulation Tax).
- (6) Imposta di Registro (Registration Tax).
- (7) Imposta di Bollo (Stamp Tax).

(End of clause)

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252.229-7004 Status of Contractor as a Direct Contractor (Spain).

As prescribed in [229.402-70](#)(d), use the following clause:

STATUS OF CONTRACTOR AS A DIRECT CONTRACTOR (SPAIN) (JUN 1997)

(a) "Direct Contractor," as used in this clause, means an individual, company, or entity with whom an agency of the United States Department of Defense has executed a written agreement that allows duty-free import of equipment, materials, and supplies into Spain for the construction, development, maintenance, and operation of Spanish-American installations and facilities.

(b) The Contractor is hereby designated as a Direct Contractor under the provisions of Complementary Agreement 5, articles 11, 14, 15, 17, and 18 of the Agreement on Friendship, Defense and Cooperation between the United States Government and the Kingdom of Spain, dated July 2, 1982. The Agreement relates to contracts to be performed in whole or part in Spain, the provisions of which are hereby incorporated into and made a part of this contract by reference.

(c) The Contractor shall apply to the appropriate Spanish authorities for approval of status as a Direct Contractor in order to complete duty-free import of non-Spanish equipment, materials, and supplies represented as necessary for contract performance by the Contracting Officer. Orders for equipment, materials, and supplies placed prior to official notification of such approval shall be at the Contractor's own risk. The Contractor must submit its documentation in sufficient time to permit processing by the appropriate United States and Spanish Government agencies prior to the arrival of the equipment, materials, or supplies in Spain. Seasonal variations in processing times are common, and the Contractor should program its projects accordingly. Any delay or expense arising directly or indirectly from this process shall not excuse untimely performance (except as expressly allowed in other provisions of this contract), constitute a direct or constructive change, or otherwise provide a basis for additional compensation or adjustment of any kind.

(d) To ensure that all duty-free imports are properly accounted for, exported, or disposed of, in accordance with Spanish law, the Contractor shall obtain a written bank letter of guaranty payable to the Treasurer of the United States, or such other authority as may be designated by the Contracting Officer, in the amount set forth in paragraph (g) of this clause, prior to effecting any duty-free imports for the performance of this contract.

(e) If the Contractor fails to obtain the required guaranty, the Contractor agrees that the Contracting Officer may withhold a portion of the contract payments in order to establish a fund in the amount set forth in paragraph (g) of this clause. The fund shall be used for the payment of import taxes in the event that the Contractor fails to properly account for, export, or dispose of equipment, materials, or supplies imported on a duty-free basis.

(f) The amount of the bank letter of guaranty or size of the fund required under paragraph (d) or (e) of this clause normally shall be 5 percent of the contract value. However, if the Contractor demonstrates to the Contracting Officer's satisfaction that the amount retained by the United States Government or guaranteed by the bank is excessive, the amount shall be reduced to an amount commensurate with contingent import tax and duty-free liability. This bank guaranty or fund shall not be released to

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the Contractor until the Spanish General Directorate of Customs verifies the accounting, export, or disposition of the equipment, material, or supplies imported on a duty-free basis.

(g) The amount required under paragraph (d), (e), or (f) of this clause is *(Contracting Officer insert amount at time of contract award)*.

(h) The Contractor agrees to insert the provisions of this clause, including this paragraph (h), in all subcontracts.

(End of clause)

252.229-7005 Tax Exemptions (Spain).

As prescribed in [229.402-70\(e\)\(1\)](#), use the following clause:

TAX EXEMPTIONS (SPAIN) (MAR 2012)

(a) As the Contractor represented in its offer, the contract price, including the prices in subcontracts awarded under this contract, does not include taxes from which the United States Government is exempt.

(b) In accordance with tax relief agreements between the United States Government and the Spanish Government, and because the incumbent contract arises from the activities of the United States Forces in Spain, the contract will be exempt from the following excise, luxury, and transaction taxes:

- (1) Derechos de Aduana (Customs Duties).
- (2) Impuesto de Compensacion a la Importacion (Compensation Tax on Imports).
- (3) Transmisiones Patrimonialas (Property Transfer Tax).
- (4) Impuesto Sobre el Lujo (Luxury Tax).
- (5) Actos Juridicos Documentados (Legal Official Transactions).
- (6) Impuesto Sobre el Trafico de Empresas (Business Trade Tax).
- (7) Impuestos Especiales de Fabricacion (Special Products Tax).
- (8) Impuesto Sobre el Petroleo y Derivados (Tax on Petroleum and its By-Products).
- (9) Impuesto Sobre el Uso de Telefona (Telephone Tax).
- (10) Impuesto General Sobre la Renta de Sociedades y demas Entidades Juridicas (General Corporation Income Tax).
- (11) Impuesto Industrial (Industrial Tax).
- (12) Impuesto de Rentas Sobre el Capital (Capital Gains Tax).

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- (13) Plus Vailia (Increase on Real Property).
- (14) Contribucion Territorial Urbana (Metropolitan Real Estate Tax).
- (15) Contribucion Territorial Rustica y Pecuaria (Farmland Real Estate Tax).
- (16) Impuestos de la Diputacion (County Service Charges).
- (17) Impuestos Municipal y Tasas Parafiscales (Municipal Tax and Charges).

(End of clause)

252.229-7006 Value Added Tax Exclusion (United Kingdom)

As prescribed in [229.402-70\(f\)](#), use the follow clause:

VALUE ADDED TAX EXCLUSION (UNITED KINGDOM) (DEC 2011)

The supplies or services identified in this contract are to be delivered at a price exclusive of value added tax under arrangements between the appropriate United States authorities and Her Majesty's Revenue and Customs (HMRC Reference Notice 431, entitled Relief from Customs Duty and/or Value Added Tax on United States Government Expenditures in the United Kingdom). By executing this contract, the Contracting Officer certifies that these supplies or services are being purchased for United States Government official purposes only.

(End of clause)

252.229-7007 Verification of United States Receipt of Goods.

As prescribed in [229.402-70\(g\)](#), use the following clause:

VERIFICATION OF UNITED STATES RECEIPT OF GOODS (JUN 1997)

The Contractor shall insert the following statement on all Material Inspection and Receiving Reports (DD Form 250 series) for Contracting Officer approval:

"I certify that the items listed on this invoice have been received by the United States."

(End of clause)

252.229-7008 Relief from Import Duty (United Kingdom).

As prescribed in [229.402-70\(h\)](#), use the following clause:

RELIEF FROM IMPORT DUTY (UNITED KINGDOM) (DEC 2011)

Any import dutiable articles, components, or raw materials supplied to the United States Government under this contract shall be exclusive of any United Kingdom import duties. Any imported items supplied for which import duty already has been paid will be supplied at a price exclusive of the amount of import duty paid. The Contractor is advised to contact Her Majesty's Revenue and Customs to obtain a refund upon completion of the contract (Reference HMRC Notice No. 431, entitled "Relief from

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Customs Duty and/or Value Added Tax on United States Government Expenditures in the United Kingdom”).

(End of clause)

252.229-7009 Relief from Customs Duty and Value Added Tax on Fuel (Passenger Vehicles) (United Kingdom).

As prescribed in [229.402-70\(i\)](#), use the following clause:

RELIEF FROM CUSTOMS DUTY AND VALUE ADDED TAX ON FUEL (PASSENGER VEHICLES) (UNITED KINGDOM) (JUN 1997)

(a) Pursuant to an agreement between the United States Government and Her Majesty’s (HM) Customs and Excise, fuels and lubricants used by passenger vehicles (except taxis) in the performance of this contract will be exempt from customs duty and value added tax. Therefore, the procedures outlined in HM Customs and Excise Notice No. 431B, August 1982, and any amendment thereto, shall be used to obtain relief from both customs duty and value added tax for fuel used under the contract. These procedures shall apply to both loaded and unloaded miles. The unit prices shall be based on the recoupment by the Contractor of customs duty in accordance with the following allowances:

(1) Vehicles (except taxis) with a seating capacity of less than 29, one gallon for every 27 miles.

(2) Vehicles with a seating capacity of 29-53, one gallon for every 13 miles.

(3) Vehicles with a seating capacity of 54 or more, one gallon for every 10 miles.

(b) In the event the mileage of any route is increased or decreased within 10 percent, resulting in no change in route price, the customs duty shall be reclaimed from HM Customs and Excise on actual mileage performed.

(End of clause)

252.229-7010 Relief from Customs Duty on Fuel (United Kingdom).

As prescribed in [229.402-70\(j\)](#), use the following clause:

RELIEF FROM CUSTOMS DUTY ON FUEL (UNITED KINGDOM) (JUN 1997)

(a) Pursuant to an agreement between the United States Government and Her Majesty’s (HM) Customs and Excise, it is possible to obtain relief from customs duty on fuels and lubricants used in support of certain contracts. If vehicle fuels and lubricants are used in support of this contract, the Contractor shall seek relief from customs duty in accordance with HM Customs Notice No. 431, February 1973, entitled “Relief from Customs Duty and/or Value Added Tax on United States Government Expenditures in the United Kingdom.” Application should be sent to the Contractor’s local Customs and Excise Office.

(b) Specific information should be included in the request for tax relief, such as the number of vehicles involved, types of vehicles, rating of vehicles, fuel consumption,

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estimated mileage per contract period, and any other information that will assist HM Customs and Excise in determining the amount of relief to be granted.

(c) Within 30 days after the award of this contract, the Contractor shall provide the Contracting Officer with evidence that an attempt to obtain such relief has been initiated. In the event the Contractor does not attempt to obtain relief within the time specified, the Contracting Officer may deduct from the contract price the amount of relief that would have been allowed if HM Customs and Excise had favorably considered the request for relief.

(d) The amount of any rebate granted by HM Customs and Excise shall be paid in full to the United States Government. Checks shall be made payable to the Treasurer of the United States and forwarded to the Administrative Contracting Officer.

(End of clause)

252.229-7011 Reporting of Foreign Taxes – U.S. Assistance Programs.

As prescribed in [229.170-4](#), use the following clause:

REPORTING OF FOREIGN TAXES – U.S. ASSISTANCE PROGRAMS (SEP 2005)

(a) *Definition.* “Commodities,” as used in this clause, means any materials, articles, supplies, goods, or equipment.

(b) Commodities acquired under this contract shall be exempt from all value added taxes and customs duties imposed by the recipient country. This exemption is in addition to any other tax exemption provided through separate agreements or other means.

(c) The Contractor shall inform the foreign government of the tax exemption, as documented in the Letter of Offer and Acceptance, country-to-country agreement, or interagency agreement.

(d) If the foreign government or entity nevertheless imposes taxes, the Contractor shall promptly notify the Contracting Officer and shall provide documentation showing that the foreign government was apprised of the tax exemption in accordance with paragraph (c) of this clause.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts for commodities that exceed \$500.

(End of clause)

252.229-7012 Tax Exemptions (Italy)—Representation.

As prescribed in [229.402-70\(c\)\(2\)](#), use the following provision:

TAX EXEMPTIONS (ITALY)—REPRESENTATION (MAR 2012)

(a) *Exemptions.* The United States Government is exempt from payment of—

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(1) Imposta Valore Aggiunto (IVA) tax in accordance with Article 72 of the IVA implementing decree on all supplies and services sold to United States Military Commands in Italy; and

(2) The other taxes specified in paragraph (c) of the clause DFARS [252.229-7003](#), Tax Exemptions (Italy).

(b) *Representation.* By submission of its offer, the offeror represents that the offered price, including the prices of subcontracts to be awarded under the contract, does not include the taxes identified herein, or any other taxes from which the United States Government is exempt.

(End of provision)

252.229-7013 Tax Exemptions (Spain)—Representation.

As prescribed in [229.402-70](#)(e)(2), use the following provision:

TAX EXEMPTIONS (SPAIN)—REPRESENTATION (APR 2012)

(a) *Exemptions.* In accordance with tax relief agreements between the United States Government and the Spanish Government, and because the resultant contract arises from the activities of the United States Forces in Spain, the contract will be exempt from the excise, luxury, and transaction taxes listed in paragraph (b) of the clause DFARS [252.229-7005](#), Tax Exemptions (Spain).

(b) *Representation.* By submission of its offer, the offeror represents that the offered price, including the prices of subcontracts to be awarded under the contract, does not include the taxes identified herein, or any other taxes from which the United States Government is exempt.

(End of provision)

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(Revised June 26, 2015)

252.234-7001 Notice of Earned Value Management System.

As prescribed in [234.203\(1\)](#), use the following provision:

NOTICE OF EARNED VALUE MANAGEMENT SYSTEM (APR 2008)

(a) If the offeror submits a proposal in the amount of \$50,000,000 or more—

(1) The offeror shall provide documentation that the Cognizant Federal Agency (CFA) has determined that the proposed Earned Value Management System (EVMS) complies with the EVMS guidelines in the American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA-748) (current version at time of solicitation). The Government reserves the right to perform reviews of the EVMS when deemed necessary to verify compliance.

(2) If the offeror proposes to use a system that has not been determined to be in compliance with the requirements of paragraph (a)(1) of this provision, the offeror shall submit a comprehensive plan for compliance with the guidelines in ANSI/EIA-748.

(i) The plan shall—

(A) Describe the EVMS the offeror intends to use in performance of the contract, and how the proposed EVMS complies with the EVMS guidelines in ANSI/EIA-748;

(B) Distinguish between the offeror's existing management system and modifications proposed to meet the EVMS guidelines;

(C) Describe the management system and its application in terms of the EVMS guidelines;

(D) Describe the proposed procedure for administration of the EVMS guidelines as applied to subcontractors; and

(E) Describe the process the offeror will use to determine subcontractor compliance with ANSI/EIA-748.

(ii) The offeror shall provide information and assistance as required by the Contracting Officer to support review of the plan.

(iii) The offeror's EVMS plan must provide milestones that indicate when the offeror anticipates that the EVMS will be compliant with the guidelines in ANSI/EIA-748.

(b) If the offeror submits a proposal in an amount less than \$50,000,000—

(1) The offeror shall submit a written description of the management procedures it will use and maintain in the performance of any resultant contract to comply with the requirements of the Earned Value Management System clause of the

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contract. The description shall include—

(i) A matrix that correlates each guideline in ANSI/EIA-748 (current version at time of solicitation) to the corresponding process in the offeror's written management procedures; and

(ii) The process the offeror will use to determine subcontractor compliance with ANSI/EIA-748.

(2) If the offeror proposes to use an EVMS that has been determined by the CFA to be in compliance with the EVMS guidelines in ANSI/EIA-748, the offeror may submit a copy of the documentation of such determination instead of the written description required by paragraph (b)(1) of this provision.

(c) The offeror shall identify the subcontractors (or the subcontracted effort if subcontractors have not been selected) to whom the EVMS requirements will apply. The offeror and the Government shall agree to the subcontractors or the subcontracted effort selected for application of the EVMS requirements. The offeror shall be responsible for ensuring that the selected subcontractors comply with the requirements of the Earned Value Management System clause of the contract.

(End of provision)

252.234-7002 Earned Value Management System.

As prescribed in [234.203\(2\)](#), use the following clause:

EARNED VALUE MANAGEMENT SYSTEM (MAY 2011)

(a) *Definitions.* As used in this clause—

“Acceptable earned value management system” means an earned value management system that generally complies with system criteria in paragraph (b) of this clause.

“Earned value management system” means an earned value management system that complies with the earned value management system guidelines in the ANSI/EIA-748.

“Significant deficiency” means a shortcoming in the system that materially affects the ability of officials of the Department of Defense to rely upon information produced by the system that is needed for management purposes.

(b) *System criteria.* In the performance of this contract, the Contractor shall use—

(1) An Earned Value Management System (EVMS) that complies with the EVMS guidelines in the American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA-748); and

(2) Management procedures that provide for generation of timely, reliable, and verifiable information for the Contract Performance Report (CPR) and the Integrated Master Schedule (IMS) required by the CPR and IMS data items of this contract.

(c) If this contract has a value of \$50 million or more, the Contractor shall use an

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EVMS that has been determined to be acceptable by the Cognizant Federal Agency (CFA). If, at the time of award, the Contractor's EVMS has not been determined by the CFA to be in compliance with the EVMS guidelines as stated in paragraph (b)(1) of this clause, the Contractor shall apply its current system to the contract and shall take necessary actions to meet the milestones in the Contractor's EVMS plan.

(d) If this contract has a value of less than \$50 million, the Government will not make a formal determination that the Contractor's EVMS complies with the EVMS guidelines in ANSI/EIA-748 with respect to the contract. The use of the Contractor's EVMS for this contract does not imply a Government determination of the Contractor's compliance with the EVMS guidelines in ANSI/EIA-748 for application to future contracts. The Government will allow the use of a Contractor's EVMS that has been formally reviewed and determined by the CFA to be in compliance with the EVMS guidelines in ANSI/EIA-748.

(e) The Contractor shall submit notification of any proposed substantive changes to the EVMS procedures and the impact of those changes to the CFA. If this contract has a value of \$50 million or more, unless a waiver is granted by the CFA, any EVMS changes proposed by the Contractor require approval of the CFA prior to implementation. The CFA will advise the Contractor of the acceptability of such changes as soon as practicable (generally within 30 calendar days) after receipt of the Contractor's notice of proposed changes. If the CFA waives the advance approval requirements, the Contractor shall disclose EVMS changes to the CFA at least 14 calendar days prior to the effective date of implementation.

(f) The Government will schedule integrated baseline reviews as early as practicable, and the review process will be conducted not later than 180 calendar days after—

- (1) Contract award;
- (2) The exercise of significant contract options; and
- (3) The incorporation of major modifications.

During such reviews, the Government and the Contractor will jointly assess the Contractor's baseline to be used for performance measurement to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

(g) The Contractor shall provide access to all pertinent records and data requested by the Contracting Officer or duly authorized representative as necessary to permit Government surveillance to ensure that the EVMS complies, and continues to comply, with the performance criteria referenced in paragraph (b) of this clause.

(h) When indicated by contract performance, the Contractor shall submit a request for approval to initiate an over-target baseline or over-target schedule to the Contracting Officer. The request shall include a top-level projection of cost and/or schedule growth, a determination of whether or not performance variances will be retained, and a schedule of implementation for the rebaselining. The Government will acknowledge receipt of the request in a timely manner (generally within 30 calendar days).

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(i) *Significant deficiencies.* (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, of any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's EVMS. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—

(i) Remaining significant deficiencies;

(ii) The adequacy of any proposed or completed corrective action;

(iii) System noncompliance, when the Contractor's existing EVMS fails to comply with the earned value management system guidelines in the ANSI/EIA-748; and

(iv) System disapproval, if initial EVMS validation is not successfully completed within the timeframe approved by the Contracting Officer, or if the Contracting Officer determines that the Contractor's earned value management system contains one or more significant deficiencies in high-risk guidelines in ANSI/EIA-748 standards (guidelines 1, 3, 6, 7, 8, 9, 10, 12, 16, 21, 23, 26, 27, 28, 30, or 32). When the Contracting Officer determines that the existing earned value management system contains one or more significant deficiencies in one or more of the remaining 16 guidelines in ANSI/EIA-748 standards, the Contracting Officer will use discretion to disapprove the system based on input received from functional specialists and the auditor.

(4) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the significant deficiencies.

(j) *Withholding payments.* If the Contracting Officer makes a final determination to disapprove the Contractor's EVMS, and the contract includes the clause at [252.242-7005](#), Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

(k) With the exception of paragraphs (i) and (j) of this clause, the Contractor shall require its subcontractors to comply with EVMS requirements as follows:

(1) For subcontracts valued at \$50 million-or more, the following subcontractors shall comply with the requirements of this clause:

[Contracting Officer to insert names of subcontractors (or subcontracted effort if subcontractors have not been selected) designated for application of the EVMS]

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requirements of this clause.]

(2) For subcontracts valued at less than \$50 million, the following subcontractors shall comply with the requirements of this clause, excluding the requirements of paragraph (c) of this clause:

[Contracting Officer to insert names of subcontractors (or subcontracted effort if subcontractors have not been selected) designated for application of the EVMS requirements of this clause.]

(End of clause)

252.234-7003 Notice of Cost and Software Data Reporting System

Basic. As prescribed in [234.7101](#)(a) and (a)(1), use the following provision:

**NOTICE OF COST AND SOFTWARE DATA REPORTING SYSTEM—BASIC
(NOV 2014)**

(a) This solicitation includes—

(1) The Government-approved cost and software data reporting (CSDR) plan for the contract, DD Form 2794; and

(2) The related Resource Distribution Table.

(b) As part of its proposal, the Offeror shall—

(1) Describe the process to be used to satisfy the requirements of the DoD 5000.04-M-1, CSDR Manual, and the Government-approved CSDR plan for the proposed contract;

(2) Demonstrate how contractor cost and data reporting (CCDR) will be based, to the maximum extent possible, upon actual cost transactions and not cost allocations;

(3) Demonstrate how the data from its accounting system will be mapped into the standard reporting categories required in the CCDR data item descriptions;

(4) Describe how recurring and nonrecurring costs will be segregated;

(5) Provide comments on the adequacy of the CSDR contract plan and related

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Resource Distribution Table; and

(6) Submit the DD Form 1921, Cost Data Summary Report, and DD Form 1921-1, Functional Cost-Hour Report, with its pricing proposal.

(c) CSDR reporting will be required for subcontractors at any tier with a subcontract that exceeds \$50 million. The offeror shall identify, by providing comments on the Resource Distribution Table, the subcontractors, or, if the subcontractors have not been selected, the subcontracted effort in this category.

(End of provision)

Alternate I. As prescribed in [234.7101](#)(a) and (a)(2), use the following provision, which uses a different paragraph (c) than the basic provision:

NOTICE OF COST AND SOFTWARE DATA REPORTING SYSTEM —ALTERNATE I (NOV 2014)

(a) This solicitation includes—

(1) The Government-approved cost and software data reporting (CSDR) plan for the contract, DD Form 2794; and

(2) The related Resource Distribution Table.

(b) As part of its proposal, the Offeror shall—

(1) Describe the process to be used to satisfy the requirements of the DoD 5000.04-M-1, CSDR Manual, and the Government-approved CSDR plan for the proposed contract;

(2) Demonstrate how contractor cost and data reporting (CCDR) will be based, to the maximum extent possible, upon actual cost transactions and not cost allocations;

(3) Demonstrate how the data from its accounting system will be mapped into the standard reporting categories required in the CCDR data item descriptions;

(4) Describe how recurring and nonrecurring costs will be segregated;

(5) Provide comments on the adequacy of the CSDR contract plan and related Resource Distribution Table; and

(6) Submit the DD Form 1921, Cost Data Summary Report, and DD Form 1921-1, Functional Cost-Hour Report, with its pricing proposal.

(c) CSDR reporting will be required for subcontractors for selected subcontracts identified in the CSDR contract plan as requiring such reporting. The offeror shall identify, by providing comments on the Resource Distribution Table, the subcontractors, or, if the subcontractors have not been selected, the subcontracted effort.

(End of provision)

252.234-7004 Cost and Software Data Reporting System

Basic. As prescribed in [234.7101](#)(b) and (b)(1), use the following clause:

COST AND SOFTWARE DATA REPORTING SYSTEM—BASIC (NOV 2014)

(a) In the performance of this contract, the Contractor shall use—

(1) A documented standard cost and software data reporting (CSDR) process that satisfies the guidelines contained in the DoD 5000.04–M–1, CSDR Manual;

(2) Management procedures that provide for generation of timely and reliable information for the contractor cost data reports (CCDRs) and software resources data reports (SRDRs) required by the CCDR and SRDR data items of this contract; and

(3) The Government-approved CSDR plan for this contract, DD Form 2794, and the related Resource Distribution Table as the basis for reporting in accordance with the required CSDR data item descriptions (DIDs).

(b) The Contractor shall require CSDR reporting from subcontractors at any tier with a subcontract that exceeds \$50 million. If, for subcontracts that exceed \$50 million, the Contractor changes subcontractors or makes new subcontract awards, the Contractor shall notify the Government.

(End of clause)

Alternate I. As prescribed in [234.7101](#)(b) and (b)(2), use the following clause, which uses a different paragraph (b) than the basic clause:

COST AND SOFTWARE DATA REPORTING SYSTEM—ALTERNATE I
(NOV 2014)

(a) In the performance of this contract, the Contractor shall use—

(1) A documented standard cost and software data reporting (CSDR) process that satisfies the guidelines contained in the DoD 5000.04–M–1, CSDR Manual;

(2) Management procedures that provide for generation of timely and reliable information for the contractor cost data reports (CCDRs) and software resources data reports (SRDRs) required by the CCDR and SRDR data items of this contract; and

(3) The Government-approved CSDR plan for this contract, DD Form 2794, and the related Resource Distribution Table as the basis for reporting in accordance with the required CSDR data item descriptions (DIDs).

(b) The Contractor shall require CSDR reporting from selected subcontractors identified in the CSDR contract plan as requiring such reporting. If the Contractor changes subcontractors or makes new awards for selected subcontract effort, the Contractor shall notify the Government.

(End of clause)

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(Revised June 26, 2015)

252.235-7000 Indemnification Under 10 U.S.C. 2354--Fixed Price.

As prescribed in [235.070-3](#), use the following clause:

INDEMNIFICATION UNDER 10 U.S.C. 2354--FIXED PRICE (DEC 1991)

(a) This clause provides for indemnification under 10 U.S.C. 2354 if the Contractor meets all the terms and conditions of this clause.

(b) Claims, losses, and damages covered—

(1) Claims by third persons for death, bodily injury, sickness, or disease, or the loss, damage, or lost use of property. Claims include those for reasonable expenses of litigation or settlement. The term “third persons” includes employees of the contractor;

(2) The loss, damage, and lost use of the Contractor's property, but excluding lost profit; and

(3) Loss, damage, or lost use of the Government's property.

(c) The claim, loss, or damage—

(1) Must arise from the direct performance of this contract;

(2) Must not be compensated by insurance or other means, or be within deductible amounts of the Contractor's insurance;

(3) Must result from an unusually hazardous risk as specifically defined in the contract;

(4) Must not result from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, managers, superintendents, or other equivalent representatives who have supervision or direction of—

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operations at any one plant or separate location where this contract is being performed; or

(iii) A separate and complete major industrial operation connected with the performance of this contract;

(5) Must not be a liability assumed under any contract or agreement (except for subcontracts covered by paragraph (h) of this clause), unless the Contracting Officer (or in contracts with the Department of the Navy, the Department) specifically approved the assumption of liability; and

(6) Must be certified as just and reasonable by the Secretary of the department or designated representative.

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(d) The Contractor shall buy and maintain, to the extent available, insurance against unusually hazardous risks in the form, amount, period(s) of time, at the rate(s), and with such insurers, as the Contracting Officer (or, for Navy contracts, the Department) may from time to time require and approve. If the cost of this insurance is higher than the cost of the insurance the Contractor had as of the date of the contract, the Government shall reimburse the Contractor for the difference in cost, as long as it is properly allocable to this contract and is not included in the contract price. The Government shall not be liable for claims, loss, or damage if insurance was available and is either required or approved under this paragraph.

(e) A reduction of the insurance coverage maintained by the Contractor on the date of the execution of this contract shall not increase the Government's liability under this clause unless the Contracting Officer consents, and the contract price is equitably adjusted, if appropriate, to reflect the Contractor's consideration for the Government's assumption of increased liability.

(f) *Notice.* The Contractor shall—

(1) Promptly notify the Contracting Officer of any occurrence, action, or claim that might trigger the Government's liability under this clause;

(2) Furnish the proof or evidence of any claim, loss, or damage in the form and manner that the Government requires; and

(3) Immediately provide copies of all pertinent papers that the Contractor receives or has received.

(g) The Government may direct, participate in, and supervise the settlement or defense of the claim or action. The Contractor shall comply with the Government's directions and execute any authorizations required.

(h) *Flowdown.* The Government shall indemnify the Contractor if the Contractor has an obligation to indemnify a subcontractor under any subcontract at any tier under this contract for the unusually hazardous risk identified in this contract only if—

(1) The Contracting Officer gave prior written approval for the Contractor to provide in a subcontract for the Contractor to indemnify the subcontractor for unusually hazardous risks defined in this contract;

(2) The Contracting Officer approved those indemnification provisions;

(3) The subcontract indemnification provisions entitle the Contractor, or the Government, or both, to direct, participate in, and supervise the settlement or defense of relevant actions and claims; and

(4) The subcontract provides the same rights and duties, the same provisions for notice, furnishing of papers and the like, between the Contractor and the subcontractor, as exist between the Government and the Contractor under this clause.

(i) The Government may discharge its obligations under paragraph (h) of this clause by making payments directly to subcontractors or to persons to whom the subcontractors may be liable.

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(j) The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract.

(End of clause)

252.235-7001 Indemnification Under 10 U.S.C. 2354—Cost Reimbursement.
As prescribed in [235.070-3](#), use the following clause:

INDEMNIFICATION UNDER 10 U.S.C. 2354--COST REIMBURSEMENT (DEC 1991)

(a) This clause provides for indemnification under 10 U.S.C. 2354 if the Contractor meets all the terms and conditions of this clause.

(b) Claims, losses, and damages covered—

(1) Claims by third persons for death, bodily injury, sickness, or disease, or the loss, damage, or lost use of property. Claims include those for reasonable expenses of litigation or settlement. The term “third persons” includes employees of the Contractor;

(2) The loss, damage, and lost use of the Contractor's property, but excluding lost profit; and

(3) Loss, damage, or lost use of the Government's property.

(c) The claim, loss, or damage—

(1) Must arise from the direct performance of this contract;

(2) Must not be compensated by insurance or other means, or be within deductible amounts of the Contractor's insurance;

(3) Must result from an unusually hazardous risk as specifically defined in the contract;

(4) Must not result from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, managers, superintendents, or other equivalent representatives who have supervision or direction of—

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operations at any one plant or separate location where this contract is being performed; or

(iii) A separate and complete major industrial operation connected with the performance of this contract;

(5) Must not be a liability assumed under any contract or agreement (except for subcontracts covered by paragraph (i) of this clause), unless the Contracting Officer (or in contracts with the Department of the Navy, the Department) specifically approved the assumption of liability; and

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(6) Must be certified as just and reasonable by the Secretary of the department or designated representative.

(d) A reduction of the insurance coverage maintained by the Contractor on the date of the execution of this contract shall not increase the Government's liability under this clause unless the Contracting Officer consents, and the contract price is equitably adjusted, if appropriate, to reflect the Contractor's consideration for the Government's assumption of increased liability.

(e) *Notice.* The Insurance--Liability to Third Persons clause of this contract applies also to claims under this clause. In addition, the Contractor shall—

(1) Promptly notify the Contracting Officer of any occurrence, action, or claim that might trigger the Government's liability under this clause;

(2) Furnish the proof or evidence of any claim, loss, or damage in the form and manner that the Government requires; and

(3) Immediately provide copies of all pertinent papers that the contractor receives or has received.

(f) The Government may direct, participate in, and supervise the settlement or defense of the claim or action. The Contractor shall comply with the Government's directions, and execute any authorizations required.

(g) The Limitation of Cost clause of this contract does not apply to the Government's obligations under this clause. The obligations under this clause are excepted from the release required by the Allowable Cost, Fee, and Payment clause of this contract.

(h) Under this clause, a claim, loss, or damage arises from the direct performance of this contract if the cause of the claim, loss, or damage occurred during the period of performance of this contract or as a result of the performance of this contract.

(i) *Flowdown.* The Government shall indemnify the Contractor if the Contractor has an obligation to indemnify a subcontractor under any subcontract at any tier under this contract for the unusually hazardous risk identified in this contract only if—

(1) The Contracting Officer gave prior written approval for the Contractor to provide in a subcontract for the Contractor to indemnify the subcontractor for unusually hazardous risks defined in this contract;

(2) The Contracting Officer approved those indemnification provisions;

(3) The subcontract indemnification provisions entitle the Contractor, or the Government, or both, to direct, participate in, and supervise the settlement or defense of relevant actions and claims; and

(4) The subcontract provides the same rights and duties, the same provisions for notice, furnishing of paper and the like, between the Contractor and the subcontractor, as exist between the Government and the Contractor under this clause.

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(j) The Government may discharge its obligations under paragraph (i) of this clause by making payments directly to subcontractors or to persons to whom the subcontractors may be liable.

(k) The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract.

(End of clause)

252.235-7002 Animal Welfare.

As prescribed in [235.072\(a\)](#), use the following clause:

ANIMAL WELFARE (DEC 2014)

(a)(1) The Contractor shall register its research, development, test, and evaluation or training facility with the Secretary of Agriculture in accordance with 7 U.S.C. 2136 and 9 CFR subpart C, and section 2.30, unless otherwise exempt from this requirement by meeting the conditions in 7 U.S.C. 2136 and 9 CFR parts 1 through 4 for the duration of the activity. The Contractor shall have its proposed animal use approved in accordance with Department of Defense Instruction (DoDI) 3216.01, Use of Animals in DoD Programs, by a DoD Component Headquarters Oversight Office. The Contractor shall furnish evidence of such registration and approval to the Contracting Officer before beginning work under this contract.

(2) The Contractor shall make its animals, and all premises, facilities, vehicles, equipment, and records that support animal care available during business hours and at other times mutually agreeable to the Contractor and the United States Department of Agriculture Office of Animal and Plant Health Inspection Service (USDA/APHIS) representative, personnel representing the DoD component oversight offices, as well as the Contracting Officer, to ascertain that the Contractor is compliant with 7 U.S.C. 2131-2159 and 9 CFR parts 1 through 4.

(b) The Contractor shall acquire animals in accordance with DoDI 3216.01, current at time of award (<http://www.dtic.mil/whs/directives/corres/pdf/321601p.pdf>).

(c) The Contractor agrees that the care and use of animals will conform with the pertinent laws of the United States, regulations of the Department of Agriculture, and policies and procedures of the Department of Defense (see 7 U.S.C. 2131 *et seq.*, and 9 CFR subchapter A, parts 1 through 4, DoDI 3216.01, Army Regulation 40-33/SECNAVINST 3900.38C/AFMAN 40-401(I)/DARPAINST 18/USUHSINST 3203). The Contractor shall also comply with DoDI 1322.24, Medical Readiness Training, if this contract includes acquisition of training.

(d) The Contracting Officer may immediately suspend, in whole or in part, work and further payments under this contract for failure to comply with the requirements of paragraphs (a) through (c) of this clause.

(1) The suspension will stay in effect until the Contractor complies with the requirements.

(2) Failure to complete corrective action within the time specified by the Contracting Officer may result in termination of this contract and, if applicable,

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removal of the Contractor's name from the approved vendor list for live animals used in medical training.

(e) The Contractor may request registration of its facility by contacting USDA/APHIS/AC, 4700 River Road, Unit 84, Riverdale, MD 20737-1234, or via the APHIS Animal Care website at:
<http://www.aphis.usda.gov/wps/portal/aphis/ourfocus/animalwelfare>.

(f) The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts involving research, development, test, and evaluation or training that use live vertebrate animals.

(End of clause)

252.235-7003 Frequency Authorization.

Basic. As prescribed in [235.072](#)(b) and (b)(1), use the following clause:

FREQUENCY AUTHORIZATION—BASIC (MAR 2014)

(a) The Contractor shall obtain authorization for radio frequencies required in support of this contract.

(b) For any experimental, developmental, or operational equipment for which the appropriate frequency allocation has not been made, the Contractor shall provide the technical operating characteristics of the proposed electromagnetic radiating device to the Contracting Officer during the initial planning, experimental, or developmental phase of contract performance.

(c) The Contracting Officer shall furnish the procedures for obtaining radio frequency authorization.

(d) The Contractor shall include this clause, including this paragraph (d), in all subcontracts requiring the development, production, construction, testing, or operation of a device for which a radio frequency authorization is required.

(End of clause)

Alternate I. As prescribed in [235.072](#)(b) and (b)(2), use the following clause, which uses a different paragraph (c) than the basic clause:

FREQUENCY AUTHORIZATION—ALTERNATE I (MAR 2014)

(a) The Contractor shall obtain authorization for radio frequencies required in support of this contract.

(b) For any experimental, developmental, or operational equipment for which the appropriate frequency allocation has not been made, the Contractor shall provide the technical operating characteristics of the proposed electromagnetic radiating device to the Contracting Officer during the initial planning, experimental, or developmental phase of contract performance.

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(c) The contractor shall use DD Form 1494, Application for Equipment Frequency Allocation, to obtain radio frequency authorization.

(d) The Contractor shall include this clause, including this paragraph (d), in all subcontracts requiring the development, production, construction, testing, or operation of a device for which a radio frequency authorization is required.

(End of clause)

252.235-7004 Protection of Human Subjects.

As prescribed in [235.072\(e\)](#), use the following clause:

PROTECTION OF HUMAN SUBJECTS (JUL 2009)

(a) *Definitions.* As used in this clause—

(1) “Assurance of compliance” means a written assurance that an institution will comply with requirements of 32 CFR Part 219, as well as the terms of the assurance, which the Human Research Protection Official determines to be appropriate for the research supported by the Department of Defense (DoD) component (32 CFR 219.103).

(2) “Human Research Protection Official (HRPO)” means the individual designated by the head of the applicable DoD component and identified in the component’s Human Research Protection Management Plan as the official who is responsible for the oversight and execution of the requirements of this clause, although some DoD components may use a different title for this position.

(3) “Human subject” means a living individual about whom an investigator (whether professional or student) conducting research obtains data through intervention or interaction with the individual, or identifiable private information (32 CFR 219.102(f)). For example, this could include the use of human organs, tissue, and body fluids from individually identifiable living human subjects as well as graphic, written, or recorded information derived from individually identifiable living human subjects.

(4) “Institution” means any public or private entity or agency (32 CFR 219.102(b)).

(5) “Institutional Review Board (IRB)” means a board established for the purposes expressed in 32 CFR Part 219 (32 CFR 219.102(g)).

(6) “IRB approval” means the determination of the IRB that the research has been reviewed and may be conducted at an institution within the constraints set forth by the IRB and by other institutional and Federal requirements (32 CFR 219.102(h)).

(7) “Research” means a systematic investigation, including research, development, testing, and evaluation, designed to develop or contribute to generalizable knowledge. Activities that meet this definition constitute research for

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purposes of 32 CFR Part 219, whether or not they are conducted or supported under a program that is considered research for other purposes. For example, some demonstration and service programs may include research activities (32 CFR 219.102(d)).

(b) The Contractor shall oversee the execution of the research to ensure compliance with this clause. The Contractor shall comply fully with 32 CFR Part 219 and DoD Directive 3216.02, applicable DoD component policies, 10 U.S.C. 980, and, when applicable, Food and Drug Administration policies and regulations.

(c) The Contractor shall not commence performance of research involving human subjects that is covered under 32 CFR Part 219 or that meets exemption criteria under 32 CFR 219.101(b), or expend funding on such effort, until and unless the conditions of either the following paragraph (c)(1) or (c)(2) have been met:

(1) The Contractor furnishes to the HRPO, with a copy to the Contracting Officer, an assurance of compliance and IRB approval and receives notification from the Contracting Officer that the HRPO has approved the assurance as appropriate for the research under the Statement of Work and also that the HRPO has reviewed the protocol and accepted the IRB approval for compliance with the DoD component policies. The Contractor may furnish evidence of an existing assurance of compliance for acceptance by the HRPO, if an appropriate assurance has been approved in connection with previous research. The Contractor shall notify the Contracting Officer immediately of any suspensions or terminations of the assurance.

(2) The Contractor furnishes to the HRPO, with a copy to the Contracting Officer, a determination that the human research proposed meets exemption criteria in 32 CFR 219.101(b) and receives written notification from the Contracting Officer that the exemption is determined acceptable. The determination shall include citation of the exemption category under 32 CFR 219.101(b) and a rationale statement. In the event of a disagreement regarding the Contractor's furnished exemption determination, the HRPO retains final judgment on what research activities or classes of research are covered or are exempt under the contract.

(d) DoD staff, consultants, and advisory groups may independently review and inspect the Contractor's research and research procedures involving human subjects and, based on such findings, DoD may prohibit research that presents unacceptable hazards or otherwise fails to comply with DoD procedures.

(e) Failure of the Contractor to comply with the requirements of this clause will result in the issuance of a stop-work order under Federal Acquisition Regulation clause 52.242-15 to immediately suspend, in whole or in part, work and further payment under this contract, or will result in other issuance of suspension of work and further payment for as long as determined necessary at the discretion of the Contracting Officer.

(f) The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts that may include research involving human subjects in accordance with 32 CFR Part 219, DoD Directive 3216.02, and 10 U.S.C. 980, including research that meets exemption criteria under 32 CFR 219.101(b).

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This clause does not apply to subcontracts that involve only the use of cadaver materials.

(End of clause)

252.235-7005 Reserved.

252.235-7006 Reserved.

252.235-7007 Reserved.

252.235-7008 Reserved.

252.235-7009 Reserved.

252.235-7010 Acknowledgment of Support and Disclaimer.

As prescribed in [235.072\(c\)](#), use the following clause:

ACKNOWLEDGMENT OF SUPPORT AND DISCLAIMER (MAY 1995)

(a) The Contractor shall include an acknowledgment of the Government's support in the publication of any material based on or developed under this contract, stated in the following terms: This material is based upon work supported by the (name of contracting agency(ies)) under Contract No. (Contracting agency(ies) contract number(s)).

(b) All material, except scientific articles or papers published in scientific journals, must, in addition to any notices or disclaimers by the Contractor, also contain the following disclaimer: Any opinions, findings and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the (name of contracting agency(ies)).

(End of clause)

252.235-7011 Final Scientific or Technical Report.

As prescribed in [235.072\(d\)](#), use the following clause:

FINAL SCIENTIFIC OR TECHNICAL REPORT (JAN 2015)

The Contractor shall—

(a) Submit an electronic copy of the approved final scientific or technical report, not a summary, delivered under this contract to the Defense Technical Information Center (DTIC) through the web-based input system at <http://www.dtic.mil/dtic/submit/> as required by DoD Instruction 3200.12, DoD Scientific and Technical Information Program (STIP). Include a completed Standard Form (SF) 298, Report Documentation Page, in the document, or complete the web-based SF 298.

(b) For instructions on submitting multi-media reports, follow the instructions at <http://www.dtic.mil/dtic/submit>.

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(c) Email classified reports (up to Secret) to TR@DTIC.SMIL.MIL. If a SIPRNET email capability is not available, follow the classified submission instructions at <http://www.dtic.mil/dtic/submit/>.

(End of clause)

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(Revised June 26, 2015)

252.237-7000 Notice of Special Standards of Responsibility.

As prescribed in [237.270\(d\)\(1\)](#), use the following provision:

NOTICE OF SPECIAL STANDARDS OF RESPONSIBILITY (DEC 1991)

(a) To be determined responsible, the Offeror must meet the general standards of responsibility set forth at FAR 9.104-1 and the following criteria, as described in Chapter 3, General Standards, of “Government Auditing Standards.”

- (1) Qualifications;
- (2) Independence; and
- (3) Quality Control.

(b) “Government Auditing Standards” is issued by the Comptroller General of the United States and is available for sale from the:

Superintendent of Documents
U.S. Government Printing Office
Washington, DC 20401

Stock number 020-000-00243-3.

(c) The apparently successful Offeror, before award, shall give the Contracting Officer evidence that it is licensed by the cognizant licensing authority in the state or other political jurisdiction where the Offeror operates its professional practice.

(End of provision)

252.237-7001 Compliance with Audit Standards.

As prescribed in [237.270\(d\)\(2\)](#), use the following clause:

COMPLIANCE WITH AUDIT STANDARDS (MAY 2000)

The Contractor, in performance of all audit services under this contract, shall comply with “Government Auditing Standards” issued by the Comptroller General of the United States.

(End of clause)

252.237-7002 Award to Single Offeror.

Basic. As prescribed in [237.7003\(a\)](#) and (a)(1), use the following provision:

AWARD TO SINGLE OFFEROR—BASIC (NOV 2014)

(a) Award shall be made to a single offeror.

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(b) Offerors shall include unit prices for each item. Failure to include unit prices for each item will be cause for rejection of the entire offer.

(c) The Government will evaluate offers on the basis of the estimated quantities shown.

(d) Award will be made to that responsive, responsible offeror whose total aggregate offer is the lowest price to the Government.

(End of provision)

Alternate I. As prescribed in [237.7003](#)(a) and (a)(2), use the following provision, which uses a different paragraph (d) than the basic provision:

AWARD TO SINGLE OFFEROR--ALTERNATE I (NOV 2014)

(a) Award shall be made to a single offeror.

(b) Offerors shall include unit prices for each item. Failure to include unit prices for each item will be cause for rejection of the entire offer.

(c) The Government will evaluate offers on the basis of the estimated quantities shown.

(d) Award will be made to that responsive, responsible offeror whose total aggregate offer is in the best interest of the Government.

(End of provision)

252.237-7003 Requirements.

As prescribed in [237.7003](#)(b), use the following clause:

REQUIREMENTS (DEC 1991)

(a) Except as provided in paragraphs (c) and (d) of this clause, the Government will order from the Contractor all of its requirements in the area of performance for the supplies and services listed in the schedule of this contract.

(b) Each order will be issued as a delivery order and will list—

- (1) The supplies or services being ordered;
- (2) The quantities to be furnished;
- (3) Delivery or performance dates;
- (4) Place of delivery or performance;
- (5) Packing and shipping instructions;
- (6) The address to send invoices; and

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(7) The funds from which payment will be made.

(c) The Government may elect not to order supplies and services under this contract in instances where the body is removed from the area for medical, scientific, or other reason.

(d) In an epidemic or other emergency, the contracting activity may obtain services beyond the capacity of the Contractor's facilities from other sources.

(e) Contracting Officers of the following activities may order services and supplies under this contract—

(End of clause)

252.237-7004 Area of Performance.

As prescribed in [237.7003\(b\)](#), use the following clause:

AREA OF PERFORMANCE (DEC 1991)

(a) The area of performance is as specified in the contract.

(b) The Contractor shall take possession of the remains at the place where they are located, transport them to the Contractor's place of preparation, and later transport them to a place designated by the Contracting Officer.

(c) The Contractor will not be reimbursed for transportation when both the place where the remains were located and the delivery point are within the area of performance.

(d) If remains are located outside the area of performance, the Contracting Officer may place an order with the Contractor under this contract or may obtain the services elsewhere. If the Contracting Officer requires the Contractor to transport the remains into the area of performance, the Contractor shall be paid the amount per mile in the schedule for the number of miles required to transport the remains by a reasonable route from the point where located to the boundary of the area of performance.

(e) The Contracting Officer may require the Contractor to deliver remains to any point within 100 miles of the area of performance. In this case, the Contractor shall be paid the amount per mile in the schedule for the number of miles required to transport the remains by a reasonable route from the boundary of the area of performance to the delivery point.

(End of clause)

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252.237-7005 Performance and Delivery.

As prescribed in [237.7003\(b\)](#), use the following clause:

PERFORMANCE AND DELIVERY (DEC 1991)

(a) The Contractor shall furnish the material ordered and perform the services specified as promptly as possible but not later than 36 hours after receiving notification to remove the remains, excluding the time necessary for the Government to inspect and check results of preparation.

(b) The Government may, at no additional charge, require the Contractor to hold the remains for an additional period not to exceed 72 hours from the time the remains are casketed and final inspection completed.

(End of clause)

252.237-7006 Subcontracting.

As prescribed in [237.7003\(b\)](#), use the following clause:

SUBCONTRACTING (DEC 1991)

The Contractor shall not subcontract any work under this contract without the Contracting Officer's written approval. This clause does not apply to contracts of employment between the Contractor and its personnel.

(End of clause)

252.237-7007 Termination for Default.

As prescribed in [237.7003\(b\)](#), use the following clause:

TERMINATION FOR DEFAULT (DEC 1991)

(a) This clause supplements and is in addition to the Default clause of this contract.

(b) The Contracting Officer may terminate this contract for default by written notice without the ten day notice required by paragraph (a)(2) of the Default clause if—

(1) The Contractor, through circumstances reasonably within its control or that of its employees, performs any act under or in connection with this contract, or fails in the performance of any service under this contract and the act or failures may reasonably be considered to reflect discredit upon the Department of Defense in fulfilling its responsibility for proper care of remains;

(2) The Contractor, or its employees, solicits relatives or friends of the deceased to purchase supplies or services not under this contract. (The Contractor may furnish supplies or arrange for services not under this contract, only if representatives of the deceased voluntarily request, select, and pay for them.);

(3) The services or any part of the services are performed by anyone other than the Contractor or the Contractor's employees without the written authorization of the Contracting Officer;

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(4) The Contractor refuses to perform the services required for any particular remains; or

(5) The Contractor mentions or otherwise uses this contract in its advertising in any way.

(End of clause)

252.237-7008 Group Interment.

As prescribed in [237.7003\(b\)](#), use the following clause:

GROUP INTERMENT (DEC 1991)

The Government will pay the Contractor for supplies and services provided for remains interred as a group on the basis of the number of caskets furnished, rather than on the basis of the number of persons in the group.

(End of clause)

252.237-7009 Permits.

As prescribed in [237.7003\(b\)](#), use the following clause:

PERMITS (DEC 1991)

The Contractor shall meet all State and local licensing requirements and obtain and furnish all necessary health department and shipping permits at no additional cost to the Government. The Contractor shall ensure that all necessary health department permits are in order for disposition of the remains.

(End of clause)

252.237-7010 Prohibition on Interrogation of Detainees by Contractor Personnel.

As prescribed in [237.173-5](#), use the following clause:

PROHIBITION ON INTERROGATION OF DETAINEES BY CONTRACTOR PERSONNEL (JUN 2013)

(a) *Definitions.* As used in this clause—

“Detainee” means any person captured, detained, held, or otherwise under the effective control of DoD personnel (military or civilian) in connection with hostilities. This includes, but is not limited to, enemy prisoners of war, civilian internees, and retained personnel. This does not include DoD personnel or DoD contractor personnel being held for law enforcement purposes.

“Interrogation of detainees” means a systematic process of formally and officially questioning a detainee for the purpose of obtaining reliable information to satisfy foreign intelligence collection requirements.

(b) Contractor personnel shall not interrogate detainees.

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(c) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts, including subcontracts for commercial items, that may require subcontractor personnel to interact with detainees in the course of their duties.

(End of clause)

252.237-7011 Preparation History.

As prescribed in [237.7003](#)(b), use the following clause:

PREPARATION HISTORY (DEC 1991)

For each body prepared, or for each casket handled in a group interment, the Contractor shall state briefly the results of the embalming process on a certificate furnished by the Contracting Officer.

(End of clause)

252.237-7012 Instruction to Offerors (Count-of-Articles).

As prescribed in [237.7101](#)(a), use the following provision:

INSTRUCTION TO OFFERORS (COUNT-OF-ARTICLES) (DEC 1991)

(a) The Offeror shall include unit prices for each item in a lot. Unit prices shall include all costs to the Government of providing the services, including pickup and delivery charges.

(b) Failure to offer on any item in a lot shall be cause for rejection of the offer on that lot. The Contracting Officer will evaluate offers based on the estimated quantities in the solicitation.

(c) Award generally will be made to a single offeror for all lots. However, the Contracting Officer may award by individual lot when it is more advantageous to the Government.

(d) Prospective offerors may inspect the types of articles to be serviced. Contact the Contracting Officer to make inspection arrangements.

(End of provision)

252.237-7013 Instruction to Offerors (Bulk Weight).

As prescribed in [237.7101](#)(b), use the following provision:

INSTRUCTION TO OFFERORS (BULK WEIGHT) (DEC 1991)

(a) Offers shall be submitted on a unit price per pound of serviced laundry. Unit prices shall include all costs to the Government of providing the service, including pickup and delivery charges.

(b) The Contracting Officer will evaluate bids based on the estimated pounds of serviced laundry stated in the solicitation.

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(c) Award generally will be made to a single offeror for all lots. However, the Contracting Officer may award by individual lot when it is more advantageous to the Government.

(d) Prospective offerors may inspect the types of articles to be serviced. Contact the Contracting Officer to make inspection arrangements.

(End of provision)

252.237-7014 Loss or Damage (Count-of-Articles).

As prescribed in [237.7101\(c\)](#), use the following clause:

LOSS OR DAMAGE (COUNT-OF-ARTICLES) (DEC 1991)

(a) The count-of-articles will be—

(1) The count of the Contracting Officer; or

(2) The count agreed upon as a result of a joint count by the Contractor and the Contracting Officer at the time of delivery to the Contractor.

(b) The Contractor shall—

(1) Be liable for return of the number and kind of articles furnished for service under this contract; and

(2) Shall indemnify the Government for any loss or damage to such articles.

(c) The Contractor shall pay to the Government the value of any lost or damaged property using Federal supply schedule price lists. If the property is not on these price lists, the Contracting Officer shall determine a fair and reasonable price.

(d) The Contracting Officer will allow credit for any depreciation in the value of the property at the time of loss or damage. The Contracting Officer and the Contractor shall mutually determine the amount of the allowable credit.

(e) Failure to agree upon the value of the property or on the amount of credit due will be treated as a dispute under the Disputes clause of this contract.

(f) In case of damage to any property that the Contracting Officer and the Contractor agree can be satisfactorily repaired, the Contractor may repair the property at its expense in a manner satisfactory to the Contracting Officer, rather than make payment under paragraph (c) of this clause.

(End of clause)

252.237-7015 Loss or Damage (Weight of Articles).

As prescribed in [237.7101\(d\)](#), use the following clause:

LOSS OR DAMAGE (WEIGHT OF ARTICLES) (DEC 1991)

(a) The Contractor shall—

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(1) Be liable for return of the articles furnished for service under this contract; and

(2) Indemnify the Government for any articles delivered to the Contractor for servicing under this contract that are lost or damaged, and in the opinion of the Contracting Officer, cannot be repaired satisfactorily.

(b) The Contractor shall pay to the Government _____ per pound for lost or damaged articles. The Contractor shall pay the Government only for losses which exceed the maximum weight loss in paragraph (e) of this clause.

(c) Failure to agree on the amount of credit due will be treated as a dispute under the Disputes clause of this contract.

(d) In the case of damage to any articles that the Contracting Officer and the Contractor agree can be satisfactorily repaired, the Contractor shall repair the articles at its expense in a manner satisfactory to the Contracting Officer.

(e) The maximum weight loss allowable in servicing the laundry is _____ percent of the weight recorded on delivery tickets when the laundry is picked up. Any weight loss in excess of this amount shall be subject to the loss provisions of this clause.

(End of clause)

252.237-7016 Delivery Tickets.

Basic. As prescribed in [237.7101](#)(e) and (e)(1), use the following clause:

DELIVERY TICKETS—BASIC (NOV 2014)

(a) The Contractor shall complete delivery tickets in the number of copies required and in the form approved by the Contracting Officer, when it receives the articles to be serviced.

(b) The Contractor shall include one copy of each delivery ticket with its invoice for payment.

(End of clause)

Alternate I. As prescribed in [237.7101](#)(e) and (e)(2), use the following clause, which includes paragraphs (c), (d), and (e) not included in the basic clause:

DELIVERY TICKETS—ALTERNATE I (NOV 2014)

(a) The Contractor shall complete delivery tickets in the number of copies required and in the form approved by the Contracting Officer, when it receives the articles to be serviced.

(b) The Contractor shall include one copy of each delivery ticket with its invoice for payment.

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(c) Before the Contractor picks up articles for service under this contract, the Contracting Officer will ensure that—

(1) Each bag contains only articles within a single bag type as specified in the schedule; and

(2) Each bag is weighed and the weight and bag type are identified on the bag.

(d) The Contractor shall, at time of pickup—

(1) Verify the weight and bag type and record them on the delivery ticket; and

(2) Provide the Contracting Officer, or representative, a copy of the delivery ticket.

(e) At the time of delivery, the Contractor shall record the weight and bag type of serviced laundry on the delivery ticket. The Contracting Officer will ensure that this weight and bag type are verified at time of delivery.

(End of clause)

Alternate II. As prescribed in [237.7101](#)(e) and (e)(3), use the following clause, which includes paragraphs (c), (d), and (e) not included in the basic clause:

DELIVERY TICKETS—ALTERNATE II (NOV 2014)

(a) The Contractor shall complete delivery tickets in the number of copies required and in the form approved by the Contracting Officer, when it receives the articles to be serviced.

(b) The Contractor shall include one copy of each delivery ticket with its invoice for payment.

(c) Before the Contractor picks up articles for service under this contract, the Contracting Officer will ensure that each bag is weighed and that the weight is identified on the bag.

(d) The Contractor, at time of pickup, shall verify and record the weight on the delivery ticket and shall provide the Contracting Officer, or representative, a copy of the delivery ticket.

(e) At the time of delivery, the Contractor shall record the weight of serviced laundry on the delivery ticket. The Contracting Officer will ensure that this weight is verified at time of delivery.

(End of clause)

252.237-7017 Individual Laundry.

As prescribed in [237.7101](#)(f), use the following clause:

INDIVIDUAL LAUNDRY (DEC 1991)

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(a) The Contractor shall provide laundry service under this contract on both a unit bundle and on a piece-rate bundle basis for individual personnel.

(b) The total number of pieces listed in the “Estimated Quantity” column in the schedule is the estimated amount of individual laundry for this contract. The estimate is for information only and is not a representation of the amount of individual laundry to be ordered. Individuals may elect whether or not to use the laundry services.

(c) Charges for individual laundry will be on a per unit bundle or a piece-rate basis. The Contractor shall provide individual laundry bundle delivery tickets for use by the individuals in designating whether the laundry is a unit bundle or a piece-rate bundle. An individual laundry bundle will be accompanied by a delivery ticket listing the contents of the bundle.

(d) The maximum number of pieces to be allowed per bundle is as specified in the schedule and as follows—

(1) Bundle consisting of 26 pieces, including laundry bag. This bundle will contain approximately _____ pieces of outer garments which shall be starched and pressed. Outer garments include, but are not limited to, shirts, trousers, jackets, dresses, and coats.

(2) Bundle consisting of 13 pieces, including laundry bag. This bundle will contain approximately _____ pieces of outer garments which shall be starched and pressed. Outer garments include, but are not limited to, shirts, trousers, jackets, dresses, and coats.

(End of clause)

252.237-7018 Special Definitions of Government Property.

As prescribed in [237.7101\(g\)](#), use the following clause:

SPECIAL DEFINITIONS OF GOVERNMENT PROPERTY (DEC 1991)

Articles delivered to the Contractor to be laundered or dry-cleaned, including any articles which are actually owned by individual Government personnel, are Government-owned property, not Government-furnished property. Government-owned property does not fall under the requirements of any Government-furnished property clause of this contract.

(End of clause)

252.237-7019 Training for Contractor Personnel Interacting with Detainees.

As prescribed in [237.171-4](#), use the following clause:

TRAINING FOR CONTRACTOR PERSONNEL INTERACTING WITH DETAINEES (JUN 2013)

(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.

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“Detainee” means a person in the custody or under the physical control of the Department of Defense on behalf of the United States Government as a result of armed conflict or other military operation by United States armed forces.

“Personnel interacting with detainees” means personnel who, in the course of their duties, are expected to interact with detainees.

(b) *Training requirement.* This clause implements Section 1092 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375).

(1) The Combatant Commander responsible for the area where a detention or interrogation facility is located will arrange for training to be provided to contractor personnel interacting with detainees. The training will address the international obligations and laws of the United States applicable to the detention of personnel, including the Geneva Conventions. The Combatant Commander will arrange for a training receipt document to be provided to personnel who have completed the training.

(2)(i) The Contractor shall arrange for its personnel interacting with detainees to—

(A) Receive the training specified in paragraph (b)(1) of this clause—

(1) Prior to interacting with detainees, or as soon as possible if, for compelling reasons, the Contracting Officer authorizes interaction with detainees prior to receipt of such training; and

(2) Annually thereafter; and

(B) Provide a copy of the training receipt document specified in paragraph (b)(1) of this clause to the Contractor for retention.

(ii) To make these arrangements, the following points of contact apply:

[Contracting Officer to insert applicable point of contact information cited in PGI 237.171-3(b).]

(3) The Contractor shall retain a copy of the training receipt document(s) provided in accordance with paragraphs (b)(1) and (2) of this clause until the contract is closed, or 3 years after all work required by the contract has been completed and accepted by the Government, whichever is sooner.

(c) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts, including subcontracts for commercial items, that may require subcontractor personnel to interact with detainees in the course of their duties.

(End of clause)

252.237-7020 Reserved.

252.237-7021 Reserved.

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252.237-7022 Services at Installations Being Closed.

As prescribed in [237.7402](#), use the following clause:

SERVICES AT INSTALLATIONS BEING CLOSED (MAY 1995)

Professional employees shall be used by the local government to provide services under this contract to the extent that professionals are available in the area under the jurisdiction of such government.

(End of clause)

252.237-7023 Continuation of Essential Contractor Services .

As prescribed in [237.7603](#)(b), use the following clause:

CONTINUATION OF ESSENTIAL CONTRACTOR SERVICES (OCT 2010)

(a) *Definitions.* As used in this clause—

(1) “Essential contractor service” means a service provided by a firm or individual under contract to DoD to support mission-essential functions, such as support of vital systems, including ships owned, leased, or operated in support of military missions or roles at sea; associated support activities, including installation, garrison, and base support services; and similar services provided to foreign military sales customers under the Security Assistance Program. Services are essential if the effectiveness of defense systems or operations has the potential to be seriously impaired by the interruption of these services, as determined by the appropriate functional commander or civilian equivalent.

(2) “Mission-essential functions” means those organizational activities that must be performed under all circumstances to achieve DoD component missions or responsibilities, as determined by the appropriate functional commander or civilian equivalent. Failure to perform or sustain these functions would significantly affect DoD’s ability to provide vital services or exercise authority, direction, and control.

(b) The Government has identified all or a portion of the contractor services performed under this contract as essential contractor services in support of mission essential functions. These services are listed in attachment __, Mission-Essential Contractor Services, dated _____.

(c)(1) The Mission-Essential Contractor Services Plan submitted by the Contractor, is incorporated in this contract.

(2) The Contractor shall maintain and update its plan as necessary. The Contractor shall provide all plan updates to the Contracting Officer for approval.

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(3) As directed by the Contracting Officer, the Contractor shall participate in training events, exercises, and drills associated with Government efforts to test the effectiveness of continuity of operations procedures and practices.

(d)(1) Notwithstanding any other clause of this contract, the contractor shall be responsible to perform those services identified as essential contractor services during crisis situations (as directed by the Contracting Officer), in accordance with its Mission-Essential Contractor Services Plan.

(2) In the event the Contractor anticipates not being able to perform any of the essential contractor services identified in accordance with paragraph (b) of this section during a crisis situation, the Contractor shall notify the Contracting Officer or other designated representative as expeditiously as possible and use its best efforts to cooperate with the Government in the Government's efforts to maintain the continuity of operations.

(e) The Government reserves the right in such crisis situations to use Federal employees, military personnel or contract support from other contractors, or to enter into new contracts for essential contractor services.

(f) Changes. The Contractor shall segregate and separately identify all costs incurred in continuing performance of essential services in a crisis situation. The Contractor shall notify the Contracting Officer of an increase or decrease in costs within ninety days after continued performance has been directed by the Contracting Officer, or within any additional period that the Contracting Officer approves in writing, but not later than the date of final payment under the contract. The Contractor's notice shall include the Contractor's proposal for an equitable adjustment and any data supporting the increase or decrease in the form prescribed by the Contracting Officer. The parties shall negotiate an equitable price adjustment to the contract price, delivery schedule, or both as soon as is practicable after receipt of the Contractor's proposal.

(g) The Contractor shall include the substance of this clause, including this paragraph (g), in subcontracts for the essential services.

(End of Clause)

252.237-7024 Notice of Continuation of Essential Contractor Services.
As prescribed in [237.7603](#)(b), use the following provision:

NOTICE OF CONTINUATION OF ESSENTIAL CONTRACTOR SERVICES (OCT
2010)

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(a) *Definitions.* “Essential contractor service” and “mission-essential functions” have the meanings given in the clause at [252.237-7023](#), Continuation of Essential Contractor Services, in this solicitation.

(b) The offeror shall provide with its offer a written plan describing how it will continue to perform the essential contractor services listed in attachment ____, Mission Essential Contractor Services, dated _____, during periods of crisis. The offeror shall—

(1) Identify provisions made for the acquisition of essential personnel and resources, if necessary, for continuity of operations for up to 30 days or until normal operations can be resumed;

(2) Address in the plan, at a minimum—

(i) Challenges associated with maintaining essential contractor services during an extended event, such as a pandemic that occurs in repeated waves;

(ii) The time lapse associated with the initiation of the acquisition of essential personnel and resources and their actual availability on site;

(iii) The components, processes, and requirements for the identification, training, and preparedness of personnel who are capable of relocating to alternate facilities or performing work from home;

(iv) Any established alert and notification procedures for mobilizing identified “essential contractor service” personnel; and

(v) The approach for communicating expectations to contractor employees regarding their roles and responsibilities during a crisis.

(End of provision)

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252.244-7000 Subcontracts for Commercial Items.

As prescribed in [244.403](#), use the following clause:

SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (DOD CONTRACTS) (JUN 2013)

(a) The Contractor is not required to flow down the terms of any Defense Federal Acquisition Regulation Supplement (DFARS) clause in subcontracts for commercial items at any tier under this contract, unless so specified in the particular clause.

(b) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligation.

(c) The Contractor shall include the terms of this clause, including this paragraph (c), in subcontracts awarded under this contract, including subcontracts for the acquisition of commercial items.

(End of clause)

252.244-7001 Contractor Purchasing System Administration.

Basic. As prescribed in [244.305-71](#) and [244.305-71\(a\)](#), use the following clause:

CONTRACTOR PURCHASING SYSTEM ADMINISTRATION-BASIC (MAY 2014)

(a) *Definitions.* As used in this clause—

“Acceptable purchasing system” means a purchasing system that complies with the system criteria in paragraph (c) of this clause.

“Purchasing system” means the Contractor’s system or systems for purchasing and subcontracting, including make-or-buy decisions, the selection of vendors, analysis of quoted prices, negotiation of prices with vendors, placing and administering of orders, and expediting delivery of materials.

“Significant deficiency” means a shortcoming in the system that materially affects the ability of officials of the Department of Defense to rely upon information produced by the system that is needed for management purposes.

(b) *General.* The Contractor shall establish and maintain an acceptable purchasing system. Failure to maintain an acceptable purchasing system, as defined in this clause, may result in disapproval of the system by the Contracting Officer and/or withholding of payments.

(c) *System criteria.* The Contractor’s purchasing system shall—

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- (1) Have an adequate system description including policies, procedures, and purchasing practices that comply with the Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS);
- (2) Ensure that all applicable purchase orders and subcontracts contain all flowdown clauses, including terms and conditions and any other clauses needed to carry out the requirements of the prime contract;
- (3) Maintain an organization plan that establishes clear lines of authority and responsibility;
- (4) Ensure all purchase orders are based on authorized requisitions and include a complete and accurate history of purchase transactions to support vendor selected, price paid, and document the subcontract/purchase order files which are subject to Government review;
- (5) Establish and maintain adequate documentation to provide a complete and accurate history of purchase transactions to support vendors selected and prices paid;
- (6) Apply a consistent make-or-buy policy that is in the best interest of the Government;
- (7) Use competitive sourcing to the maximum extent practicable, and ensure debarred or suspended contractors are properly excluded from contract award;
- (8) Evaluate price, quality, delivery, technical capabilities, and financial capabilities of competing vendors to ensure fair and reasonable prices;
- (9) Require management level justification and adequate cost or price analysis, as applicable, for any sole or single source award;
- (10) Perform timely and adequate cost or price analysis and technical evaluation for each subcontractor and supplier proposal or quote to ensure fair and reasonable subcontract prices;
- (11) Document negotiations in accordance with FAR 15.406-3;
- (12) Seek, take, and document economically feasible purchase discounts, including cash discounts, trade discounts, quantity discounts, rebates, freight allowances, and company-wide volume discounts;
- (13) Ensure proper type of contract selection and prohibit issuance of cost-plus-a-percentage-of-cost subcontracts;
- (14) Maintain subcontract surveillance to ensure timely delivery of an acceptable product and procedures to notify the Government of potential subcontract problems that may impact delivery, quantity, or price;
- (15) Document and justify reasons for subcontract changes that affect cost or price;

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(16) Notify the Government of the award of all subcontracts that contain the FAR and DFARS flowdown clauses that allow for Government audit of those subcontracts, and ensure the performance of audits of those subcontracts;

(17) Enforce adequate policies on conflict of interest, gifts, and gratuities, including the requirements of 41 U.S.C. chapter 87, Kickbacks;

(18) Perform internal audits or management reviews, training, and maintain policies and procedures for the purchasing department to ensure the integrity of the purchasing system;

(19) Establish and maintain policies and procedures to ensure purchase orders and subcontracts contain mandatory and applicable flowdown clauses, as required by the FAR and DFARS, including terms and conditions required by the prime contract and any clauses required to carry out the requirements of the prime contract, including the requirements of [252.246-7007](#), Contractor Counterfeit Electronic Part Detection and Avoidance System, if applicable;

(20) Provide for an organizational and administrative structure that ensures effective and efficient procurement of required quality materials and parts at the best value from responsible and reliable sources, including the requirements of [252.246-7007](#), Contractor Counterfeit Electronic Part Detection and Avoidance System, if applicable;

(21) Establish and maintain selection processes to ensure the most responsive and responsible sources for furnishing required quality parts and materials and to promote competitive sourcing among dependable suppliers so that purchases are reasonably priced and from sources that meet contractor quality requirements, including the requirements of [252.246-7007](#), Contractor Counterfeit Electronic Part Detection and Avoidance System, and the item marking requirements of [252.211-7003](#), Item Unique Identification and Valuation, if applicable;

(22) Establish and maintain procedures to ensure performance of adequate price or cost analysis on purchasing actions;

(23) Establish and maintain procedures to ensure that proper types of subcontracts are selected, and that there are controls over subcontracting, including oversight and surveillance of subcontracted effort; and

(24) Establish and maintain procedures to timely notify the Contracting Officer, in writing, if—

(i) The Contractor changes the amount of subcontract effort after award such that it exceeds 70 percent of the total cost of the work to be performed under the contract, task order, or delivery order. The notification shall identify the revised cost of the subcontract effort and shall include verification that the Contractor will provide added value; or

(ii) Any subcontractor changes the amount of lower-tier subcontractor effort after award such that it exceeds 70 percent of the total cost of the work to be performed under its subcontract. The notification shall identify the revised cost of the subcontract

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effort and shall include verification that the subcontractor will provide added value as related to the work to be performed by the lower-tier subcontractor(s).

(d) *Significant deficiencies.* (1) The Contracting Officer will provide notification of initial determination to the Contractor, in writing, of any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's purchasing system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—

(i) Remaining significant deficiencies;

(ii) The adequacy of any proposed or completed corrective action; and

(iii) System disapproval, if the Contracting Officer determines that one or more significant deficiencies remain.

(e) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the deficiencies.

(f) *Withholding payments.* If the Contracting Officer makes a final determination to disapprove the Contractor's purchasing system, and the contract includes the clause at [252.242-7005](#), Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

(End of clause)

Alternate I. As prescribed in [244.305-71](#) and [244.305-71\(b\)](#), use the following clause, which amends paragraph (c) of the basic clause by deleting paragraphs (c)(1) through (c)(18) and (c)(22) through (c)(24), and revising and renumbering paragraphs (c)(19) through (c)(21) of the basic clause.

CONTRACTOR PURCHASING SYSTEM ADMINISTRATION—ALTERNATE I (MAY 2014)

The following paragraphs (a) through (f) of this clause do not apply unless the Contractor is subject to the Cost Accounting Standards under 41 U.S.C. chapter 15, as implemented in regulations found at 48 CFR 9903.201-1.

(a) *Definitions.* As used in this clause—

“Acceptable purchasing system” means a purchasing system that complies with the system criteria in paragraph (c) of this clause.

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“Purchasing system” means the Contractor’s system or systems for purchasing and subcontracting, including make-or-buy decisions, the selection of vendors, analysis of quoted prices, negotiation of prices with vendors, placing and administering of orders, and expediting delivery of materials.

“Significant deficiency” means a shortcoming in the system that materially affects the ability of officials of the Department of Defense to rely upon information produced by the system that is needed for management purposes.

(b) *Acceptable purchasing system.* The Contractor shall establish and maintain an acceptable purchasing system. Failure to maintain an acceptable purchasing system, as defined in this clause, may result in disapproval of the system by the Contracting Officer and/or withholding of payments.

(c) *System criteria.* The Contractor’s purchasing system shall—

(1) Establish and maintain policies and procedures to ensure purchase orders and subcontracts contain mandatory and applicable flowdown clauses, as required by the FAR and DFARS, including terms and conditions required by the prime contract and any clauses required to carry out the requirements of the prime contract, including the requirements of [252.246-7007](#), Contractor Counterfeit Electronic Part Detection and Avoidance System;

(2) Provide for an organizational and administrative structure that ensures effective and efficient procurement of required quality materials and parts at the best value from responsible and reliable sources, including the requirements of [252.246-7007](#), Contractor Counterfeit Electronic Part Detection and Avoidance System, and, if applicable, the item marking requirements of [252.211-7003](#), Item Unique Identification and Valuation; and

(3) Establish and maintain selection processes to ensure the most responsive and responsible sources for furnishing required quality parts and materials and to promote competitive sourcing among dependable suppliers so that purchases are from sources that meet contractor quality requirements, including the requirements of [252.246-7007](#), Contractor Counterfeit Electronic Part Detection and Avoidance System.

(d) *Significant deficiencies.* (1) The Contracting Officer will provide notification of initial determination to the Contractor, in writing, of any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's purchasing system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the Contracting Officer’s final determination concerning—

(i) Remaining significant deficiencies;

(ii) The adequacy of any proposed or completed corrective action; and

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(iii) System disapproval, if the Contracting Officer determines that one or more significant deficiencies remain.

(e) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the deficiencies.

(f) *Withholding payments.* If the Contracting Officer makes a final determination to disapprove the Contractor's purchasing system, and the contract includes the clause at [252.242-7005](#), Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

(End of clause)

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(Revised June 26, 2015)

252.246-7000 Material Inspection and Receiving Report.

As prescribed in [246.370](#), use the following clause:

MATERIAL INSPECTION AND RECEIVING REPORT (MAR 2008)

(a) At the time of each delivery of supplies or services under this contract, the Contractor shall prepare and furnish to the Government a material inspection and receiving report in the manner and to the extent required by Appendix F, Material Inspection and Receiving Report, of the Defense FAR Supplement.

(b) Contractor submission of the material inspection and receiving information required by Appendix F of the Defense FAR Supplement by using the Wide Area WorkFlow (WAWF) electronic form (see paragraph (b) of the clause at [252.232-7003](#)) fulfills the requirement for a material inspection and receiving report (DD Form 250). Two copies of the receiving report (paper copies of either the DD Form 250 or the WAWF report) shall be distributed with the shipment, in accordance with Appendix F, Part 4, F-401, Table 1, of the Defense FAR Supplement.

(End of clause)

252.246-7001 Warranty of Data.

Basic. As prescribed in [246.710](#)(1) and (1)(i), use the following clause:

WARRANTY OF DATA—BASIC (MAR 2014)

(a) *Definition.* “Technical data” has the same meaning as given in the clause in this contract entitled Rights in Technical Data and Computer Software.

(b) *Warranty.* Notwithstanding inspection and acceptance by the Government of technical data furnished under this contract, and notwithstanding any provision of this contract concerning the conclusiveness of acceptance, the Contractor warrants that all technical data delivered under this contract will at the time of delivery conform with the specifications and all other requirements of this contract. The warranty period shall extend for three years after completion of the delivery of the line item of data (as identified in DD Form 1423, Contract Data Requirements List) of which the data forms a part; or any longer period specified in the contract.

(c) *Contractor Notification.* The Contractor agrees to notify the Contracting Officer in writing immediately of any breach of the above warranty which the Contractor discovers within the warranty period.

(d) *Remedies.* The following remedies shall apply to all breaches of the warranty, whether the Contractor notifies the Contracting Officer in accordance with paragraph (c) of this clause or if the Government notifies the Contractor of the breach in writing within the warranty period:

(1) Within a reasonable time after such notification, the Contracting Officer may—

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(i) By written notice, direct the Contractor to correct or replace at the Contractor's expense the nonconforming technical data promptly; or

(ii) If the Contracting Officer determines that the Government no longer has a requirement for correction or replacement of the data, or that the data can be more reasonably corrected by the Government, inform the Contractor by written notice that the Government elects a price or fee adjustment instead of correction or replacement.

(2) If the Contractor refuses or fails to comply with a direction under paragraph (d)(1)(i) of this clause, the Contracting Officer may, within a reasonable time of the refusal or failure—

(i) By contract or otherwise, correct or replace the nonconforming technical data and charge the cost to the Contractor; or

(ii) Elect a price or fee adjustment instead of correction or replacement.

(3) The remedies in this clause represent the only way to enforce the Government's rights under this clause.

(e) The provisions of this clause apply anew to that portion of any corrected or replaced technical data furnished to the Government under paragraph (d)(1)(i) of this clause.

(End of clause)

Alternate I. As prescribed in [246.710](#)(1) and (1)(ii), use the following clause, which uses a different paragraph (d)(3) than the basic clause:

WARRANTY OF DATA—ALTERNATE I (MAR 2014)

(a) *Definition.* “Technical data” has the same meaning as given in the clause in this contract entitled “Rights in Technical Data and Computer Software.”

(b) *Warranty.* Notwithstanding inspection and acceptance by the Government of technical data furnished under this contract, and notwithstanding any provision of this contract concerning the conclusiveness of acceptance, the Contractor warrants that all technical data delivered under this contract will at the time of delivery conform with the specifications and all other requirements of this contract. The warranty period shall extend for three years after completion of the delivery of the line item of data (as identified in DD Form 1423, Contract Data Requirements List) of which the data forms a part; or any longer period specified in the contract.

(c) *Contractor Notification.* The Contractor agrees to notify the Contracting Officer in writing immediately of any breach of the above warranty which the Contractor discovers within the warranty period.

(d) *Remedies.* The following remedies shall apply to all breaches of the warranty, whether the Contractor notifies the Contracting Officer in accordance with paragraph

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(c) of this clause or if the Government notifies the Contractor of the breach in writing within the warranty period:

(1) Within a reasonable time after such notification, the Contracting Officer may—

(i) By written notice, direct the Contractor to correct or replace at the Contractor's expense the nonconforming technical data promptly; or

(ii) If the Contracting Officer determines that the Government no longer has a requirement for correction or replacement of the data, or that the data can be more reasonably corrected by the Government, inform the Contractor by written notice that the Government elects a price or fee adjustment instead of correction or replacement.

(2) If the Contractor refuses or fails to comply with a direction under paragraph (d)(1)(i) of this clause, the Contracting Officer may, within a reasonable time of the refusal or failure—

(i) By contract or otherwise, correct or replace the nonconforming technical data and charge the cost to the Contractor; or

(ii) Elect a price or fee adjustment instead of correction or replacement.

(3) In addition to the remedies under paragraphs (d)(1) and (2) of this clause, the Contractor shall be liable to the Government for all damages to the Government as a result of the breach of warranty.

(i) The additional liability under paragraph (d)(3) of this clause shall not exceed 75 percent of the target profit.

(ii) If the breach of the warranty is with respect to the data supplied by an equipment subcontractor, the limit of the Contractor's liability shall be—

(A) Ten percent of the total subcontract price in a firm-fixed-price subcontract;

(B) Seventy-five percent of the total subcontract fee in a cost-plus-fixed-fee or cost-plus-award-fee subcontract; or

(C) Seventy-five percent of the total subcontract target profit or fee in a fixed-price-incentive or cost-plus-incentive subcontract.

(iii) Damages due the Government under the provisions of this warranty are not an allowable cost.

(iv) The additional liability in paragraph (d)(3) of this clause shall not apply—

(A) With respect to the requirements for product drawings and associated lists, special inspection equipment (SIE) drawings and associated lists, special tooling drawings and associated lists, SIE operating instructions, SIE

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descriptive documentation, and SIE calibration procedures under MIL-T-31000, General Specification for Technical Data Packages, Amendment 1, or MIL-T-47500, General Specification for Technical Data Packages, Supp 1, or drawings and associated lists under level 2 or level 3 of MIL-D-1000A, Engineering and Associated Data Drawings, or DoD-D-1000B, Engineering and Associated Lists Drawings (Inactive for New Design) Amendment 4, Notice 1; or drawings and associated lists under category E or I of MIL-D-1000, Engineering and Associated Lists Drawings, provided that the data furnished by the Contractor was current, accurate at time of submission, and did not involve a significant omission of data necessary to comply with the requirements; or

(B) To defects the Contractor discovers and gives written notice to the Government before the Government discovers the error.

(e) The provisions of this clause apply anew to that portion of any corrected or replaced technical data furnished to the Government under paragraph (d)(1)(i) of this clause.

(End of clause)

Alternate II. As prescribed in [246.710](#)(1) and (1)(iii), use the following clause, which uses a different paragraph (d)(3) than the basic clause:

WARRANTY OF DATA—ALTERNATE II (MAR 2014)

(a) *Definition.* “Technical data” has the same meaning as given in the clause in this contract entitled “Rights in Technical Data and Computer Software.”

(b) *Warranty.* Notwithstanding inspection and acceptance by the Government of technical data furnished under this contract, and notwithstanding any provision of this contract concerning the conclusiveness of acceptance, the Contractor warrants that all technical data delivered under this contract will at the time of delivery conform with the specifications and all other requirements of this contract. The warranty period shall extend for three years after completion of the delivery of the line item of data (as identified in DD Form 1423, Contract Data Requirements List) of which the data forms a part; or any longer period specified in the contract.

(c) *Contractor Notification.* The Contractor agrees to notify the Contracting Officer in writing immediately of any breach of the above warranty which the Contractor discovers within the warranty period.

(d) *Remedies.* The following remedies shall apply to all breaches of the warranty, whether the Contractor notifies the Contracting Officer in accordance with paragraph (c) of this clause or if the Government notifies the Contractor of the breach in writing within the warranty period:

(1) Within a reasonable time after such notification, the Contracting Officer may—

(i) By written notice, direct the Contractor to correct or replace at the Contractor's expense the nonconforming technical data promptly; or

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(ii) If the Contracting Officer determines that the Government no longer has a requirement for correction or replacement of the data, or that the data can be more reasonably corrected by the Government, inform the Contractor by written notice that the Government elects a price or fee adjustment instead of correction or replacement.

(2) If the Contractor refuses or fails to comply with a direction under paragraph (d)(1)(i) of this clause, the Contracting Officer may, within a reasonable time of the refusal or failure—

(i) By contract or otherwise, correct or replace the nonconforming technical data and charge the cost to the Contractor; or

(ii) Elect a price or fee adjustment instead of correction or replacement.

(3) In addition to the remedies under paragraphs (d)(1) and (2) of this clause, the Contractor shall be liable to the Government for all damages to the Government as a result of the breach of the warranty.

(i) The additional liability under paragraph (d)(3) of this clause shall not exceed ten percent of the total contract price.

(ii) If the breach of the warranty is with respect to the data supplied by an equipment subcontractor, the limit of the Contractor's liability shall be—

(A) Ten percent of the total subcontract price in a firm-fixed-price subcontract;

(B) Seventy-five percent of the total subcontract fee in a cost-plus-fixed-fee or cost-plus-award-fee subcontract; or

(C) Seventy-five percent of the total subcontract target profit or fee in a fixed-price-incentive or cost-plus-incentive subcontract.

(iii) The additional liability specified in paragraph (d)(3) of this clause shall not apply—

(A) With respect to the requirements for product drawings and associated lists, special inspection equipment (SIE) drawings and associated lists, special tooling drawings and associated lists, SIE operating instructions, SIE descriptive documentation, and SIE calibration procedures under MIL-T-31000, General Specification for Technical Data Packages, Amendment 1, or MIL-T-47500, General Specification for Technical Data Packages, Supp 1, or drawings and associated lists under level 2 or level 3 of MIL-D-1000A, Engineering and Associated Data Drawings, or DoD-D-1000B, Engineering and Associated Lists Drawings (Inactive for New Design) Amendment 4, Notice 1; or drawings and associated lists under category E or I of MIL-D-1000, Engineering and Associated Lists Drawings, provided that the data furnished by the Contractor was current, accurate at time of submission, and did not involve a significant omission of data necessary to comply with the requirements; or

(B) To defects the Contractor discovers and gives written notice to the Government before the Government discovers the error.

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(e) The provisions of this clause apply anew to that portion of any corrected or replaced technical data furnished to the Government under paragraph (d)(1)(i) of this clause.

(End of clause)

252.246-7002 Warranty of Construction (Germany).

As prescribed in [246.710\(2\)](#), use the following clause:

WARRANTY OF CONSTRUCTION (GERMANY) (JUN 1997)

(a) In addition to any other representations in this contract, the Contractor warrants, except as provided in paragraph (j) of this clause, that the work performed under this contract conforms to the contract requirements and is free of any defect of equipment, material, or design furnished or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

(b) This warranty shall continue for the period(s) specified in Section 13, VOB, Part B, commencing from the date of final acceptance of the work under this contract. If the Government takes possession of any part of the work before final acceptance, this warranty shall continue for the period(s) specified in Section 13, VOB, Part B, from the date the Government takes possession.

(c) The Contractor shall remedy, at the Contractor's expense, any failure to conform or any defect. In addition, the Contractor shall remedy, at the Contractor's expense, any damage to Government-owned or -controlled real or personal property when that damage is the result of—

(1) The Contractor's failure to conform to contract requirements; or

(2) Any defect of equipment, material, or design furnished or workmanship performed.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause.

(e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable period of time after the discovery of any failure, defect, or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable period of time after receipt of notice, the Government shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall—

(1) Obtain all warranties that would be given in normal commercial practice;

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(2) Require all warranties to be executed in writing, for the benefit of the Government, if directed by the Contracting Officer; and

(3) Enforce all warranties for the benefit of the Government as directed by the Contracting Officer.

(h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

(i) Unless a defect is caused by the Contractor's negligence, or the negligence of a subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Government or for the repair of any damage resulting from any defect in Government-furnished material or design.

(j) This warranty shall not limit the Government's right under the Inspection clause of this contract, with respect to latent defects, gross mistakes, or fraud.

(End of clause)

252.246-7003 Notification of Potential Safety Issues.

As prescribed in [246.371\(a\)](#), use the following clause:

NOTIFICATION OF POTENTIAL SAFETY ISSUES (JUN 2013)

(a) *Definitions.* As used in this clause—

“Credible information” means information that, considering its source and the surrounding circumstances, supports a reasonable belief that an event has occurred or will occur.

“Critical safety item” means a part, subassembly, assembly, subsystem, installation equipment, or support equipment for a system that contains a characteristic, any failure, malfunction, or absence of which could have a safety impact.

“Safety impact” means the occurrence of death, permanent total disability, permanent partial disability, or injury or occupational illness requiring hospitalization; loss of a weapon system; or property damage exceeding \$1,000,000.

“Subcontractor” means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for the Contractor or another subcontractor under this contract.

(b) The Contractor shall provide notification, in accordance with paragraph (c) of this clause, of—

(1) All nonconformances for parts identified as critical safety items acquired by the Government under this contract; and

(2) All nonconformances or deficiencies that may result in a safety impact for systems, or subsystems, assemblies, subassemblies, or parts integral to a system, acquired by or serviced for the Government under this contract.

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(c) The Contractor—

(1) Shall notify the Administrative Contracting Officer (ACO) and the Procuring Contracting Officer (PCO) as soon as practicable, but not later than 72 hours, after discovering or acquiring credible information concerning nonconformances and deficiencies described in paragraph (b) of this clause; and

(2) Shall provide a written notification to the ACO and the PCO within 5 working days that includes—

(i) A summary of the defect or nonconformance;

(ii) A chronology of pertinent events;

(iii) The identification of potentially affected items to the extent known at the time of notification;

(iv) A point of contact to coordinate problem analysis and resolution; and

(v) Any other relevant information.

(d) The Contractor—

(1) Is responsible for the notification of potential safety issues occurring with regard to an item furnished by any subcontractor; and

(2) Shall facilitate direct communication between the Government and the subcontractor as necessary.

(e) Notification of safety issues under this clause shall be considered neither an admission of responsibility nor a release of liability for the defect or its consequences. This clause does not affect any right of the Government or the Contractor established elsewhere in this contract.

(f)(1) The Contractor shall include the substance of this clause, including this paragraph (f), in subcontracts for—

(i) Parts identified as critical safety items;

(ii) Systems and subsystems, assemblies, and subassemblies integral to a system; or

(iii) Repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, subassemblies, and parts integral to a system.

(2) For those subcontracts, including subcontracts for commercial items, described in paragraph (f)(1) of this clause, the Contractor shall require the subcontractor to provide the notification required by paragraph (c) of this clause to—

(i) The Contractor or higher-tier subcontractor; and

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(ii) The ACO and the PCO, if the subcontractor is aware of the ACO and the PCO for the contract.

(End of clause)

252.246-7004 Safety of Facilities, Infrastructure, and Equipment for Military Operations.

As prescribed in [246.270-4](#), use the following clause:

SAFETY OF FACILITIES, INFRASTRUCTURE, AND EQUIPMENT FOR MILITARY OPERATIONS (OCT 2010)

(a) *Definition.* “Discipline Working Group,” as used in this clause, means representatives from the DoD Components, as defined in MIL-STD-3007F, who are responsible for the unification and maintenance of the Unified Facilities Criteria (UFC) documents for a particular discipline area.

(b) The Contractor shall ensure, consistent with the requirements of the applicable inspection clause in this contract, that the facilities, infrastructure, and equipment acquired, constructed, installed, repaired, maintained, or operated under this contract comply with Unified Facilities Criteria (UFC) 1-200-01 for—

- (1) Fire protection;
- (2) Structural integrity;
- (3) Electrical systems;
- (4) Plumbing;
- (5) Water treatment;
- (6) Waste disposal; and
- (7) Telecommunications networks.

(c) The Contractor may apply a standard equivalent to or more stringent than UFC 1-200-01 upon a written determination of the acceptability of the standard by the Contracting Officer with the concurrence of the relevant Discipline Working Group.

(End of clause)

252.246-7005 Notice of Warranty Tracking of Serialized Items.

As prescribed in [246.710\(3\)\(i\)\(A\)](#), use the following provision:

NOTICE OF WARRANTY TRACKING OF SERIALIZED ITEMS (JUN 2011)

(a) *Definition.* “Unique item identifier” and “warranty tracking” are defined in the clause at [252.246-7006](#), Warranty Tracking of Serialized Items.

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(b) *Reporting of data for warranty tracking and administration.* The offeror shall provide the information required by Attachment __, Warranty Tracking Information, (indicated by a single asterisk (*)), on each contract line item number, subline item number, or exhibit line item number for warranted items. The offeror shall provide all information required by Attachment __, Warranty Repair Source Instruction, prior to, but not later than when the warranted items are presented for receipt and/or acceptance. The “Warranty Item Unique Item Identifier data category may also be completed in conjunction with Attachment __, Warranty Repair Source Instruction. Information required in the warranty attachment shall include such information as duration, enterprise, enterprise identifier, first use, fixed expiration, installation, issuing agency, item type, starting event, serialized item, unique item identifier, usage, warranty administrator, warranty guarantor, warranty repair source, and warranty tracking. The offeror shall submit the data for warranty tracking to the Contracting Officer.

(End of provision)

252.246-7006 Warranty Tracking of Serialized Items.

As prescribed in [246.710\(3\)\(i\)\(B\)](#), use the following clause:

WARRANTY TRACKING OF SERIALIZED ITEMS (JUN 2011)

(a) *Definitions.* As used in this clause—

“Duration” means the warranty period. This period may be a stated period of time, amount of usage, or the occurrence of a specified event, after formal acceptance of delivery, for the Government to assert a contractual right for the correction of defects.

“Enterprise” means the entity (e.g., a manufacturer or vendor) responsible for granting the warranty and/or assigning unique item identifiers to serialized warranty items.

“Enterprise identifier” means a code that is uniquely assigned to an enterprise by an issuing agency.

“First use” means the initial or first-time use of a product by the Government.

“Fixed expiration” means the date the warranty expires and the Contractor’s obligation to provide for a remedy or corrective action ends.

“Installation” means the date a unit is inserted into a higher level assembly in order to make that assembly operational.

“Issuing agency” means an organization responsible for assigning a globally unique identifier to an enterprise (e.g., Dun & Bradstreet’s Data Universal Numbering System (DUNS) Number, GS1 Company Prefix, Allied Committee 135 NATO Commercial and Government Entity (NCAGE)/Commercial and Government Entity (CAGE) Code, or the Coded Representation of the North American Telecommunications Industry Manufacturers, Suppliers, and Related Service Companies (ATIS-0322000) Number), European Health Industry Business Communication Council (EHIBCC) and Health Industry Business Communication Council (HIBCC)), as indicated in the Register of Issuing Agency Codes for ISO/IEC 15459, located at <http://www.nen.nl/web/Normen-ontwikkelen/ISOIEC-15459-Issuing-Agency-Codes.htm>.

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“Item type” means a coded representation of the description of the item being warranted, consisting of the codes C - component procured separate from end item, S - subassembly procured separate from end item or subassembly, E – embedded in component, subassembly or end item parent, and P – parent end item.

“Starting event” means the event or action that initiates the warranty.

“Serialized item” means each item produced is assigned a serial number that is unique among all the collective tangible items produced by the enterprise, or each item of a particular part, lot, or batch number is assigned a unique serial number within that part, lot, or batch number assignment within the enterprise identifier. The enterprise is responsible for ensuring unique serialization within the enterprise identifier or within the part, lot, or batch numbers, and that serial numbers, once assigned, are never used again.

“Unique item identifier” means a set of data elements marked on an item that is globally unique and unambiguous.

“Usage” means the quantity and an associated unit of measure that specifies the amount of a characteristic subject to the contractor’s obligation to provide for remedy or corrective action, such as a number of miles, hours, or cycles.

“Warranty administrator” means the organization specified by the guarantor for managing the warranty.

“Warranty guarantor” means the enterprise that provides the warranty under the terms and conditions of a contract.

“Warranty repair source” means the organization specified by a warranty guarantor for receiving and managing warranty items that are returned by a customer.

“Warranty tracking” means the ability to trace a warranted item from delivery through completion of the effectivity of the warranty.

(b) *Reporting of data for warranty tracking and administration.* The Contractor shall provide all information required by Attachment __, Warranty Tracking Information on each contract line item number, subline item number, or exhibit line item number for warranted items. The Contractor shall provide all information required by Attachment __, Warranty Repair Source Instructions, prior to, but not later than when the warranted items are presented for receipt and/or acceptance. The “Warranty Item Unique Item Identifier” data category may also be completed in conjunction with Attachment __, Warranty Repair Source Instructions. Information required in the warranty attachment shall include such information as duration, enterprise, enterprise identifier, first use, fixed expiration, installation, issuing agency, item type, starting event, serialized item, unique item identifier, usage, warranty administrator, warranty guarantor, warranty repair source, and warranty tracking. The Contractor shall submit the data for warranty tracking to the Contracting Officer with a copy to the requiring activity and the Contracting Officer Representative.

(c) *Reservation of rights.* The terms of this clause shall not be construed to limit the Government’s rights or remedies under any other contract clause.

(End of clause)

252.246-7007 Contractor Counterfeit Electronic Part Detection and Avoidance System.

As prescribed in [246.870-3](#), use the following clause:

CONTRACTOR COUNTERFEIT ELECTRONIC PART DETECTION AND
AVOIDANCE SYSTEM (MAY 2014)

The following paragraphs (a) through (e) of this clause do not apply unless the Contractor is subject to the Cost Accounting Standards under 41 U.S.C. chapter 15, as implemented in regulations found at 48 CFR 9903.201-1.

(a) *Definitions.* As used in this clause—

“Counterfeit electronic part” means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified electronic part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used electronic parts represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

“Electronic part” means an integrated circuit, a discrete electronic component (including, but not limited to, a transistor, capacitor, resistor, or diode), or a circuit assembly (section 818(f)(2) of Pub. L. 112-81). The term “electronic part” includes any embedded software or firmware.

“Obsolete electronic part” means an electronic part that is no longer in production by the original manufacturer or an aftermarket manufacturer that has been provided express written authorization from the current design activity or original manufacturer.

“Suspect counterfeit electronic part” means an electronic part for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the electronic part is authentic.

(b) *Acceptable counterfeit electronic part detection and avoidance system.* The Contractor shall establish and maintain an acceptable counterfeit electronic part detection and avoidance system. Failure to maintain an acceptable counterfeit electronic part detection and avoidance system, as defined in this clause, may result in disapproval of the purchasing system by the Contracting Officer and/or withholding of payments.

(c) *System criteria.* A counterfeit electronic part detection and avoidance system shall include risk-based policies and procedures that address, at a minimum, the following areas:

(1) The training of personnel.

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(2) The inspection and testing of electronic parts, including criteria for acceptance and rejection. Tests and inspections shall be performed in accordance with accepted Government- and industry-recognized techniques. Selection of tests and inspections shall be based on minimizing risk to the Government. Determination of risk shall be based on the assessed probability of receiving a counterfeit electronic part; the probability that the inspection or test selected will detect a counterfeit electronic part; and the potential negative consequences of a counterfeit electronic part being installed (*e.g.*, human safety, mission success) where such consequences are made known to the Contractor.

(3) Processes to abolish counterfeit parts proliferation.

(4) Processes for maintaining electronic part traceability (*e.g.*, item unique identification) that enable tracking of the supply chain back to the original manufacturer, whether the electronic parts are supplied as discrete electronic parts or are contained in assemblies. This traceability process shall include certification and traceability documentation developed by manufacturers in accordance with Government and industry standards; clear identification of the name and location of supply chain intermediaries from the manufacturer to the direct source of the product for the seller; and, where available, the manufacturer's batch identification for the electronic part(s), such as date codes, lot codes, or serial numbers. If IUID marking is selected as a traceability mechanism, its usage shall comply with the item marking requirements of [252.211-7003](#), Item Unique Identification and Valuation.

(5) Use of suppliers that are the original manufacturer, or sources with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer or suppliers that obtain parts exclusively from one or more of these sources. When parts are not available from any of these sources, use of suppliers that meet applicable counterfeit detection and avoidance system criteria.

(6) Reporting and quarantining of counterfeit electronic parts and suspect counterfeit electronic parts. Reporting is required to the Contracting Officer and to the Government-Industry Data Exchange Program (GIDEP) when the Contractor becomes aware of, or has reason to suspect that, any electronic part or end item, component, part, or assembly containing electronic parts purchased by the DoD, or purchased by a Contractor for delivery to, or on behalf of, the DoD, contains counterfeit electronic parts or suspect counterfeit electronic parts. Counterfeit electronic parts and suspect counterfeit electronic parts shall not be returned to the seller or otherwise returned to the supply chain until such time that the parts are determined to be authentic.

(7) Methodologies to identify suspect counterfeit parts and to rapidly determine if a suspect counterfeit part is, in fact, counterfeit.

(8) Design, operation, and maintenance of systems to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts. The Contractor may elect to use current Government- or industry-recognized standards to meet this requirement.

(9) Flow down of counterfeit detection and avoidance requirements, including applicable system criteria provided herein, to subcontractors at all levels in the supply

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chain that are responsible for buying or selling electronic parts or assemblies containing electronic parts, or for performing authentication testing.

(10) Process for keeping continually informed of current counterfeiting information and trends, including detection and avoidance techniques contained in appropriate industry standards, and using such information and techniques for continuously upgrading internal processes.

(11) Process for screening GIDEP reports and other credible sources of counterfeiting information to avoid the purchase or use of counterfeit electronic parts.

(12) Control of obsolete electronic parts in order to maximize the availability and use of authentic, originally designed, and qualified electronic parts throughout the product's life cycle.

(d) Government review and evaluation of the Contractor's policies and procedures will be accomplished as part of the evaluation of the Contractor's purchasing system in accordance with [252.244-7001](#), Contractor Purchasing System Administration--Basic, or Contractor Purchasing System Administration--Alternate I.

(e) The Contractor shall include the substance of this clause, including paragraphs (a) through (e), in subcontracts, including subcontracts for commercial items, for electronic parts or assemblies containing electronic parts.

(End of clause)

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(Revised June 26, 2015)

252.247-7000 Hardship Conditions.

As prescribed in [247.270-4\(a\)](#), use the following clause:

HARDSHIP CONDITIONS (AUG 2000)

(a) If the Contractor finds unusual ship, dock, or cargo conditions associated with loading or unloading a particular cargo, that will work a hardship on the Contractor if loaded or unloaded at the basic commodity rates, the Contractor shall--

(1) Notify the Contracting Officer before performing the work, if feasible, but no later than the vessel sailing time; and

(2) Submit any associated request for price adjustment to the Contracting Officer within 10 working days of the vessel sailing time.

(b) Unusual conditions include, but are not limited to, inaccessibility of place of stowage to the ship's cargo gear, side port operations, and small quantities of cargo in any one hatch.

(c) The Contracting Officer will investigate the conditions promptly after receiving the notice. If the Contracting Officer finds that the conditions are unusual and do materially affect the cost of loading or unloading, the Contracting Officer will authorize payment at the applicable man-hour rates set forth in the schedule of rates of this contract.

(End of clause)

252.247-7001 Price Adjustment.

As prescribed in [247.270-4\(b\)](#), use the following clause:

PRICE ADJUSTMENT (JAN 1997)

(a) The Contractor warrants that the prices set forth in this contract—

(1) Are based upon the wage rates, allowances, and conditions set forth in the collective bargaining agreements between the Contractor and its employees, in effect as of (insert date), and which are generally applicable to the ports where work under this contract is performed;

(2) Apply to operations by the Contractor on non-Government work as well as under this contract; and

(3) Do not include any allowance for cost increases that may—

(i) Become effective under the terms of the collective bargaining agreements after the date in paragraph (a)(1) of this clause; or

(ii) Result from modification of the collective bargaining agreements after the date in paragraph (a)(1).

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(b) The Contractor shall notify the Contracting Officer within 60 days of receipt of notice of any changes (increase or decrease) in the wage rates, allowances, fringe benefits, and conditions that apply to its direct labor employees, if the changes—

- (1) Are pursuant to the provisions of the collective bargaining agreements; or
- (2) Are a result of effective modifications to the agreements; and
- (3) Would change the Contractor's costs to perform this contract.

(c) The Contractor shall include in its notification—

(1) A proposal for an adjustment in the contract commodity, activity, or work-hour prices; and

(2) Data, in such form as the Contracting Officer may require, explaining the—

- (i) Causes;
- (ii) Effective date; and

(iii) Amount of the increase or decrease in the Contractor's proposal for the adjustment.

(d) Promptly upon receipt of any notice and data described in paragraph (c), the Contractor and the Contracting Officer shall negotiate an adjustment in the existing contract commodity, activity, or man-hour prices. However, no upward adjustment of the existing commodity, activity, or work-hour prices will be allowed in excess of ____ percent per year, except as provided in the Changes clause of this contract.

(1) Changes in the contract prices shall reflect, in addition to the direct and variable indirect labor costs, the associated changes in the costs for social security, unemployment compensation, taxes, and workman's compensation insurance.

(2) There will be no adjustment to increase the dollar amount allowances of the Contractor's profit.

(3) The agreed upon adjustment, its effective date, and the revised commodity, activity, or work-hour prices for services set forth in the schedule of rates, shall be incorporated in the contract by supplemental agreement.

(e) There will be no adjustment for any changes in the quantities of labor that the Contractor contemplated for each specific commodity, except as may result from modifications of the collective bargaining agreements. For the purpose of administering this clause, the Contractor shall submit to the Contracting Officer, within five days after award, the accounting data and computations the Contractor used to determine its estimated efficiency rate in the performance of this contract, to include the Contractor's computation of the costs apportioned for each rate set forth in the schedule of rates.

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(f) Failure of the parties to agree to an adjustment under this clause will be deemed to be a dispute concerning a question of fact within the meaning of the Disputes clause of this contract. The Contractor shall continue performance pending agreement on, or determination of, any such adjustment and its effective date.

(g) The Contractor shall include with the final invoice submitted under this contract a statement that the Contractor has not experienced a decrease in rates of pay for labor, or that the Contractor has given notice of all such decreases in compliance with paragraph (b) of this clause.

(End of clause)

252.247-7002 Revision of Prices.

As prescribed in [247.270-4\(c\)](#), use the following clause:

REVISION OF PRICES (DEC 1991)

(a) *Definition.* "Wage adjustment," as used in this clause, means a change in the wages, salaries, or other terms or conditions of employment which—

- (1) Substantially affects the cost of performing this contract;
- (2) Is generally applicable to the port where work under this contract is performed; and
- (3) Applies to operations by the Contractor on non-Government work as well as to work under this contract.

(b) *General.* The prices fixed in this contract are based on wages and working conditions established by collective bargaining agreements, and on other conditions in effect on the date of this contract. The Contracting Officer and the Contractor may agree to increase or decrease such prices in accordance with this clause.

(c) *Demand for negotiation.*

- (1) At any time, subject to the limitations specified in this clause, either the Contracting Officer or the Contractor may deliver to the other a written demand that the parties negotiate to revise the prices under this contract.
- (2) No such demand shall be made before 90 days after the date of this contract, and thereafter neither party shall make a demand having an effective date within 90 days of the effective date of any prior demand. However, this limitation does not apply to a wage adjustment during the 90 day period.
- (3) Each demand shall specify a date (the same as or subsequent to the date of the delivery of the demand) as to when the revised prices shall be effective. This date is the effective date of the price revision.

(i) If the Contractor makes a demand under this clause, the demand shall briefly state the basis of the demand and include the statements and data referred to in paragraph (d) of this clause.

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(ii) If the demand is made by the Contracting Officer, the Contractor shall furnish the statements and data within 30 days of the delivery of the demand.

(d) *Submission of data.* At the times specified in paragraphs (c)(3)(i) and (ii) of this clause, the Contractor shall submit—

(1) A new estimate and breakdown of the unit cost and the proposed prices for the services the Contractor will perform under this contract after the effective date of the price revision, itemized to be consistent with the original negotiations of the contract;

(2) An explanation of the difference between the original (or last preceding) estimate and the new estimate;

(3) Such relevant operating data, cost records, overhead absorption reports, and accounting statements as may be of assistance in determining the accuracy and reliability of the new estimate;

(4) A statement of the actual costs of performance under this contract to the extent that they are available at the time of the negotiation of the revision of prices under this clause; and

(5) Any other relevant data usually furnished in the case of negotiations of prices under a new contract. The Government may examine and audit the Contractor's accounts, records, and books as the Contracting Officer considers necessary.

(e) *Negotiations.*

(1) Upon the filing of the statements and data required by paragraph (d) of this clause, the Contractor and the Contracting Officer shall negotiate promptly in good faith to agree upon prices for services the Contractor will perform on and after the effective date of the price revision.

(2) If the prices in this contract were established by competitive negotiation, they shall not be revised upward unless justified by changes in conditions occurring after the contract was awarded.

(3) The agreement reached after each negotiation will be incorporated into the contract by supplemental agreement.

(f) *Disagreements.* If, within 30 days after the date on which statements and data are required pursuant to paragraph (c) of this clause, the Contracting Officer and the Contractor fail to agree to revised prices, the failure to agree shall be resolved in accordance with the Disputes clause of this contract. The prices fixed by the Contracting Officer will remain in effect for the balance of the contract, and the Contractor shall continue performance.

(g) *Retroactive changes in wages or working conditions.*

(1) In the event of a retroactive wage adjustment, the Contractor or the Contracting Officer may request an equitable adjustment in the prices in this contract.

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(2) The Contractor shall request a price adjustment within 30 days of any retroactive wage adjustment. The Contractor shall support its request with—

- (i) An estimate of the changes in cost resulting from the retroactive wage adjustment;
- (ii) Complete information upon which the estimate is based; and
- (iii) A certified copy of the collective bargaining agreement, arbitration award, or other document evidencing the retroactive wage adjustment.

(3) Subject to the limitation in paragraph (g)(2) of this clause as to the time of making a request, completion or termination of this contract shall not affect the Contractor's right under paragraph (g) of this clause.

(4) In case of disagreement concerning any question of fact, including whether any adjustment should be made, or the amount of such adjustment, the disagreement will be resolved in accordance with the Disputes clause of this contract.

(5) The Contractor shall notify the Contracting Officer in writing of any request by or on behalf of the employees of the Contractor which may result in a retroactive wage adjustment. The notice shall be given within 20 days after the request, or if the request occurs before contract execution, at the time of execution.

(End of clause)

252.247-7003 Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer.

As prescribed in [247.207](#), use the following clause:

PASS-THROUGH OF MOTOR CARRIER FUEL SURCHARGE ADJUSTMENT TO THE COST BEARER (JUN 2013)

(a) This clause implements section 884 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417).

(b) Unless an exception is authorized by the Contracting Officer, the Contractor shall pass through any motor carrier fuel-related surcharge adjustments to the person, corporation, or entity that directly bears the cost of fuel for shipment(s) transported under this contract.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts, including subcontracts for commercial items, with motor carriers, brokers, or freight forwarders.

(End of clause)

252.247-7004 Indefinite Quantities--Fixed Charges.

As prescribed in [247.270-4\(d\)](#), use the following clause:

INDEFINITE QUANTITIES--FIXED CHARGES (DEC 1991)

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The amount of work and services the Contractor may be ordered to furnish shall be the amount the Contracting Officer may order from time to time. In any event, the Government is obligated to compensate the Contractor the monthly lump sum specified in the Schedule entitled Fixed Charges, for each month or portion of a month the contract remains in effect.

(End of clause)

252.247-7005 Indefinite Quantities--No Fixed Charges.

As prescribed in [247.270-4\(e\)](#), use the following clause:

INDEFINITE QUANTITIES--NO FIXED CHARGES (DEC 1991)

The amount of work and services the Contractor may be ordered to furnish shall be the amount the Contracting Officer may order from time to time. In any event, the Government shall order, during the term of this contract, work or services having an aggregate value of not less than \$100.

(End of clause)

252.247-7006 Removal of Contractor's Employees.

As prescribed in [247.270-4\(f\)](#), use the following clause:

REMOVAL OF CONTRACTOR'S EMPLOYEES (DEC 1991)

The Contractor agrees to use only experienced, responsible, and capable people to perform the work. The Contracting Officer may require that the Contractor remove from the job, employees who endanger persons or property, or whose continued employment under this contract is inconsistent with the interest of military security.

(End of clause)

252.247-7007 Liability and Insurance.

As prescribed in [247.270-4\(g\)](#), use the following clause:

LIABILITY AND INSURANCE (DEC 1991)

(a) The Contractor shall be—

(1) Liable to the Government for loss or damage to property, real and personal, owned by the Government or for which the Government is liable;

(2) Responsible for, and hold the Government harmless from, loss of or damage to property not included in paragraph (a)(1); and

(3) Responsible for, and hold the Government harmless from, bodily injury and death of persons, resulting either in whole or in part from the negligence or fault of the Contractor, its officers, agents, or employees in the performance of work under this contract.

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(b) For the purpose of this clause, all cargo loaded or unloaded under this contract is agreed to be property owned by the Government or property for which the Government is liable.

(1) The amount of the loss or damage as determined by the Contracting Officer will be withheld from payments otherwise due the Contractor.

(2) Determination of liability and responsibility by the Contracting Officer will constitute questions of fact within the meaning of the Disputes clause of this contract.

(c) The general liability and responsibility of the Contractor under this clause are subject only to the following specific limitations. The Contractor is not responsible to the Government for, and does not agree to hold the Government harmless from, loss or damage to property or bodily injury to or death of persons if—

(1) The unseaworthiness of the vessel, or failure or defect of the gear or equipment furnished by the Government, contributed jointly with the fault or negligence of the Contractor in causing such damage, injury, or death; and

(i) The Contractor, his officers, agents, and employees, by the exercise of due diligence, could not have discovered such unseaworthiness or defect of gear or equipment; or

(ii) Through the exercise of due diligence could not otherwise have avoided such damage, injury, or death.

(2) The damage, injury, or death resulted solely from an act or omission of the Government or its employees, or resulted solely from proper compliance by officers, agents, or employees of the Contractor with specific directions of the Contracting Officer.

(d) The Contractor shall at its own expense acquire and maintain insurance during the term of this contract, as follows—

(1) Standard workmen's compensation and employer's liability insurance and longshoremen's and harbor workers' compensation insurance, or such of these as may be proper under applicable state or Federal statutes.

(i) The Contractor may, with the prior approval of the Contracting Officer, be a self-insurer against the risk of this paragraph (d)(1).

(ii) This approval will be given upon receipt of satisfactory evidence that the Contractor has qualified as a self-insurer under applicable provision of law.

(2) Bodily injury liability insurance in an amount of not less than \$300,000 on account of any one occurrence.

(3) Property damage liability insurance (which shall include any and all property, whether or not in the care, custody, or control of the Contractor) in an amount of not less than \$300,000 for any one occurrence.

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(e) Each policy shall provide, by appropriate endorsement or otherwise, that cancellation or material change in the policy shall not be effective until after a 30 day written notice is furnished the Contracting Officer.

(f) The Contractor shall furnish the Contracting Officer with satisfactory evidence of the insurance required in paragraph (d) before performance of any work under this contract.

(g) The Contractor shall, at its own cost and expense, defend any suits, demands, claims, or actions, in which the United States might be named as a co-defendant of the Contractor, resulting from the Contractor's performance of work under this contract. This requirement is without regard to whether such suit, demand, claim, or action was the result of the Contractor's negligence. The Government shall have the right to appear in such suit, participate in defense, and take such actions as may be necessary to protect the interest of the United States.

(h) It is expressly agreed that the provisions in paragraphs (d) through (g) of this clause shall not in any manner limit the liability or extend the liability of the Contractor as provided in paragraphs (a) through (c) of this clause.

(i) The Contractor shall—

(1) Equitably reimburse the Government if the Contractor is indemnified, reimbursed, or relieved of any loss or damage to Government property;

(2) Do nothing to prevent the Government's right to recover against third parties for any such loss or damage; and

(3) Furnish the Government, upon the request of the Contracting Officer, at the Government's expense, all reasonable assistance and cooperation in obtaining recovery, including the prosecution of suit and the execution of instruments of assignment in favor of the Government.

(End of clause)

252.247-7008 Evaluation of Bids.

Basic. As prescribed in [247.271-3](#) and [247.271-3\(a\)](#) and (a)(1), use the following provision:

EVALUATION OF BIDS—BASIC (APR 2014)

(a) The Government will evaluate bids on the basis of total aggregate price of all items within an area of performance under a given schedule.

(1) An offeror must bid on all items within a specified area of performance for a given schedule. Failure to do so shall be cause for rejection of the bid for that area of performance of that Schedule. If there is to be no charge for an item, an entry such as “No Charge,” or the letters “N/C” or “0,” must be made in the unit price column of the Schedule.

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(2) Any bid which stipulates minimum charges or graduated prices for any or all items shall be rejected for that area of performance within the Schedule.

(b) In addition to other factors, the Contracting Officer will evaluate bids on the basis of advantages or disadvantages to the Government that might result from making more than one award (multiple awards).

(1) In making this evaluation, the Contracting Officer will assume that the administrative cost to the Government for issuing and administering each contract awarded under this solicitation would be \$500.

(2) Individual awards will be for the items and combinations of items which result in the lowest aggregate cost to the Government, including the administrative costs in paragraph (b)(1).

(c) When drayage is necessary for the accomplishment of any item in the bid schedule, the Offeror shall include in the unit price any costs for bridge or ferry tolls, road use charges or similar expenses.

(d) Unless otherwise provided in this solicitation, the Offeror shall state prices in amounts per hundred pounds on gross or net weights, whichever is applicable. All charges shall be subject to, and payable on, the basis of 100 pounds minimum weight for unaccompanied baggage and a 500 pound minimum weight for household goods, net or gross weight, whichever is applicable.

(End of provision)

Alternate I. As prescribed in [247.271-3](#) and [247.271-3\(a\)](#) and (a)(2), use the following provision, which adds a paragraph (e) not included in the basic provision:

EVALUATION OF BIDS—ALTERNATE I (APR 2014)

(a) The Government will evaluate bids on the basis of total aggregate price of all items within an area of performance under a given schedule.

(1) An offeror must bid on all items within a specified area of performance for a given schedule. Failure to do so shall be cause for rejection of the bid for that area of performance of that Schedule. If there is to be no charge for an item, an entry such as “No Charge,” or the letters “N/C” or “0,” must be made in the unit price column of the Schedule.

(2) Any bid which stipulates minimum charges or graduated prices for any or all items shall be rejected for that area of performance within the Schedule.

(b) In addition to other factors, the Contracting Officer will evaluate bids on the basis of advantages or disadvantages to the Government that might result from making more than one award (multiple awards).

(1) In making this evaluation, the Contracting Officer will assume that the administrative cost to the Government for issuing and administering each contract awarded under this solicitation would be \$500.

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(2) Individual awards will be for the items and combinations of items which result in the lowest aggregate cost to the Government, including the administrative costs in paragraph (b)(1).

(c) When drayage is necessary for the accomplishment of any item in the bid schedule, the Offeror shall include in the unit price any costs for bridge or ferry tolls, road use charges or similar expenses.

(d) Unless otherwise provided in this solicitation, the Offeror shall state prices in amounts per hundred pounds on gross or net weights, whichever is applicable. All charges shall be subject to, and payable on, the basis of 100 pounds minimum weight for unaccompanied baggage and a 500 pound minimum weight for household goods, net or gross weight, whichever is applicable.

(e) Notwithstanding paragraph (a), when “additional services” are added to any schedule, such “additional services” items will not be considered in the evaluation of bids.

(End of provision)

252.247-7009 Award.

As prescribed in [247.271-3\(b\)](#), use the following provision:

AWARD (DEC 1991)

(a) The Government shall make award by area to the qualified low bidder under each of the specified schedules to the extent of the bidder's stated guaranteed daily capability as provided in this solicitation and the Estimated Quantities Schedule.

(b) The Government reserves the right to make an award of two or more areas to a single bidder if such award will result in an overall lower estimated cost to the Government.

(c) The Government also reserves the right to award additional contracts, as a result of this solicitation, to the extent necessary to meet its estimated maximum daily requirements.

(End of provision)

252.247-7010 Scope of Contract.

As prescribed in [247.271-3\(d\)](#), use the following clause:

SCOPE OF CONTRACT (DEC 1991)

(a) The Contractor shall furnish services and materials for the preparation of personal property (including servicing of appliances) for movement or storage, drayage and related services. Unless otherwise indicated in the Schedule, the Contractor shall—

(1) Furnish all materials except Government-owned containers (Federal Specification PPP-B-580), all equipment, plant and labor; and

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(2) Perform all work in accomplishing containerization of personal property for overseas or domestic movement or storage, including—

- (i) Stenciling;
- (ii) Cooperage;
- (iii) Drayage of personal property in connection with other services;
- (iv) Decontainerization of inbound shipments of personal property; and
- (v) The handling of shipments into and out of the Contractor's facility.

(b) Excluded from the scope of this contract is the furnishing of like services or materials which are provided incident to complete movement of personal property when purchased by the Through Government Bill of Lading or other method/mode of shipment or property to be moved under the Do-It-Yourself moving program or otherwise moved by the owner.

(End of clause)

252.247-7011 Period of Contract.

As prescribed in [247.271-3\(e\)](#), use the following clause:

PERIOD OF CONTRACT (OCT 2001)

(a) This contract begins January 1, ____, and ends December 31, ____, both dates inclusive. Any work ordered before, and not completed by the expiration date shall be governed by the terms of this contract.

(b) The Government will not place new orders under this contract that require that performance commence more than 15 days after the expiration date.

(c) The Government may place orders required for the completion of services (for shipments in the Contractor's possession) for 180 days past the expiration date.

(End of clause)

252.247-7012 Ordering Limitation.

As prescribed in [247.271-3\(g\)](#), use the following clause:

ORDERING LIMITATION (DEC 1991)

(a) The Government will place orders for items of supplies or services with the contractor awarded the initial contract to the extent of the contractor's guaranteed maximum daily capability. However, the contractor may accept an additional quantity in excess of its capability to accommodate a single order.

(b) Orders for additional requirements will be placed in a like manner with the next higher contractor to the extent of its guaranteed maximum daily capability. The Government will repeat this procedure until its total daily requirement is fulfilled.

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(c) In the event the procedure in paragraphs (a) and (b) does not fulfill the Government's total daily requirement, the Government may offer additional orders under the contract to contractors without regard to their guaranteed maximum daily capability.

(End of clause)

252.247-7013 Contract Areas of Performance.

As prescribed in [247.271-3\(h\)](#), use the following clause and complete paragraph (b) by defining each area of performance as required (see [247.271-2\(b\)](#)):

CONTRACT AREAS OF PERFORMANCE (DEC 1991)

(a) The Government will consider all areas of performance described in paragraph (b) as including the Contractor's facility, regardless of geographical location.

(b) The Contractor shall perform services within the following defined areas of performance, which include terminals identified therein: _____.

(End of clause)

252.247-7014 Demurrage.

As prescribed in [247.271-3\(i\)](#), use the following clause:

DEMURRAGE (DEC 1991)

The Contractor shall be liable for all demurrage, detention, or other charges as a result of its failure to load or unload trucks, freight cars, freight terminals, vessel piers, or warehouses within the free time allowed under applicable rules and tariffs.

(End of clause)

252.247-7015 Reserved.

252.247-7016 Contractor Liability for Loss or Damage.

As prescribed in [247.271-3\(k\)](#), use the following clause:

CONTRACTOR LIABILITY FOR LOSS OR DAMAGE (DEC 1991)

(a) *Definitions.* As used in this clause—

“Article” means any shipping piece or package and its contents.

“Schedule” means the level of service for which specific types of traffic apply as described in DoD 4500.34-R, Personal Property Traffic Management Regulation.

(b) For shipments picked up under Schedule I, Outbound Services, or delivered under Schedule II, Inbound Services—

(1) If notified within one year after delivery that the owner has discovered loss or damage to the owner's property, the Contractor agrees to indemnify the Government

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for loss or damage to the property which arises from any cause while it is in the Contractor's possession. The Contractor's liability is—

(i) *Non-negligent damage.* For any cause, other than the Contractor's negligence, indemnification shall be at a rate not to exceed sixty cents per pound per article.

(ii) *Negligent damage.* When loss or damage is caused by the negligence of the Contractor, the liability is for the full cost of satisfactory repair or for the current replacement value of the article.

(2) The Contractor shall make prompt payment to the owner of the property for any loss or damage for which the Contractor is liable.

(3) In the absence of evidence or supporting documentation which places liability on a carrier or another contractor, the destination contractor shall be presumed to be liable for the loss or damage, if timely notified.

(c) For shipments picked up or delivered under Schedule III, Intra-City and Intra-Area—

(1) If notified of loss or damage within 75 days following delivery, the Contractor agrees to indemnify the Government for loss or damage to the owner's property.

(2) The Contractor's liability shall be for the full cost of satisfactory repair, or for the current replacement value of the article less depreciation, up to a maximum liability of \$1.25 per pound times the net weight of the shipment.

(3) The Contractor has full salvage rights to damaged items which are not repairable and for which the Government has received compensation at replacement value.

(End of clause)

252.247-7017 Erroneous Shipments.

As prescribed in [247.271-3\(l\)](#), use the following clause:

ERRONEOUS SHIPMENTS (DEC 1991)

(a) The Contractor shall—

(1) Forward to the rightful owner, articles of personal property inadvertently packed with goods of other than the rightful owner.

(2) Ensure that all shipments are stenciled correctly. When a shipment is sent to an incorrect address due to incorrect stenciling by the Contractor, the Contractor shall forward it to its rightful owner.

(3) Deliver to the designated air or surface terminal all pieces of a shipment, in one lot, at the same time. The Contractor shall forward to the owner any pieces of one

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lot not included in delivery, and remaining at its facility after departure of the original shipment.

(b) Forwarding under paragraph (a) shall be—

- (1) With the least possible delay;
- (2) By a mode of transportation selected by the Contracting Officer; and
- (3) At the Contractor's expense.

(End of clause)

252.247-7018 Subcontracting.

As prescribed in [247.271-3\(m\)](#), use the following clause:

SUBCONTRACTING (DEC 1991)

The Contractor shall not subcontract without the prior written approval of the Contracting Officer. The facilities of any approved subcontractor shall meet the minimum standards required by this contract.

(End of clause)

252.247-7019 Drayage.

As prescribed in [247.271-3\(n\)](#), use the following clause:

DRAYAGE (DEC 1991)

(a) Drayage included for Schedule I, Outbound, applies in those instances when a shipment requires drayage to an air, water, or other terminal for onward movement after completion of shipment preparation by the Contractor. Drayage not included is when it is being moved from a residence or other pickup point to the Contractor's warehouse for onward movement by another freight company, carrier, etc.

(b) Drayage included for Schedule II, Inbound, applies in those instances when shipment is delivered, as ordered, from a destination Contractor's facility or other destination point to the final delivery point. Drayage not included is when shipment or partial removal of items from shipment is performed and prepared for member's pickup at destination delivery point.

(c) The Contractor will reposition empty Government containers—

- (1) Within the area of performance;
- (2) As directed by the Contracting Officer; and
- (3) At no additional cost to the Government.

(End of clause)

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252.247-7020 Additional Services.

As prescribed in [247.271-3\(o\)](#), use the following clause:

ADDITIONAL SERVICES (AUG 2000)

The Contractor shall provide additional services not included in the Schedule, but required for satisfactory completion of the services ordered under this contract, at a rate comparable to the rate for like services as contained in tenders on file with the Military Traffic Management Command in effect at time of order.

(End of clause)

252.247-7021 Returnable Containers Other Than Cylinders.

As prescribed in [247.305-70](#), use the following clause:

RETURNABLE CONTAINERS OTHER THAN CYLINDERS (MAY 1995)

(a) "Returnable container," as used in this clause, includes reels, spools, drums, carboys, liquid petroleum gas containers, and other returnable containers when the Contractor retains title to the container.

(b) Returnable containers shall remain the Contractor's property but shall be loaned without charge to the Government for a period of ____ (insert number of days) calendar days after delivery to the f.o.b. point specified in the contract. Beginning with the first day after the loan period expires, to and including the day the containers are delivered to the Contractor (if the original delivery was f.o.b. origin) or are delivered or are made available for delivery to the Contractor's designated carrier (if the original delivery was f.o.b. destination), the Government shall pay the Contractor a rental of \$_____ (insert dollar amount for rental) per container per day, computed separately for containers for each type, size, and capacity, and for each point of delivery named in the contract. No rental shall accrue to the Contractor in excess of the replacement value per container specified in paragraph (c) of this clause.

(c) For each container lost or damaged beyond repair while in the Government's possession, the Government shall pay to the Contractor the replacement value as follows, less the allocable rental paid for that container:

(Insert the container types, sizes, capacities, and associated replacement values.)
These containers shall become Government property.

(d) If any lost container is located within ____ (insert number of days) calendar days after payment by the Government, it may be returned to the Contractor by the Government, and the Contractor shall pay to the Government the replacement value, less rental computed in accordance with paragraph (b) of this clause, beginning at the expiration of the loan period specified in paragraph (b) of this clause, and continuing to the date on which the container was delivered to the Contractor.

(End of clause)

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252.247-7022 Representation of Extent of Transportation by Sea.

As prescribed in [247.574\(a\)](#), use the following provision:

REPRESENTATION OF EXTENT OF TRANSPORTATION BY SEA (AUG 1992)

(a) The Offeror shall indicate by checking the appropriate blank in paragraph (b) 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.

(b) *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.

(c) 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 FAR Supplement clause at [252.247-7024](#), Notification of Transportation of Supplies by Sea.

(End of provision)

252.247-7023 Transportation of Supplies by Sea.

Basic. As prescribed in [247.574\(b\)](#) and (b)(1), use the following clause:

TRANSPORTATION OF SUPPLIES BY SEA—BASIC (APR 2014)

(a) *Definitions.* As used in this clause—

“Components” means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the Contractor or any subcontractor.

“Department of Defense” (DoD) means the Army, Navy, Air Force, Marine Corps, and defense agencies.

“Foreign-flag vessel” means any vessel that is not a U.S.-flag vessel.

“Ocean transportation” means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

“Subcontractor” means a supplier, materialman, distributor, or vendor at any level below the prime contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

“Supplies” means all property, except land and interests in land, that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by

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sea.

(i) An item is clearly identifiable for eventual use by the DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

(ii) “Supplies” includes (but is not limited to) public works; buildings and facilities; ships; floating equipment and vessels of every character, type, and description, with parts, subassemblies, accessories, and equipment; machine tools; material; equipment; stores of all kinds; end items; construction materials; and components of the foregoing.

“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)(1) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if—

(i) This contract is a construction contract; or

(ii) The supplies being transported are—

(A) Noncommercial items; or

(B) Commercial items that—

(1) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);

(2) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(3) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

(c) The Contractor and its subcontractors may request that the Contracting Officer authorize shipment in foreign-flag vessels, or designate available U.S.-flag vessels, if the Contractor or a subcontractor believes that—

(1) U.S.-flag vessels are not available for timely shipment;

(2) The freight charges are inordinately excessive or unreasonable; or

(3) Freight charges are higher than charges to private persons for transportation of like goods.

(d) The Contractor must submit any request for use of foreign-flag vessels in

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writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its delivery schedules. The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, but the Contracting Officer's failure to grant approvals to meet the shipper's sailing date will not of itself constitute a compensable delay under this or any other clause of this contract. Requests shall contain at a minimum—

- (1) Type, weight, and cube of cargo;
- (2) Required shipping date;
- (3) Special handling and discharge requirements;
- (4) Loading and discharge points;
- (5) Name of shipper and consignee;
- (6) Prime contract number; and
- (7) A documented description of efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.

(e) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and the Maritime Administration, Office of Cargo Preference, U.S. Department of Transportation, 400 Seventh Street SW, Washington, DC 20590, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information:

- (1) Prime contract number;
- (2) Name of vessel;
- (3) Vessel flag of registry;
- (4) Date of loading;
- (5) Port of loading;
- (6) Port of final discharge;
- (7) Description of commodity;
- (8) Gross weight in pounds and cubic feet if available;
- (9) Total ocean freight in U.S. dollars; and
- (10) Name of steamship company.

(f) If this contract exceeds the simplified acquisition threshold, the Contractor shall provide with its final invoice under this contract a representation that to the best of its

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knowledge and belief—

- (1) No ocean transportation was used in the performance of this contract;
- (2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;
- (3) Ocean transportation was used, and the Contractor had the written consent of the Contracting Officer for all foreign-flag ocean transportation; or
- (4) Ocean transportation was used and some or all of the shipments were made on foreign-flag vessels without the written consent of the Contracting Officer. The Contractor shall describe these shipments in the following format:

	ITEM DESCRIPTION	CONTRACT LINE ITEMS	QUANTITY
TOTAL			

(g) If this contract exceeds the simplified acquisition threshold and the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the Prompt Payment clause of this contract. In the event there has been unauthorized use of foreign-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

(h) In the award of subcontracts, for the types of supplies described in paragraph (b)(2) of this clause, including subcontracts for commercial items, the Contractor shall flow down the requirements of this clause as follows:

(1) The Contractor shall insert the substance of this clause, including this paragraph (h), in subcontracts that exceed the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

(2) The Contractor shall insert the substance of paragraphs (a) through (e) of this clause, and this paragraph (h), in subcontracts that are at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

(End of clause)

Alternate I. As prescribed in [247.574\(b\)](#) and (b)(2), use the following clause, which uses a different paragraph (b) than the basic clause:

TRANSPORTATION OF SUPPLIES BY SEA—ALTERNATE I (APR 2014)

(a) *Definitions.* As used in this clause—

“Components” means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the Contractor or any subcontractor.

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“Department of Defense” (DoD) means the Army, Navy, Air Force, Marine Corps, and defense agencies.

“Foreign-flag vessel” means any vessel that is not a U.S.-flag vessel.

“Ocean transportation” means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

“Subcontractor” means a supplier, materialman, distributor, or vendor at any level below the prime contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

“Supplies” means all property, except land and interests in land, that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by sea.

(i) An item is clearly identifiable for eventual use by the DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

(ii) “Supplies” includes (but is not limited to) public works; buildings and facilities; ships; floating equipment and vessels of every character, type, and description, with parts, subassemblies, accessories, and equipment; machine tools; material; equipment; stores of all kinds; end items; construction materials; and components of the foregoing.

“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)(1) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if the supplies being transported are—

(i) Noncommercial items; or

(ii) Commercial items that—

(A) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);

(B) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations (Note: This contract requires shipment of commercial items in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations); or

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(C) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

(c) The Contractor and its subcontractors may request that the Contracting Officer authorize shipment in foreign-flag vessels, or designate available U.S.-flag vessels, if the Contractor or a subcontractor believes that—

- (1) U.S.-flag vessels are not available for timely shipment;
- (2) The freight charges are inordinately excessive or unreasonable; or
- (3) Freight charges are higher than charges to private persons for transportation of like goods.

(d) The Contractor must submit any request for use of foreign-flag vessels in writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its delivery schedules. The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, but the Contracting Officer's failure to grant approvals to meet the shipper's sailing date will not of itself constitute a compensable delay under this or any other clause of this contract. Requests shall contain at a minimum—

- (1) Type, weight, and cube of cargo;
- (2) Required shipping date;
- (3) Special handling and discharge requirements;
- (4) Loading and discharge points;
- (5) Name of shipper and consignee;
- (6) Prime contract number; and
- (7) A documented description of efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.

(e) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and the Maritime Administration, Office of Cargo Preference, U.S. Department of Transportation, 400 Seventh Street SW, Washington, DC 20590, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information:

- (1) Prime contract number;
- (2) Name of vessel;
- (3) Vessel flag of registry;
- (4) Date of loading;

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- (5) Port of loading;
- (6) Port of final discharge;
- (7) Description of commodity;
- (8) Gross weight in pounds and cubic feet if available;
- (9) Total ocean freight in U.S. dollars; and
- (10) Name of steamship company.

(f) If this contract exceeds the simplified acquisition threshold, the Contractor shall provide with its final invoice under this contract a representation that to the best of its knowledge and belief—

- (1) No ocean transportation was used in the performance of this contract;
- (2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;
- (3) Ocean transportation was used, and the Contractor had the written consent of the Contracting Officer for all foreign-flag ocean transportation; or
- (4) Ocean transportation was used and some or all of the shipments were made on foreign-flag vessels without the written consent of the Contracting Officer. The Contractor shall describe these shipments in the following format:

	ITEM DESCRIPTION	CONTRACT LINE ITEMS	QUANTITY
TOTAL			

(g) If this contract exceeds the simplified acquisition threshold and the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the Prompt Payment clause of this contract. In the event there has been unauthorized use of foreign-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

(h) In the award of subcontracts for the types of supplies described in paragraph (b)(2) of this clause, including subcontracts for commercial items, the Contractor shall flow down the requirements of this clause as follows:

- (1) The Contractor shall insert the substance of this clause, including this paragraph (h), in subcontracts that exceed the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

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(2) The Contractor shall insert the substance of paragraphs (a) through (e) of this clause, and this paragraph (h), in subcontracts that are at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

(End of clause)

Alternate II. As prescribed in [247.574](#)(b) and (b)(3), use the following clause, which uses a different paragraph (b) than the basic clause:

TRANSPORTATION OF SUPPLIES BY SEA—ALTERNATE II (APR 2014)

(a) *Definitions.* As used in this clause—

“Components” means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the Contractor or any subcontractor.

“Department of Defense” (DoD) means the Army, Navy, Air Force, Marine Corps, and defense agencies.

“Foreign-flag vessel” means any vessel that is not a U.S.-flag vessel.

“Ocean transportation” means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

“Subcontractor” means a supplier, materialman, distributor, or vendor at any level below the prime contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

“Supplies” means all property, except land and interests in land, that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by sea.

(i) An item is clearly identifiable for eventual use by the DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

(ii) “Supplies” includes (but is not limited to) public works; buildings and facilities; ships; floating equipment and vessels of every character, type, and description, with parts, subassemblies, accessories, and equipment; machine tools; material; equipment; stores of all kinds; end items; construction materials; and components of the foregoing.

“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)(1) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

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(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if the supplies being transported are—

- (i) Noncommercial items; or
- (ii) Commercial items that—

(A) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);

(B) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(C) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643 (Note: This contract requires transportation of commissary or exchange cargoes outside of the Defense Transportation System in accordance with 10 U.S.C. 2643).

(c) The Contractor and its subcontractors may request that the Contracting Officer authorize shipment in foreign-flag vessels, or designate available U.S.-flag vessels, if the Contractor or a subcontractor believes that—

- (1) U.S.-flag vessels are not available for timely shipment;
- (2) The freight charges are inordinately excessive or unreasonable; or
- (3) Freight charges are higher than charges to private persons for transportation of like goods.

(d) The Contractor must submit any request for use of foreign-flag vessels in writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its delivery schedules. The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, but the Contracting Officer's failure to grant approvals to meet the shipper's sailing date will not of itself constitute a compensable delay under this or any other clause of this contract. Requests shall contain at a minimum—

- (1) Type, weight, and cube of cargo;
- (2) Required shipping date;
- (3) Special handling and discharge requirements;
- (4) Loading and discharge points;
- (5) Name of shipper and consignee;
- (6) Prime contract number; and
- (7) A documented description of efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-

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flag carriers contacted. Copies of telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.

(e) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and the Maritime Administration, Office of Cargo Preference, U.S. Department of Transportation, 400 Seventh Street SW, Washington, DC 20590, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information:

- (1) Prime contract number;
- (2) Name of vessel;
- (3) Vessel flag of registry;
- (4) Date of loading;
- (5) Port of loading;
- (6) Port of final discharge;
- (7) Description of commodity;
- (8) Gross weight in pounds and cubic feet if available;
- (9) Total ocean freight in U.S. dollars; and
- (10) Name of steamship company.

(f) If this contract exceeds the simplified acquisition threshold, the Contractor shall provide with its final invoice under this contract a representation that to the best of its knowledge and belief—

- (1) No ocean transportation was used in the performance of this contract;
- (2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;
- (3) Ocean transportation was used, and the Contractor had the written consent of the Contracting Officer for all foreign-flag ocean transportation; or
- (4) Ocean transportation was used and some or all of the shipments were made on foreign-flag vessels without the written consent of the Contracting Officer. The Contractor shall describe these shipments in the following format:

	ITEM DESCRIPTION	CONTRACT LINE ITEMS	QUANTITY
TOTAL			

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(g) If this contract exceeds the simplified acquisition threshold and the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the Prompt Payment clause of this contract. In the event there has been unauthorized use of foreign-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

(h) In the award of subcontracts for the types of supplies described in paragraph (b)(2) of this clause, including subcontracts for commercial items, the Contractor shall flow down the requirements of this clause as follows:

(1) The Contractor shall insert the substance of this clause, including this paragraph (h), in subcontracts that exceed the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

(2) The Contractor shall insert the substance of paragraphs (a) through (e) of this clause, and this paragraph (h), in subcontracts that are at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

(End of clause)

252.247-7024 Notification of Transportation of Supplies by Sea.

As prescribed in [247.574\(c\)](#), use the following clause:

NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA (MAR 2000)

(a) The Contractor has indicated by the response to the solicitation provision, Representation of Extent of Transportation by Sea, that it did not anticipate transporting by sea any supplies. If, however, after the award of this contract, the Contractor learns that supplies, as defined in the Transportation of Supplies by Sea clause of this contract, will be transported by sea, the Contractor—

(1) Shall notify the Contracting Officer of that fact; and

(2) Hereby agrees to comply with all the terms and conditions of the Transportation of Supplies by Sea clause of this contract.

(b) The Contractor shall include this clause, including this paragraph (b), revised as necessary to reflect the relationship of the contracting parties—

(1) In all subcontracts under this contract, if this contract is a construction contract; or

(2) If this contract is not a construction contract, in all subcontracts under this contract that are for—

(i) Noncommercial items; or

(ii) Commercial items that—

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(A) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);

(B) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(C) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

(End of clause)

252.247-7025 Reflagging or Repair Work.

As prescribed in [247.574\(d\)](#), use the following clause:

REFLAGGING OR REPAIR WORK (JUN 2005)

(a) *Definition.* “Reflagging or repair work,” as used in this clause, means work performed on a vessel—

(1) To enable the vessel to meet applicable standards to become a vessel of the United States; or

(2) To convert the vessel to a more useful military configuration.

(b) *Requirement.* Unless the Secretary of Defense waives this requirement, reflagging or repair work shall be performed in the United States or its outlying areas, if the reflagging or repair work is performed—

(1) On a vessel for which the Contractor submitted an offer in response to the solicitation for this contract; and

(2) Prior to acceptance of the vessel by the Government.

(End of clause)

252.247-7026 Evaluation Preference for Use of Domestic Shipyards — Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade.

As prescribed in [247.574\(e\)](#), use the following provision:

EVALUATION PREFERENCE FOR USE OF DOMESTIC SHIPYARDS — APPLICABLE TO ACQUISITION OF CARRIAGE BY VESSEL FOR DOD CARGO IN THE COASTWISE OR NONCONTIGUOUS TRADE (NOV 2008)

(a) *Definitions.* As used in this provision—

“Covered vessel” means a vessel—

(1) Owned, operated, or controlled by the offeror; and

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(2) Qualified to engage in the carriage of cargo in the coastwise or noncontiguous trade under Section 27 of the Merchant Marine Act, 1920 (46 U.S.C. 12101, 12132, and 55102), commonly referred to as “Jones Act”; 46 U.S.C. 12102, 12112, and 12119; and Section 2 of the Shipping Act, 1916 (46 U.S.C. 50501).

“Foreign shipyard” means a shipyard that is not a U.S. shipyard.

“Overhaul, repair, and maintenance work” means work requiring a shipyard period greater than or equal to 5 calendar days.

“Shipyard” means a facility capable of performing overhaul, repair, and maintenance work on covered vessels.

“U.S. shipyard” means a shipyard that is located in any State of the United States or in Guam.

(b) This solicitation includes an evaluation criterion that considers the extent to which the offeror has had overhaul, repair, and maintenance work for covered vessels performed in U.S. shipyards.

(c) The offeror shall provide the following information with its offer, addressing all covered vessels for which overhaul, repair, and maintenance work has been performed during the period covering the current calendar year, up to the date of proposal submission, and the preceding four calendar years:

(1) Name of vessel.

(2) Description and cost of qualifying shipyard work performed in U.S. shipyards.

(3) Description and cost of qualifying shipyard work performed in foreign shipyards and whether—

(i) Such work was performed as emergency repairs in foreign shipyards due to accident, emergency, Act of God, or an infirmity to the vessel, and safety considerations warranted taking the vessel to a foreign shipyard; or

(ii) Such work was paid for or reimbursed by the U.S. Government.

(4) Names of shipyards that performed the work.

(5) Inclusive dates of work performed.

(d) Offerors are responsible for submitting accurate information. The Contracting Officer—

(1) Will use the information to evaluate offers in accordance with the criteria specified in the solicitation; and

(2) Reserves the right to request supporting documentation if determined necessary in the proposal evaluation process.

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(e) The Department of Defense will provide the information submitted in response to this provision to the congressional defense committees, as required by Section 1017 of Pub. L. 109-364.

(End of provision)

252.247-7027 Riding Gang Member Requirements.

As prescribed in [247.574](#)(f), use the following clause:

RIDING GANG MEMBER REQUIREMENTS (OCT 2011)

(a) *Definition.* “Riding gang member,” as used in this clause, has the same definition as “riding gang member” in title 46 U.S.C. 2101.

(b) *Requirements relating to riding gang members.* Notwithstanding 46 U.S.C. 8106, the Contractor shall ensure each riding gang member holds a valid U.S. Merchant Mariner's Document issued under 46 U.S.C. chapter 73, or a transportation security card issued under section 70105 of such title.

(c) *Exemption.*

(1) An individual is exempt from the requirements of paragraph (b) of this clause and shall not be treated as a riding gang member for the purposes of section 8106 of title 46, if that individual is on a vessel for purposes other than engaging in the operation or maintenance of the vessel and is—

(i) One of the personnel who accompanies, supervises, guards, or maintains unit equipment aboard a ship, commonly referred to as supercargo personnel;

(ii) One of the force protection personnel of the vessel;

(iii) A specialized repair technician; or

(iv) An individual who is otherwise required by the Secretary of Defense or designee to be aboard the vessel.

(2) Any individual who is exempt under paragraph (c)(1) of this clause must pass a DoD background check before going aboard the vessel.

(i) The Contractor shall—

(A) Render all necessary assistance to U.S. Armed Forces personnel with respect to the identification and screening of exempted individuals. This will require, at a minimum, the Contractor to submit the name and other biographical information necessary to the Government official specified in the contract for the purposes of conducting a background check; and

(B) Deny access or immediately remove any individual(s) from the vessel deemed unsuitable for any reason by Military Sealift Command Force Protection

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personnel. The Contractor agrees to replace any such individual promptly and require such replacements to fully comply with all screening requirements.

(ii) The head of the contracting activity may waive this requirement if the individual possesses a valid U.S. Merchant Mariner's Document issued under 46 U.S.C., chapter 73, or a transportation security card issued under section 70105 of such title.

(3) An individual exempted under paragraph (c)(1) of this clause is not treated as a riding gang member and shall not be counted as an individual in addition to the crew for the purposes of 46 U.S.C. 3304.

(End of clause)

252.247-7028 Application for U.S. Government Shipping Documentation/Instructions.

As prescribed in [247.207](#), use the following clause:

APPLICATION FOR U.S. GOVERNMENT SHIPPING DOCUMENTATION/INSTRUCTIONS (JUN 2012)

(a) Except as provided in paragraph (b) of this clause, the Contractor shall request bills of lading by submitting a DD Form 1659, Application for U.S. Government Shipping Documentation/Instructions, to the—

- (1) Transportation Officer, if named in the contract schedule; or
- (2) Contract administration office.

(b) If an automated system is available for shipment requests, use service/agency systems (e.g., Navy's Global Freight Management—Electronic Transportation Acquisition (GFM-ETA) and Financial Air Clearance Transportation System (FACTS) Shipment Processing Module, Air Force's Cargo Movement Operations System, DCMA's Shipment Instruction Request (SIR) E-tool, and DLA's Distribution Standard System Vendor Shipment Module in lieu of DD Form 1659.

(End of clause)