

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

(Revised April 26, 2002)

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

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

BUY AMERICAN ACT--BALANCE OF PAYMENTS PROGRAM CERTIFICATE (SEP 1999)

(a) *Definitions.* “Domestic end product,” “qualifying country,” “qualifying country end product,” and “nonqualifying country end product” have the meanings given in the Buy American Act and Balance of Payments Program clause of this solicitation.

(b) *Evaluation.* Offers will be evaluated by giving preference to domestic end products and qualifying country end products over nonqualifying country end products.

(c) *Certifications.*

(1) 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) 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:

Qualifying Country End Products

Line Item Number

Country of Origin

(List only qualifying country end products.)

(3) The Offeror certifies that the following end products are nonqualifying country end products:

Nonqualifying Country End Products

Line Item Number

Country of Origin (If known)

(End of provision)

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

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

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

BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM (MAR 1998)

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

(1) “Components” means those articles, materials, and supplies directly incorporated into end products.

(2) “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 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 shall include transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate may be issued). A component shall be 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—

(A) Determined to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality; or

(B) That the Secretary concerned determines would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

(3) “End product” means those articles, materials, and supplies to be acquired for public use under the contract. For this contract, the end products are the line items to be delivered to the Government (including supplies to be acquired by the Government for public use in connection with service contracts, but excluding installation and other services to be performed after delivery).

(4) “Nonqualifying country end product” means an end product that is neither a domestic end product nor a qualifying country end product.

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

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

(7) “Qualifying country end product” means—

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

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

(ii) An end product manufactured in a qualifying country if the cost of the components mined, produced, or manufactured in the qualifying country and its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components.

(b) This clause implements the Buy American Act (41 U.S.C. Section 10a-d) in a manner that will encourage a favorable international balance of payments by providing a preference to domestic end products over other end products, except for end products which are qualifying country end products.

(c) The Contractor agrees that it will deliver only domestic end products unless, in its offer, it specified delivery of other end products in the Buy American Act—Balance of Payments Program Certificate provision of the solicitation. An offer certifying that a qualifying country end product will be supplied requires the Contractor to deliver a qualifying country end product or a domestic end product.

(d) The offered price of qualifying country end products should not include custom fees or duty. The offered price of nonqualifying country end products, and products manufactured in the United States that contain nonqualifying country components, must include all applicable duty. The award price will not include duty for end products or components that are to be accorded duty-free entry. Generally, when the Buy American Act is applicable, each nonqualifying country offer is adjusted for the purpose of evaluation by adding 50 percent of the offer, inclusive of duty.

(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 1991)

Subject to the restrictions in section 225.872 of the Defense FAR Supplement, the Contractor shall not preclude qualifying country sources and U.S. sources from competing for subcontracts under this contract.

(End of clause)

252.225-7003 Information for Duty-Free Entry Evaluation.

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

INFORMATION FOR DUTY-FREE ENTRY EVALUATION (MAR 1998)

(a) Does the offeror propose to furnish—

(1) A domestic end product with nonqualifying country components for which the offeror requests duty-free entry; or

(2) A foreign end product consisting of end items, components, or material of foreign origin other than those for which duty-free entry is to be accorded pursuant to the Duty-Free Entry--Qualifying Country Supplies (End Products and Components) clause or, if applicable, the Duty-Free Entry--Eligible End Products clause of this solicitation?

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

Yes () No ()

(b) If the answer in paragraph (a) is yes, answer the following questions:

(1) Are such foreign supplies now in the United States?

Yes () No ()

(2) Has the duty on such foreign supplies been paid?

Yes () No ()

(3) If the answer to paragraph (b)(2) is no, what amount is included in the offer to cover such duty? \$ _____

(c) If the duty has not been paid, the Government may elect to make award on a duty-free basis. If so, the offered price will be reduced in the contract award by the amount specified in paragraph (b)(3). The Offeror agrees to identify, at the request of the Contracting Officer, the foreign supplies which are subject to duty-free entry.

(End of provision)

ALTERNATE I (MAR 1998).

As prescribed in 225.1101(4), substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) Does the offeror propose to furnish a U.S. made end product with nonqualifying country components for which the offeror requests duty-free entry?

Yes () No ()

252.225-7004 Reserved.

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 (APR 2002)

(a) 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.

(b) 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—

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

(1) May be expressed either as dollar amounts or as percentages of the total amount of the request for payment;

(2) Should be based on reasonable estimates; and

(3) Shall state the full amount of the payment requested, subdivided into the following categories:

(i) U.S. products--expenditures for material and equipment manufactured or produced in the United States, including end products, components, or construction material, but excluding transportation;

(ii) U.S. services--expenditures for services performed in the United States, including all charges for overhead, other indirect costs, and profit under construction or service contracts;

(iii) Transportation on U.S. carriers--expenditures for transportation furnished by U.S. flag, ocean, surface, and air carriers; and

(iv) Expenditures not identified under paragraphs (b)(3)(i) through (iii) of this clause.

(c) 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 Buy American Act--Trade Agreements--Balance of Payments Program Certificate.

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

BUY AMERICAN ACT--TRADE AGREEMENTS--BALANCE OF PAYMENTS PROGRAM CERTIFICATE (MAR 1998)

(a) *Definitions.* “Caribbean Basin country end product,” “designated country end product,” “domestic end product,” “NAFTA country end product,” “nondesignated country end product,” “qualifying country end product,” and “U.S. made end product” have the meanings given in the Buy American Act--Trade Agreements--Balance of Payments Program clause of this solicitation.

(b) *Evaluation.* Offers will be evaluated in accordance with the policies and procedures of Part 225 of the Defense Federal Acquisition Regulation Supplement. Offers of foreign end products that are not U.S. made, qualifying country, designated country, Caribbean Basin country, or NAFTA country end products will not be considered for award, unless the Contracting Officer determines that there are no offers of such end products; or the offers of such end products are insufficient to fulfill the requirements; or a national interest exception to the Trade Agreements Act is granted.

(c) *Certifications.*

(1) The Offeror certifies that—

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

(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 must identify all end products that are not domestic end products.

(i) The Offeror certifies that the following supplies qualify as “U.S. made end products” but do not meet the definition of “domestic end product”:

(insert line item number)

(ii) The Offeror certifies that the following supplies are qualifying country end products:

(insert line item number)

(insert country of origin)

(iii) The Offeror certifies that the following supplies qualify as designated country end products:

(insert line item number)

(insert country of origin)

(iv) The Offeror certifies that the following supplies qualify as Caribbean Basin country end products:

(insert line item number)

(insert country of origin)

(v) The Offeror certifies that the following supplies qualify as NAFTA country end products:

(insert line item number)

(insert country of origin)

(vi) The following supplies are other nondesignated country end products.

(insert line item number)

(insert country of origin)

(End of provision)

252.225-7007 Buy American Act--Trade Agreements--Balance of Payments Program.

As prescribed in 252.1101(6), use the following clause:

BUY AMERICAN ACT--TRADE AGREEMENTS--BALANCE OF PAYMENTS PROGRAM (SEP 2001)

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

(1) “Caribbean Basin country” means—

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

| | | |
|------------------------|----------------------|-----------------------------------|
| Antigua and Barbuda | El Salvador | Nicaragua |
| Aruba | Grenada | St. Kitts-Nevis |
| Bahamas | Guatemala | St. Lucia |
| Barbados | Guyana | St. Vincent and the Grenadines |
| Belize | Haiti | Trinidad and Tobago |
| British Virgin Islands | Jamaica | |
| Costa Rica | Montserrat | |
| Dominica | Netherlands Antilles | |

(2) “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 or instrumentality, 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 so 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.

(3) “Components” means those articles, materials, and supplies directly incorporated into end products.

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

(4) “Designated country” means—

| | | |
|--------------------------|---------------|-----------------------|
| Aruba | Germany | Netherlands |
| Austria | Greece | Niger |
| Bangladesh | Guinea | Norway |
| Belgium | Guinea-Bissau | Portugal |
| Benin | Haiti | Republic of Korea |
| Bhutan | Hong Kong | Rwanda |
| Botswana | Iceland | Sao Tome and Principe |
| Burkina Faso | Ireland | Sierra Leone |
| Burundi | Israel | Singapore |
| Canada | Italy | Somalia |
| Cape Verde | Japan | Spain |
| Central African Republic | Kiribati | Sweden |
| Chad | Lesotho | Switzerland |
| Comoros | Liechtenstein | Tanzania U.R. |
| Denmark | Luxembourg | Togo |
| Djibouti | Malawi | Tuvalu |
| Equatorial Guinea | Maldives | Uganda |
| Finland | Mali | United Kingdom |
| France | Mozambique | Vanuatu |
| Gambia | Nepal | Western Samoa |
| | | Yemen |

(5) “Designated country end product” means an article that—

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

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a designated 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 so 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.

(6) “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 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 shall include transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certification may be issued). A component shall be 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—

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

(A) Determined to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality; or

(B) That the Secretary concerned determines would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

(7) “End product” means those articles, materials, and supplies to be acquired for public use under the contract. For this contract, the end products are the line items to be delivered to the Government (including supplies to be acquired by the Government for public use in connection with service contracts, but excluding installation and other services to be performed after delivery).

(8) “NAFTA country end product” means an article that—

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

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA 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 so 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.

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

(10) “North American Free Trade Agreement (NAFTA) country” means Canada or Mexico.

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

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

(13) “Qualifying country end product” means—

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

(ii) An end product manufactured in a qualifying country if the cost of the components mined, produced, or manufactured in the qualifying country and its components mined, produced or manufactured in the United States exceeds 50 percent of the cost of all its components.

(14) “United States” means the United States, its possessions, Puerto Rico, and any other place subject to its jurisdiction, but does not include leased bases or trust territories.

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

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

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

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been 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 so transformed.

(b) Unless otherwise specified, the Trade Agreements Act of 1979 (19 U.S.C. 2501 et seq.), the North American Free Trade Agreement Implementation Act of 1993 (19 U.S.C. 3301 note), and the Caribbean Basin Initiative apply to all items in the Schedule.

(c)(1) The Contractor agrees to deliver under this contract only domestic end products unless, in its offer, it specified delivery of U.S. made, qualifying country, designated country, Caribbean Basin country, NAFTA country, or other nondesignated country end products in the Buy American Act--Trade Agreements--Balance of Payments Program Certificate provision of the solicitation.

(2) The Contractor may not supply a nondesignated country end product unless—

(i) It is a qualifying country end product, a Caribbean Basin country end product, or a NAFTA country end product;

(ii) The Contracting Officer has determined that offers of U.S. made end products or qualifying, designated, NAFTA, or Caribbean Basin country end products from responsive, responsible offerors are either not received or are insufficient to fill the Government’s requirements; or

(iii) A national interest waiver has been granted under section 302 of the Trade Agreements Act of 1979.

(d) The offered price of qualifying country end products and the offered price of designated country end products, NAFTA country end products, and Caribbean Basin country end products, for line items subject to the Trade Agreements Act or the North American Free Trade Agreement Implementation Act, should not include custom fees or duty. The offered price of end products listed in paragraph (c)(2)(vi) of the Buy American Act--Trade Agreements--Balance of Payments Program Certificate provision of the solicitation, or the offered price of U.S. made end products that contain nonqualifying country components, must include all applicable duty. The award price will not include duty for end products or components that are to be accorded duty-free entry. Generally, each offer of a U.S. made end product that does not meet the definition of “domestic end product” is adjusted for the purpose of evaluation by adding 50 percent of the offered price, inclusive of duty.

(e) The HTSUS is available on the Internet at <http://www.customs.ustreas.gov/impexpo/impexpo.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:

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

(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)

252.225-7008 Supplies to be Accorded Duty-Free Entry.

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

SUPPLIES TO BE ACCORDED DUTY-FREE ENTRY (MAR 1998)

In accordance with paragraph (b) of the Duty-Free Entry clause of this contract, in addition to duty-free entry for all qualifying country supplies (end products and components) and all eligible end products subject to applicable trade agreements (if this contract contains the Buy American Act--Trade Agreements--Balance of Payments Program clause or the Buy American Act--North American Free Trade Agreement Implementation Act--Balance of Payments Program clause), the following foreign end products that are neither qualifying country end products nor eligible end products under a trade agreement, and the following nonqualifying country components, are accorded duty-free entry:

(End of clause)

252.225-7009 Duty-Free Entry--Qualifying Country Supplies (End Products and Components).

As prescribed in 225.1101(8), use the following clause:

DUTY-FREE ENTRY--QUALIFYING COUNTRY SUPPLIES (END PRODUCTS AND COMPONENTS (AUG 2000))

(a) *Definitions.* “Qualifying country” and “qualifying country end products” have the meaning given in the Buy American Act and Balance of Payments Program clause, Buy American Act--Trade Agreements--Balance of Payments Program clause, Buy American Act--North American Free Trade Agreement Implementation Act--Balance of Payments Program clause, or Trade Agreements clause of this contract.

(b) The requirements of this clause apply to this contract and subcontracts, including purchase orders, that involve supplies to be accorded duty-free entry whether placed—

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

- (1) Directly with a foreign concern as a prime contract; or
 - (2) As a subcontract or purchase order under a contract with a domestic concern.
- (c) Except as otherwise approved by the Contracting Officer, or unless supplies were imported into the United States before the date of this contract or, in the case of supplies imported by a first or lower tier subcontractor, before the date of the subcontract, no amount is or will be included in the contract price for duty for—
- (1) End items that are qualifying country end products; or
 - (2) Components (including, without limitation, raw materials and intermediate assemblies) produced or made in qualifying countries, that are to be incorporated in the end items to be delivered under this contract, provided that the end items are manufactured in the United States or in a qualifying country.
- (d) The Contractor warrants that—
- (1) All qualifying country supplies, for which duty-free entry is to be claimed, are intended to be delivered to the Government or incorporated in the end items to be delivered under this contract; and
 - (2) The Contractor will pay duty to the extent that such supplies, or any portion thereof (if not scrap or salvage) are diverted to nongovernmental use, other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer.
- (e) The Government agrees to execute duty-free entry certificates and to afford such assistance as appropriate to obtain the duty-free entry of qualifying country supplies for which the shipping documents bear the notation specified in paragraph (f) of this clause, except as the Contractor may otherwise agree.
- (f) All shipping documents submitted to Customs, covering foreign end products or supplies for which duty-free entry certificates are to be issued under this clause, 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 delivery order if applicable;
 - (ii) Number of the subcontract/purchase order for foreign supplies if applicable;
 - (iii) Identification of carrier;

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

(iv)(A) For direct shipments to a U.S. military installation, the notation: UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE Duty-Free Entry to be claimed pursuant to Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States. Upon arrival of shipment at the appropriate port of entry, District Director of Customs, please release shipment under 19 CFR part 142 and notify Commander, Defense Contract Management (DCM) New York, ATTN: Customs Team, DCMDN-GNIC, 207 New York Avenue, Building 120, Staten Island, New York, 10305-5013, for execution of Customs Forms 7501, 7501A, or 7506 and any required duty-free entry certificates.

(B) In cases where 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 insert the name and address of the contractor, agent or broker who will notify Commander, DCM New York, for execution of the duty-free certificate.

(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; and

(vii) Activity Address Number of the contract administration office actually administering the prime contract, e.g., for DCM Dayton, S3605A.

(g) *Preparation of customs forms.*

(1) Except for shipments consigned to a military installation, the Contractor shall prepare, or authorize an agent to prepare, any customs forms required for the entry of foreign supplies in connection with DoD contracts into the United States, its possessions, or Puerto Rico. The completed customs forms shall be submitted to the District Director of Customs with a copy to DCM New York for execution of any required duty-free entry certificates. Shipments consigned directly to a military installation will be released in accordance with 10.101 and 10.102 of the U.S. Custom 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.

(h) The Contractor agrees—

(1) To prepare (if this contract is placed directly with a foreign supplier), or to instruct the foreign supplier to prepare, a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry;

(2) To consign the shipment as specified in paragraph (f) of this clause; and

(3) To mark the exterior of all packages as follows:

(i) "UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE;"
and

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

(ii) The activity address number of the contract administration office actually administering the prime contract.

(i) The Contractor agrees to notify the Contracting Officer administering the prime contract in writing of any purchase under the contract of qualifying country supplies to be accorded duty-free entry that are to be imported into the United States for delivery to the Government or for incorporation in end items to be delivered to the Government. The notice shall be furnished to the contract administration office immediately upon award to the qualifying country supplier. The notice shall contain—

- (1) Prime contractor's name, address, and CAGE code;
- (2) Prime contract number, and delivery order number if applicable;
- (3) Total dollar value of the prime contract or delivery order;
- (4) Expiration date of the prime contract or delivery order;
- (5) Foreign supplier's name and address;
- (6) Number of the subcontract/purchase order for foreign supplies;
- (7) Total dollar value of the subcontract for foreign supplies;
- (8) Expiration date of the subcontract for foreign supplies;
- (9) List of items purchased;
- (10) An agreement by the Contractor that duty shall be paid by the Contractor to the extent that such supplies, or any portion (if not scrap or salvage), are diverted to nongovernmental use other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer;
- (11) The qualifying country; and
- (12) The scheduled delivery date(s).

(j) This clause does not apply to purchases of qualifying country supplies in connection with this contract if—

(1) The qualifying country 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.

(k) The Contractor agrees to insert the substance of this clause, including this paragraph (k) in all subcontracts for supplies. Each subcontract shall require the subcontractor to identify this contract by including its contract number on any shipping

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

documents submitted to Customs covering supplies for which duty-free entry is to be claimed pursuant to this clause. The Contractor also agrees that the name and address of the Contracting Officer administering the prime contract (name and address of the contract administration office cognizant of the prime contract), and its activity address number (Appendix G of the Defense FAR Supplement), and the information required by paragraphs (i)(1), (2), and (3) of this clause will be included in applicable subcontracts.

(End of clause)

252.225-7010 Duty-Free Entry--Additional Provisions.

As prescribed in 252.1101(9), use the following clause:

DUTY-FREE ENTRY--ADDITIONAL PROVISIONS (AUG 2000)

(a) The requirements of this clause supplement the Duty-Free Entry clause of this contract. Both of these clauses apply to this contract and subcontracts, including purchase orders, that involve supplies to be accorded duty-free entry whether placed—

- (1) Directly with a foreign concern as a prime contract; or
- (2) As a subcontractor purchase order under a contract with a domestic concern.

(b) The Contractor shall send the notification required by paragraph (b)(1) of the Duty-Free Entry clause of this contract to the Contracting Officer administering this contract.

(c) In addition to any data required by paragraph (b)(1) of the Duty-Free Entry clause, the Contractor shall furnish the following for all foreign supplies to be imported pursuant to paragraph (a) or (b) of the Duty-Free Entry clause. The Contractor shall furnish this information to the Contracting Officer administering the prime contract immediately upon award of any contract or subcontract involving supplies to be accorded duty-free entry.

- (1) Prime contractor's name, address, and CAGE code;
- (2) Prime contract number plus delivery order number, if applicable;
- (3) Total dollar value of the prime contract or delivery order;
- (4) Expiration date of the prime contract or delivery order;
- (5) Foreign supplier's name and address;
- (6) Number of the subcontract/purchase order for foreign supplies;
- (7) Total dollar value of the subcontract for foreign supplies;
- (8) Expiration date of the subcontract for foreign supplies;
- (9) List of items purchased; and

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

(10) An agreement by the Contractor that duty shall be paid by the Contractor to the extent that such supplies, or any portion (if not scrap or salvage), are diverted to nongovernmental use other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer.

(d) The Contractor agrees to incorporate the substance of this clause, including this paragraph (d), in any subcontract (including purchase orders) in accordance with paragraph (i) of the Duty-Free Entry clause of this contract. The Contractor agrees that the name and address of the Contracting Officer administering the prime contract (name and address of the contract administration office cognizant of the prime contract and its activity address number (Appendix G of the Defense FAR Supplement)) and the information required by paragraphs (c)(1), (2), and (3) of this clause will be included in applicable subcontracts.

(e) To properly complete the shipping document instructions as required by paragraph (f) of the Duty-Free Entry clause, the Contractor shall insert Defense Contract Management (DCM) New York, ATTN: Customs Team, DCMDN-GNIC, 207 New York Avenue, Building 120, Staten Island, New York, 10305-5013, as the cognizant contract administration office (for paragraph (f) only) in those cases when the shipment is consigned directly to a military installation. When the shipment will be consigned to a location other than a military installation, e.g., a domestic contractor's plant, change the shipping document notation required by paragraph (f) of the clause to insert the name and address of the Contractor, agent or broker that will prepare the customs documentation for execution of the Duty-Free Entry certificates. In either case, the shipping documents will contain the following items in addition to those required by paragraph (f) of the Duty-Free Entry clause:

- (1) Delivery order number on the Government prime contract, if applicable;
- (2) Number of the subcontract/purchase order for foreign supplies, if applicable;
- (3) Activity address number of the contract administration office actually administering the prime contract, e.g., for DCM Dayton, S3605A.

(f) Except for shipments consigned to a military installation, the Contractor shall prepare, or authorize an agent to prepare, any customs forms required for the entry into the United States, its possessions, or Puerto Rico of foreign supplies in connection with DoD contracts. The Contractor shall submit the completed customs forms to the District Director of Customs with a copy to DCM New York for execution of any required duty-free entry certificates. For shipments containing both supplies which are to be accorded duty-free entry and supplies which are not, the Contractor shall identify on the customs forms those items which are eligible for duty-free entry under the provisions of the Duty-Free Entry clause. Shipments consigned directly to a military installation will be released in accordance with Section 10.101 and 10.102 of the U.S. Customs regulations.

(g) The Contractor shall ensure that all exterior containers are marked in accordance with paragraph (g) of the Duty-Free Entry clause, including the following additional data—

- (1) "UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE;" and

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

(2) The activity address number for the contract administration office actually administering the prime contract.

(End of clause)

252.225-7011 Restriction on Acquisition of Supercomputers.

As prescribed in 225.7023-3, use the following clause:

RESTRICTION ON ACQUISITION OF SUPERCOMPUTERS (JUL 1995)

The Contractor agrees that any supercomputers furnished under this contract have been manufactured in the United States.

(End of clause)

252.225-7012 Preference for Certain Domestic Commodities.

As prescribed in 225.7002-3(a), use the following clause:

PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (APR 2002)

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

(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, its possessions, or Puerto Rico:

(1) Food.

(2) Clothing.

(3) Tents, tarpaulins, or covers.

(4) Cotton and other natural fiber products.

(5) Woven silk or woven silk blends.

(6) Spun silk yarn for cartridge cloth.

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

(8) Canvas products.

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

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

(10) Any item of individual equipment (Federal Supply Class 8465) manufactured from or containing fibers, yarns, fabrics, or materials listed in this paragraph (b).

(c) This clause does not apply—

(1) To items listed in section 25.104(a) of the Federal Acquisition Regulation (FAR), or other items for which the Government has determined that a satisfactory quality and sufficient quantity cannot be acquired as and when needed at U.S. market prices;

(2) To end products incidentally incorporating cotton, other natural fibers, or wool, 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 foods that have been manufactured or processed in the United States, its possessions, or Puerto Rico, regardless of where the foods (and any component if applicable) were grown or produced;

(4) To chemical warfare protective clothing produced in the countries listed in subsection 225.872-1 of the Defense FAR Supplement; or

(5) 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 yarns manufactured in the Netherlands.

(End of clause)

252.225-7013 Reserved.

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

252.225-7014 Preference for Domestic Specialty Metals.

As prescribed in 225.7002-3(b), use the following clause:

PREFERENCE FOR DOMESTIC SPECIALTY METALS (MAR 1998)

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

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

(2) “Specialty metals” means—

(i) Steel—

(A) Where the maximum alloy content exceeds one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or

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

(ii) Metal alloys consisting of nickel, iron-nickel, and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10 percent;

(iii) Titanium and titanium alloys; or

(iv) Zirconium and zirconium base alloys.

(b) The Contractor agrees that any specialty metals incorporated in articles delivered under this contract will be melted in the United States, its possessions, or Puerto Rico.

(c) This clause does not apply to the extent that—

(1) The Secretary or designee determines that a satisfactory quality and sufficient quantity of such articles cannot be acquired when needed at U.S. market prices;

(2) The specialty metal is melted in a qualifying country or is incorporated in an article manufactured in a qualifying country;

(3) The acquisition is necessary to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources to offset sales made by the U.S. Government or U.S. firms under approved programs; or

(4) The specialty metal is purchased by a subcontractor at any tier.

(End of clause)

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

ALTERNATE I (MAR 1998)

As prescribed in 225.7002-3(b), substitute the following paragraph (c) for paragraph (c) of the basic clause, and add the following paragraph (d) to the basic clause:

(c) This clause does not apply to the extent that—

(1) The Secretary or designee determines that a satisfactory quality and sufficient quantity of such articles cannot be acquired when needed at U.S. market prices;

(2) The specialty metal is melted in a qualifying country or is incorporated in an article manufactured in a qualifying country; or

(3) The acquisition is necessary to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources to offset sales made by the U.S. Government or U.S. firms under approved programs.

(d) The Contractor agrees to include the terms of this clause, including this paragraph (d), in every subcontract or purchase order awarded under this contract unless the item being purchased contains no specialty metals.

252.225-7015 Preference for Domestic Hand or Measuring Tools.

As prescribed in 225.7002-3(c), use the following clause:

PREFERENCE FOR DOMESTIC HAND OR MEASURING TOOLS (DEC 1991)

The Contractor agrees to deliver under this contract only hand or measuring tools produced in the United States or its possessions.

(End of clause)

252.225-7016 Restriction on Acquisition of Ball and Roller Bearings.

As prescribed in 225.7019-4, use the following clause:

RESTRICTION ON ACQUISITION OF BALL AND ROLLER BEARINGS (DEC 2000)

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

(1) “Bearing components” means the bearing element, retainer, inner race, or outer race.

(2) “Miniature and instrument ball bearings” means all rolling contact ball bearings with a basic outside diameter (exclusive of flange diameters) of 30 millimeters or less, regardless of material, tolerance, performance, or quality characteristics.

(b) The Contractor agrees that, except as provided in paragraph (c) of this clause, all ball and roller bearings and ball and roller bearing components (including miniature and instrument ball bearings) delivered under this contract, either as end items or components of end items, shall be wholly manufactured in the United States or Canada. Unless otherwise specified, raw materials, such as preformed bar, tube, or rod stock and lubricants, need not be mined or produced in the United States or Canada.

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

(c)(1) The restriction in paragraph (b) of this clause does not apply to ball or roller bearings that are acquired as components if--

(i) The end items or components containing ball or roller bearings are commercial items; or

(ii) The ball or roller bearings are commercial components manufactured in the United Kingdom.

(2) The commercial item exception in paragraph (c)(1) of this clause does not include items designed or developed under a Government contract or contracts where the end item is bearings and bearing components.

(d) The restriction in paragraph (b) of this clause may be waived upon request from the Contractor in accordance with subsection 225.7019-3 of the Defense Federal Acquisition Regulation Supplement. If the restriction is waived for miniature and instrument ball bearings, the Contractor agrees to acquire a like quantity and type of domestic manufacture for nongovernmental use.

(e) The Contractor agrees to retain records showing compliance with this restriction until 3 years after final payment and to make records available upon request of the Contracting Officer.

(f) The Contractor agrees to insert this clause, including this paragraph (f), in every subcontract and purchase order issued in performance of this contract, unless items acquired are—

(1) Commercial items other than ball or roller bearings; or

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

(End of clause)

ALTERNATE I (DEC 2000)

As prescribed in 225.7019-4(b), substitute the following paragraph (c)(1)(ii) for paragraph (c)(1)(ii) of the basic clause:

(c)(1)(ii) The ball or roller bearings are commercial components.

252.225-7017 Prohibition on Award to Companies Owned by the People's Republic of China.

As prescribed in 225.771-5, use the following provision:

PROHIBITION ON AWARD TO COMPANIES OWNED BY THE PEOPLE'S REPUBLIC OF CHINA (FEB 2000)

(a) *Definition.* "People's Republic of China," as used in this provision, means the government of the People's Republic of China, including its political subdivisions, agencies, and instrumentalities.

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

(b) *Prohibition on award.* Section 8120 of the Department of Defense Appropriations Act for fiscal year 1999 (Pub. L. 105-262), as amended by Section 144 of Title I, Division C, of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105-277), prohibits the award of a contract under this solicitation to any company in which the Director of Defense Procurement (Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics)) has determined that the People's Republic of China or the People's Liberation Army of the People's Republic of China owns more than 50 percent interest.

(c) *Representation.* By submission of an offer, the offeror represents that the People's Republic of China or the People's Liberation Army of the People's Republic of China does not own more than 50 percent interest in the offeror.

(End of provision)

252.225-7018 Notice of Prohibition of Certain Contracts with Foreign Entities for the Conduct of Ballistic Missile Defense RDT&E.

As prescribed in 225.7011-5, use the following provision:

NOTICE OF PROHIBITION OF CERTAIN CONTRACTS WITH FOREIGN ENTITIES FOR THE CONDUCT OF BALLISTIC MISSILE DEFENSE RDT&E (JAN 1997)

(a) *Definitions.*

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

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

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

(b) This provision implements Section 222 of the Defense Authorization Act for FYs 1988 and 1989 (Pub. L. 100-180) prohibiting the award of certain contracts, for the conduct of Ballistic Missile Defense (BMD) Program research, development, test, or of Ballistic evaluation (RDT&E), to foreign governments or firms.

(c) Except as provided in paragraph (d) of this provision, any funds appropriated to, or for the use of, the DoD, may not be used to enter into or carry out any contract, including any contract awarded as a result of a broad agency announcement (BAA), with a foreign government or firm if the contract provides for the conduct of RDT&E in connection with the BMD. Foreign governments and firms, however, are encouraged to submit offers since this provision is not intended to restrict BMD access to unique foreign expertise when contract performance requires a level of competency unavailable in the United States.

(d) The prohibition does not apply to a foreign government or firm if—

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

- (1) The contract will be performed within the United States;
 - (2) The contract is exclusively for RDT&E in connection with antitactical ballistic missile systems;
 - (3) The foreign government or firm agrees to share a substantial portion of the total contract cost. The foreign share is considered substantial where it is equitable with respect to the relative benefits to be derived from the contract by the United States and the foreign parties. For example, if the contract is more beneficial to the foreign party, its share of the costs should be correspondingly higher; or
 - (4) The U.S. Government determines that the contract cannot be competently performed by a U.S. firm at a price equal to or less than the price at which the RDT&E can be performed by a foreign government or firm.
- (e) The offeror (____) is (____) is not a U.S. firm.

(End of provision)

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

As prescribed in 225.7012-3, use the following clause:

RESTRICTION ON ACQUISITION OF FOREIGN ANCHOR AND MOORING CHAIN (DEC 1991)

(a) Welded shipboard anchor and mooring chain, four inches in diameter and under, delivered under this contract—

(1) Shall be 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 shall exceed 50 percent of the total cost of components.

(b) The Contractor may request a waiver of this restriction if adequate domestic supplies meeting the above requirements are not available to meet the contract delivery schedule.

(c) The Contractor shall include this clause, including this paragraph (c), in all subcontracts, unless the items acquired contain none of the restricted welded shipboard anchor and mooring chain.

(End of clause)

252.225-7020 Trade Agreements Certificate.

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

TRADE AGREEMENTS CERTIFICATE (MAR 1998)

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

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

(b) *Evaluation.* Offers will be evaluated in accordance with the policies and procedures of Part 225 of the Defense Federal Acquisition Regulation Supplement. Offers of foreign end products that are not U.S. made, qualifying country, designated country, Caribbean Basin country, or NAFTA country end products will not be considered for award, unless the Contracting Officer determines that there are not offers of such end products; or the offers of such end products are insufficient to fulfill the requirements; or a national interest exception to the Trade Agreements Act is granted.

(c) *Certifications.*

(1) 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, designated country, Caribbean Basin country, or NAFTA country end product.

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

(insert line item number)

(insert country of origin)

(End of provision)

252.225-7021 Trade Agreements.

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

TRADE AGREEMENTS (SEP 2001)

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

(1) “Caribbean Basin country” means—

| | | |
|------------------------|----------------------|---------------------|
| Antigua and Barbuda | El Salvador | Nicaragua |
| Aruba | Grenada | St. Kitts-Nevis |
| Bahamas | Guatemala | St. Lucia |
| Barbados | Guyana | St. Vincent and the |
| Belize | Haiti | Grenadines |
| British Virgin Islands | Jamaica | Trinidad and Tobago |
| Costa Rica | Montserrat | |
| Dominica | Netherlands Antilles | |

(2) “Caribbean Basin country end product”—

(i) Means an article that—

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

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

(B) In the case of an article that consists in whole or in part of materials from another country or instrumentality, 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 so 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.

(3) “Components” means those articles, materials, and supplies directly incorporated into end products.

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

(4) “Designated country” means—

| | | |
|--------------------------|---------------|-----------------------|
| Aruba | Germany | Netherlands |
| Austria | Greece | Niger |
| Bangladesh | Guinea | Norway |
| Belgium | Guinea-Bissau | Portugal |
| Benin | Haiti | Republic of Korea |
| Bhutan | Hong Kong | Rwanda |
| Botswana | Iceland | Sao Tome and Principe |
| Burkina Faso | Ireland | Sierra Leone |
| Burundi | Israel | Singapore |
| Canada | Italy | Somalia |
| Cape Verde | Japan | Spain |
| Central African Republic | Kiribati | Sweden |
| Chad | Lesotho | Switzerland |
| Comoros | Liechtenstein | Tanzania U.R. |
| Denmark | Luxembourg | Togo |
| Djibouti | Malawi | Tuvalu |
| Equatorial Guinea | Maldives | Uganda |
| Finland | Mali | United Kingdom |
| France | Mozambique | Vanuatu |
| Gambia | Nepal | Western Samoa |
| | | Yemen |

(5) “Designated country end product” means an article that—

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

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a designated 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 so 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.

(6) “End product” means those articles, materials, and supplies to be acquired for public use under the contract. For this contract, the end products are the line items to be delivered to the Government (including supplies to be acquired by the Government for public use in connection with service contracts, but excluding installation and other services to be performed after delivery).

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

(i) Is wholly the growth, product, or manufacture of the NAFTA country; or
(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

use distinct from that of the article or articles from which it was so transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

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

(9) “North American Free Trade Agreement (NAFTA) country” means Canada or Mexico.

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

(11) “Qualifying country end product” means—

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

(ii) An end product manufactured in a qualifying country if the cost of the components mined, produced, or manufactured in the qualifying country and its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components.

(12) “United States” means the United States, its possessions, Puerto Rico, and any other place subject to its jurisdiction, but does not include leased bases or trust territories.

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

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

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been 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 so transformed.

(b) Unless otherwise specified, the Trade Agreements Act of 1979 (19 U.S.C. 2501, et seq.), the North American Free Trade Agreement Implementation Act of 1993 (19 U.S.C. 3301 note), and the Caribbean Basin Initiative apply to all items in the Schedule.

(c)(1) The Contractor agrees to deliver under this contract only U.S. made, qualifying country, designated country, Caribbean Basin country or NAFTA country end products unless, in its offer, it specified delivery of other nondesignated country end products in the Trade Agreements Certificate provision of the solicitation.

(2) The Contractor may not supply a nondesignated country end product other than a qualifying country end product, a Caribbean Basin country end product, or a NAFTA country end product, unless—

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

(i) The Contracting Officer has determined that offers of U.S. made end products or qualifying, designated, Caribbean Basin, or NAFTA 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 under section 302 of the Trade Agreements Act of 1979.

(d) The offered price of end products listed in paragraph (c)(2) of the Trade Agreements Certificate provision of the solicitation must include all applicable duty, whether or not a duty-free entry certificate will be granted. The offered price of qualifying country, designated country, Caribbean Basin country, or NAFTA country end products, for line items subject to the Trade Agreements Act or the North American Free Trade Agreement Implementation Act, should not include custom fees or duty. The offered price of U.S. made end products should not include duty for qualifying country components.

(e) The HTSUS is available on the Internet at <http://www.customs.ustreas.gov/impexpo/impexpo.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)

252.225-7022 Restriction on Acquisition of Polyacrylonitrile (PAN) Carbon Fiber.

As prescribed in 225.7103-3, use the following clause:

RESTRICTION ON ACQUISITION OF POLYACRYLONITRILE (PAN) CARBON FIBER (JUN 1997)

(a) This clause applies only if the end product furnished under this contract contains polyacrylonitrile carbon fibers (alternatively referred to as PAN-based carbon fibers or PAN-based graphite fibers).

(b) PAN carbon fibers contained in the end product shall be manufactured in the United States or Canada using PAN precursor produced in the United States or Canada.

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

(c) The Contracting Officer may waive the requirement in paragraph (b) of this clause in whole or in part. The Contractor may request a waiver from the Contracting Officer by identifying the circumstances and including a plan to qualify U.S. or Canadian sources expeditiously.

(End of clause)

252.225-7023 Restriction on Acquisition of Vessel Propellers.

As prescribed in 225.7020-4, use the following clause:

RESTRICTION ON ACQUISITION OF VESSEL PROPELLERS (DEC 2000)

(a) Except as provided in paragraph (b) of this clause, the Contractor shall deliver under this contract, whether as end items or components of end items, vessel propellers--

(1) Manufactured in the United States or Canada; and

(2) For which all component castings were poured and finished in the United States or Canada.

(b) The restriction in paragraph (a) of this clause--

(1) Does not apply to vessel propellers that are commercial items; and

(2) For other than commercial items, may be waived upon request from the Contractor in accordance with subsection 225.7020-3 of the Defense Federal Acquisition Regulation Supplement.

(End of clause)

252.225-7024 Restriction on Acquisition of Night Vision Image Intensifier Tubes and Devices.

As prescribed in 225.7015-3, use the following clause:

RESTRICTION ON ACQUISITION OF NIGHT VISION IMAGE INTENSIFIER TUBES AND DEVICES (DEC 1991)

All second and third generation night vision image intensifier tubes and devices provided under this contract shall be manufactured in the United States or Canada.

(End of clause)

252.225-7025 Restriction on Acquisition of Forgings.

As prescribed in 225.7102-4, use the following clause:

RESTRICTION ON ACQUISITION OF FORGINGS (JUN 1997)

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

(1) “Domestic manufacture” means manufactured in the United States or Canada if the Canadian firm—

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

(i) Normally produces similar items or is currently producing the item in support of DoD contracts (as prime or subcontractor); and

(ii) Agrees to become (upon receiving a contract/order) a planned producer under DoD's Industrial Preparedness Production Planning Program, if it is not already a planned producer for the item.

(2) "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) The Contractor agrees that end items 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 agrees to retain records showing compliance with this restriction until 3 years after final payment and to make records available upon request of the Contracting Officer.

(e) The Contractor agrees to insert this clause, including this paragraph (e), in subcontracts and purchase orders issued in performance of this contract, when products purchased contain restricted forging items.

(End of clause)

252.225-7026 Reporting of Contract Performance Outside the United States.

As prescribed in 225.7203, use the following clause:

REPORTING OF CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES (JUN 2000)

(a) *Reporting criteria.* Reporting under this clause is required for—

(1) Offers exceeding \$10 million, if the Offeror is aware at the time the offer is submitted that it or its first-tier subcontractor intends to perform any part of the contract that exceeds \$500,000 outside the United States and Canada, if that part could be performed inside the United States or Canada;

(2) Contracts exceeding \$10 million, when any part that exceeds \$500,000 could be performed inside the United States or Canada, but will be performed outside the United States and Canada. If the information was submitted with the offer, it need not be resubmitted unless it changes; and

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

(3) Contracts exceeding \$500,000, when any part that exceeds the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation will be performed outside the United States, unless a foreign place of performance is—

(i) The principal place of performance; and

(ii) Indicated by the Offeror's entry in the Place of Performance provision of the solicitation.

(b) *Submission of reports.*

(1) The Offeror shall submit reports required by paragraph (a)(1) of this clause with its offer.

(2) The Contractor shall submit reports required by paragraph (a)(2) of this clause to the Contracting Officer as soon as the information is known, with a copy to the addressee in paragraph (b)(3) of this clause. With respect to performance by a first-tier subcontractor, this information shall be reported, to the maximum extent practicable, at least 30 days before award of the subcontract.

(3) The Contractor shall submit reports required by paragraph (a)(3) of this clause within 10 days of the end of each Government quarter to—

Deputy Director of Defense Procurement (Foreign Contracting)
OUSD(AT&L)DP(FC)
Washington, DC 20301-3060

(4) The Offeror/Contractor shall submit reports on DD Form 2139, Report of Contract Performance Outside the United States. Computer-generated reports are acceptable, provided the report contains all information required by DD Form 2139. Copies of DD Form 2139 may be obtained from the Contracting Officer.

(c) *Flowdown requirements.*

(1) The Contractor shall include a clause substantially the same as this one in all first-tier subcontracts exceeding \$500,000, except subcontracts for commercial items, construction, ores, natural gases, utilities, petroleum products and crudes, timber (logs), or subsistence.

(2) The Contractor shall provide the prime contract number to subcontractors for reporting purposes.

(d) *Information required.* Information to be reported on the part of this contract performed outside the United States (or outside the United States and Canada for reports required by paragraphs (a)(1) and (a)(2) of this clause) includes that for—

(1) Subcontracts;

(2) Purchases; and

(3) Intracompany transfers when transfers originate in a foreign location.

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

(End of clause)

252.225-7027 Restriction on Contingent Fees for Foreign Military Sales.

As prescribed in 225.7308(a), use the following clause. Insert in paragraph (b)(1) of the clause the name(s) of any foreign country customer(s) listed in 225.7303-4(b).

RESTRICTION ON CONTINGENT FEES FOR FOREIGN MILITARY SALES (MAR 1998)

(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 a bona fide employee of the Contractor or to 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 225.7308(b), use the following clause:

EXCLUSIONARY POLICIES AND PRACTICES OF FOREIGN GOVERNMENTS (DEC 1991)

No person, partnership, corporation, or other entity performing functions pursuant to this contract, shall, in employing or assigning personnel to participate in the performance of any such function, whether in the United States or abroad, take into account the exclusionary policies or practices of any foreign government where such policies or practices are based on race, religion, national origin, or sex.

(End of clause)

252.225-7029 Preference for United States or Canadian Air Circuit Breakers.

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

PREFERENCE FOR UNITED STATES OR CANADIAN AIR CIRCUIT BREAKERS (AUG 1998)

(a) Unless otherwise specified in its offer, the Contractor agrees that air circuit breakers for naval vessels provided under this contract shall be manufactured in the United States, Canada, or the United Kingdom.

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

(b) Unless an exception applies under Defense Federal Acquisition Regulation Supplement (DFARS) 225.7016-2 or a waiver is granted under DFARS 225.7005(a)(1) or (2), preference will be given to air circuit breakers manufactured in the United States or Canada by adding 50 percent for evaluation purposes to the offered price of all other air circuit breakers, except those manufactured in the United Kingdom.

(End of clause)

252.225-7030 Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate.

As prescribed in 225.7017-4, use the following clause:

RESTRICTION ON ACQUISITION OF CARBON, ALLOY, AND ARMOR STEEL PLATE (OCT 1992)

The Contractor agrees that all carbon, alloy, and armor steel plate in Federal supply class 9515, or described by American Society for Testing Materials (ASTM) or American Iron and Steel Institute (AISI) specifications, furnished as a deliverable under this contract, or purchased by the contractor as a raw material, for use in a Government-owned facility or a facility under the control of the Department of Defense, shall be melted and rolled in the United States or Canada.

(End of clause)

252.225-7031 Secondary Arab Boycott of Israel.

As prescribed in 225.770-5, use the following clause:

SECONDARY ARAB BOYCOTT OF ISRAEL (JUN 1992)

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

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

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

(b) *Certification.* By submitting this offer, the Offeror, if a foreign person, company or entity, certifies that it—

(1) Does not comply with the Secondary Arab Boycott of Israel; and

(2) Is not taking or knowingly agreeing to take any action, with respect to the Secondary Boycott of Israel by Arab countries, which 50 U.S.C. App. Sec 2407(a) prohibits a United States person from taking.

(End of clause)

252.225-7032 Waiver of United Kingdom Levies.

As prescribed in 252.873-3, use the following clause:

WAIVER OF UNITED KINGDOM LEVIES (OCT 1992)

(a) Offered prices for contracts and subcontracts with United Kingdom (U.K.) firms may contain commercial exploitation levies assessed by the Government of the U.K. The Offeror shall identify to the Contracting Officer all levies included in the offered price by describing—

- (1) The name of the U.K. firm;
- (2) The item to which the levy applies and quantity; and
- (3) The amount of levy plus any associated indirect costs and profit or fee.

(b) If, after award of the prime contract, the Contractor contemplates award of a subcontract over \$1 million to a U.K. firm, the Contractor shall identify any levy before award of the subcontract and shall provide the following information to the Contracting Officer—

- (1) Name of the U.K. firm;
- (2) Prime contract number;
- (3) Description of item to which levy applies;
- (4) Quantity being acquired; and
- (5) Amount of levy plus any associated indirect costs and profit or fee.

(c) The Offeror/Contractor should obtain assistance in identifying the levy from the U.K. firm. In the event of difficulty, the Offeror/Contractor may seek advice through Director of Procurement, United Kingdom Defence Procurement Office, British Embassy, 3100 Massachusetts Avenue, NW, Washington, DC 20006.

(d) 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) Where levies are waived before contract award, the offer will be evaluated without the levy.

(2) Where levies are identified but not waived before contract award, the offer will be evaluated inclusive of the levies.

(3) Where a waiver of the levy is obtained after award, the U.S. Government reserves the right to reduce the contract price by the amount of the levy waived plus associated indirect costs, profit or fee.

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

(e) The Contractor agrees to insert the substance of this clause, including this paragraph (e), in any subcontract for supplies where a lower tier subcontract over \$1 million with a U.K. firm is anticipated.

(End of clause)

252.225-7033 Restriction on Acquisition of Four Ton Dolly Jacks.

As prescribed in 225.7018-3, use the following clause:

RESTRICTION ON ACQUISITION OF FOUR TON DOLLY JACKS (APR 1993)

Four ton dolly jacks delivered under this contract shall be manufactured in the United States unless a waiver is granted in accordance with subsection 225.7018-2 of the Defense Federal Acquisition Regulation Supplement.

(End of clause)

252.225-7034 Reserved.

252.225-7035 Buy American Act--North American Free Trade Agreement Implementation Act--Balance of Payments Program Certificate.

As prescribed in 225.1101(12), use the following provision:

BUY AMERICAN ACT--NORTH AMERICAN FREE TRADE AGREEMENT IMPLEMENTATION ACT--BALANCE OF PAYMENTS PROGRAM CERTIFICATE (MAR 1998)

(a) *Definitions.* “Domestic end product,” “foreign end product,” “NAFTA country end product,” and “qualifying country end product” have the meanings given in the Buy American Act--North American Free Trade Agreement Implementation Act--Balance of Payments Program clause of this solicitation.

(b) *Evaluation.* Offers will be evaluated in accordance with the policies and procedures of Part 225 of the Defense Federal Acquisition Regulation Supplement. For line items subject to the North American Free Trade Agreement Implementation Act, offers of qualifying country end products or NAFTA country end products will be evaluated without regard to the restrictions of the Buy American Act or the Balance of Payments Program.

(c) *Certifications.*

(1) 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 must identify all end products that are not domestic end products.

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

(i) The Offeror certifies that the following supplies are qualifying country (except Canada) end products:

(insert line item number)

(insert country of origin)

(ii) The Offeror certifies that the following supplies qualify as NAFTA country end products:

(insert line item number)

(insert country of origin)

(iii) The following supplies are other foreign end products:

(insert line item number)

(insert country of origin)

(End of provision)

ALTERNATE I (MAR 1998)

As prescribed in 225.1101(12)(ii), substitute the phrase “Canadian end product” for the phrase “NAFTA country end product” in paragraph (a); and substitute the phrase “Canadian end products” for the phrase “NAFTA country end products” in paragraphs (b) and (c)(2)(ii) of the basic clause.

252.225-7036 Buy American Act--North American Free Trade Agreement Implementation Act--Balance of Payments Program.

As prescribed in 225.1101(13), use the following clause:

BUY AMERICAN ACT--NORTH AMERICAN FREE TRADE AGREEMENT IMPLEMENTATION ACT--BALANCE OF PAYMENTS PROGRAM (MAR 1998)

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

(1) “Components” means those articles, materials, and supplies directly incorporated into end products.

(2) “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 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 shall include transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate may be issued). A component shall be 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—

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

(A) Determined to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality; or

(B) That the Secretary concerned determines would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

(3) “End product” means those articles, materials, and supplies to be acquired for public use under the contract. For this contract, the end products are the line items to be delivered to the Government (including supplies to be acquired by the Government for public use in connection with service contracts, but excluding installation and other services to be performed after delivery).

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

(5) “North American Free Trade Agreement (NAFTA) country” means Canada or Mexico.

(6) “NAFTA country end product” means an article that—

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

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA 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 so transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

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

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

(9) “Qualifying country end product” means—

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

(ii) An end product manufactured in a qualifying country if the cost of the components mined, produced, or manufactured in the qualifying country and its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components.

(b) Unless otherwise specified, the North American Free Trade Agreement Implementation Act of 1993 (19 U.S.C. 3301 note) applies to all items in the Schedule.

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

(c) The Contractor agrees to deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country, NAFTA country, or other foreign end products in the Buy American Act--North American Free Trade Agreement Implementation Act--Balance of Payments Program Certificate provision of the solicitation. An offer certifying that a qualifying country end product or a NAFTA country end product will be supplied requires the Contractor to supply a qualifying country end product or a NAFTA country end product, whichever is certified, or, at the Contractor's option, a domestic end product.

(d) The offered price of qualifying country end products, or NAFTA country end products for line items subject to the North American Free Trade Agreement Implementation Act, should not include custom fees or duty. The offered price of foreign end products listed in paragraph (c)(2)(iii) of the Buy American Act--North American Free Trade Agreement Implementation Act--Balance of Payments Program Certificate provision of the solicitation, or the offered price of domestic end products that contain nonqualifying country components, must include all applicable duty. The award price will not include duty for end products or components that are to be accorded duty-free entry. Generally, each foreign end product listed in paragraph (c)(2)(iii) of the Buy American Act--North American Free Trade Agreement Implementation Act--Balance of Payments Program Certificate provision of the solicitation is adjusted for the purpose of evaluation by adding 50 percent of the offered price, inclusive of duty.

(End of clause)

ALTERNATE I (SEP 1999)

As prescribed in 225.1101(13)(i)(B), substitute the following paragraphs (a)(6), (c), and (d) for paragraphs (a)(6), (c), and (d) of the basic clause:

(a)(6) "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 or instrumentality, 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 so was so 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 that of the product itself.

(c) The Contractor agrees to deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country, Canadian, or other foreign end products in the Buy American Act--North American Free Trade Agreement Implementation Act--Balance of Payments Program Certificate provision of the solicitation. An offer certifying that a qualifying country end product or a Canadian end product will be supplied requires the Contractor to supply a qualifying country end product or a Canadian end product, whichever is certified, or, at the Contractor's option, a domestic end product.

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

(d) The offered price of qualifying country end products, or Canadian end products for line items subject to the North American Free Trade Agreement Implementation Act, should not include custom fees or duty. The offered price of foreign end products listed in paragraph (c)(2)(iii) of the Buy American Act--North American Free Trade Agreement Implementation Act--Balance of Payments Program Certificate provision of the solicitation, or the offered price of domestic end products that contain nonqualifying country components, must include all applicable duty. The award price will not include duty for end products or components that are to be accorded duty-free entry. Generally, each foreign end product listed in paragraph (c)(2)(iii) of the Buy American Act--North American Free Trade Agreement Implementation Act--Balance of Payments Program Certificate provision of the solicitation is adjusted for the purpose of evaluation by adding 50 percent of the offered price, inclusive of duty.

252.225-7037 Duty-Free Entry--Eligible End Products.

As prescribed in 225.1101(14), use the following clause:

DUTY-FREE ENTRY--ELIGIBLE END PRODUCTS (AUG 2000)

(a) *Definition.* “Eligible end product,” as used in this clause, means—

(1) “Designated country end product,” “Caribbean Basin country end product,” or “NAFTA country end product,” as defined in the Trade Agreements clause of this contract;

(2) “NAFTA country end product,” as defined in the Buy American Act--North American Free Trade Agreement Implementation Act--Balance of Payments Program clause of this contract; or

(3) “Canadian end product,” as defined in Alternate I of the Buy American Act--North American Free Trade Agreement Implementation Act--Balance of Payments Program clause of this contract.

(b) The requirements of this clause apply to this contract and subcontracts, including purchase orders, that involve delivery of eligible end products to be accorded duty-free entry whether placed—

(1) Directly with a foreign concern as a prime contract; or

(2) As a subcontract or purchase order under a contract with a domestic concern.

(c) Except as otherwise approved by the Contracting Officer, no amount is or will be included in the contract price for duty for eligible end products.

(d) The Contractor warrants that—

(1) All eligible end products, for which duty-free entry is to be claimed under this clause, are intended to be delivered to the Government; and

(2) The Contractor will pay any applicable duty to the extent that such eligible end products, or any portion thereof (if not scrap or salvage) are diverted to

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

nongovernmental use, other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer.

(e) The Government agrees to execute duty-free entry certificates and to afford such assistance as appropriate to obtain the duty-free entry of eligible end products for which the shipping documents bear the notation specified in paragraph (f) of this clause, except as the Contractor may otherwise agree.

(f) All shipping documents submitted to Customs, covering eligible end products for which duty-free entry certificates are to be issued under this clause, 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 delivery order if applicable;

(ii) Number of the subcontract/purchase order for foreign supplies if applicable;

(iii) Identification of carrier;

(iv)(A) For direct shipments to a U.S. military installation, the notation: UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE Duty-Free Entry to be claimed pursuant to Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States. Upon arrival of shipment at the appropriate port of entry, District Director of Customs, please release shipment under 19 CFR part 142, and notify Commander, Defense Contract Management (DCM) New York, ATTN: Customs Team, DCMDN-GNIC, 207 New York Avenue, Building 120, Staten Island, New York 10305-5013, for execution of Customs Forms 7501, 7501A, or 7506 and any required duty-free entry certificates.

(B) In cases where 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 insert the name and address of the contractor, agent or broker who will notify Commander, DCM New York, for execution of the duty-free certificate. (Note: In those instances where the shipment will be consigned to a contractor's plant and no duty-free entry certificate is required, the contractor or its agent shall claim duty-free entry under NAFTA or other trade agreement and shall comply with the U.S. Customs Service requirements. No notification to Commander, DCM 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; and

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

(vii) Activity Address Number of the contract administration office actually administering the prime contract, e.g., for DCM Dayton, S3605A.

(g) Preparation of customs forms.

(1) Except for shipments consigned to a military installation, the Contractor shall prepare, or authorize an agent to prepare, any customs forms required for the entry of eligible end products in connection with DoD contracts into the United States, its possessions, or Puerto Rico. The completed customs forms shall be submitted to the District Director of Customs with a copy to DCM New York for execution of any required duty-free entry certificates. Shipments consigned directly to a military installation will be released in accordance with 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.

(h) The Contractor agrees—

(1) To prepare (if this contract is placed directly with a foreign supplier), or to instruct the foreign supplier to prepare, a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry;

(2) To consign the shipment as specified in paragraph (f) of this clause; and

(3) To mark the exterior of all package as follows:

(i) “UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE;”
and

(ii) The activity address number of the contract administration office actually administering the prime contract.

(i) The Contractor agrees to notify the Contracting Officer administering the prime contract in writing of any purchase under the contract of eligible end products to be accorded duty-free entry that are to be imported into the United States for delivery to the Government or for incorporation in end items to be delivered to the Government. The notice shall be furnished to the contract administration office immediately upon award to the supplier of the eligible end products. The notice shall contain—

(1) Prime contractor's name, address, and CAGE code;

(2) Prime contract number, and delivery order number if applicable;

(3) Total dollar value of the prime contract or delivery order;

(4) Expiration date of the prime contract or delivery order;

(5) Foreign supplier's name and address;

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

(6) Number of the subcontract/purchase order for eligible end products;

(7) Total dollar value of the subcontract for eligible end products;

(8) Expiration date of the subcontract for eligible end products;

(9) List of items purchased;

(10) An agreement by the Contractor that any applicable duty shall be paid by the Contractor to the extent that such eligible end products are diverted to nongovernmental use other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer; and

(11) The scheduled delivery date(s).

(End of clause)

252.225-7038 Restriction on Acquisition of Aircraft Fuel Cells.

As prescribed in 225.7021-3, use the following clause:

RESTRICTION ON ACQUISITION OF AIRCRAFT FUEL CELLS (MAR 1994)

The Contractor agrees that all aircraft fuel cells furnished under this contract have been produced or manufactured in the United States by a domestic-operated entity.

(End of clause)

252.225-7039 Restriction on Acquisition of Totally Enclosed Lifeboat Survival Systems.

As prescribed in 225.7022-4, use the following clause:

RESTRICTION ON ACQUISITION OF TOTALLY ENCLOSED LIFEBOAT SURVIVAL SYSTEMS (APR 1996)

For totally enclosed lifeboat survival systems furnished under this contract, which consist of lifeboat and associated davits and winches, the Contractor agrees that—

(a) 50 percent or more of the components have been manufactured in the United States; and

(b) 50 percent or more of the labor in the manufacture and assembly of the entire system has been performed in the United States.

(End of clause)

252.225-7040 Reserved.

252.225-7041 Correspondence in English.

As prescribed in 225.1103(2), use the following clause:

CORRESPONDENCE IN ENGLISH (JUN 1997)

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

The Contractor shall ensure that all contract correspondence that is addressed to the United States Government is submitted in English or with an English translation.

(End of clause)

252.225-7042 Authorization to Perform.

As prescribed in 225.1103(3), use the following clause:

AUTHORIZATION TO PERFORM (JUN 1997)

The Contractor represents that it has been duly authorized to operate and to do business in the country or countries in which this contract is to be performed. The Contractor also represents that it will fully comply with all laws, decrees, labor standards, and regulations of such country or countries, during the performance of this contract.

(End of clause)

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

As prescribed in 225.7402, use the following clause:

ANTITERRORISM/FORCE PROTECTION POLICY FOR DEFENSE CONTRACTORS OUTSIDE THE UNITED STATES (JUN 1998)

(a) Except as provided in paragraph (b) 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.

(b) 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

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

(3) A foreign corporation wholly owned by a foreign government.

(c) Information and guidance pertaining to DoD antiterrorism/force protection can be obtained from (Contracting Officer to insert applicable information cited in 225.7401).

(End of clause)

252.225-7044 Balance of Payments Program--Construction Material.

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

BALANCE OF PAYMENTS PROGRAM--CONSTRUCTION MATERIAL (APR 2002)

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

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

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

“Cost of components” means--

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

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

“Domestic construction material” means--

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

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

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

“United States” means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

(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; or

(2) 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.

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

BALANCE OF PAYMENTS PROGRAM--CONSTRUCTION MATERIAL UNDER TRADE AGREEMENTS (APR 2002)

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

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

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

“Cost of components” means--

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

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

of components does not include any costs associated with the manufacture of the end product.

“Designated country” means any of the following countries:

| | | |
|--------------------------|--------------------|-----------------------|
| Aruba | Germany | Netherlands |
| Austria | Greece | Niger |
| Bangladesh | Guinea | Norway |
| Belgium | Guinea-Bissau | Portugal |
| Benin | Haiti | Rwanda |
| Bhutan | Hong Kong | Sao Tome and Principe |
| Botswana | Iceland | Sierra Leone |
| Burkina Faso | Ireland | Singapore |
| Burundi | Israel | Somalia |
| Canada | Italy | Spain |
| Cape Verde | Japan | Sweden |
| Central African Republic | Kiribati | Switzerland |
| Chad | Korea, Republic of | Tanzania U.R. |
| Comoros | Lesotho | Togo |
| Denmark | Liechtenstein | Tuvalu |
| Djibouti | Luxembourg | Uganda |
| Equatorial Guinea | Malawi | United Kingdom |
| Finland | Maldives | Vanuatu |
| France | Mali | Western Samoa |
| Gambia | Mozambique | Yemen |
| | Nepal | |

“Designated country construction material” means a construction material that--

- (1) Is wholly the growth, product, or manufacture of a designated country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different construction material distinct from the material from which it was transformed.

“Domestic construction material” means--

- (1) An unmanufactured construction material mined or produced in the United States; or
- (2) A construction material manufactured in the United States, if 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.

“North American Free Trade Agreement (NAFTA) country” means Canada or Mexico.

“North American Free Trade Agreement (NAFTA) country construction material” means a construction material that--

- (1) Is wholly the growth, product, or manufacture of a NAFTA country; or

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

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

“United States” means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

(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 Trade Agreements Act and the North American Free Trade Agreement (NAFTA) apply to this acquisition. Therefore, the Buy American Act and Balance of Payments Program restrictions are waived for designated country and NAFTA country construction materials.

(c) The Contractor shall use only domestic, designated country, or NAFTA 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; or

(2) 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 (APR 2002). As prescribed in 225.7503(b), delete the definitions of “North American Free Trade Agreement country” and “North American Free Trade Agreement country construction material” from the definitions in paragraph (a) of the basic clause and substitute the following paragraphs (b) and (c) for paragraphs (b) and (c) of the basic clause:

(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 Trade Agreements Act applies to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for designated country construction material.

(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; or

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

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

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