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**Parent topic:** Defense Federal Acquisition Regulation

# 225.001 General.

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

# 225.003 Definitions.

As used in this part—

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

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

“Communist Chinese military company” means any entity, regardless of geographic location, that is—

(1) A part of the commercial or defense industrial base of the People’s Republic of China (including a subsidiary or affiliate of such entity); or

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

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

“Domestic concern” means—

(1) A concern incorporated in the United States (including a subsidiary that is incorporated in the

United States, even if the parent corporation is a foreign concern); or

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

“Domestic end product” means—

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

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

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

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with FAR 25.101(d); or award is made before January 1, 2030, for a foreign end product that exceeds 55 percent domestic content (see 225.103(b)(ii)). The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

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

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

(B) The end product is a commercially available off-the-shelf (COTS) item; or

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

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

(1) A foreign end product that—

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

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

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

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

“Foreign concern” means any concern other than a domestic concern.

“Free Trade Agreement country” does not include Oman.

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

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

“Qualifying country” means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia

Austria

Belgium

Canada

Czech Republic

Denmark

Egypt

Estonia

Finland

France

Germany

Greece

Israel

Italy

Japan

Latvia

Lithuania

Luxembourg

Netherlands

Norway

Poland

Portugal

Slovenia

Spain

Sweden

Switzerland

Turkey

United Kingdom of Great Britain and Northern Ireland.

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

“Qualifying country end product” means—

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

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

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

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

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

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

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

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

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

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

(1) Is wholly the growth, product, or manufacture of an SC/CASA state; 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 an SC/CASA state into a new and different construction material distinct from the material from which it was transformed.

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

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

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

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

## 225.070 Reporting of acquisition of end products manufactured outside the United States.

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

# Subpart 225.1 - BUY AMERICAN—SUPPLIES

### 225.101 General.

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

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

(ii)(A) Except for an end product that consists wholly or predominantly of iron or steel or a combination of both, the cost of its U.S. and qualifying country components exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in

calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, but see paragraph (d) of this section. This test is applied to end products only and not to individual components.

(B) For an end product that consists wholly or predominantly of iron or steel or a combination of both, the cost of iron and steel not produced in the United States or a qualifying country must constitute less than 5 percent of the cost of all the components used in the end product. The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding commercially available off-the-shelf (COTS) fasteners. The domestic content test of the Buy American statute has not been waived for acquisitions of COTS items in this category, except for COTS fasteners.

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

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

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

(A) See 225.1101(2)(iv) for use of alternate II of the clause at 252.225-7001, Buy American and Balance of Payments Program;

(B) See 225.1101(2)(v) for use of alternate III of the clause at 252.225-7001, Buy American and Balance of Payments Program;

(C) See 225.1101(9) for use of the basic or alternate provision at 252.225-7035, Buy American—Free Trade Agreements—Balance of Payments Program Certificate, or the basic or alternate clause at 252.225-7036, Buy American—Free Trade Agreements—Balance of Payments Program; and

(D) See 225.1101(10)(i) for use of the basic or alternate clause at 252.225-7036, Buy American—Free Trade Agreements—Balance of Payments Program.

## 225.103 Exceptions.

(a)(i)(A) Public interest exceptions for certain countries are in 225.872 .

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

(ii)(A) Normally, use the evaluation procedures in subpart 225.5, but consider recommending a

public interest exception if the purposes of the Buy American statute are not served, or in order to meet a need set forth in 10 U.S.C. 4861. For example, a public interest exception may be appropriate—

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

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

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

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

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

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

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

*(2)* By the head of the contracting activity for acquisitions with a value greater than the simplified acquisition threshold but less than $1.5 million; or

*(3)* By the agency head for acquisitions valued at $1.5 million or more.

(b)(i) A determination that an article, material, or supply is not reasonably available is required when domestic offers are insufficient to meet the requirement and award is to be made on other than a qualifying country or eligible end product.

(ii) A determination is not required before January 1, 2030, if there is an offer for a foreign end product that exceeds 55 percent domestic content. Except as provided in FAR 25.103(b)(3), the determination shall be approved—

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

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

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

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

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

(B) Foreign drugs acquired by the Defense Supply Center, Philadelphia, when the Director,

Pharmaceuticals Group, Directorate of Medical Materiel, determines that only the requested foreign drug will fulfill the requirements.

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

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

### 225.106 Determining reasonableness of cost.

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

### 225.170 Acquisition from or through other Government agencies.

Contracting activities must apply the evaluation procedures in subpart 225.5 when using Federal supply schedules.

## Subpart 225.2 - BUY AMERICAN—CONSTRUCTIONMATERIALS

### 225.202 Exceptions.

(a)(2) A nonavailability determination is not required for construction materials listed in FAR 25.104(a). For other materials, a nonavailability determination shall be approved at the levels specified in 225.103 Exceptions.(b)(ii). Use the estimated value of the construction materials to determine the approval level. A nonavailability determination is not required before January 1, 2030, if there is an offer for foreign construction material that exceeds 55 percent domestic content (also see FAR 25.204(b)(1)(ii) and (b)(2)(ii)).

### 225.206 Noncompliance.

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

### 225.270 Energy savings service contracts.

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

# Subpart 225.3 - CONTRACTS PERFORMED OUTSIDE THE UNITED STATES

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

### 225.301-1 Scope.

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

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

### 225.301-4 Contract clause.

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

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

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

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

## 225.302 Contractors performing private security functions outside the United States.

### 225.302-6 Contract clause.

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

(1) Contingency operations;

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

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

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

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

## 225.370 Contracts requiring performance or delivery in a foreign country.

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

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

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

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

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

For additional information on contractor personnel supporting U.S. Armed Forces, see PGI 225.371 .

### 225.371-1 Scope.

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

(1) Contingency operations;

(2) Humanitarian or peacekeeping operations; or

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

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

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

(2) Provision of emergency infrastructure reconstruction, humanitarian relief, or essential

governmental services (until feasible to transition to local government).

**225.371-2 Definition.**

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

**225.371-3 Government support.**

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

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

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

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

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

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

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

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

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

**225.371-4 Law of war training.**

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

basic training source, provided the servicing DoD legal advisor concurs with the course content. An example of an alternate source of basic training is the web-based training provided by the Defense Acquisition University at https://acc.dau.mil/CommunityBrowser.aspx?id=18014&lang=en-US.

(b) *Advanced law of war training*.

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

(i) Private security contractors.

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

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

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

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

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

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

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

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

**225.371-5 Contract clauses.**

Use the clause 252.225-7980, Contractor Personnel Performing in the United States Africa Command Area of Responsibility (DEVIATION 2016-O0008)(JUN 2016), in lieu of the clause at DFARS 252.225-7040 , Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States, in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that will require contractor personnel to perform in the United States Africa Command (AFRICOM) area of responsibility. This class deviation remains in effect until incorporated in the DFARS or otherwise rescinded.

Use the clause 252.225-7993, Prohibition on Providing Funds to the Enemy (DEVIATION 2015-O0016)(SEP 2015), in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, to be awarded on or before December 31, 2019, with an estimated value in excess of $50,000 that are being, or will be, performed outside the United States and its outlying areas, in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities. This class deviation remains in effect until incorporated in the Federal Acquisition Regulation or otherwise rescinded.

Use the clause 252.225-7981, Additional Access to Contractor and Subcontractor Records (Other than USCENTCOM) (DEVIATION 2015-O0016)(SEP 2015), in solicitations and contracts valued at

more than $50,000, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that are to be performed outside the United States and its outlying areas, in support of a contingency operation in which members of the armed forces are actively engaged in hostilities, except for contracts that will be performed in the United States Central Command (USCENTCOM) theater of operations. This class deviation remains in effect until incorporated in the Federal Acquisition Regulation or otherwise rescinded.

Use the clause 252.225-7994, Additional Access to Contractor and Subcontractor Records in the United States Central Command Theater of Operations (DEVIATION 2015-O0013)(MAR 2015), in all solicitations and contracts awarded prior to December 19, 2017, valued at more than $100,000, that are to be performed in the United States Central Command (USCENTCOM) theater of operations. This class deviation remains in effect until December 19, 2017 or otherwise rescinded.

Use the clause 252.225-7987, Requirements for Contractor Personnel Performing in USSOUTHCOM Area of Responsibility (DEVIATION 2014-O0016)(OCT 2014), in all solicitations and contracts that require performance in the USSOUTHCOM Area of Responsibility, unless the clause at DFARS 252.225-7040 applies. This class deviation remains in effect until incorporated in the DFARS or otherwise rescinded.

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

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

(1) Contingency operations;

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

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

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

## 225.372 Antiterrorism/force protection.

### 225.372-1 General.

Information and guidance pertaining to DoD antiterrorism/force protection policy for contracts that

require performance or travel outside the United States can be obtained from the offices listed in PGI 225.372-1 .

**225.372-2 Contract clause.**

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

(a) Foreign governments;

(b) Representatives of foreign governments; or

(c) Foreign corporations wholly owned by foreign governments.

### 225.373 Contract administration in support of contingency operations.

For additional guidance on contract administration considerations when supporting contingency operations, see PGI 225.373 .

### 225.374 Use of electronic business tools.

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

## Subpart 225.4 - TRADE AGREEMENTS

### 225.401 Exceptions.

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

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

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

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

(B) Public interest exceptions for certain countries when acquiring products or services in support of operations in Afghanistan are in 225.7704-1 .

**225.401-70 End products subject to trade agreements.**

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

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

| | |
|---|---|
| 39 | Materials handling equipment |
| 40 | Rope, cable, chain, and fittings |
| 41 | Refrigeration, air conditioning, and air circulating equipment |
| 42 | Fire fighting, rescue, and safety equipment; and environmental protection equipment and materials |
| 43 | Pumps and compressors |
| 44 | Furnace, steam plant, and drying equipment (except 4470) |
| 45 | Plumbing, heating, and waste disposal equipment |
| 46 | Water purification and sewage treatment equipment |
| 47 | Pipe, tubing, hose, and fittings |
| 48 | Valves |
| 49 | Maintenance and repair shop equipment (except 4920-4927, 4931-4935, 4960, 4970) |
| 53 | Hardware and abrasives |
| 54 | Prefabricated structures and scaffolding |
| 55 | Lumber, millwork, plywood, and veneer |
| 56 | Construction and building materials |
| 61 | Electric wire, and power and distribution equipment |
| 62 | Lighting fixtures and lamps |
| 63 | Alarm, signal and security detection systems |
| 65 | Medical, dental, and veterinary equipment and supplies |

| | |
|---|---|
| 66 | Instruments and laboratory equipment (except aircraft clocks under 6645) - See FAR 25.003 exclusion of certain watches and watch parts for certain Caribbean Basin countries |
| 67 | Photographic equipment |
| 68 | Chemicals and chemical products |
| 69 | Training aids and devices |
| 70 | Automatic data processing equipment (including firmware), software, supplies and support equipment |
| 71 | Furniture |
| 72 | Household and commercial furnishings and appliances |
| 73 | Food preparation and serving equipment |
| 74 | Office machines, text processing systems and visible record equipment |
| 75 | Office supplies and devices |
| 76 | Books, maps, and other publications |
| 77 | Musical instruments, phonographs, and home-type radios |
| 78 | Recreational and athletic equipment |
| 79 | Cleaning equipment and supplies |
| 80 | Brushes, paints, sealers, and adhesives |
| 81 | Containers, packaging, and packing supplies (except 8140) |
| 83 | Pins, needles, and sewing kits (only part of 8315) and flagstaffs, flagpoles, and flagstaff trucks (only part of 8345) |
| 84 | Luggage (only 8460) - See FAR 25.003 for exclusion of luggage for Caribbean Basin countries |

| | |
|---|---|
| 85 | Toiletries |
| 87 | Agricultural supplies |
| 88 | Live animals |
| 89 | Tobacco products (only 8975) |
| 91 | Fuels, lubricants, oils, and waxes |
| 93 | Nonmetallic fabricated materials |
| 94 | Nonmetallic crude materials |
| 96 | Ores, minerals, and their primary products |
| 99 | Miscellaneous |

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

When acquiring products or services, other than small arms, in support of operations in Afghanistan if using a procedure specified in 225.7703-1 (a) (2) or (3), the procedures of subpart 25.4 are not applicable.

## 225.402 General.

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

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

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

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

(A) Not received; or

(B) Insufficient to fill the Government's requirements. In this case, accept all responsive, responsible

offers of U.S.-made, qualifying country, and eligible products before accepting any other offers;

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

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

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

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

### 225.408 Procedures.

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

## Subpart 225.5 - EVALUATING FOREIGN OFFERS—SUPPLY CONTRACTS

### 225.502 Application.

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

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

(i) Consider only offers of U.S.-made, qualifying country, or designated country end products, except as permitted by 225.403 or 225.7703-1.

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

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

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

(B) If the acquisition is also subject to a Free Trade Agreement, then eligible products of the applicable Free Trade Agreement country are also exempt from application of the Buy American or

Balance of Payments Program evaluation factor, but see 225.106.

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

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

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

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

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

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

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

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

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

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

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

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

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

## 225.503 Group offers.

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

### 225.504 Evaluation examples.

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

## Subpart 225.6 - Reserved

## Subpart 225.7 - PROHIBITED SOURCES

### 225.701 Restrictions administered by the Department of the Treasury on acquisitions of supplies or services from prohibited sources.

#### 225.701-70 Exception.

DoD personnel are authorized to make emergency acquisitions in direct support of U.S. or allied forces deployed in military contingency, humanitarian, or peacekeeping operations in a country or region subject to economic sanctions administered by the Department of the Treasury, Office of Foreign Assets Control.

### 225.770 Prohibition on acquisition of certain items from Communist Chinese military companies.

This section implements section 1211 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109-163), section 1243 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81), and section 1296 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328). See PGI 225.770 for additional information relating to this statute, the terms used in this section, the United States Munitions List (USML), and the 600 series of the Commerce Control List (CCL).

#### 225.770-1 Definitions.

As used in this section—

“Component” means an item that is useful only when used in conjunction with an end item (15 CFR 772.1 and 22 CFR 120.45(b)).

“Item” means—

(1) A USML defense article, as defined at 22 CFR 120.6;

(2) A USML defense service, as defined at 22 CFR 120.9; or

(3) A 600 series item, as defined at 15 CFR 772.1.

“Part” means any single unassembled element of a major or minor component, accessory, or

attachment, that is not normally subject to disassembly without the destruction or impairment of designed use (15 CFR 772.1 and 22 CFR 120.45(d)).

### 225.770-2 Prohibition.

Do not acquire items covered by the USML or the 600 series of the CCL, through a contract or subcontract at any tier, from any Communist Chinese military company.

This prohibition does not apply to components and parts of covered items unless the components and parts are themselves covered by the USML or the 600 series of the CCL.

### 225.770-3 Exceptions.

The prohibition in 225.770-2 does not apply to items acquired—

(a) In connection with a visit to the People's Republic of China by a vessel or an aircraft of the U.S. armed forces;

(b) For testing purposes; or

(c) For the purpose of gathering intelligence.

### 225.770-4 Identifying items covered by the USML or the 600 series of the CCL.

(a) Before issuance of a solicitation, the requiring activity will notify the contracting officer in writing whether the items to be acquired are covered by the USML or the 600 series of the CCL. The notification will identify any covered item(s) and will provide the pertinent USML reference(s) from 22 CFR part 121 or the 600 series of the CCL references from 15 CFR part 774, Supplement No. 1.

(b) The USML includes defense articles and defense services that fall into 21 categories. The CCL includes ten categories and five product groups in each category, many of which contain 600 series items. Since not all items covered by the USML or 600 series of the CCL are themselves munitions (e.g., protective personnel equipment, military training equipment), the requiring activity should consult the USML and the 600 series of the CCL before concluding that an item is or is not covered. See PGI 225.770 -4.

### 225.770-5 Waiver of prohibition.

(a) The prohibition in 225.770-2 may be waived, on a case-by-case basis, if an official identified in paragraph (b) of this subsection determines that a waiver is necessary for national security purposes.

(b) The following officials are authorized, without power of delegation, to make the determination specified in paragraph (a) of this subsection:

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

(2) The Secretaries of the military departments.

(3) The Component Acquisition Executive of the Defense Logistics Agency.

(c)(1) The official granting a waiver shall submit a report to the congressional defense committees, with a copy to the Principal Director, Defense Pricing, Contracting, and Acquisition Policy (see PGI 225.770-5 ), not less than 15 days before issuing the waiver.

(2) In the report, the official shall—

(i) Identify the specific reasons for the waiver; and

(ii) Include recommendations as to what actions may be taken to develop alternative sourcing capabilities in the future.

## 225.771 Prohibition on contracting or subcontracting with a firm that is owned or controlled by the government of a country that is a state sponsor of terrorism.

### 225.771-0 Scope.

This section implements 10 U.S.C. 4871(b).

### 225.771-1 Definition.

“State sponsor of terrorism,” as used in this section, is defined in the provision at 252.225-7050 , Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism.

### 225.771-2 Prohibition.

(a) The contracting officer shall not award a contract of $200,000 or more to a firm when a foreign government that is a state sponsor of terrorism owns or controls, either directly or indirectly, a significant interest in—

(i) The firm;

(ii) A subsidiary of the firm; or

(iii) Any other firm that owns or controls the firm.

(b) For restrictions on subcontracting with a firm, or a subsidiary of a firm, that is identified by the Secretary of Defense as being owned or controlled by the government of a country that is a state sponsor of terrorism, see 209.405-2 .

### 225.771-3 Notification.

Any disclosure that the government of a country that is a state sponsor of terrorism has a significant interest in an offeror, a subsidiary of an offeror, or any other firm that owns or controls an offeror shall be forwarded through agency channels to the address at PGI 225.771-3 .

### 225.771-4 Waiver of prohibition.

The prohibition in 225.771-2 may be waived if the Secretary of Defense determines that a waiver is not inconsistent with the national security objectives of the United States in accordance with 10 U.S.C. 4871(c).

### 225.771-5 Solicitation provision.

Use the provision at 252.225-7050, Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services (other than commercial satellite services), that are expected to result in contracts of $200,000 or more. If the solicitation includes the provision at FAR 52.204-7, do not separately list the provision 252.225-7050 in the solicitation.

## 225.772 Prohibition on acquisition of certain foreign commercial satellite services.

### 225.772-0 Scope.

This section implements 10 U.S.C. 2279.

### 225.772-1 Definitions.

As used in this section—

“Covered foreign country” means—

(1) The People’s Republic of China;

(2) North Korea;

(3) The Russian Federation; or

(4) Any country that is a state sponsor of terrorism. (10 U.S.C. 2279)

“Cybersecurity risk” means threats to and vulnerabilities of information or information systems and any related consequences caused by or resulting from unauthorized access, use, disclosure, degradation, disruption, modification, or destruction of such information or information systems,

including such related consequences caused by an act of terrorism. (10 U.S.C. 2279)

“Foreign entity” means—

(1) Any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization organized under the laws of a foreign state if either its principal place of business is outside the United States or its equity securities are primarily traded on one or more foreign exchanges.

(2) Notwithstanding paragraph (1) of this definition, any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization that demonstrates that a majority of the equity interest in such entity is ultimately owned by U.S. nationals is not a foreign entity. (31 CFR 800.212)

“Government of a covered foreign country” includes the state and the government of a covered foreign country, as well as any political subdivision, agency, or instrumentality thereof.

“Launch vehicle” means a fully integrated space launch vehicle. (10 U.S.C. 2279)

“Satellite services” means communications capabilities that utilize an on-orbit satellite for transmitting the signal from one location to another.

“State sponsor of terrorism” means a country determined by the Secretary of State, under section 1754(c)(1)(A)(i) of the Export Control Reform Act of 2018 (Title XVII, Subtitle B, of the National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232),to be a country the government of which has repeatedly provided support for acts of international terrorism. As of December 14, 2020, state sponsors of terrorism include Iran, North Korea, and Syria. (10 U.S.C. 4871 )

**225.772-2 Prohibitions.**

Except as provided in 225.772-4 , the contracting officer shall not award a contract for commercial satellite services to—

(a)(1) A foreign entity if the Under Secretary of Defense for Acquisition and Sustainment or the Under Secretary of Defense for Policy reasonably believes that—

(i) The foreign entity is an entity in which the government of a covered foreign country has an ownership interest that enables the government to affect satellite operations;

(ii) The foreign entity plans to or is expected to provide satellite services under the contract from a covered foreign country; or

(iii) Entering into such contract would create an unacceptable cybersecurity risk for DoD, as determined by the Under Secretary of Defense for Acquisition and Sustainment or the Under Secretary of Defense for Policy; or

(2) An offeror that is offering commercial satellite services provided by a foreign entity as described in paragraph (a) of this section; or

(b)(1) Any entity, except as provided in paragraph (b)(2) of this section, for a launch that occurs on or after December 31, 2022, if the Under Secretary of Defense for Acquisition and Sustainment or the Under Secretary of Defense for Policy reasonably believes that such satellite services will be

provided using satellites that will be—

(i) Designed or manufactured—

(A) In a covered foreign country; or

(B) By an entity controlled in whole or in part by, or acting on behalf of, the government of a covered foreign country; or

(ii) Launched outside the United States using a launch vehicle that is—

(A) Designed or manufactured in a covered foreign country; or

(B) Provided by—

(*1*) The government of a covered foreign country; or

(*2*) An entity controlled in whole or in part by, or acting on behalf of, the government of a covered foreign country.

(2) The prohibition in paragraph (b)(1) of this section does not apply with respect to launch services for which a satellite service provider has a contract or other agreement that, prior to June 10, 2018, was either fully paid for by the satellite service provider or covered by a legally binding commitment of the satellite service provider to pay for such services.

**225.772-3 Procedures.**

(a)(1) The contracting officer shall not award to any source that is a foreign satellite service provider or is offering satellite services provided by a foreign entity if such award presents an unacceptable cybersecurity risk, as determined by the Under Secretary of Defense for Acquisition and Sustainment or the Under Secretary of Defense for Policy.

(2) When procuring commercial satellite services from a foreign entity, the contracting officer shall review the exclusion records in the System for Award Management (SAM) database as required at FAR 9.405, to ensure that an entity identified in, or otherwise known to be involved in, the otherwise successful offer is not listed as ineligible in the SAM database (see FAR 9.405).

(b) If an offeror discloses information in accordance with paragraph (c) of the provision 252.225-7049 , Prohibition on Acquisition of Certain Foreign Commercial Satellite Services—Representations, the contracting officer—

(1) Shall forward the information regarding the offeror through agency channels to the address at PGI 225.772-3 ; and

(2) Shall not award to that offeror, unless an exception is determined to apply in accordance with 225.772-4 .

(c)(1) If the otherwise successful offeror provides negative responses to all representations in the provision at 252.225-7049 , the contracting officer may rely on the representations, unless the contracting officer has an independent reason to question the representations.

(2) If the contracting officer has an independent reason to question a negative representation of the

otherwise successful offeror, the contracting officer shall consult with the office specified in PGI 225.772-3 , prior to deciding whether to award to that offeror.

### 225.772-4 Exception.

(a) The prohibitions in 225.772-2 (a) and (b) do not apply if–

(1) The Under Secretary of Defense for Acquisition and Sustainment, or the Under Secretary of Defense for Policy, without power of redelegation, determines that it is in the national security interest of the United States to enter into such contract; and

(2) Not later than seven days before entering into such contract, the Under Secretary of Defense making the determination in paragraph (a)(1) of this section, in consultation with the Director of National Intelligence, submits to the congressional defense committees a national security assessment, in accordance with 10 U.S.C. 2279.

(b) If requesting an exception pursuant to paragraph (a) of this section, the contracting officer shall forward the request through agency channels to the address at PGI 225.772-3 , providing any available information necessary for the Under Secretary of Defense making the determination in paragraph (a)(1) of this section to evaluate the request and perform a national security assessment, in accordance with 10 U.S.C. 2279.

### 225.772-5 Solicitation provision and contract clauses.

(a) Use the provision at 252.225-7049, Prohibition on Acquisition of Certain Foreign Commercial Satellite Services - Representations, in solicitations that include the clause at 252.225-7051, Prohibition on Acquisition of Certain Foreign Commercial Satellite Services. If the solicitation includes the provision at FAR 52.204-7, do not separately list the provision 252.225-7049 in the solicitation.

(b) Use the clause at 252.225-7051, Prohibition on Acquisition of Certain Foreign Commercial Satellite Services, in solicitations and contracts for the acquisition of commercial satellite services, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services.

(c) Use the clause at 252.239-7018, Supply Chain Risk, as prescribed at 239.7306(b), when applicable.

## Subpart 225.8 - OTHER INTERNATIONAL AGREEMENTS AND COORDINATION

### 225.802 Procedures.

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

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

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

### 225.802-71 End use certificates.

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

## 225.870 Contracting with Canadian contractors.

### 225.870-1 General.

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

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

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

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

(2) Acquisitions of unusual or compelling urgency;

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

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

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

### 225.870-2 Solicitation of Canadian contractors.

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

(b) Handle acquisitions at or below the simplified acquisition threshold directly with Canadian firms

and not through the Canadian Commercial Corporation.

### 225.870-3 Submission of offers.

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

(1) Name of the Canadian offeror.

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

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

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

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

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

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

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

### 225.870-4 Contracting procedures.

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

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

(c) *Requirement for data other than certified cost or pricing data.* (1) DoD has waived the requirement for submission of certified cost or pricing data for the Canadian Commercial Corporation and its subcontractors (see 215.403-1(c)(4)(C)).

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

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

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

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

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

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

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

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

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

(3) The contracting officer shall use the provision at 252.215-7003, Requirement for Submission of Data Other Than Certified Cost or Pricing Data - Canadian Commercial Corporation, and the clause at 252.215-7004, Requirement for Submission of Data Other Than Certified Cost or Pricing Data - Modifications - Canadian Commercial Corporation, as prescribed at 215.408(2)(i) and (ii), respectively.

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

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

(i) The effort made to obtain the data.

(ii) The need for the item or service.

(iii) Increased cost or significant harm to the Government if award is not made.

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

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

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

### 225.870-5 Contract administration.

Follow the contract administration procedures at PGI 225.870-5 .

### 225.870-6 Termination procedures.

When contract termination is necessary, follow the procedures at 249.7000 .

### 225.870-7 Acceptance of Canadian supplies.

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

### 225.870-8 Industrial security.

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

## 225.871 North Atlantic Treaty Organization (NATO) cooperative projects.

### 225.871-1 Scope.

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

### 225.871-2 Definitions.

As used in this section—

(a) “Cooperative project” means a jointly managed arrangement—

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

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

(3) Providing for—

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

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

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

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

**225.871-3 General.**

(a) *Cooperative project authority.*

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

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

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

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

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

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

(3) Is approved by the appropriate DoD official.

**225.871-4 Statutory waivers.**

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

(1) Procedures for the formation of contracts;

(2) Terms and conditions for inclusion in contracts;

(3) Requirements or preferences for—

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

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

(4) Requirements regulating the performance of contracts.

(b) There is no authority for waiver of—

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

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

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

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

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

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

**225.871-5 Directed subcontracting.**

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

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

**225.871-6 Disposal of property.**

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

**225.871-7 Congressional notification.**

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

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

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

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

## 225.872 Contracting with qualifying country sources.

### 225.872-1 General.

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

Australia

Belgium

Canada

Czech Republic

Denmark

Egypt

Estonia

Federal Republic of Germany

Finland

France

Greece

Israel

Italy

Japan

Latvia

Lithuania

Luxembourg

Netherlands

Norway

Poland

Portugal

Slovenia

Spain

Sweden

Switzerland

Turkey

United Kingdom of Great Britain and Northern Ireland

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

Austria

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

**225.872-2 Applicability.**

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

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

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

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

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

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

(4) U.S. industrial security requirements.

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

**225.872-3 Solicitation procedures.**

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

participation of small business concerns.

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

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

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

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

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

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

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

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

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

### 225.872-4 Individual determinations.

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

### 225.872-5 Contract administration.

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

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

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

### 225.872-6 Request for audit services.

Handle requests for audit services in France, Germany, the Netherlands, or the United Kingdom in accordance with PGI 215.404-2 (c), but follow the additional procedures at PGI 225.872-6 .

### 225.872-7 Industrial security for qualifying countries.

The required procedures for safeguarding classified defense information necessary for the performance of contracts awarded to qualifying country sources are in the National Industrial Security Program Operating Manual, 32 CFR part 117 (implemented for the Army by AR 380-49; for the Navy by SECNAV Instruction 5510.1H; for the Air Force by AFI 31-601; for the Defense Information Systems Agency by DCA Instruction 240-110-8; and for the National Imagery and Mapping Agency by NIMA Instruction 5220.22).

### 225.872-8 Subcontracting with qualifying country sources.

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

## 225.873 Waiver of United Kingdom commercial exploitation levies.

### 225.873-1 Policy.

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

### 225.873-2 Procedures.

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

# Subpart 225.9 - CUSTOMS AND DUTIES

## 225.900 RESERVED

### 225.900-70 Definition.

“Component,” as used in this subpart, means any item supplied to the Government as part of an end product or of another component.

## 225.901 Policy.

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

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

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

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

## 225.902 Procedures.

Follow the entry and release procedures at PGI 225.902 .

## 225.903 Exempted supplies.

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

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

# Subpart 225.10 - ADDITIONAL FOREIGN ACQUISITION REGULATIONS

## 225.1070 Clause deviations in overseas contracts.

See 201.403 (2) for approval authority for clause deviations in overseas contracts with governments of North Atlantic Treaty Organization (NATO) countries or other allies or with United Nations or NATO organizations.

# Subpart 225.11 - SOLICITATION PROVISIONS AND CONTRACT CLAUSES

## 225.1100 Scope of subpart.

This subpart prescribes the clauses that implement subparts 225.1 through 225.10.

The clauses that implement subparts 225.70 through 225.75 are prescribed within those subparts.

## 225.1101 Acquisition of supplies.

(1) Use the basic or the alternate of the provision at 252.225-7000, Buy American—Balance of Payments Program Certificate, instead of the provision at FAR 52.225-2, Buy American Certificate, in any solicitation, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services, that includes the basic or the alternate of the clause at 252.225-7001, Buy American and Balance of Payments Program.

(i) Use the basic provision when the solicitation includes the basic clause or alternate II of the clause at 252.225-7001.

(ii) Use the alternate I provision when the solicitation includes alternate I or alternate III of the clause at 252.225-7001.

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

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

(B) All line items require domestic or qualifying country end products in accordance with subpart 225.70, but note that this exception does not apply if subpart 225.70 only requires manufacture of the end product in the United States or in the United States or Canada, without a corresponding requirement for use of domestic components;

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

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

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

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

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

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

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

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

(iv) Use alternate II of the clause in lieu of the basic clause in solicitations and contracts if—

(A) The acquisition is not of end products listed in 225.401-70 in support of operations in Afghanistan; and

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

(v) Use alternate III of the clause in lieu of Alternate I of the clause in solicitations and contracts if—

(A) The acquisition is of end products listed in 225.401-70 in support of operations in Afghanistan; and

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

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

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

(ii) 252.225-7021, Trade Agreements.

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

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

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

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

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

(6) Except as provided in paragraph (6)(iv) of this section, use the basic or an alternate of the clause at 252.225-7021, Trade Agreements, instead of the clause at FAR 52.225-5, Trade Agreements, in

solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, if the World Trade Organization Government Procurement Agreement applies, i.e., the acquisition is of end products listed at 225.401-70, the value of the acquisition equals or exceeds $174,000, and none of the exceptions at 25.401(a) applies.

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

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

(iii) Use the alternate III clause in lieu of the basic clause in solicitations and contracts that are not of end products in support of operations in Afghanistan or that include the clause at 252.225-7024, Requirement for Products or Services from Afghanistan , when n alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)

(iv) Use the alternate IV clause in lieu of the alternate II clause in solicitations and contracts that do not include the clause at 252.225-7024, Requirement for Products or Services from Afghanistan when—

(A) The acquisition is of end products in support of operations in Afghanistan; and

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

(v) Do not use the basic or an alternate of the clause if -

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

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

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

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

(i) Submit an offer; or

(ii) Receive a subcontract exceeding $1 million.

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

(i) Submit an offer; or

(ii) Receive a subcontract exceeding $1 million.

(9) Use the basic or an alternate of the provision at 252.225-7035, Buy American—Free Trade Agreements—Balance of Payments Program Certificate, instead of the provision at FAR 52.225-4, Buy American—Free Trade Agreements—Israeli Trade Act Certificate, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services,that include the basic or an alternate of the clause at 252.225-7036, Buy American—Free Trade Agreements—Balance of Payments Program.

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

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

(iii) Use the alternate II provision when the solicitation includes alternate II or alternate VIII of the clause at 252.225-7036.

(iv) Use the alternate III provision when the solicitation includes alternate III or alternate IX of the clause at 252.225-7036.

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

(vi) Use the alternate V provision when the solicitation includes alternate V or alternate XI of the clause at 252.225-7036.

(10)(i) Except as provided in paragraph (10)(ii) of this section, use the basic or an alternate of the clause at 252.225-7036, Buy American—Free Trade Agreements—Balance of Payments Program, instead of the clause at FAR 52.225-3, Buy American—Free Trade Agreements–Israeli Trade Act, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services,for the items listed at 225.401-70, when the estimated value is less than $174,000, unless an exception at FAR 25.401 or 225.401 applies.

(A) Use the basic clause in solicitations and contracts when the estimated value equals or exceeds $100,000, but is less than $174,000, except if the acquisition is of end products in support of operations in Afghanistan.

(B) Use the alternate I clause in solicitations and contracts when the estimated value is less than $102,280, except if the acquisition is of end products in support of operations in Afghanistan.

(C) Use the alternate II clause in solicitations and contracts when the estimated value equals or exceeds $ 100,000 but is less than $174,000, and the acquisition is of end products in support of operations in Afghanistan.

(D) Use the alternate III clause in solicitations and contracts when the estimated value is less than $102,280, and the acquisition is of end products in support of operations in Afghanistan.

(E) Use the alternate IV clause in solicitations and contracts when the estimated value equals or exceeds $102,280 but is less than 174,000, except if the acquisition is of end products in support of operations in Afghanistan.

(F) Use the alternate V clause in solicitations and contracts when the estimated value equals or exceeds $102,280but is less than $174,000 and the acquisition is of end products in support of operations in Afghanistan.

(G) Use the alternate VI clause in lieu of the basic clause in solicitations and contracts, except if the acquisition is of end products in support of operations in Afghanistan, when—

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

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

(H) Use the alternate VII clause in lieu of the alternate I clause in solicitations and contracts, except if the acquisition is of end products in support of operations in Afghanistan, when—

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

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

(I) Use the alternate VIII clause in lieu of the alternate II clause in solicitations and contracts when—

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

(*2*) The acquisition is of end products in support of operations in Afghanistan; and

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

(J) Use the alternate IX clause in lieu of the alternate III clause in solicitations and contracts when—

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

(*2*) The acquisition is of end products in support of operations in Afghanistan; and

(*3*) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive in accordance with FAR 25.101(d).

(K) Use the alternate X clause in lieu of the alternate IV clause in solicitations and contracts, except if the acquisition is of end products in support of operations in Afghanistan, when—

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

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

(L) Use the alternate XI clause in lieu of the alternate V clause in solicitations and contracts when—

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

(*2*) The acquisition is of end products in support of operations in Afghanistan; and

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

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

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

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

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

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

### 225.1103 Other provisions and clauses.

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

(i) Exceed the simplified acquisition threshold; and

(ii) Are for the acquisition of—

(A) Supplies for use outside the United States;

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

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

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

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

(4) Unless an exception in 225.770-3 applies, use the clause at 252.225-7007 , Prohibition on Acquisition of Certain Items from Communist Chinese Military Companies, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, involving the delivery of items covered by the United States Munitions List or the 600 series of the Commerce Control List.

## Subpart 225.70 - AUTHORIZATION ACTS, APPROPRIATIONS ACTS, AND OTHER STATUTORY

# RESTRICTIONS ON FOREIGN ACQUISITION

## 225.7000 Scope of subpart.

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

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

## 225.7001 Definitions.

As used in this subpart—

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

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

(2) Incorporates multiple, replaceable parts.

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

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

“Covered country” means—

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

(2) The People’s Republic of China;

(3) The Russian Federation; and

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

“End item,” as used in sections 225.7003 and 225.7018 , means the final production product when assembled or completed and ready for delivery under a line item of the contract (10 U.S.C. 2533b(m)).

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

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

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

“Structural component of a tent”—

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

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

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

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

### 225.7002-1 Restrictions.

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

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

(i) Food.

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

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

(B) Tarpaulins; or

(C) Covers.

(iv) Cotton and other natural fiber products.

(v) Woven silk or woven silk blends.

(vi) Spun silk yarn for cartridge cloth.

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

(viii) Canvas products.

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

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

(2) Hand or measuring tools, unless the tools were produced in the United States. For additional

guidance, see PGI 225.7002-1 (a)(2).

(b) In accordance with section 8123 of the Department of Defense Appropriations Act, 2014 (Pub. L. 113-76, division C, title VIII), and the same provision in subsequent Defense appropriations acts, except as provided in 225.7002-2 , do not acquire a flag of the United States (PSC 8345), unless such flag, including the materials and components thereof, is manufactured in the United States, consistent with the requirements at10 U.S.C. 4862. This restriction does not apply to the acquisition of any end items or components related to flying or displaying the flag (e.g., flag poles and accessories).

**225.7002-2 Exceptions.**

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

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

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

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

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

(ii) The Secretary of the Army.

(iii) The Secretary of the Navy.

(iv) The Secretary of the Air Force.

(v) The Director of the Defense Logistics Agency.

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

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

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

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

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

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

(1) In support of contingency operations; or

(2) For which the use of other than competitive procedures has been approved on the basis of unusual and compelling urgency in accordance with FAR 6.302-2.

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

(h) Acquisitions by vessels in foreign waters.

(i) Acquisitions of items specifically for commissary resale.

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

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

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

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

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

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

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

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

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

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

(iv) Parachutes ( PSG 1670); or

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

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

(o) Acquisitions that are interagency, State, or local purchases that are executed by DoD as a result of the transfer of contracts from the General Services Administration or for which DoD serves as an

item manager for products on behalf of the General Services Administration. According to section 897 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92), such contracts shall not be subject to requirements under subchapter II of chapter 385, United States Code (including 10 U.S.C. 4862), to the extent such contracts are for purchases of products by other Federal agencies or State or local governments.

### 225.7002-3 Contract clauses.

Unless an exception at 225.7002-2 applies—

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

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

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

## 225.7003 Restrictions on acquisition of specialty metals.

### 225.7003-1 Definitions.

As used in this section—

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

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

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

“Automotive item”—

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

(i) A high-mobility multipurpose wheeled vehicle;

(ii) An armored personnel carrier; or

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

(2) Does not include—

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

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

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

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

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

“Produce” means—

(1) Atomization;

(2) Sputtering; or

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

“Specialty metal” means—

(1) Steel—

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

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

(2) Metal alloys consisting of—

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

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

(3) Titanium and titanium alloys; or

(4) Zirconium and zirconium alloys.

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

elements.

**225.7003-2 Restrictions.**

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

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

(i) Aircraft.

(ii) Missile or space systems.

(iii) Ships.

(iv) Tank or automotive items.

(v) Weapon systems.

(vi) Ammunition.

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

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

**225.7003-3 Exceptions.**

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

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

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

(3) Acquisitions in support of contingency operations.

(4) Acquisitions for which the use of other than competitive procedures has been approved on the basis of unusual and compelling urgency in accordance with FAR 6.302-2.

(5) Acquisitions of items specifically for commissary resale.

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

(b) One or more of the following exceptions may apply to an end item or component that includes

any of the following, under a prime contract or subcontract at any tier. The restrictions in 225.7003-2 do not apply to the following:

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

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

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

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

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

(D) COTS fasteners, unless—

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

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

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

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

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

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

(i) The secretary of the military department concerned is authorized, without power of redelegation,

to make a domestic nonavailability determination that applies to only one contract. The supporting documentation for the determination shall include an analysis and written documentation by the requiring activity, with specificity, why alternatives that would not require a domestic nonavailability determination are unacceptable.

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

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

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

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

(B) The USD(A&S)—

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

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

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

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

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

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

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

(d) National security waiver. The USD(A&S) may waive the restrictions at 225.7003-2 if the USD(A&S) determines in writing that acceptance of the item is necessary to the national security

interests of the United States (see procedures at PGI 225.7003-3 (d)). This authority may not be delegated.

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

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

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

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

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

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

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

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

### 225.7003-4 Reserved.

### 225.7003-5 Solicitation provision and contract clauses.

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

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

(i) Exceed the simplified acquisition threshold; and

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

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

(i) Exceed the simplified acquisition threshold; and

(ii) Require delivery of any of the following items, or components of the following items, if such items

or components contain specialty metal:

(A) Aircraft.

(B) Missile or space systems.

(C) Ships.

(D) Tank or automotive items.

(E) Weapon systems.

(F) Ammunition.

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

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

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

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

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

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

### 225.7004-0 Scope.

This section implements 10 U.S.C. 4864.

### 225.7004-1 Definitions.

As used in this section—

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

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

**225.7004-2 Restrictions.**

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

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

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

(1) Gyrocompasses.

(2) Electronic navigation chart systems.

(3) Steering controls.

(4) Propulsion and machinery control systems.

(5) Totally enclosed lifeboats.

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

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

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

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

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

(3) Shipboard cranes.

(4) Spreaders for shipboard cranes.

(e) Star trackers.

**225.7004-3 Exceptions.**

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

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

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

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

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

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

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

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

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

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

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

### 225.7004-5 Additional restrictions on anchor and mooring chain.

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

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

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

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

**225.7004-6 Waiver of restrictions.**

(a) Welded shipboard anchor and mooring chain.

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

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

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

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

(i) The factors supporting the waiver; and

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) The restriction would cause unreasonable delays.

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

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

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

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

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

**225.7004-7 Contract clauses.**

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

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

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

(2) A waiver has been granted.

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

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

acquisition threshold and that include the acquisition of star trackers unless—

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

(2) A waiver has been granted.

## 225.7005 Reserved.

## 225.7006 Reserved.

## 225.7007 Reserved.

## 225.7008 Reserved.

## 225.7009 Restriction on ball and roller bearings.

### 225.7009-1 Scope.

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

### 225.7009-2 Restriction.

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

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

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

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

### 225.7009-3 Exception.

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

### 225.7009-4 Waiver.

The secretary of the department responsible for acquisition or, for the Defense Logistics Agency, the Component Acquisition Executive, may waive the restriction in 225.7009-2, on a case-by-case basis,

by certifying to the House and Senate Committees on Appropriations that—

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

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

#### 225.7009-5 Contract clause.

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

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

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

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

### 225.7010 Reserved.

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

#### 225.7011-1 Restriction.

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

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

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

(b) This restriction—

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

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

#### 225.7011-2 Waiver.

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

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

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

#### 225.7011-3 Contract clause.

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

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

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

### 225.7012 Restriction on supercomputers.

#### 225.7012-1 Restriction.

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

#### 225.7012-2 Waiver.

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

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

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

#### 225.7012-3 Contract clause.

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

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

**225.7013-0 Scope.**

This section implements 10 U.S.C. 8679 and 10 U.S.C. 8680.

**225.7013-1 Definitions.**

As used in this section—

“Corrective and preventive maintenance or repair” means—

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

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

“Facilities maintenance” means the effort required to—

(1) Provide housekeeping services throughout the ship;

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

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

**225.7013-2 Restrictions.**

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

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

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

(b) *Overhaul, repair, or maintenance (10 U.S.C. 8680).*

(1) Do not overhaul, repair, or maintain, in a shipyard,outside the United States or Guam, a naval vessel (or any other vessel under the jurisdiction of the Secretary of the Navy) homeported in the United States or Guam.

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

(i) Voyage repairs; or

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

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

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

(A) In a foreign shipyard;

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

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

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

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

## 225.7014 Restrictions on military construction.

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

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

## 225.7015 Restriction on overseas architect-engineer services.

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

## 225.7017 Utilization of domestic photovoltaic devices.

### 225.7017-1 Definitions As used in this section—

“Caribbean Basin country photovoltaic device” means a photovoltaic device that—

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

(2) In the case of a photovoltaic device that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of a Caribbean Basin country.

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

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

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

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

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

“Foreign photovoltaic device” means a photovoltaic device other than a domestic photovoltaic device.

“Free Trade Agreement country photovoltaic device” means a photovoltaic device that—

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

(2) In the case of a photovoltaic device that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of a Free Trade Agreement country.

“Least developed country photovoltaic device” means a photovoltaic device that—

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

(2) In the case of a photovoltaic device that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of a least developed country.

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

“Qualifying country photovoltaic device” means a photovoltaic device manufactured in a qualifying country.

“U.S.-made photovoltaic device” means a photovoltaic device that—

(1) Is manufactured in the United States; or

(2) Is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of the United States.

“WTO GPA country photovoltaic device” means a photovoltaic device that—

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

(2) In the case of a photovoltaic device that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article

of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of a WTO GPA country.

**225.7017-2 Restriction.**

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

**225.7017-3 Exceptions.**

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

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

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

(c) *Trade agreements.*

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

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

**225.7017-4 Solicitation provision and contract clause.**

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

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

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

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

### 225.7018-0 Scope.

This section implements 10 U.S.C. 4872.

### 225.7018-1 Definitions.

As used in this section—

“Covered material” means—

(1) Samarium-cobalt magnets;

(2) Neodymium-iron-boron magnets;

(3) Tantalum metals and alloys;

( 4 ) Tungsten metal powder; and

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

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

“Tungsten heavy alloy” means a tungsten base pseudo alloy that—

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

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

### 225.7018-2 Restriction.

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

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

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

(b) *Samarium-cobalt magnets and neodymium-iron-boron magnets.*

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

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

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

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

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

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

(c) *Tantalum metals and alloys.*

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

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

(d) *Tungsten metal powder and tungsten heavy alloy.*

(1) Effective through December 31, 2026, for production of tungsten metal powder and tungsten heavy alloy, this restriction includes–

(i) Atomization;

(ii) Calcination and reduction into powder;

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

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

(2) Effective January 1, 2027, for production of tungsten metal powder, tungsten heavy alloy, or any

finished or semi-finished component containing tungsten heavy alloy, this restriction includes mining or production of a tungsten ore or feedstock, including recycled material, through production of tungsten metal powders, except as provided at 225.7018-3.

**225.7018-3 Exceptions.**

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

(a) At or below the simplified acquisition threshold;

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

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

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

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

(A) 50 percent or more tungsten by weight; or

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

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

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

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

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

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

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

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

**225.7018-4 Nonavailability determination.**

(a) *Individual nonavailability determinations*.

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

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

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

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

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

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

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

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

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

(2) The USD(A&S)—

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

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

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

**225.7018-5 Contract clause.**

Unless acquiring items outside the United States for use outside the United States or a nonavailability determination has been made in accordance with 225.7018-4 , use the clause at 252.225-7052 , Restriction on Acquisition of Certain Magnets, Tantalum, and Tungsten, in

solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that exceed the simplified acquisition threshold.

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

### 225.7019-1 Definitions.

As used in this section—

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

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

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

### 225.7019-2 Prohibition.

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

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

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

### 225.7019-3 Waiver.

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

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

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

(b)*Submission of waiver notice*. (1) Not later than 14 days before the execution of any energy

contract for which a waiver is granted under paragraph (a) of this section, the head of the contracting activity shall submit to the congressional defense committees a notice of the waiver. See PGI 225.7019-3 for waiver procedures.

(2) The waiver notice shall include the following:

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

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

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

#### 225.7019-4 Solicitation provision and contract clause.

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

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

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

### 225.7020 Prohibition on contracting with the Maduro regime.

#### 225.7020-1 Definitions.

As used in this section—

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

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

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

*Person* means—

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

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

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

**225.7020-2 Prohibition.**

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

**225.7020-3 Exceptions.**

The prohibition in 225.7020-2 does not apply if—

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

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

**225.7020-4 Joint determination.**

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

(1) Necessary for purposes of—

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

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

(iii) Carrying out noncombatant evacuations; or

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

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

### 225.7020-5 Solicitation provision and contract clause.

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

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

## 225.7021 Disclosure requirements for employment transparency regarding individuals who perform work in the People's Republic of China.

See PGI 225.7021 for additional procedures regarding disclosures.

### 225.7021-1 Definitions.

As used in this section—

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

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

### 225.7021-2 Restrictions.

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

### 225.7021-3 National security waiver of disclosure.

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

### 225.7021-4 Solicitation provision and contract clause.

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

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

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

### 225.7022-1 Scope.

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

### 225.7022-2 Definitions.

As used in this section—

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

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

### 225.7022-3 Prohibition.

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

### 225.7022-4 Exceptions.

The prohibition at 225.7022-3 does not apply to—

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

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

### 225.7022-5 Solicitation provision and contract clause.

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

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

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

### 225.7023-1 Definitions.

As used in this section—

“Covered item” means an article or item of—

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

(i) Nitrile and vinyl gloves;

(ii) Surgical masks;

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

(iv) Face shields and protective eyewear;

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

(vi) Clothing; and

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

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

### 225.7023-2 Restriction.

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

### 225.7023-3 Exceptions.

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

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

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

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

(2) The contracting officer shall include a copy of any such determination in the contract file.

### 225.7023-4 Contract clause.

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

(a) Are for the acquisition of covered items;

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

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

## 225.7024 Restriction on acquisition of fuel for overseas contingency operations.

### 225.7024-1 Scope.

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

### 225.7024-2 Prohibition.

Contracting officers shall not award, for an overseas contingency operation, a contract for fuel, in whole or in part, or derivatives of such fuel, that is sourced from nations or regions prohibited from selling petroleum to the United States. See FAR subpart 25.7 and the Office of Foreign Assets Control website at https://ofac.treasury.gov/sanctions-programs-and-country-information for prohibited sources.

**225.7024-3 Procedures.**

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

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

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

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

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

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

(2) To the maximum extent practicable, shall not disqualify an otherwise responsible offeror on the basis of an unsupported denial of access to a facility or equipment by a host-nation government. The provision at 252.225-7065, Restriction on Acquisition of Fuel for Overseas Contingency Operations, requires offerors to report promptly to the contracting officer, prior to award, any instance of unsupported denial of access to a facility or equipment by a host-nation government that may prevent it from complying with the terms and conditions of the solicitation.

(b) See 215.101-71 for the requirement to consider using a tradeoff process.

**225.7024-4 Solicitation provision.**

Use the provision at 252.225-7065, Restriction on Acquisition of Fuel for Overseas Contingency Operations, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services, that are for the acquisition of fuel for overseas contingency operations and are expected to exceed the simplified acquisition threshold.

# Subpart 225.71 - OTHER RESTRICTIONS ON FOREIGN ACQUISITION

## 225.7100 Scope of subpart.

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

## 225.7101 Definitions.

“Component” and “domestic manufacture,” as used in this subpart, are defined in the clause at 252.225-7025 , Restriction on Acquisition of Forgings.

## 225.7102 Forgings.

### 225.7102-1 Policy.

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

| ITEMS | CATEGORIES |
|---|---|
| Ship propulsion shafts | Excludes service and landing craft shafts |
| Periscope tubes | All |
| Ring forgings for bull gears | All greater than 120 inches in diameter |

### 225.7102-2 Exceptions.

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

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

(b) Overseas for overseas use; or

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

### 225.7102-3 Waiver.

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

**225.7102-4 Contract clause.**

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

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

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

# Subpart 225.72 - REPORTING CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES

## 225.7201 Policy.

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

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

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

## 225.7202 Exception.

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

## 225.7203 Contracting officer distribution of reports.

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

## 225.7204 Solicitation provision and contract clauses.

Except for acquisitions described in 225.7202 —

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

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

# Subpart 225.73 - ACQUISITIONS FOR FOREIGN MILITARY SALES

## 225.7300 Scope of subpart.

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

(b) This subpart does not apply to—

(1) FMS made from inventories or stocks;

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

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

## 225.7301 General.

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

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

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

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

### 225.7301-1 Reserved.

### 225.7301-2 Solicitation approval for sole source contracts.

The contracting officer shall coordinate through agency channels with the Principal Director, Defense Pricing, Contracting, and Acquisition Policy, prior to issuing a solicitation for a firm-fixed-price sole source contract type for U.S./FMS combined requirements for a major system that has an estimated contract value that exceeds $500 million. See also 201.170 and PGI 216.403-1 (1)(ii)(B) and (C).

## 225.7302 Preparation of letter of offer and acceptance.

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

(1) Working with prospective contractors to—

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

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

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

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

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

## 225.7303 Pricing acquisitions for FMS.

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

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

### 225.7303-1 Contractor sales to other foreign customers.

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

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

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

be recognized in the same amounts in pricing other defense contracts. Examples of such costs include, but are not limited to, the following:

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

(i) Maintaining international sales and service organizations;

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

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

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

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

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

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

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

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

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

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

(iv) Indirect offset costs are deemed reasonable for purposes of FAR parts 15 and 31 with no further analysis necessary on the part of the contracting officer, provided that the U.S. defense contractor submits to the contracting officer a signed offset agreement or other documentation showing that the FMS customer has made the provision of an indirect offset a condition of the FMS acquisition. FMS customers are placed on notice through the LOA that indirect offset costs are deemed reasonable without any further analysis by the contracting officer.

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

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

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

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

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

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

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

**225.7303-3 Government-to-government agreements.**

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

**225.7303-4 Contingent fees.**

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

(1) The fees are paid to a bona fide employee or a bona fide established commercial or selling agency maintained by the prospective contractor for the purpose of securing business (see FAR Part 31 and FAR Subpart 3.4); and

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

(b)(1) Under DoD 5105.38-M, LOAs for requirements for the governments of Australia, Taiwan, Egypt, Greece, Israel, Japan, Jordan, Republic of Korea, Kuwait, Pakistan, Philippines, Saudi Arabia, Turkey, Thailand, or Venezuela (Air Force) shall provide that all U.S. Government contracts resulting from the LOAs prohibit the reimbursement of contingent fees as an allowable cost under the contract, unless the contractor identifies the payments and the foreign customer approves the payments in writing before contract award (see 225.7307 (a)).

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

**225.7303-5 Acquisitions wholly paid for from nonrepayable funds.**

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

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

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

## 225.7304 FMS customer involvement.

(a) FMS customers may request that a defense article or defense service be obtained from a particular contractor. In such cases, FAR 6.302-4 provides authority to contract without full and open competition. The FMS customer may also request that a subcontract be placed with a particular firm. The contracting officer shall honor such requests from the FMS customer only if the LOA or other written direction sufficiently fulfills the requirements of FAR Subpart 6.3.

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

(1) Develop technical specifications;

(2) Establish delivery schedules;

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

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

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

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

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

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

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

(e) Do not allow representatives of the FMS customer to—

(1) Direct the exclusion of certain firms from the solicitation process (they may suggest the inclusion of certain firms);

(2) Interfere with a contractor's placement of subcontracts; or

(3) Observe or participate in negotiations between the U.S. Government and the contractor involving certified cost or pricing data, unless a deviation is granted in accordance with subpart 201.4.

(f) Do not accept directions from the FMS customer on source selection decisions or contract terms (except that, upon timely notice, the contracting officer may attempt to obtain any special contract provisions, warranties, or other unique requirements requested by the FMS customer).

(g) Do not honor any requests by the FMS customer to reject any bid or proposal.

(h) If an FMS customer requests additional data concerning FMS contract prices, the contracting officer shall, after consultation with the contractor, provide sufficient data to demonstrate the reasonableness of the price and reasonable responses to relevant questions concerning contract price. This data—

(1) May include tailored responses, top-level pricing summaries, historical prices, or an explanation of any significant differences between the actual contract price and the estimated contract price included in the initial LOA; and

(2) May be provided orally, in writing, or by any other method acceptable to the contracting officer.

## 225.7305 Limitation of liability.

Advise the contractor when the foreign customer will assume the risk for loss or damage under the appropriate limitation of liability clause(s) (see FAR Subpart 46.8). Consider the costs of necessary insurance, if any, obtained by the contractor to cover the risk of loss or damage in establishing the FMS contract price.

## 225.7306 Offset arrangements.

In accordance with the Presidential policy statement of April 16, 1990, DoD does not encourage, enter into, or commit U.S. firms to FMS offset arrangements. The decision whether to engage in offsets, and the responsibility for negotiating and implementing offset arrangements, resides with the companies involved. (Also see 225.7303-2 (a)(3).)

## 225.7307 Contract clauses.

(a) Use the clause at 252.225-7027 , Restriction on Contingent Fees for Foreign Military Sales, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that are for FMS. Insert in paragraph (b)(1) of the clause the name(s) of any foreign country customer(s) listed in 225.7303-4 (b).

(b) Use the clause at 252.225-7028 , Exclusionary Policies and Practices of Foreign Governments, in

solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that are for the purchase of supplies and services for international military education training and FMS.

# Subpart 225.74 - Reserved

# Subpart 225.75 - BALANCE OF PAYMENTS PROGRAM

## 225.7500 Scope of subpart.

This subpart provides policies and procedures implementing the Balance of Payments Program. It applies to contracts for the acquisition of—

(a) Supplies for use outside the United States; and

(b) Construction to be performed outside the United States.

## 225.7501 Policy.

Acquire only domestic end products for use outside the United States, and use only domestic construction material for construction to be performed outside the United States, including end products and construction material for foreign military sales, unless—

(a) Before issuing the solicitation—

(1) The estimated cost of the acquisition or the value of a particular construction material is at or below the simplified acquisition threshold;

(2) The end product or particular construction material is—

(i) Listed in FAR 25.104;

(ii) A petroleum product;

(iii) A spare part for foreign-manufactured vehicles, equipment, machinery, or systems, provided the acquisition is restricted to the original manufacturer or its supplier;

(iv) An industrial gas;

(v) A brand drug specified by the Defense Medical Materiel Board; or

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

(3) The acquisition is covered by the World Trade Organization Government Procurement Agreement;

(4) The acquisition of foreign end products or construction material is required by a treaty or executive agreement between governments;

(5) Use of a procedure specified in 225.7703-1 (a) is authorized for an acquisition in support of operations in Afghanistan;

(6) The end product is acquired for commissary resale; or

(7) The contracting officer determines that a requirement can best be filled by a foreign end product or construction material, including determinations that—

(i) A subsistence product is perishable and delivery from the United States would significantly impair the quality at the point of consumption;

(ii) An end product or construction material, by its nature or as a practical matter, can best be acquired in the geographic area concerned, e.g., ice or books; or bulk material, such as sand, gravel, or other soil material, stone, concrete masonry units, or fired brick;

(iii) A particular domestic construction material is not available;

(iv) The cost of domestic construction material would exceed the cost of foreign construction material by more than 50 percent, calculated on the basis of—

(A) A particular construction material; or

(B) The comparative cost of application of the Balance of Payments Program to the total acquisition; or

(v) Use of a particular domestic construction material is impracticable;

(b) After receipt of offers—

(1) The evaluated low offer (see Subpart 225.5) is an offer of an end product that—

(i) Is a qualifying country end product;

(ii) Is an eligible product;

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

(iv) Is a nonqualifying country end product, but application of the Balance of Payments Program evaluation factor would not result in award on a domestic offer; or

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

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

## 225.7502 Procedures.

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

## 225.7503 Contract clauses.

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

(a) Use the basic or an alternate of the clause at 252.225-7044 Balance of Payments Program—Construction Material., Balance of Payments Program—Construction Material, in solicitations and contracts for construction to be performed outside the United States, including acquisitions of commercial products or commercial components, with an estimated value greater than the simplified acquisition threshold but less than $6,708,000.

(1) Use the basic clause unless the acquisition is in support of operations in Afghanistan.

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

(3) Use the alternate II clause in lieu of the basic clause if an alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)), unless the acquisition is in support of operations in Afghanistan.

(4) Use the alternate III clause in lieu of the alternate I clause if—

(i) The acquisition is in support of operations in Afghanistan; and

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

(b) Use the basic or an alternate of the clause at 252.225-7045, Balance of Payments Program—Construction Material Under Trade Agreements, in solicitations and contracts for construction to be performed outside the United States with an estimated value of $6,708,000 or more, including acquisitions of commercial products or commercial components.

(1) Use the basic clause in solicitations and contracts with an estimated value of $13,296,489 or more, unless the acquisition is in support of operations in Afghanistan.

(2) Use the alternate I clause in solicitations and contracts with an estimated value of $6,708,000 or more, but less than $13,296,489unless the acquisition is in support of operations in Afghanistan.

(3) Use the alternate II clause in solicitations and contracts with an estimated value of $13,296,489 or more and is in support of operations in Afghanistan.

(4) Use the alternate III clause in solicitations and contracts with an estimated value of $6,708,000or more, but less than $13,296,489, and is in support of operations in Afghanistan.

(5) Use the alternate IV clause in lieu of the basic clause in solicitations and contracts, unless the acquisition is in support of operations in Afghanistan, when—

(i) The estimated value is $13,296,489 or more; and

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

(6) Use the alternate V clause in lieu of the alternate I clause in solicitations and contracts, unless the acquisition is in support of operations in Afghanistan, when—

(i) The estimated value is $6,708,000 or more, but less than $13,296,489; and

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

(7) Use the alternate VI clause in lieu of the alternate II clause in solicitations and contracts when—

(i) The estimated value is $13,296,489 or more;

(ii) The acquisition is in support of operations in Afghanistan; and

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

(8) Use the alternate VII clause in lieu of the alternate III clause in solicitations and contracts when—

(i) The estimated value is $6,708,000 or more but less than $13,296,489;

(ii) The acquisition is in support of operations in Afghanistan; and

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

# Subpart 225.76 - SECONDARY ARAB BOYCOTT OF ISRAEL

## 225.7601 Restriction.

In accordance with 10 U.S.C. 4659, do not enter into a contract with a foreign entity unless it has certified that it does not comply with the secondary Arab boycott of Israel.

## 225.7602 Procedures.

For contracts awarded to the Canadian Commercial Corporation (CCC), the CCC will submit a certification from its proposed subcontractor with the other required precontractual information (see 225.870 ).

## 225.7603 Exceptions.

This restriction does not apply to—

(a) Purchases at or below the simplified acquisition threshold;

(b) Contracts for consumable supplies, provisions, or services for the support of United States forces or of allied forces in a foreign country; or

(c) Contracts pertaining to the use of any equipment, technology, data, or services for intelligence or classified purposes, or to the acquisition or lease thereof, in the interest of national security.

### 225.7604 Waivers.

The Secretary of Defense may waive this restriction on the basis of national security interests. To request a waiver, follow the procedures at PGI 225.7604 .

### 225.7605 Solicitation provision.

Unless an exception at 225.7603 applies or a waiver has been granted in accordance with 225.7604 , use the provision at 252.225-7031 , Secondary Arab Boycott of Israel, in all solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services. If the solicitation includes the provision at FAR 52.204-7, do not separately list 252.225-7031 in the solicitation.

## Subpart 225.77 - ACQUISITIONS IN SUPPORT OF OPERATIONS IN AFGHANISTAN

### 225.7700 Scope.

This subpart implements—

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

(b) Section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181), as amended by section 842 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239);

(c) Section 826 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239); and

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

(e) Section 1216 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328).

### 225.7701 Definitions.

As used in this subpart—

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

Afghanistan.

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

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

“Source from Afghanistan” means a source that—

(1) Is located in Afghanistan; and

(2) Offers products or services from Afghanistan.

“Textile component” is defined in the clause at 252.225-7029 , Acquisition of Uniform Components for Afghan Military or Afghan National Police.

## 225.7702 Acquisitions not subject to the enhanced authority to acquire products or services from Afghanistan.

### 225.7702-1 Acquisition of small arms.

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

(1) Use full and open competition to the maximum extent practicable, consistent with the provisions of 10 U.S.C. 3201;

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

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

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

(3) If the exception at FAR 6.302-2 (unusual and compelling urgency) applies, do not exclude responsible U.S. manufacturers or products manufactured in the United States from the competition for the purpose of administrative expediency. However, such an offer may be rejected if it does not meet delivery schedule requirements.

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

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

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

### 225.7702-2 Acquisition of uniform components for the Afghan military or the Afghan police.

Any textile components supplied by DoD to the Afghan National Army or the Afghan National Police for purpose of production of uniforms shall be produced in the United States.

## 225.7703 Enhanced authority to acquire products or services from Afghanistan.

### 225.7703-1 Acquisition procedures.

(a) Subject to the requirements of 225.7703-2, except as provided in 225.7702, a product or service (including construction), in support of operations in Afghanistan, may be acquired by—

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

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

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

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

(c) When issuing solicitations and contracts for performance in Afghanistan, follow the procedures at PGI 225.7703-1 (c).

### 225.7703-2 Determination requirements.

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

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

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

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

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

(1) The appropriate official specified in paragraph (b)(2) of this subsection must determine in writing that it is in the national security interest of the United States to use a procedure specified in 225.7703-1 (a), because—

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

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

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

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

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

(i) The head of the contacting activity is authorized to make a determination that applies to an individual acquisition with a value of less than $150 million.

(ii) The Principal Director, Defense Pricing, Contracting, and Acquisition Policy, and the following officials, without power of redelegation, are authorized to make a determination that applies to an individual acquisition with a value of $150 million or more or to a class of acquisitions:

(A) Defense Logistics Agency Component Acquisition Executive.

(B) Army Acquisition Executive.

(C) Navy Acquisition Executive.

(D) Air Force Acquisition Executive.

(E) Commander of the United States Central Command Joint Theater Support Contracting Command (C–JTSCC).

(3) The contracting officer—

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

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

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

### 225.7703-3 Evaluating offers.

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

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

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

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

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

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

**225.7703-4 Solicitation provisions and contract clauses.**

(a) Use the provision at 252.225-7023, Preference for Products or Services from Afghanistan, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services, that provide a preference for products or services from Afghanistan in accordance with 225.7703-1(a)(1). The contracting officer may modify the 50 percent evaluation factor in accordance with contracting office procedures.

(b) Use the clause at 252.225-7024, Requirement for Products or Services from Afghanistan, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services, that include the provision at 252.225-7023, Preference for Products or Services from Afghanistan, and in the resulting contract.

(c) Use the clause at 252.225-7026, Acquisition Restricted to Products or Services from Afghanistan, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that -

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

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

(d) Use the clause at 252.225-7029, Acquisition of Uniform Components for Afghan Military or Afghan National Police, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, for the acquisition of any textile components that DoD intends to supply to the Afghan National Army or the Afghan National Police for purposes of production of uniforms.

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

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

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

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

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

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

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

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

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

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

(1) 252.225-7020, Trade Agreements Certificate.

(2) 252.225-7021, Trade Agreements.

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

### 225.7704-1 Applicability of trade agreements.

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

### 225.7704-2 Applicability of Balance of Payments Program.

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

### 225.7704-3 Solicitation provisions and contract clauses.

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

## 225.7705 Prohibition on use of funds for contracts of certain programs and projects in Afghanistan that cannot be safely accessed.

This section implements section 1216 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328).

**225.7705-1 Prohibition.**

The contracting officer shall not obligate or expend funds for a construction or other infrastructure program or project of the Department in Afghanistan if military or civilian personnel of the United States Government or their representatives, with authority to conduct oversight of such program or project, cannot safely access such program or project. In limited circumstances, this prohibition may be waived in accordance with section 225.7705-2 .

**225.7705-2 Waiver of prohibition.**

(a) The prohibition in 225.7705-1 may be waived upon issuance of a determination, approved in accordance with paragraph (b) of this section, that—

(1) The program or project clearly contributes to United States national interests or strategic objectives;

(2) The Government of Afghanistan has requested or expressed a need for the program or project;

(3) The program or project has been coordinated with the Government of Afghanistan, and with any other implementing agencies or international donors;

(4) Security conditions permit effective implementation and oversight of the program or project;

(5) Safeguards to detect, deter, and mitigate corruption and waste, fraud, and abuse of funds are in place;

(6) Adequate arrangements have been made for the sustainment of the program or project following its completion, including arrangements with respect to funding and technical capacity for sustainment; and

(7) Meaningful metrics have been established to measure the progress and effectiveness of the program or project in meeting its objectives.

(b) The following officials are authorized to approve the determination described in paragraph (a) of this section:

(1) In the case of a program or project with an estimated lifecycle cost of less than $1 million, by the contracting officer.

(2) In the case of a program or project with an estimated lifecycle cost of $1 million or more, but less than $20 million, by the senior U.S. officer in the Combined Security Transition Command-Afghanistan.

(3) In the case of a program or project with an estimated lifecycle cost of $20 million or more, but less than $40 million, by the Commander of United States Forces-Afghanistan.

(4) In the case of a program or project with an estimated lifecycle cost of $40 million or more, by the Secretary of Defense.

(c) Congressional notification is required within 15 days of issuance of a determination to waive the prohibition for programs or projects valued at $40 million or more in accordance with paragraph

(b)(4) of this section.

**225.7705-3 Procedures.**

(a) The contracting officer shall not obligate or expend funds for contracts for a construction or other infrastructure program or project in Afghanistan, awarded after December 23, 2016, unless the requiring activity provides the following documentation:

(1) Written affirmation that military or civilian personnel of the United States Government or their representatives, with authority to conduct oversight of such program or project, can safely access such program or project; or

(2)(i) For programs or projects valued at less than $1 million, sufficient information upon which to base the determination described in 225.7705-2 (a); or

(ii)(A) For programs or projects valued at $1 million or more, a copy of the approved determination described in 225.7705-2 (a) and (b); and

(B) For programs or projects valued at $40 million or more, a copy of the Congressional notification described in 225.7705-2 (c).

(b) After contract award, the contracting officer shall review the requiring activity's progress reports (e.g., contracting officer's representative reports) that addresses whether access continues to be safe or security conditions continue to permit effective implementation and oversight of the contract. If the requiring activity does not affirm continued safe access or, if a determination to waive the prohibition has been approved, that security conditions continue to permit effective implementation and oversight of the contract, then the contracting officer shall consult with the requiring activity to take any appropriate actions.

## 225.7798 Enhanced authority to acquire products or services of Djibouti in support of DoD operations in Djibouti.

See Class Deviation 2016-O0005, dated February 4, 2016, implementing section 1263 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015, Enhanced Authority to Acquire Goods and Services of Djibouti in Support of DoD Activities in the United States Africa Command Area of Responsibility, as amended by section 886(c) of the NDAA for FY 2016. Contracting officers shall limit competition to, or provide a preference for, products or services of Djibouti for procurements in support of DoD operations in the Republic of Djibouti (Djibouti).

## 225.7799 Authority to acquire products and services (including construction) from Afghanistan or from countries along a major route of supply to Afghanistan.

See Class Deviation 2016-O0004, dated December 29, 2015, implementing section 801 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2010, as most recently amended by sections 886 and 1214 of the NDAA for FY 2016 (Pub. L. 114-92) and section 886 of the NDAA for FY 2008, most recently amended by section 886 of the NDAA for FY 2016. Contracting officers are

authorized to limit competition to, or provide a preference for products mined, produced, or manufactured in, or services from the Central Asian states, Pakistan, the South Caucasus, or Afghanistan, unless the products are in the AbilityOne Procurement Catalog and are available from a qualified nonprofit agency in a timely fashion to support mission requirements.

# Subpart 225.78 - ACQUISITIONS IN SUPPORT OF GEOGRAPHIC COMBATANT COMMANDS THEATER SECURITY COOPERATION EFFORTS

## 225.7801 Policy.

For guidance on procurement support of the geographic combatant command's theater security cooperation efforts, see PGI 225.78 .

# Subpart 225.79 - EXPORT CONTROL

## 225.7900 Scope of subpart.

This subpart implements –

(a) Section 890(a) of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181); and

(b) The requirements regarding export control of Title I of the Security Cooperation Act of 2010 (Pub. L. 111-266); the Treaty Between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation (the U.S.-Australia DTC Treaty); and the Treaty Between the Government of the United States of America and the Government the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation (the U.S.-U.K. DTC Treaty). See PGI 225.7902 for additional information.

## 225.7901 Export-controlled items.

This section implements section 890(a) of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

### 225.7901-1 Definitions.

"Export-controlled items," as used in this section, is defined in the clause at 252.225-7048 .

### 225.7901-2 General.

Certain types of items are subject to export controls in accordance with the Arms Export Control Act (22 U.S.C. 2751, et seq.), the International Traffic in Arms Regulations (22 CFR Parts 120-130), the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401 et seq.), and the Export Administration Regulations (15 CFR Parts 730-774). See PGI 225.7901-2 for additional information.

### 225.7901-3 Policy.

(a) It is in the interest of both the Government and the contractor to be aware of export controls as they apply to the performance of DoD contracts.

(b) It is the contractor's responsibility to comply with all applicable laws and regulations regarding export-controlled items. This responsibility exists independent of, and is not established or limited by, this section.

### 225.7901-4 Contract clause.

Use the clause at 252.225-7048 , Export-Controlled Items, in all solicitations and contracts.

## 225.7902 Defense Trade Cooperation Treaties.

This section implements the Defense Trade Cooperation (DTC) Treaties with Australia and the United Kingdom and the associated Implementing Arrangements for DoD solicitations and contracts that authorize prospective contractors and contractors to use the DTC Treaties to respond to DoD solicitations and in the performance of DoD contracts.

### 225.7902-1 Definitions.

"Approved community," "defense articles," "Defense Trade Cooperation (DTC) Treaty", "export," "Implementing Arrangement," "qualifying defense articles," "transfer," and "U.S. DoD Treaty-eligible requirements" are defined in contract clause DFARS 252.225-7047 , Exports by Approved Community Members in Performance of the Contract.

### 225.7902-2 Purpose.

The DTC Treaties permits the export of certain U.S. defense articles, technical data, and defense services, without U.S. export licenses or other written authorization under the International Traffic in Arms Regulation (ITAR) into and within the Approved Community, as long as the exports are in support of purposes specified in the DTC Treaties. All persons must continue to comply with statutory and regulatory requirements outside of DFARS and ITAR concerning the import of defense articles and defense services or the possession or transfer of defense articles, including, but not limited to, regulations issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives found at 27 CFR Parts 447, 478, and 479, which are unaffected by the DTC Treaties. The Approved Community consists of U.S. entities that are registered with the Department of State and are eligible exporters, the U.S. Government, and certain governmental and commercial facilities in Australia and

the United Kingdom that are approved and listed by the U.S. Government. See PGI 225.7902-2 for additional information.

### 225.7902-3 Policy.

DoD will facilitate maximum use of the DTC Treaties by prospective contractors responding to DoD solicitations and by contractors eligible to export qualifying defense articles under DoD contracts in accordance with 22 CFR 126.16(g) and 22 CFR 126.17(g).

### 225.7902-4 Procedures.

(a) For all solicitations and contracts that may be eligible for DTC Treaty coverage (see PGI 225.7902-4 (1)), the program manager shall identify in writing and submit to the contracting officer prior to issuance of a solicitation and prior to award of a contract—

(1) The qualifying DTC Treaty Scope paragraph (Article 3(1)(a), 3(1)(b), or 3(1)(d) of the U.S.-Australia DTC Treaty or Article (3)(1)(a), (3(1)(b), or 3(1)(d) of the U.S.-U.K. DTC Treaty); and

(2) The qualifying defense article(s) using the categories described in 22 CFR 126.16(g) and 22 CFR 126.17(g).

(b) If applicable, the program manager shall also identify in writing and submit to the contracting officer any specific Part C, DTC Treaty-exempted technology list items, terms and conditions for applicable contract line item numbers (See PGI 225.7902-4 (2)).

### 225.7902-5 Solicitation provision and contract clause.

(a) Use the provision at 252.225-7046 , Exports by Approved Community Members in Response to the Solicitation, in solicitations containing the clause at 252.225-7047 .

(b)(1) Use the clause at 252.225-7047 , Exports by Approved Community Members in Performance of the Contract, in solicitations and contracts when—

(i) Export-controlled items are expected to be involved in the performance of the contract and the clause at 252.225-7048 is used; and

(ii) At least one contract line item is intended to satisfy a U.S. DoD Treaty-eligible requirement.

(2) The contracting officer shall complete paragraph (b) of the clause using information the program manager provided as required by 225.7902-4 (a).