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Parent topic: PGI Defense Federal Acquisition Regulation

PGI 225.001 General.

Consider the following when evaluating offers of foreign end products:

(1) *Statutory or policy restrictions*.

(i) Determine whether the product is restricted by—

(A) Statute (see DFARS Subpart 225.70); or

(B) DoD policy (see DFARS Subpart 225.71,FAR 6.302-3, and DoD Directive 5230.11, Disclosure of Classified Military Information to Foreign Governments and International Organizations).

(ii) If an exception to or waiver of a restriction in DFARS Subpart 225.70 or 225.71 would result in award of a foreign end product, apply the policies and procedures of the Buy American statute or the Balance of Payments Program, and, if applicable, the trade agreements.

(2) *Memoranda of understanding or other international agreements*. Determine whether the offered product is the product of one of the qualifying countries listed in DFARS 225.872-1.

(3) *Trade agreements*. If the product is not an eligible product, a qualifying country end product, or a U.S.-made end product, purchase of the foreign end product may be prohibited (see FAR 25.403(c) and DFARS 225.403(c)).

(4) *Other trade sanctions and prohibited sources*.

(i) Determine whether the offeror complies with the secondary Arab boycott of Israel. Award to such offerors may be prohibited (see DFARS Subpart 225.76).

(ii) Determine whether the offeror is a prohibited source (see FAR Subpart 25.7 and DFARS Subpart 225.7).

(5) *Buy American and Balance of Payments Program*. See the evaluation procedures in DFARS Subpart 225.5.

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

(1) *Definitions.* “Manufactured end product” and “place of manufacture” are defined in the provision at FAR 52.225-18, Place of Manufacture.

(2) Use the Federal Procurement Data System data field “Place of Manufacture,” under the section on Product or Service Information, to enter data on the acquisition of end products manufactured outside the United States for contracts awarded and orders issued in fiscal year 2007 and subsequent fiscal years. Select the appropriate description in accordance with the following table:

Place of Manufacture

Short Description as viewed in drop down box	Long Description
Manufactured or performed outside United States (Actions prior to FY 2007 only)	The action is for (i) Any foreign end product manufactured outside the United States; or (ii) Services performed outside the United States by a foreign concern.
Mfg in U.S.	The action is predominantly for acquisition of manufactured end products that are manufactured in the United States.
Mfg outside U.S. - Commercial information technology	The foreign manufactured end products are predominantly commercial information technology items (FAR 25.103(e)).
Mfg outside U.S. - Domestic nonavailability	The foreign manufactured end products were predominantly not domestically available as shown by one of the following: The item is listed at FAR 25.104 (FAR 25.103(b)(1)). The agency did an individual determination (FAR 25.103(b)(2)). No offer of a domestic end product was received, even though the acquisition was synopsized and conducted through full and open competition (FAR 25.103(b)(3)).
Mfg outside U.S -Public interest determination	The head of the agency has made a determination that domestic preferences would be inconsistent with the public interest (FAR 25.103(a)).
Mfg outside U.S. - Qualifying country	For DoD only, the foreign manufactured end products are predominantly qualifying country end products (DFARS 225.003 and 225.872-1).

Mfg outside U.S. - Resale	The foreign manufactured end products acquired are predominantly for resale (FAR 25.103(d)).
Mfg outside U.S. - Trade Agreements	The foreign manufactured end products are predominantly eligible products acquired under Trade Agreements (FAR 25.402(a)(1)).
Mfg outside U.S. - Unreasonable cost	The cost of the offered domestic end products was unreasonable (FAR 25.103(c), 25.105, and Subpart 25.5).
Mfg outside U.S. - Use outside the United States	The foreign manufactured end products acquired are predominantly for use outside the United States (FAR 25.100).
More than 50% of foreign content, but manufactured in United States (Actions prior to FY 2007 only)	The action is for (i) A foreign end product that is manufactured in the United States but still determined to be foreign because 50 percent or more of the cost of the components is not mined, produced, or manufactured inside the United States or qualifying countries; or (ii) Services performed in the United States by a foreign concern.
Not applicable	The action is NOT predominantly for acquisition of manufactured end products.

(3) Note that the first and second from the last options in the drop down box are to be used only for reporting of contracts awarded or orders issued prior to October 1, 2006.

(4) The other options in the drop down box apply only to contracts awarded and orders issued on or after October 1, 2006. If the solicitation for the contract contains the provision at FAR 52.225-18, Place of Manufacture (or the commercial product equivalent at FAR 52.212-3(j)), the contracting officer must review the successful offeror’s response to this provision to select the correct option.

(i) Enter “Mfg in U.S.” if the offeror has checked the box “In the United States.”

(ii) If the offeror has checked the box “Outside the United States,” enter one of the other options, depending on the predominant reason for acquiring end products manufactured outside the United States. These reasons correspond to the exceptions to the Buy American statute (FAR Subpart 25.1 and DFARS Subpart 225.1). Further explanation of these exceptions to the Buy American statute are available at the FAR and DFARS references provided in the long description for each option.

(5) For any contract awarded on or after October 1, 2006, when the solicitation did not include the provision at FAR 52.225-18, Place of Manufacture (or FAR 52.212-3(j)), and for any order placed on or after October 1, 2006, under a contract that did not include one of these provisions, the contracting officer shall use best judgment in estimating whether the acquisition is predominantly for manufactured end products and whether the end products were predominantly end products manufactured in the United States or outside the United States, using the place of performance or other information that may be available to the contracting officer to assist in forming this judgment.

PGI 225.1 - BUY AMERICAN—SUPPLIES

PGI 225.101 General.

(d)(1) When the contracting officer obtains the approval from the senior procurement executive (this authority is not delegable) to allow for the application of an alternate domestic content test for the contract, the contracting officer shall ensure the documentation evidencing the senior procurement executive's consultation with the Office of Management and Budget's Made in America Office and subsequent allowance for the application of an alternate domestic content test is included in the contract file.

PGI 225.2 - BUY AMERICAN—CONSTRUCTION MATERIALS

PGI 225.270 Energy savings service contracts.

(a) For DoD energy savings service contracts, the requirements documents from the requiring activity are required to specify if construction and construction materials will be used during the performance of the contract. If specified, the contracting officer shall—

(1) Include the FAR provisions and clauses regarding construction materials that implement the Buy American statute; and

(2) Enforce them based on the associated terms and conditions of the contract.

(b) See FAR subpart 23.2, Energy Savings Performance Contracts.

PGI 225.3 -CONTRACTSPERFORMED OUTSIDE THE UNITED STATES

PGI 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, the contracting officer shall—

(i) Ensure that the solicitation and contract include any applicable host country and designated operational area performance considerations. Failure to provide such information—

(A) May result in a contract that does not reflect the respective support relationships between the contractor and the Government, ultimately affecting the ability of the contractor to fulfill the contract terms and conditions;

(B) May result in unplanned support burdens being placed on the Government in a theater of operations;

(C) May result in contractor personnel conflicting with theater operations or performing in violation of a theater commander's directives or host country laws; or

(D) May cause contractor personnel to be wrongly subjected to host country laws;

(ii) Comply with any theater business clearance and contract administration delegation requirements set forth in the memorandum (https://www.acq.osd.mil/dpap/policy/policyvault/USA004346-12-DPAP.pdf) entitled Theater Business Clearance/Contract Administration Delegation Update—Integration of TBC with the Joint Contingency Contracting System Platform, which must be consistent with the combat support agency's established functions and responsibilities, and set forth by the geographic combatant commander during declared contingency operations for all solicitations and contracts that relate to the delivery of supplies and services to the designated area(s) of operation. The memorandum is available at https://www.acq.osd.mil/dpap/policy/policyvault/USA004346-12-DPAP.pdf

(A) Theater business clearance ensures—

(*1*) Contracted effort to be accomplished in designated area(s) of operations, along with any associated contractor personnel, is visible to the combatant commander;

(*2*) Contracted effort is in consonance with in-country commanders' plans;

(*3*) Solicitations and contracts contain appropriate terms and conditions;

(*4*) Contracted effort will be properly overseen in designated area(s) of operation;

(*5*) Any Government-furnished support requirements associated with contractor personnel are properly addressed in the contract terms and conditions.

(B) Contract administration delegation—

(*1*) Allows the combatant commander to exercise control over the assignment of contract administration (which must be consistent with the combat support agency's established functions and responsibilities) for that portion of contracted effort that relates to performance in, or delivery to, designated area(s) of operation.

(*2*) Allows the combatant commander to exercise oversight to ensure the contractor's compliance with combatant commander and subordinate task force commander policies, directives, and terms and conditions;

(iii) Refer to the website at https://www.acq.osd.mil/asda/dpc/cp/cc/index.html , which contains required procedures and applicable guidance and information;

(iv) Follow specific guidance for the combatant command in whose area the contractor will be performing services or delivering supplies. This guidance is contained on the respective combatant commander's operational contract support webpage, which is linked to the procedures at https://www.acq.osd.mil/asda/dpc/cp/cc/aor.html , at the web-link for the combatant command for the area in which the contractor will be performing services or delivering items. These pages list prevailing regulations, policies, requirements, host nation laws, orders/fragmentary orders, combatant commander's directives, unique clauses, and other considerations necessary for soliciting and awarding a contract for performance in, or delivery of items to, that combatant commander's area of responsibility;

(v) To determine the appropriate point(s) of contact for contracting matters within the combatant commander's area of responsibility, contact the overseas contracting office by accessing the link for the combatant command in whose area of responsibility the contractor will be performing services or delivering items. From the combatant command website, link to the contracting office supporting the combatant command to identify the appropriate point of contact; and

(vi) Use the following checklist as a guide to document consideration of each listed issue, as applicable, and retain a copy of the completed checklist in the contract file.

CHECKLIST

The contracting officer shall verify that the requiring activity has considered the following when building its requirements package, as applicable:

____ (1) Whether the contemplated acquisition will duplicate or otherwise conflict with existing work being performed or items already provided in the area, and whether economies of scope/schedule can be leveraged if there are already existing contracts in place for similar work or items.

____ (2) The availability of technically qualified and properly trained Government civilian and/or military personnel to oversee the performance of the contract in the combatant commander's area of responsibility (e.g., contracting officer's representatives, quality assurance representatives, and property administrators).

____ (3) The applicability of any international agreements to the acquisition. (Some agreements may be classified and must be handled appropriately.)

____ (4) Compliance with area-specific, anti-terrorism security guidance set forth by the command anti-terrorism officer, to include soliciting anti-terrorism officer guidance on the particular requirement and the location of delivery and/or execution of services, and incorporating recommended security measures into the requirements package.

____ (5) Whether there are any requirements for use of foreign currencies, including applicability of U.S. holdings of excess foreign currencies.

____ (6) Information on taxes and duties from which the Government may be exempt.

____ (7) If the acquisition requires performance of work in the foreign country, whether there are standards of conduct for the prospective contractor and, if so, the consequences for violation of such standards of conduct.

____ (8) The availability of logistical and other Government-furnished support and equipment for contractor personnel. This includes, but is not limited to: berthing and messing; intra-theater transportation; medical support; morale, welfare, and recreation support; postal support; force protection support; organizational clothing and personal protective gear (e.g., body armor and gas masks.)

____ (9) If the contractor will employ foreign workers, whether a waiver of the Defense Base Act will be required (see FAR 28.305).

____ (10) Whether contractor personnel will need authorization to carry weapons for the performance of the contract.

____ (11) If the contract will include the clause at DFARS 252.225-7040, Contractor Personnel

Supporting U.S. Armed Forces Deployed Outside the United States, the Government official authorized to receive DD Form 93, Record of Emergency Data Card, to enable the contracting officer to provide that information to the contractor, as required by paragraph (g) of the clause.

____ (12) Ascertain the existence of and detail any Geographic Combatant Commander's (GCC's)/Subordinate Joint Force Commander Combating Trafficking in Persons Directives or Notices applying to Combating Trafficking in Persons (as required by FAR 22.1705 for contracts performed outside the United States) that would require the contracting officer to use Alternate I of the clause at FAR 52.222-50 detailing these requirements. This information can be ascertained from review of content on the cognizant Geographic Combatant Command Operational Contract Support webpage referred to in (a)(iv) of this PGI section.

____ (13) Other requirements associated with contractor personnel to include deployment -related training, accountability (registration in Synchronized Pre-deployment and Operational Tracker), medical and dental qualifications, theater entrance and country clearance requirements.

____ (14) Any other requirements of the website for the country in which the contract will be performed or the designated operational area to which deliveries will be made.

The contracting officer shall provide the following information to the applicable overseas contracting office (see PGI 225.370 (a)(v)):

____ (1) The solicitation number, the estimated dollar value of the acquisition, and a brief description of the work to be performed or the items to be delivered.

____ (2) Notice of contract award, including contract number, dollar value, and a brief description of the work to be performed or the items to be delivered.

____ (3) Any additional information requested by the applicable contracting office to ensure full compliance with policies, procedures, and objectives of the applicable country or designated operational area.

(c) For work performed in Japan or Korea, U.S.-Japan or U.S.-Korea bilateral agreements govern the status of contractors and employees, criminal jurisdiction, and taxation. U.S. Forces Japan (USFJ) and U.S. Forces Korea (USFK) are sub-unified commands of Pacific Command (PACOM). The PACOM Staff Judge Advocate contact information is available at http://www.pacom.mil/web/Site_Pages/Staff%20Directory/J0/J0.shtml or by clicking on Staff Directory/Special Staff on the PACOM website. Links to USFJ and USFK websites can be found at the PACOM website at http://www.pacom.mil by clicking on "Regional Resources - Links".

(i) For work performed in Japan—

(A) U.S.-Japan bilateral agreements govern the status of contractors and employees, criminal jurisdiction, and taxation;

(B) USFJ and component policy, as well as U.S.-Japan bilateral agreements, govern logistic support and base privileges of contractor employees;

(C) The Commander, USFJ, is primarily responsible for interpreting the Status of Forces Agreement (SOFA) and local laws applicable to U.S. Forces in Japan and for requirements in support of USFJ; and

(D)(1) To ensure that the solicitation and resultant contract reflect an accurate description of

available logistics support and application of the U.S.-Japan SOFA, review the information on Contract Performance in Japan at the USFJ website, http://www.usfj.mil; or

(2) Contact the Staff Judge Advocate at (commercial) 011-81-3117-55-7717, or DSN 315-225-7717.

(ii) For work performed in Korea—

(A) U.S.-Korea bilateral agreements govern the status of contractors and employees, criminal jurisdiction, and taxation;

(B) USFK and component policy, as well as U.S.-Korea bilateral agreements, govern logistics support and base privileges of contractor employees;

(C) The Commander, USFK, is primarily responsible for interpreting the SOFA and local laws applicable to U.S. Forces in Korea and for requirements in support of USFK; and

(D) To ensure that the solicitation and resultant contract reflect an accurate description of available logistics support and application of the U.S.-Korea SOFA, review the SOFA information found at the USFK website at http://www.usfk.mil/usfk/ under "Publications", or at http://www.usfk.mil/usfk/sofadocuments.aspx. Contact information for the Commander is also available at http://www.usfk.mil/usfk/leadership.aspx; and

(E) Additional applicable directives and regulations are available at http://www.usfk.mil/usfk/, click on the drop down menu for "Publications".

(d) For work performed in specified countries in the USCENTCOM area of responsibility, follow theater business clearance/ contract administration delegation policy as set forth in OSD policy letters linked to this PGI, and specific theater business clearance/contract administration delegation instructions as implemented by USCENTCOM's Joint Theater Support Contracting Command and found under contracting guidance at https://www.acq.osd.mil/asda/dpc/cp/cc/aor.html (click on CENTCOM area of responsibility).

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

(1) DoDI 3020.41, Operational Contract Support (OCS), establishes policy, assigns responsibilities and provides procedures for OCS, including OCS Program Management, contract support integration, and integration of defense contractor personnel into contingency operations outside the United States. This instruction serves as a comprehensive source of DoD policy and procedures concerning DoD contractor and subcontractor personnel supporting the U.S. Armed Forces deployed outside the United States.

(2) Also see PGI 207.105 (b)(20)(C)(9) for special considerations for acquisition planning for crisis situations outside the United States.

PGI 225.371-2 Definitions.

"Designated operational areas" include, but are not limited to, such descriptors as theater of war, theater of operations, joint operations area, amphibious objective area, joint special operations area,

and area of operations. See DoD Joint Publication 3-0, Joint Operations, Chapter IV, Paragraph 2, "Understanding the Operational Environment," at http://www.dtic.mil/doctrine/new_pubs/jp3_0.pdf.

PGI 225.371-3 Government support.

(a) Support that may be authorized or required when contractor personnel are deployed with or otherwise provide support in the theater of operations to U.S. military forces deployed outside the United States may include, but are not limited to—

(i) Deployment in-processing centers;

(ii) Training;

(iii) Transportation to operation area;

(iv) Transportation within operation area;

(v) Physical security;

(vi) Force protection;

(vii) Organizational clothing and individual equipment;

(viii) Emergency medical care;

(ix) Mess operations;

(x) Quarters;

(xi) Postal service;

(xii) Phone service;

(xiii) Emergency notification;

(xiv) Laundry; and

(xv) Religious services.

(d) Medical support of contractor personnel.

(1) Contractors are required to ensure that the Government is reimbursed for any costs associated with medical or dental care provided to contractor employees accompanying the forces (see 252.225-7040(c)(2)).

(2) If questions arise concerning Defense Finance and Accounting Services (DFAS) billing to contractors for medical or dental care provided, contracting officers may refer the individual to any of the following resources:

(i) For in-patient and out-patient billing rates, go to http://comptroller.defense.gov/FinancialManagement/Reports/rates2013.as..., click on the appropriate fiscal year, and select Deployed/Non-Fixed Medical Facility Billing Rates.

(ii) For Military Service-appointed points of contact (POCs) responsible for resolving medical billing disputes, see the POCs listed in the memoranda of agreements between DFAS and the military services).

(iii) For general information on medical support of deployed contractor personnel in applicable contingency operations, see DoDI 3020.41.

(3) Contracting officers are not responsible for adjudicating DFAS bills to contractors for such medical or dental reimbursement. However, contracting officers are required to assist the Military Service POCs in resolving billing disputes.

(e) Letter of authorization.

(i) If authorized by the contracting officer, a contracting officer's representative may approve a SPOT-generated LOA. Contractor travel orders will be prepared by the supporting installation.

(ii) The LOA will state the intended length of assignment in the theater of operations and will identify planned use of Government facilities and privileges in the theater of operations, as authorized by the contract. Authorizations may include such privileges as access to the exchange facilities and the commissary, and use of Government messing and billeting. The LOA must include the name of the approving Government official.

(iii) Approved, standard DoD format for LOA. See sample LOA, Business Rules for the Synchronized Predeployment and Operational Tracker, at https://www.acq.osd.mil/asds/log/cso/ocs/spot.html.

PGI 225.371-5 Contract clauses.

"Performance," as used in Class Deviation 2015-O0009, Contractor Personnel Performing in the United States Central Command Area of Responsibility, means performance of a service or construction, as required by the contract. For supply contracts, production of the supplies or associated overhead functions are not covered by the Class Deviation, but services associated with the acquisition of the supplies are covered (e.g., installation or maintenance).

(b) When using the clause at DFARS 252.225-7040, Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States, consider the applicability of the following clauses:

(i) The clause at DFARS 252.225-7043, Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States, as prescribed at DFARS 225.372-2.

(ii) Either the clause at FAR 52.228-3, Workers' Compensation Insurance (Defense Base Act), or the clause at FAR 52.228-4, Workers' Compensation and War-Hazard Insurance Overseas, as prescribed at FAR 28.309(a) and (b).

(iii) The clause at FAR 52.228-7, Insurance—Liability to Third Persons, in cost-reimbursement contracts as prescribed at DFARS 228.311-1.

(iv) The clause at DFARS 252.228-7003, Capture and Detention, as prescribed at DFARS 228.370(d).

(v) The clause at DFARS 252.237-7019, Training for Contractor Personnel Interacting with Detainees, as prescribed at DFARS 237.171-4.

(vi) The clause at FAR 52.249-14, Excusable Delays, as prescribed at FAR 49.505(b).

(vii) The clauses at FAR 52.251-1, Government Supply Sources, as prescribed at FAR 51.107, and DFARS 252.251-7000, Ordering from Government Supply Sources, as prescribed at DFARS 251.107. See also Class Deviation 2013-O0012, Authorization for Contractors to Use Government Supply Sources in Support of Operation Enduring Freedom.

PGI 225.372 Antiterrorism/force protection.

PGI 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 following offices:

(1) For Army contracts: HQDA-AT; telephone, DSN 222-9832 or commercial (703) 692-9832.

(2) For Navy contracts: Naval Criminal Investigative Service (NCIS), Code 21; telephone, DSN 288-9077 or commercial (202) 433-9077.

(3) For Marine Corps contracts: CMC Code POS-10; telephone, DSN 224-4177 or commercial (703) 614-4177.

(4) For Air Force and Combatant Command contracts: The appropriate Antiterrorism/Force Protection Office at the Command Headquarters. Also see https://atep.dtic.mil.

(5) For defense agency contracts: The appropriate agency security office.

(6) For additional information: Assistant Secretary of Defense for Homeland Defense and Global Security, ASD (HS/GS); telephone, DSN 227-6566 or 260-8350 or commercial (703) 697-6566 or (571) 256-8350.

PGI 225.373 Contract administration in support of contingency operations.

(1) In accordance with Joint Publication 1, Doctrine for the Armed Forces of the United States, at http://www.apexnet.org/docs/Joint_Publication_1.pdf, the geographic combatant commander or subordinate joint force commander, through his command authority to exercise operational control, has the authority to exercise control over the assignment of contract administration during contingency operations, consistent with the combat support agency’s established mission functions, responsibilities, and core competencies, for contracts requiring delivery of items or performance within the area of operations.

(2) In certain contingency operations, the combatant commander or joint force commander may promulgate theater or joint operations area guidance for contracting that may include establishing—

(i) A contracting command and control structure;

(ii) Head of contracting activity responsibilities, specific orders, and policies, including local clauses;

(iii) Roles and responsibilities of DoD components and supporting agencies in contract formation and execution; and

(iv) Procedures and requirements for contract clearance and contract administration of contracts requiring delivery of items and performance within the area of operations.

(3) When a combat support agency is tasked by the combatant commander to provide contingency contract administration services in support of contingency operations and such support will be required for a long duration, the combat support agency shall initiate a memorandum of agreement with the combatant commander or joint force commander. This agreement shall clearly delineate the purpose of the support, respective responsibilities of the combat support agency and the joint, lead service, or service contracting activity requesting the support, combat support agency support parameters, and a resolution process for resolving support issues.

(i) The memorandum of agreement should focus on maximizing the combat support agency's core competencies to address the more critical, complex, high-risk, and specialized oversight requirements.

(ii) The memorandum of agreement should take into consideration the combat support agency's core competencies, workload priorities, and contract administration services support parameters for accepting requests for contract administration services support.

(iii) A combat support agency shall not be assigned to perform tasks outside its mission functions, responsibilities, or core competencies.

(iv) Contracting officers contemplating requesting contract administration support in a contingency area from a combat support agency should first ascertain whether such a memorandum of agreement exists by contacting their combat support agency point of contact and/or checking the combatant commander operational contract support website (referenced in DFARS PGI 225.370).

(v) The following is a notional format for a memorandum of agreement for contract administration services support;

(A) Purpose: Outline formal procedures for requesting contract administration services support, describe objectives associated with combat support agency providing such support.

(B) Reference: Key documents or reference(s) associated with the execution of the contract administration services support.

(C) Clearing-house functions performed by the designated joint or lead component contracting activity in the operational area–

(1) Contract clearance parameters – when required;

(2) Contract delegation parameters – when required.

(D) Contract administration services support parameters—

(1) Acceptable for delegation - contract types that will be accepted by the combat support agency based on risk, dollar threshold, geographic dispersion of performance, service type, criticality of acceptance, or other criteria;

(2) Generally not be delegated – below-threshold contract types;

(3) Will not be delegated – no agency expertise to oversee.

(E) Delegation process – process for accepting and assigning contract administration services tasks within the combat support agency.

(F) Joint resolution process – procedures in the event of disagreement on actions to be supported by the combat support agency.

(G) Term of the Agreement and Modification - length of time the agreement will be in effect and procedures for the parties to modify or terminate it.

(4) Disputes regarding requested support should be resolved at the lowest management level possible, through a predetermined resolution process. When support issues arise that affect the ability of a combat support agency to provide contract administration support that cannot be resolved at lower management levels, follow procedures set forth in DoDI 3000.06, Combat Support Agencies, paragraphs 5.6.8 and 5.6.9, (http://www.dtic.mil/whs/directives/corres/pdf/300006p.pdf).

(5) Responsibilities of the head of the contracting activity for contingency contract closeout are addressed at DFARS 204.804(2). See also planning considerations at PGI 207.105 (b)(20)(C)(8).

PGI 225.5 -EVALUATING FOREIGN OFFERS-SUPPLY CONTRACTS

PGI 225.504 Evaluation examples.

The following examples illustrate the evaluation procedures in DFARS 225.502(c)(ii). The examples assume that the contracting officer has eliminated all offers that are unacceptable for reasons other than price or a trade agreement and that price is the determining factor in contract award. The same evaluation procedures and the 50 percent evaluation factor apply regardless of whether the acquisition is subject to the Buy American Act (BAA) or the Balance of Payments Program (BOPP).

(1) Example 1.

Offer A $945,000 Foreign offer subject to BAA/BOPP

Offer B $950,000 Foreign offer exempt from BAA/BOPP

Since no domestic offers are received, do not apply the evaluation factor. Award on Offer A.

(2) Example 2.

Offer A $950,000 Domestic offer

Offer B $890,000 Foreign offer exempt from BAA/BOPP

Offer C $880,000 Foreign offer subject to BAA/BOPP

Since the exempt foreign offer is lower than the domestic offer, do not apply the evaluation factor. Award on Offer C.

(3) Example 3.

Offer A $9,100 Foreign offer exempt from BAA/BOPP

Offer B $8,900 Domestic offer

Offer C $6,000 Foreign offer subject to BAA/BOPP

Since the domestic offer is lower than the exempt foreign offer, apply the 50 percent evaluation factor to Offer C. This results in an evaluated price of $9,000 for Offer C. Award on Offer B.

(4) Example 4.

Offer A $910,000 Foreign offer exempt from BAA/BOPP

Offer B $890,000 Domestic offer

Offer C $590,000 Foreign offer subject to BAA/BOPP

Since the domestic offer is lower than the exempt foreign offer, apply the 50 percent evaluation factor to Offer C. This results in an evaluated price of $885,000 for Offer C. Award on Offer C.

(5) Example 5.

Offer A $900,000 Foreign offer exempt from BAA/BOPP

Offer B $850,000 Domestic offer (complies with the required domestic content)

Offer C $550,000 Foreign offer subject to BAA/BOPP (exceeds the required domestic content)

Since the domestic offer complies with the required domestic content and is lower than the exempt foreign offer, apply the 50 percent evaluation factor to Offer C. This results in an evaluated price of $825,000 for Offer C. Award on Offer C.

PGI 225.7 -PROHIBITED SOURCES

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

(1) The Department of State is the lead agency responsible for the regulations governing the export of defense articles, which are identified on the United States Munitions List. The Department of State has issued the International Traffic in Arms Regulations, which implement the Arms Export Control Act (22 U.S.C. 2751) and include the United States Munitions List.

(2) The official version of the International Traffic in Arms Regulations can be found in Title 22, Parts 120 through 130, of the Code of Federal Regulations (22 CFR 120-130), published by the U.S. Government Printing Office and available at http://www.gpoaccess.gov/cfr/index.html. The Department of State also publishes an on-line version at http://www.pmddtc.state.gov/regulations_laws/itar_official.html.

PGI 225.770-1 Definitions.

In accordance with 22 CFR 121.8—

(1) A major component includes any assembled element that forms a portion of an end item without which the end item is inoperable. Examples of major components are airframes, tail sections, transmissions, tank treads, and hulls;

(2) A minor component includes any assembled element of a major component; and

(3) Examples of parts are rivets, wires, and bolts.

PGI 225.770-4 Identifying USML items.

(1) The 21 categories of items on the United States Munitions List (USML) can be found at https://www.ecfr.gov/current/title-22/chapter-I/subchapter-M/part-121. Where applicable, the categories also contain a statement with regard to the coverage of components and parts of items included in a category. For example, a category may include all components and parts of covered items, or only those components and parts specifically designed or modified for military use.

(2) In addition to the list of covered items, the USML provides explanation of terms needed to determine whether a particular item is or is not covered by the USML.

(3) Within DoD, the experts on export control and the USML are in the Defense Technology Security Administration (DTSA).

(i) Official authorities and responsibilities of DTSA are in DoD Directive 5105.72, available at http://www.dtic.mil/whs/directives/corres/html/510572.htm.

(ii) Additional information on DTSA and a correspondence link are available at http://www.dod.mil/policy/sections/policy_offices/dtsa/index.html.

PGI 225.770-5 Waiver of prohibition.

(c) Send a copy of the report to the Office of the Principal Director, Defense Pricing, Contracting, and Acquisition Policy (Contract Policy) (DPCAP/CP) via email at osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil.

PGI 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.

PGI 225.771-3 Notification.

Forward any information indicating that a firm, a subsidiary of a firm, or any other firm that owns or controls the firm, may be owned or controlled by the government of a country that is a state sponsor

of terrorism, through agency channels, to DPCAP/CP via email at osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil.

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

PGI 225.772-3 Procedures.

(1) Forward any information required in accordance with 225.772-3 or requests for an exception to DPCAP/CP via email at osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil.

(2) Consult with DPCAP/CP, as required in accordance with 225.772-3(c)(2), via email at osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil.

PGI 225.8 -OTHER INTERNATIONAL AGREEMENTS AND COORDINATION

PGI 225.802 Procedures.

(b) Information on specific memoranda of understanding and other international agreements is available as follows:

(i) Memoranda of understanding and other international agreements between the United States and the countries listed in DFARS 225.872-1 are maintained in the Office of the Principal Director, Defense Pricing, Contracting, and Acquisition Policy (Contract Policy) (DPCAP/CP) and are available at https://www.acq.osd.mil/asda/dpc/cp/ic/reciprocal-procurement-mou.html .

(ii) Military Assistance Advisory Groups, Naval Missions, and Joint U.S. Military Aid Groups normally have copies of the agreements applicable to the countries concerned.

(iii) Copies of international agreements covering the United Kingdom of Great Britain and Northern Ireland, Western European countries, North Africa, and the Middle East are filed with the U.S. European Command.

(iv) Agreements with countries in the Pacific and Far East are filed with the U.S. Pacific Command.

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

When a contracting office anticipates placement of a contract for performance outside the United States and Canada, and the contracting office is not under the jurisdiction of a command for the country involved, the contracting office shall maintain liaison with the cognizant contract administration office (CAO) during preaward negotiations and postaward administration. The cognizant CAO can be found at http://home.dcma.mil/cassites/district.htm. The CAO will provide pertinent information for contract negotiations, effect appropriate coordination, and obtain required approvals for the performance of the contract.

PGI 225.870 Contracting with Canadian contractors.

PGI 225.870-1 General.

(d)(i) The Canadian Commercial Corporation uses provisions in contracts with Canadian or U.S. concerns that give DoD the same production rights, data, and information that DoD would obtain in contracts with U.S. concerns.

(ii) The Government of Canada will provide the following services under contracts with the Canadian Commercial Corporation without charge to DoD:

(A) Contract administration services, including—

(*1*) Cost and price analysis;

(*2*) Industrial security;

(*3*) Accountability and disposal of Government property;

(*4*) Production expediting;

(*5*) Compliance with Canadian labor laws;

(*6*) Processing of termination claims and disposal of termination inventory;

(*7*) Customs documentation;

(*8*) Processing of disputes and appeals; and

(*9*) Such other related contract administration functions as may be required with respect to the Canadian Commercial Corporation contract with the Canadian supplier.

(B) *Audits*. The Public Works and Government Services Canada (PWGSC) performs audits when needed, for contracts overseen by the Canadian Commercial Corporation in accordance with international agreement.

(C) *Inspection*. The Department of National Defence (Canada) provides inspection personnel, services, and facilities, at no charge to DoD departments and agencies (see DFARS 225.870-7).

(iii) In accordance with DPAP Policy Memorandum dated June 5, 2013, PWGSC will perform audits without charge to DoD, including accounting system and interim voucher reviews, when needed for—

(A) DoD contracts awarded directly to Canadian firms;

(B) Subcontracts with Canadian firms under such direct contracts with Canadian firms; and

(C) Subcontracts with Canadian firms under DoD contracts with U.S. contractors.

PGI 225.870-5 Contract administration.

(1) Assign contract administration in accordance with DFARS part 242. When the Defense Contract Management Agency will perform contract administration in Canada, name in the contract the following payment office for disbursement of DoD funds (DoD Department Code: 17-Navy; 21-Army; 57-Air Force; 97-all other DoD components), whether payment is in Canadian or U.S. dollars:

DFAS Columbus Center
DFAS-CO
PO Box 182317
Columbus, OH 43218-2317.

(2) The following procedures apply to cost-reimbursement type contracts:

(i) The PWGSC automatically arranges audits on contracts with the Canadian Commercial Corporation. Upon advice from PWGSC, the Canadian Commercial Corporation certifies the invoice and forwards it with Standard Form (SF) 1034, Public Voucher, to the administrative contracting officer for further processing and transmittal to the disbursing office.

(ii) For contracts placed directly with Canadian firms, the administrative contracting officer requests audits from the PWGSC, Ottawa, Ontario, Canada. Route requests for audit of non-Canadian Commercial Corporation contracts and subcontracts with Canadian contractors through the cognizant contract management office of the Defense Contract Management Agency.

(A) Within 25 days of the date of the audit request, PWGSC will provide—

An acknowledgement of receipt form;

An estimate of completion form; and

(*3*) A single point of contact to report the status of audit requests and the progress of audits.

(B) Audits will be completed within 24 months of the requested date for post-award audits.

(C) PWGSC will provide information to support the determination that the price is fair and reasonable.

(D) The PWGSC—

(*1*) Approves invoices on a provisional basis pending completion of the contract and final audit;

(*2*) Forwards these invoices, accompanied by SF 1034, Public Voucher, to the administrative contracting officer for further processing and transmittal to the disbursing officer; and

(*3*) Furnishes periodic advisory audit reports directly to the administrative contracting officer.

(A) Approves invoices on a provisional basis pending completion of the contract and final audit;

(B) Forwards these invoices, accompanied by SF 1034, Public Voucher, to the administrative contracting officer for further processing and transmittal to the disbursing officer; and

(C) Furnishes periodic advisory audit reports directly to the administrative contracting officer.

PGI 225.870-7 Acceptance of Canadian supplies.

(1) For contracts placed in Canada, either with the Canadian Commercial Corporation or directly with Canadian suppliers, the Department of National Defence (Canada) will perform any necessary contract quality assurance and/or acceptance, as applicable.

(2) Signature by the Department of National Defence (Canada) quality assurance representative on the DoD inspection and acceptance form is satisfactory evidence of acceptance for payment purposes.

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

PGI 225.871-4 Statutory waivers.

Forward any request for waiver under a cooperative project to the Deputy Secretary of Defense, through the Principal Director, Defense Pricing, Contracting, and Acquisition Policy. The waiver request shall include a draft Determination and Findings for signature by the Deputy Secretary of Defense establishing that the waiver is necessary to significantly further NATO standardization, rationalization, and interoperability.

PGI 225.871-5 Directed subcontracting.

The cooperative project agreement is the authority for a contractual provision requiring the contractor to place certain subcontracts with particular subcontractors. No separate justification and approval during the acquisition process is required.

PGI 225.872 Contracting with qualifying country sources.

PGI 225.872-4 Individual determinations.

(1) Obtain signature of the determination and findings—

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

(ii) By the chief of the contracting office, for acquisitions with a value greater than the simplified acquisition threshold.

(2) Prepare the determination and findings substantially as follows:

SERVICE OR AGENCY

Exemption of the Buy American and Balance of Payments Program Determination and Findings

Upon the basis of the following findings and determination which I hereby make in accordance with the provisions of FAR 25.103(a), the acquisition of a qualifying country end product may be made as

follows:

Findings

1. The (*contracting office*) proposes to purchase under contract number _____, (*describe item*) mined, produced, or manufactured in (*qualifying country of origin*). The total estimated cost of this acquisition is _____.

2. The United States Government and the Government of _____ have agreed to remove barriers to procurement at the prime and subcontract level for defense equipment produced in each other's countries insofar as laws and regulations permit.

3. The agreement provides that the Department of Defense will evaluate competitive offers of qualifying country end products mined, produced, or manufactured in (*qualifying country*) without imposing any price differential under the Buy American statute or the Balance of Payments Program and without taking applicable U.S. customs and duties into consideration so that such items may better compete for sales of defense equipment to the Department of Defense. In addition, the Agreement stipulates that acquisitions of such items shall fully satisfy Department of Defense requirements for performance, quality, and delivery and shall cost the Department of Defense no more than would comparable U.S. source or other foreign source defense equipment eligible for award.

4. To achieve the foregoing objectives, the solicitation contained the clause (*title and number of the Buy American clause contained in the contract*). Offers were solicited from other sources and the offer received from (*offeror*) is found to be otherwise eligible for award.

Determination

I hereby determine that it is inconsistent with the public interest to apply the restrictions of the Buy American statute or the Balance of Payments Program to the offer described in this determination and findings.

(Date)

PGI 225.872-5 Contract administration.

(b)(i) When contract administration services are required on contracts to be performed in qualifying countries, direct the request to the cognizant activity listed in the Federal Directory of Contract Administration Services. The cognizant activity also will arrange contract administration services for DoD subcontracts that qualifying country sources place in the United States.

(ii) The contract administration activity receiving a delegation shall determine whether any portions of the delegation are covered by memoranda of understanding annexes and, if so, shall delegate those functions to the appropriate organization in the qualifying country's government.

PGI 225.872-6 Request for audit services.

(1) Send requests for audit services in France, Germany, the Netherlands, or the United Kingdom to the administrative contracting officer at the cognizant activity listed in Section 2B of the Federal Directory of Contract Administration Services. See DFARS 225.870, PGI 225.870-1 , and PGI

225.870-5 for procedures to request audit services for contracts overseen by the Canadian Commercial Corporation.

(2) Complete requests for audit services in France, Germany, the Netherlands, or the United Kingdom using the form and information sheet with form completion instructions available at https://www.dcma.mil/About/Contact-Us/ (click on “International Command”). Links to the form and information sheet are listed under “International Pricing Request.”

PGI 225.873 Waiver of United Kingdom commercial exploitation levies.

PGI 225.873-2 Procedures.

(1) The Government of the U.K. shall approve waiver of U.K. levies. When an offeror or contractor identifies a levy included in an offered or contract price, the contracting officer shall provide written notification to the Defense Security Cooperation Agency, ATTN: PSD-PMD, 1111 Jefferson Davis Highway, Arlington, VA 22202-4306, telephone (703) 601-3864. The Defense Security Cooperation Agency will request a waiver of the levy from the Government of the U.K. The notification shall include—

(i) Name of the U.K. firm;

(ii) Prime contract number;

(iii) Description of item for which waiver is being sought;

(iv) Quantity being acquired; and

(v) Amount of levy.

(2) Waiver may occur after contract award. If levies are waived before contract award, evaluate the offer without the levy. If levies are identified but not waived before contract award, evaluate the offer inclusive of the levies.

PGI 225.9 -CUSTOMS AND DUTIES

PGI 225.902 Procedures.

(1) Formal entry and release.

(i) The administrative contracting officer shall—

(A) Ensure that contractors are aware of and understand any Duty-Free Entry clause requirements. Contractors should understand that failure by them or their subcontractors to provide the data required by the clause will result in treatment of the shipment as without benefit of free entry under Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States.

(B) Upon receipt of the required notice of purchase of foreign supplies from the contractor or any

tier subcontractor—

(*1*) Verify the duty-free entitlement of supplies entering under the contract; and

(*2*) Review the prime contract to ensure that performance of the contract requires the foreign supplies (quantity and price) identified in the notice.

(C) Within 20 days after receiving the notification of purchase of foreign supplies, forward the following information in the format indicated to the Commander, DCMA New York, ATTN: Customs Team, DCMAE-GNTF, 201 Varick Street, Room 905C, New York, NY 10014:

> We have received a contractor notification of the purchase of foreign supplies. I have verified that foreign supplies are required for the performance of the contract.
>
> Prime Contractor Name and Address:
> Prime Contractor CAGE Code:
> Prime Contract Number plus Delivery Order Number, if applicable:
> Total Dollar Value of the Prime Contract or Delivery Order:
> Expiration Date of the Prime Contract or Delivery Order:
> Foreign Supplier Name and Address:
> Number of Subcontract/Purchase Order for Foreign Supplies:
> Total Dollar Value of the Subcontract for Foreign Supplies:
> Expiration Date of the Subcontract for Foreign Supplies:
> CAO Activity Address Number:
> ACO Name and Telephone Number:
> ACO Code:
> Signature:
> Title:

(D) If a contract modification results in a change to any data verifying duty-free entitlement previously furnished, forward a revised notification including the changed data to DCMA New York.

(ii) The Customs Team, DCMAE-GNTF, DCMA New York—

(A) Is responsible for issuing duty-free entry certificates for foreign supplies purchased under a DoD contract or subcontract; and

(B) Upon receipt of import documentation for incoming shipments from the contractor, its agent, or the U.S. Customs Service, will verify the duty-free entitlement and execute the duty-free entry certificate.

(iii) Upon arrival of foreign supplies at ports of entry, the consignee, generally the contractor or its agent (import broker) for shipments to other than a military installation, will file U.S. Customs Form 7501, 7501A, or 7506, with the District Director of Customs.

(2) Immediate entry and release. Importations made in the name of a DoD military facility or shipped directly to a military facility are entitled to release under the immediate delivery procedure.

(i) A DoD immediate delivery application has been approved and is on file at Customs Headquarters.

(ii) The application is for an indefinite period and is good for all Customs districts, areas, and ports.

PGI 225.903 Exempted supplies.

(b)(i) The term “supplies”—

(A) Includes—

(*1*) Articles known as “stores,” such as food, medicines, and toiletries; and

(*2*) All consumable articles necessary and appropriate for the propulsion, operation, and maintenance of the vessel or aircraft, such as fuel, oil, gasoline, grease, paint, cleansing compounds, solvents, wiping rags, and polishes; and

(B) Does not include portable articles necessary and appropriate for the navigation, operation, or maintenance of the vessel or aircraft and for the comfort and safety of the persons on board, such as rope, bolts and nuts, bedding, china and cutlery, which are included in the term “equipment.”

(ii) Format for duty-free certificate.

(Date) _____

I certify that the acquisition of this material constituted a purchase of supplies by the United States for vessels or aircraft operated by the United States, and is admissible free of duty pursuant to 19 U.S.C. 1309.

(Name) _____

(Title) _____

(Organization) _____

PGI 225.70 -AUTHORIZATION ACTS, APPROPRIATIONS ACTS, AND OTHER STATUTORY RESTRICTIONS ON FOREIGN ACQUISITION

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

PGI 225.7002-1 Restrictions.

(a)(1)(ii)(*1*) The following are examples, not all-inclusive, of Product and Service Codes (PSCs) that contain items of clothing:

(*i*) Clothing apparel (such as outerwear, headwear, underwear, nightwear, footwear, hosiery, or handwear) listed in PSC 8405, 8410, 8415, 8420, 8425, 8450, or 8475.

(*ii*) Footwear listed in PSC 8430 or 8435.

(*iii*) Hosiery, handwear, or other items of clothing apparel, such as belts and suspenders, listed in PSC 8440 or 8445.

(*iv*) Badges or insignia listed in PSC 8455.

(2) The PSCs listed in paragraph (a)(1)(ii)(*1*) of this section also contain items that are not clothing, such as—

(i) Visors;

(ii) Kevlar helmets;

(iii) Handbags; and

(iv) Plastic identification tags.

(3) Each item should be individually analyzed to determine if it is clothing, rather than relying on the PSC alone to make that determination.

(4) The fact that an item is excluded from the foreign source restriction of the Berry Amendment applicable to clothing does not preclude application of another Berry Amendment restriction in DFARS 225.7002-1 to the components of the item.

(5) Small arms protective inserts (SAPI plates) are an example of items added to, and not normally associated with, clothing. Therefore, SAPI plates are not covered under the Berry Amendment as clothing. However, fabrics used in the SAPI plate are still subject to the foreign source restrictions of the Berry Amendment. If the fabric used in the SAPI plate is a synthetic fabric or a coated synthetic fabric, the fibers and yarns used in the fabric are not covered by the Berry Amendment, because the fabric is a component of an end product that is not a textile product (see DFARS 225.7002-2(m).

Example: A SAPI plate is compliant with the Berry Amendment if the synthetic fiber or yarn is obtained from foreign country X and woven into synthetic fabric in the United States, which is then incorporated into a SAPI plate manufactured in foreign country Y.

(2) *Hand or measuring tools.*

(A) As applied to hand or measuring tools, “produced in the United States” means that the hand or measuring tool was assembled in the United States out of components, or otherwise made from raw materials into the finished product that is to be provided to the Government.

(B) If a hand or measuring tool was assembled in a country other than the United States, then disassembled and reassembled in the United States, the hand or measuring tool was not produced in the United States.

(C) The requirement to buy hand or measuring tools produced in the United States does not impose any restriction on the source of the components of the hand or measuring tools. This is unlike the Berry Amendment restriction on clothing (see 225.7002-1 (a)(1)(ii)), which explicitly requires

domestic source for the materials and components of clothing (other than unusual components such as sensors or electronics), as well as the additional separate restrictions on various types of fibers and fabrics that might be components of the clothing.

(D) If the acquisition of the hand or measuring tools is also subject to the Buy American statute (see FAR Subpart 25.1), then in order to qualify as a domestic end product, the cost of the components mined, produced, or manufactured in the United States or a qualifying country, must exceed 50 percent of the cost of all the components of the hand or measuring tool.

PGI 225.7002-2 Exceptions.

(b) *Domestic nonavailability determinations.*

(3) *Defense agencies other than the Defense Logistics Agency.*

(A) A defense agency requesting a domestic nonavailability determination must submit the request, including the proposed determination, to—

Principal Director, Defense Pricing, Contracting, and Acquisition Policy

ATTN: OUSD(A&S) DPCAP/CP

3060 Defense Pentagon

Washington, DC 20301-3060.

(B) The Principal Director, Defense Pricing, Contracting, and Acquisition Policy, will forward the request to the Under Secretary of Defense (Acquisition and Sustainment) (USD(A&S)) as appropriate.

PGI 225.7003 Restrictions on acquisition of specialty metals.

PGI 225.7003-2 Restrictions.

(a)(i) This restriction applies to the item containing the specialty metal, not just the specialty metal, as was true when the restriction was part of 10 U.S.C. 4862. The previous practice of withholding payment while conditionally accepting noncompliant items is not permissible for—

(A) Contracts entered into on or after November 16, 2006; or

(B) New procurements or out-of-scope changes accomplished on or after November 16, 2006, through the use of bilateral modifications to contracts originally awarded prior to November 16, 2006.

(ii) Consistent with the definition of “component” in the clause at DFARS 252.225-7009, a component is any item supplied to the Government as part of an end item or of another component. Items that are not incorporated into any of the items listed in DFARS 225.7003-2(a) are not components of those items. For example, test equipment, ground support equipment, or shipping containers are not components of the missile system.

PGI 225.7003-3 Exceptions.

(b)(2) *Report of COTS items*.

If a department or agency uses the exception at DFARS 225.7003-3(b)(2) for an acquisition of COTS end items valued at $5 million or more per item, the department or agency shall address use of the exception in a year-end report, to be prepared and submitted as follows:

(A) Entitle the report "COTS Specialty Metal Exceptions Granted During Fiscal Year ____."

(B) For each excepted COTS item purchased during the fiscal year, include in the report, at a minimum, the applicable—

(1) Contract number and any applicable delivery order number;

(2) Dollar value; and

(3) Item description.

(C) Submit the report by October 31 of each year to:

Principal Director, Defense Pricing, Contracting, and Acquisition Policy

ATTN: OUSD(A&S) DPCAP/CP

3060 Defense Pentagon

Washington, DC 20301-3060.

(4) For samarium-cobalt magnets contained in an item listed in 225.7003-2(a) manufactured in a qualifying country, see paragraph (b)(6)(C) of this section.

(5) Domestic specialty metals nonavailable as and when needed.

(A) Determining availability.

(*1*) FAR 15.402 requires that contracting officers purchase supplies and services at fair and reasonable prices. Thus, contracting officers must determine whether any increase in contract price that results from providing compliant specialty metal is fair and reasonable, given the circumstances of the particular situation. In those cases where the contracting officer determines that the price would not be fair and reasonable, the Secretary of the military department concerned may use that information in determining whether the unreasonable price causes the compliant metal to be effectively "nonavailable." Where these "reasonableness" limits should be drawn is a case-by-case decision.

(*2*) A similar approach may be used to determine whether delays associated with incorporating compliant specialty metals into items being acquired results in the metals being effectively nonavailable.

(B)(1) A department or agency requesting a determination or approval from USD(A&S) in accordance with DFARS 225.7003-3(b)(5) shall submit the request, including the proposed determination, to—

Principal Director, Defense Pricing, Contracting, and Acquisition Policy

ATTN: OUSD(A&S) DPCAP/CP

3060 Defense Pentagon

Washington, DC 20301-3060.

(2) The Principal Director, Defense Pricing, Contracting, and Acquisition Policy (DPCAP), will forward the request to USD(A&S) as appropriate.

(C) For domestic nonavailability determinations with regard to samarium-cobalt high performance magnets, see paragraph (b)(6)(D) of this section.

(6) Application of specialty metals restrictions to magnets.

(A) The two most common types of high performance magnets are samarium-cobalt magnets and neodymium-iron-boron magnets. Only samarium-cobalt magnets contain specialty metals and are subject to the restrictions of 10 U.S.C. 4863 in this section, as well as the restrictions of 10 U.S.C. 4872 at 225.7018 . Neodymium-iron-boron magnets are only subject to the restrictions of 10 U.S.C. 4872 at 225.7018 , because they do not contain specialty metals. There are no other commonly used magnets that contain specialty metals.

(B) Table.

HPM = High performance magnet

COTS = Commercially available off-the-shelf

SmCo = Samarium Cobalt

Magnet made of specialty metal is:	Commercially available, SmCo HPM	NOT Commercially available, SmCo HPM
Incorporated into COTS subsystem or COTS end item	NOT restricted	*
NOT incorporated into COTS subsystem or COTS end item	Restricted	Restricted
Included in 2 percent minimum content?	Cannot be included in 2 percent minimum content	Cannot be included in 2 percent minimum content

* By definition, COTS assemblies and COTS end items will not include a HPM that is not commercially available.

(C) Samarium-cobalt magnets contained in an item manufactured in a qualifying country are still subject to the requirements of 10 U.S.C. 4872, because there is no exception in 10 U.S.C. 4872 for items manufactured in a qualifying country comparable to the exception at 225.7003-3 (b)(4) to the

specialty metal restrictions of 10 U.S.C. 4863.

(D) Even if samarium-cobalt magnets are determined to be domestically nonavailable under this section, the restrictions of 10 U.S.C. 4872 still apply unless samarium-cobalt magnets melted or produced outside a covered country are also determined to be nonavailable in accordance with 225.7018-4 .

(c) *Compliance for commercial derivative military articles*.

(i) A department or agency requesting a determination or approval from USD(A&S) in accordance with DFARS 225.7003-3(c) shall submit the request, including the proposed determination, to—

Principal Director, Defense Pricing, Contracting, and Acquisition Policy

ATTN: OUSD(A&S) DPCAP/CP

3060 Defense Pentagon

Washington, DC 20301-3060.

(ii) The Principal Director, DPCAP, will forward the request to USD(A&S) as appropriate.

(d) *National security waiver*.

(i) A department or agency shall request a national security waiver of the restrictions of 10 U.S.C. 4863 from USD(A&S) in accordance with DFARS 225.7003-3(d) in a timely manner after discovering or being informed of a specialty metals noncompliance in an item, or component thereof, listed at 225.7003-2 (a) and covered by 10 U.S.C. 4863. The department or agency shall submit the request, via the chain of command, including the draft determination and draft letters of notification to the congressional defense committees, as follows:

Principal Director, Defense Pricing, Contracting, and Acquisition Policy

ATTN: OUSD(A&S) DPCAP/CP

3060 Defense Pentagon

Washington, DC 20301-3060

(ii) The request shall include—

(A) The quantity of end items to which the waiver would apply;

(B) The time period that the waiver will cover;

(C) How and when the noncompliance was discovered—

(1) By the subcontractor(s);

(2) By the contractor; and

(3) By the department or agency;

(D) A complete description of all of the items or systems containing noncompliant specialty metals;

(E) The contract number(s), date(s), duration, and subcontractor(s) associated with the noncompliance;

(F) The manufacturer and country of origin of the noncompliant material, if known;

(G) Whether the contractor flowed down the DFARS clause to the subcontractors and in what format (e.g., exact quote or substantially the same?);

(H) A technical description of the affected parts, their role in the larger assembly, and their function in the end item;

(I) Estimated cost and schedule to replace noncompliant parts if a national security waiver is not granted;

(J) Operational and safety implications;

(K) Other national security considerations (such as how the requested waiver will contribute to national security policy or operational security);

(L) A description of the contractor's efforts to develop and implement a corrective plan to ensure future compliance; and

(M) Information helpful to a determination as to whether any noncompliance was knowing and willful.

(iii) The Director, Defense Procurement and Acquisition Policy, will forward the request to USD(A&S) as appropriate.

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

PGI 225.7018-3 Exceptions.

(c)(1) Commercially available off-the-shelf samarium-cobalt magnets are still subject to the restrictions of 10 U.S.C. 4863 unless incorporated into commercially available off-the-shelf end items or subsystems (see (b)(2)(i)(C)).

(2) A samarium-cobalt magnet that is exempt from 10 U.S.C. 4872 because it is incorporated in an electronic device is still subject to the restrictions of 10 U.S.C. 4863, because the exemption under that statute applies to "electronic component," which excludes any high performance magnet used in the electronic component (see definition of "electronic component" at 225.7003-1).

PGI 225.7018-4 Nonavailability determination.

(a) Individual nonavailability determinations.

(2) Contracting officers may use the following template for individual nonavailability determinations under this section:

SUBJECT: Individual Nonavailability Determination Exception under DFARS 225.7018-4

PROGRAM, ITEM, OR PART DESCRIPTION: _____

CONTRACT OR SOLICITATION NUMBER: _____

BACKGROUND: Per the requirements of 10 U.S.C. 4872, DFARS 252.225-7052 prohibits acquisition of samarium-cobalt magnets, neodymium-iron-boron magnets, tantalum metal and alloys, tungsten metal powder, and tungsten heavy alloy or any finished or semi-finished component containing tungsten heavy alloy melted or produced in North Korea, China, Russia, and Iran. Per DFARS

225.7018-4, the Head of Contracting Activity (HCA) can authorize an exception to DFARS 252.225-7052 through an 'Individual Nonavailability Determination' if they determine that covered materials of satisfactory quality and quantity, in the required form, cannot be procured as and when needed at a reasonable price from a source other than a covered country. ANALYSIS OF ALTERNATIVES:

See Attachment A for an analysis of why alternatives that would not require a nonavailability determination are unacceptable. CERTIFICATION: Based on the satisfactory quality, quantity, required form, timeliness, and/or reasonable price issues described in Attachment A, I hereby certify that the requirements for an individual nonavailability determination under DFARS 225.7018-4

have been met._____ Signature of Government Contracting Officer or Program Representative

_____ Date

Official Action on Request: __ Approved __ Disapproved [If disapproved, give reason.]

_____

_____ Signature of Head of Contracting Activity

_____ Date ATTACHMENT A: Analysis of Alternatives Required for an Individual Nonavailability Determination as per DFARS 225.7018-4

PART A: Data on Alternative Sources. [Can be completed either by Government or Contractor.]

1. Detailed information on current or proposed non-compliant DFARS 225.7018 source(s).

ITEM #	COMPONENT NAME	COVERED MATERIAL	CURRENT MANUFACTURER(S)	COUNTRY OF ORIGIN	MATERIAL SPECIFICATION OR GRADE	DELIVERY DATE AND LEAD TIME	QUANTITY REQUIRED	PRICE PER UNIT	TOTAL PRICE
1									

2. Detailed market research conducted on alternative compliant DFARS 225.7018 source(s).

ITEM #	COVERED MATERIAL	POTENTIAL ALTERNATIVE MANUFACTURER(S)	COUNTRY OF ORIGIN	PROPOSED MATERIAL SPECIFICATION OR GRADE	DELIVERY DATE AND LEAD TIME	QUANTITY PROPOSED	PRICE PER UNIT	TOTAL PRICE	RE-DESIGN OR RE-QUALIFICATION COST	RE-DESIGN OR RE-QUALIFICATION COST TIMELINE

1

3. Other pertinent information regarding the need for a nonavailability determination based on satisfactory quality, quantity, required form, timeliness, and/or reasonable price:

_____
_____
_____

_____ PART B: Analysis of Alternatives—Must be completed by a Government Representative

I have verified the information in Part A and a nonavailability determination is requested for the following reason(s):

ITEM #	COVERED MATERIAL	NON-SATISFACTORY QUALITY	INSUFFICENT AVAILABLE QUANTITY	DOES NOT MET REQUIRED FORM	DOES NOT MEET TIMELINESS REQUIREMENTS FOR PROGRAM/CUSTOMER	UNREASONABLE PRICE PER UNIT	UNREASONABLE PRICE FOR RE-DESIGN OR RE-QUALIFICATION
1							

_____ Signature of Government Contracting Officer or Program Representative

_____ Date

ATTACHMENT B: Definitions and Instructions

As used in this document—

“Number” means the National Stock Number (NSN) or other part number applicable to a given component name;

“Component name” includes a description of the part and the name of the end item incorporating that part (e.g., “Actuator – Joint Direct Attack Munition” or “Sphere - M1028 Canister CTG”);

“Covered material” means samarium-cobalt magnets, neodymium-iron-boron magnets, tantalum metal and alloys, tungsten metal powder, and tungsten heavy alloy or any finished / semi-finished component containing tungsten heavy alloy;

“Tungsten heavy alloy” means a tungsten base pseudo alloy that (1) meets the specifications of ASTM B777 or SAE-AMS-T-21014 for a particular class of tungsten heavy alloy or (2) contains at least 90% tungsten in a matrix of other metals (such as nickel-iron or nickel-copper) and has a density of at least 16.5 g/cm3

“Current manufacturer” means the entity that produces the covered material;

“Country of origin” means the location of the facility in which the current manufacturer produces the covered material;

Delivery date and lead time” includes (1) the date by which the covered material is required to

produce the component name and (2) the administrative lead time and procurement lead time required by the manufacturer of the component name, to secure appropriate covered material; and

“Price per unit” means the unit price of the covered material;

For any determination under “Part B”, the Head of Contracting Activity is required to produce a separate report describing why a particular exception is applicable to a given action.

(3)

Provide a copy of signed individual nonavailability determination and supporting documentation or notification when an individual waiver is requested, but denied to:

OUSD(A&S)

DASD, Industrial Policy

U.S. Department of Defense

3330 Defense Pentagon, Room 3B854

Washington, DC 20301-3330

(b)(i) When requesting a class nonavailability determination, submit the request, including the proposed determination, to—

Principal Director, Defense Pricing, Contracting, and Acquisition Policy

ATTN: OUSD(A&S) DPCAP/CP

3060 Defense Pentagon

Washington, DC 20301-3060.

(ii) The Principal Director, DPCAP, will forward the request to the Under Secretary of Defense (Acquisition and Sustainment) (USD(A&S)) as appropriate.

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

PGI 225.7019-3 Waiver.

(a) The following are factors to take into consideration for granting a waiver:

(1) The energy supply system is physically incapable of segregating Russian Federation energy from non-Russian Federation energy.

(2) The installation can only obtain the necessary energy from its current supplier without the unaffordable expense of constructing new supply lines.

(3) The price of requiring the supplier to segregate the energy is unaffordable and would result in the installation being unable to perform its mission within its budget authority.

(4) Consideration, by the requiring activity, of installation energy and security resilience has been taken into account (e.g., on-site sources of energy and fuel resupply would allow the installation to continue to perform its mission even with disruption of Russian Federation-sourced energy, the installation has addressed energy resilience and security risks and vulnerabilities, etc.).

(b) The head of the contracting activity shall submit to the congressional defense committees a notice of the waiver with a copy to DPCAP, Contract Policy, via email at osd.pentagon.ousd-a-s.mbx.dpc-cp@mail.mil, at least 14 days before the award of an energy contract on the basis of an approved waiver. The notification shall include a copy of the waiver. The contracting officer shall include a copy of the approved waiver in the contract file.

PGI 225.7020 Prohibition on contracting with the Maduro regime.

PGI 225.7020-4 Joint determination.

(b) Contracting officers shall—

(1) Notify Defense Pricing and Contracting, Contract Policy, via email at osd.pentagon.ousd-a-s.mbx.dpc-cp@mail.mil, upon entering into a contract on the basis of a joint determination made by the Secretary of Defense and the Secretary of State in accordance with agency procedures for the review and coordination, and include a copy of the joint determination in the notification; and

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

PGI 225.7021 Disclosure requirements for employment transparency regarding individuals who perform work in the People’s Republic of China.

Contracting officers shall provide disclosures received from a covered entity in response to the provision at DFARS 252.225-7057 and the clause at DFARS 252.225-7058 to Defense Pricing, Contracting, and Acquisition Policy, Contract Policy (DPCAP/CP) via email at osd.pentagon.ousd-a-s.mbx.dpc-cp@mail.mil.

PGI 225.7021-3 National security waiver of disclosure.

(b) Determination. The national security waiver request to the senior procurement executive shall include—

(1) The disclosure requirements to which the national security waiver applies;

(2) The time period that the waiver will cover;

(3) A description of the contract requirement;

(4) Impacts if a national security waiver is not granted;

(5) Operational and national security implications;

(6) Other national security considerations, such as how the requested waiver will contribute to national security policy or operational security.

(c) Include a copy of the signed determination in the contract file.

(d) For a military department or defense agency provide a copy of the approved national security waiver to the Principal Deputy, Defense Pricing, Contracting, and Acquisition Policy, Contract Policy (DPCAP/CP) via email at osd.pentagon.ousd-a-s.mbx.dpc-cp@mail.mil.

(e) The following defense field activities shall submit requests for national security waivers to DPCAP/CP via email at osd.pentagon.ousd-a-s.mbx.dpc-cp@mail.mil:

(1) Department of Defense Education Activity.

(2) Defense Human Resources Activity.

(3) Defense Microelectronics Activity.

(4) Defense Media Activity.

(5) Uniformed Services University of the Health Sciences.

PGI 225.72 -REPORTING CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES

PGI 225.7203 Contracting officer distribution of reports.

(a) Before contract award, forward a copy of any reports that are submitted with offers in accordance with the provision at 252.225-7003, Report of Intended Performance Outside the United States and Canada—Submission with Offer, to the Office of the Principal Director, Defense Pricing, Contracting, and Acquisition Policy (Contract Policy) via email to osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil.

(b) Forwarding the reports as described in paragraph (a) of this section is necessary to satisfy the requirement of 10 U.S.C. 4603 that notifications (or copies) of contract performance outside the United States and Canada be maintained in compiled form for 5 years after the date of submission.

PGI 225.73 -ACQUISITIONS FOR FOREIGN MILITARY SALES

PGI 225.7300 Scope of subpart.

(a) The Foreign Military Sales (FMS) acquisition infrastructure is also used to execute cases funded with U.S. appropriated funds under special authority to build international partner capacity. These Building Partner Capacity (BPC) cases are implemented using Pseudo Letter of Offer and Acceptance (LOA) documents.

PGI 225.7301 General.

(c)(i) Separately identify known FMS requirements and the FMS customer in solicitations.

(ii) For economies of scale and efficiency, combine U.S. and FMS requirements under the same contract whenever possible. It is not in the taxpayer's interest to concurrently use mixed contract types for the same or similar items.

(iii) Clearly identify contracts for known FMS requirements by the case identifier code in section B of the Schedule.

(iv) Ensure that the FMS LOA terms and conditions are incorporated into the signed contract.

(v) Ensure that the shipping terms for any contract for FMS materiel are stated as free on board (f.o.b.) origin.

(vi) For Pseudo LOAs, ensure that the period of performance in the contract is consistent with the period of availability of appropriated funds, as provided by the financial resource manager.

(vii) Consistent with the Defense Transportation Regulations (DTR) 4500.9-R-Part II, Cargo Movement, http://www.transcom.mil/dtr/part-ii/, Appendix E, contracting officers shall ensure that contracts involving the acquisition and delivery of FMS materiel comply with the policies, procedures, packaging, labeling, and documentation requirements specified by the DTR.

(viii) The Government representative responsible for acceptance shall ensure that the contractor prepares material inspection and receiving reports in compliance with—

(A) Appendix F, F-301(b)(15)(iv)(K) for a Wide Area WorkFlow (WAWF) Receiving Report; or

(B) F-401(b)(16)(iv)(L) for a paper DD Form 250, Material Inspection and Receiving Report, if an exception to the use of WAWF at 232.7003 applies.

(ix) Prior to contract award, contracting officers shall ensure that—

(A) If a contracting officer's representative is assigned, detailed point of contact information (email, phone number with international dialing protocols, and physical and mailing address) shall be clearly visible;

(B) Unique country requirements are specified in the contract (i.e., additional documentation requirements for use in country customs clearance (Levy Exemption waiver));

(C) Commodity-unique requirements are specified in the contract (i.e., responsibility for obtaining/paying for/affixing active Radio Frequency Identification tags and Transportation Control Number construction/usage); and

(D) The FMS Transportation Accounting Code is stated in the contract.

PGI 225.7302 Preparation of Letter of Offer and Acceptance.

(2) The contracting officer shall—

(i) Assist the DoD implementing agency, as necessary, in preparation of the Letter of Offer and Acceptance;

(ii) Identify and explain all unusual contractual requirements or requests for deviations; and

(iii) Assist in preparing the price and availability data.

PGI 225.7303 Pricing acquisitions for FMS.

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

(a)(3) *Offsets*.

(A) Offsets are the entire range of industrial and commercial benefits provided to foreign governments as an inducement or condition to purchase military supplies or services, including benefits such as coproduction, licensed production, subcontracting, technology transfer, in-county procurement, marketing and financial assistance, and joint ventures (Defense Offsets Disclosure Act of 1999, Pub. L. 106-113, section 1243(3)). There are two types of offsets: direct offsets and indirect offsets.

(i) A direct offset involves benefits, including supplies or services that are directly related to the item being purchased. For example, as a condition of a U.S. sale, the contractor may require or agree to permit the purchaser to produce in its country certain components or subsystems of the item being sold. Generally, direct offsets must be performed within a specified period because they are integral to the deliverable of the FMS contract.

(ii) An indirect offset involves benefits, including supplies or services that are unrelated to the item being purchased. For example, as a condition of a sale the contractor may agree to purchase certain of the customer's manufactured products, agricultural commodities, raw materials, or services. Indirect offsets may be accomplished without a clearly defined period of performance.

(B) Offset costs are the costs to the contractor of providing any direct or indirect offsets required (explicitly or implicitly) as a condition of purchase in a government-to-government sale of defense articles and/or defense services as defined by the Arms Export Control Act and the International Traffic in Arms Regulations.

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

PGI 225.75 -BALANCE OF PAYMENTS PROGRAM

PGI 225.7502 Procedures.

If the Balance of Payments Program applies, use the following procedures:

(1) *Solicitation of offers*. Identify, in the solicitation, supplies and construction material known in advance to be exempt from the Balance of Payments Program.

(2) *Evaluation of offers*.

(i) *Supplies*. Unless the entire acquisition is exempt from the Balance of Payments Program, evaluate offers for supplies that are subject to the Balance of Payments Program using the evaluation procedures in DFARS Subpart 225.5. However, treatment of duty may differ when delivery is overseas.

(A) Duty may not be applicable to nonqualifying country offers.

(B) The U.S. Government cannot guarantee the exemption of duty for components or end products imported into foreign countries.

(C) Foreign governments may impose duties. Evaluate offers including such duties as offered.

(ii) *Construction*. Because the contracting officer evaluates the estimated cost of foreign and domestic construction material in accordance with DFARS 225.7501(a)(7)(iv) before issuing the solicitation, no special procedures are required for evaluation of construction offers.

(3) *Postaward*. For construction contracts, the procedures at FAR 25.206, for noncompliance under the Buy American statute, also apply to noncompliance under the Balance of Payments Program.

PGI 225.76 -SECONDARY ARAB BOYCOTT OF ISRAEL

PGI 225.7604 Waivers.

Forward waiver requests to the Office of the Principal Director (Contract Policy) via email to osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil.

PGI 225.77 -ACQUISITIONS IN SUPPORT OF OPERATIONS IN AFGHANISTAN

PGI 225.7703 Enhanced authority to acquire products or services from Afghanistan.

PGI 225.7703-1 Acquisition procedures.

(c) When issuing solicitations and contracts for performance in Afghanistan, follow the guidance for CENTCOM Operational Contract Support Policies and Procedures, Theater Business Clearance, at

https://www2.centcom.mil/sites/contracts/Pages/GCO.aspx, and use the applicable solicitation provisions and contract clauses:

(1) The provision at DFARS 252.232-7014, Notification of Payment in Local Currency (Afghanistan), as prescribed at DFARS 232.7202.

PGI 225.7703-2 Determination requirements.

(b) Subject matter experts for defense industrial base matters are as follows:

For Army: SAAL-PA, Army Industrial Base Policy, telephone 703-695-2488.

For DLA: DLA J-74, Acquisition Programs and Industrial Capabilities Division, telephone 703-767-1427.

For Navy: Ship Programs, DASN Ships, telephone 703-697-1710.

For Air Force: Air Force Research Laboratory, Materials Manufacturing Directorate, telephone 703-588-7777.

For Other Defense Agencies: Personnel at defense agencies without industrial base expertise on staff should contact the Office of the Deputy Assistant Secretary of Defense for Industrial Policy (Acquisition and Sustainment), telephone 703-697-0051.

(c) Determination formats.

(i) Prepare an individual determination and findings substantially as follows:

DEPARTMENT OR AGENCY
Authority to Acquire Products or Services from Afghanistan
Determination and Findings
Upon the basis of the following findings and determination which I hereby make in accordance with the provisions of DFARS 225.7703-2, the acquisition of a product or service, other than small arms, in support of operations in Afghanistan may be made as follows:

Findings

1.	The *[contracting office]* proposes to purchase under contract number _____, *[describe item]*. The total estimated cost of this acquisition is _____.
2.	The product or service is to be used by *[describe the entity(ies) that are the intended user(s) of the product or service]*.

3. The contracting officer recommends conducting the acquisition using the following procedure, which, given this determination, is authorized by section 886 of Public Law 110-181, as amended by section 842 of Public Law 112-239 and section 886 of Public Law 114-92:
[Select one of the following:]
Provide a preference for products or services from Afghanistan.
Limit competition to products or services from Afghanistan.
Use procedures other than competitive procedures to award a contract to a particular source or sources from Afghanistan.

4. To implement the recommended procedure, the solicitation will contain *[title and number of the applicable provision and/or clause prescribed at DFARS* 225.7703-4 *].*

5. The proposed acquisition will provide a stable source of jobs in Afghanistan because _____.

6. The proposed use of other than full and open competition is necessary to provide this stable source of jobs in Afghanistan.

7. The proposed use of other than full and open competition will not adversely affect military operations or stability operations in Afghanistan, because _____. This is the opinion of the *[title of the official responsible for operations in the area involved].*

8. The proposed use of other than full and open competition will not adversely affect the United States industrial base.

9.	[If a preference will be provided for products or services from Afghanistan, or if competition will be limited to products or services from Afghanistan, include— (*1*) *A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable; and* (*2*) *Whether a notice was or will be publicized as required by FAR Subpart 5.2 and, if not, which exception in FAR 5.202 applies.]* - or - *[If procedures other than competitive procedures will be used to award a contract to a particular source or sources from Afghanistan, include—* (*1*) *A description of the market research conducted in accordance with FAR part 10 and the results; or a statement of the reason market research was not conducted;* (*2*) *A listing of the sources, if any, that expressed, in writing, an interest in the acquisition;* (*3*) *A demonstration that the proposed contractor's unique qualifications require the use of a noncompetitive acquisition, or an explanation of the other reasons for use of a noncompetitive acquisition; and* (*4*) *A certification by the contracting officer that the information in paragraphs (1) through (3) above is accurate and complete to the best of the contracting officer's knowledge and belief.]*
Determination I hereby determine that it is in the national security interest of the United States to use the acquisition procedure described above, because the procedure is necessary to provide a stable source of jobs in Afghanistan and it will not adversely affect (1) Operations in Afghanistan or (2) the United States industrial base.	
(Date)	

(ii) Prepare a determination and findings for a class of acquisitions substantially as follows:

DEPARTMENT OR AGENCY

Authority to Acquire Products or Services from Afghanistan Determination and Findings

Upon the basis of the following findings and determination which I hereby make in accordance with the provisions of DFARS 225.7703-2, the acquisition of products or services, other than small arms, in support of operations in Afghanistan may be made as follows:

Findings

1.	It is anticipated that *[applicable departments/agencies/components]* will need to award contracts during the period from _____ to _____ in order to acquire *[describe the type(s) of products or services]* for *[describe the purpose, if the purpose for which the items will be acquired is a defining characteristic of the class of acquisitions to be covered by the class determination]*.
2.	The products or services to be acquired under the contemplated contracts are to be used by *[describe the entity(ies) intended to use the products or services]*.

3. This class of acquisitions should be conducted using the following procedure, which, given this determination, is authorized by section 886 of Public Law 110-181, as amended by section 842 of Public Law 112-239 and section 886 of Public Law 114-92:
[Select one of the following:]
Provide a preference for products or services from Afghanistan.
Limit competition to products or services from Afghanistan.
Use procedures other than competitive procedures to award a contract to a particular source or sources from Afghanistan.

4. To implement the recommended procedure, solicitations will contain *[title and number of the applicable provision and/or clause prescribed at DFARS* 225.7703-4].

5. Each of the contemplated contracts will provide a stable source of jobs in Afghanistan, because _____.

6. The proposed use of other than full and open competition for this class of acquisitions is necessary to provide this stable source of jobs in Afghanistan.

7. The proposed use of other than full and open competition for this class of acquisitions will not adversely affect operations in Afghanistan, because_____. This is the opinion of the *[title of the official responsible for operations in the area involved].*

8. The proposed use of other than full and open competition for this class of acquisitions will not adversely affect the United States industrial base.

9.

[If a preference will be provided for products or services from Afghanistan, or if competition will be limited to products or services from Afghanistan, include—
(*1*) *A description of the efforts that will be made to ensure that offers are solicited from as many potential sources as is practicable; and*
(*2*) *Whether a notice will be publicized as required by FAR Subpart 5.2 and, if not, which exception in FAR 5.202 applies.]*
- or -
[If procedures other than competitive procedures will be used to award contracts to a particular source or sources from Afghanistan, include—
(*1*) *A description of the market research conducted in accordance with FAR part 10 and the results; or a statement of the reason market research was not conducted;*
(*2*) *A listing of the sources, if any, that expressed, in writing, an interest in this class of acquisitions;*
(*3*) *A demonstration that the proposed contractor's unique qualifications require the use of a noncompetitive acquisition, or an explanation of the other reasons for use of a noncompetitive acquisition; and*
(4) A certification by the contracting officer that the information in paragraphs (1) through (3) above is accurate and complete to the best of the contracting officer's knowledge and belief.

Determination
I hereby determine that it is in the national security interest of the United States to use the acquisition procedure described above for *[description of the class of acquisitions to which this determination is intended to apply]*, because the procedure is necessary to provide a stable source of jobs Afghanistan and it will not adversely affect (1) Operations in Afghanistan or (2) the United States industrial base.

(Date)

(iii) Prepare a determination and findings for acquisitions issued pursuant to https://www.acq.osd.mil/dpap/policy/policyvault/Class_Deviation_2020-O0002.pd, to Acquire Products and Services Produced in Afghanistan or in Countries along a Major Route of Supply to Afghanistan, substantially as follows:

DEPARTMENT OR AGENCY AUTHORITY TO ACQUIRE PRODUCTS OR SERVICES FROM_____1_____

Determination and Findings

Upon the basis of the following findings and determination, which I hereby make in accordance with the provisions of DFARS 225.7799-2 (DEVIATION https://www.acq.osd.mil/dpap/policy/policyvault/Class_Deviation_2020-O0002.pdf), the acquisition of a product or service, other than small arms, in support of operations in Afghanistan may be made as follows:

FINDINGS

1. The _____1A_____ proposes to purchase under solicitation number _____1B_____, _____1C_____. The total estimated cost of this

acquisition is _____ 1D_____.

2. The product or service is to be used by _____2_____.

3. The contracting officer recommends conducting the acquisition using the following procedure, which, given this determination, is authorized by section 801 of Public Law 111-84, as amended by section 886 of Public Law 114-92 and section 1212 of Public Law 116-92, and section 886 of Public Law 110-181, as amended by section 842 of Public Law 112-239 and section 886 of Public Law 114-92:_____3_____.

4. To implement the recommended procedure, the solicitation will contain: a. DFARS 252.225-7998, Preference for Products or Services from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus (DEC 2019) (DEVIATION https://www.acq.osd.mil/dpap/policy/policyvault/Class_Deviation_2020-O0002.pdf), and DFARS 252.225-7999, Requirement for Products or Services from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus (DEC 2019) (DEVIATION https://www.acq.osd.mil/dpap/policy/policyvault/Class_Deviation_2020-O0002.pdf); or b. DFARS 252.225-7996, Acquisition Restricted to Products or Services from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus (DEC 2019) (DEVIATION https://www.acq.osd.mil/dpap/policy/policyvault/Class_Deviation_2020-O0002.pdf).

5. The proposed acquisition will provide a product or service that is to be used _____5_____.

6.a. For products or services from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus, it is in the national security interest of the United States to use a procedure specified in 225.7799-1(a)(DEVIATION https://www.acq.osd.mil/dpap/policy/policyvault/Class_Deviation_2020-O0002.pdf) because the procedure is necessary to _____6A_____.

Use of the procedure for acquisition of products or services from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus will not adversely affect military or stability operations in Afghanistan or the United States industrial base (*see* 6B).

b. For products or services from Afghanistan, it is in the national security interest of the United States to use a procedure specified in 225.7799-1(a)(DEVIATION https://www.acq.osd.mil/dpap/policy/policyvault/Class_Deviation_2020-O0002.pdf) because the procedure is necessary to provide a stable source of jobs in Afghanistan.

Use of the procedure for acquisition of products or services from Afghanistan will not adversely affect military or stability operations in Afghanistan or the United States industrial base (*see* 6B). (see 6C)

7. Acquisitions conducted using the procedures specified in DFARS 225.7799-1(a) (DEVIATION https://www.acq.osd.mil/dpap/policy/policyvault/Class_Deviation_2020-O0002.pdf), (see para. 3. above), are authorized to use other than full and open competition procedures and do not require the justification and approval addressed in FAR Subpart 6.3.

8. Requirement will be/was synopsized: YES [___] NO [___]. If not synopsized, exception at FAR 5.202(a) applies.

_____ Date:_____

CONTRACTING OFFICER

Name:_____

Office Symbol: _____

DETERMINATION

In accordance with the authorization outlined in DFARS 225.7799-2(b)(1)(i)(DEVIATION https://www.acq.osd.mil/dpap/policy/policyvault/Class_Deviation_2020-O0002.pdf) and under the authority of section 801 of Public Law 111-84, as amended by section 886 of Public Law 114-92 and section 1212 of Public Law 116-92, and section 886 of Public Law 110-181, as amended by section 842 of Public Law 112-239 and section 886 of Public Law 114-02, I hereby determine that it is in the national security interest of the United States to use the acquisition procedure described above because the procedure is necessary to encourage countries along a major route of supply in support of military and stability operations in Afghanistan. This procedure will not adversely affect military or stability operations in Afghanistan or the United States industrial base.

_____ Date:_____

INSTRUCTIONS FOR COMPLETING DETERMINATION

1 Afghanistan, a Central Asian state, Pakistan, or the South Caucasus

1A Office symbol of your contracting office

1B RFP/RFQ/IFB number

1C Description of the items to be purchased

1D Estimated amount of the requirement (in USD)

2 Describe the entity(ies) that are the intended user(s) of the product or service

3 *Select and include one of the following:*

a. Provide a preference for products or services from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus in accordance with the evaluation procedures at 225.7799-3 (DEVIATION https://www.acq.osd.mil/dpap/policy/policyvault/Class_Deviation_2020-O0002.pdf). b. Limit competition to products or services from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus DEVIATION 2020-O0002).

5 *Select and include one of the following:*

In the country that is the source of the product or service.

In the course of efforts by the United States and the Forces to ship goods to or from Afghanistan in support of operations in Afghanistan.

By the military forces, police, or other security personnel of Afghanistan.

By the United States or coalition forces in Afghanistan.

6Ai Paragraph (6.a. may be deleted if the product or service is for use by the military forces, police,

or other security personnel of Afghanistan.

6Aii *Select and include one of the following:*

Reduce the overall United States transportation costs and risks in shipping goods in support of operations in Afghanistan.

Encourage states of Central Asia, Pakistan, and the South Caucasus to cooperate in expanding supply routes through their territory in support of operations in Afghanistan.

Help develop more robust and enduring routes of supply to or from Afghanistan.

6B The contracting officer generally may presume that there will not be an adverse effect on the U.S. industrial base. However, when in doubt the contracting officer should coordinate with the applicable subject matter experts.

6C Delete paragraph 6.b. if the product or service concerned is to be used only by the military forces, police, or other security personnel of Afghanistan.

7 Include a description of efforts made to ensure offers are solicited from as many potential sources as is practicable.

PGI 225.78 -ACQUISITIONS IN SUPPORT OF GEOGRAPHIC COMBATANT COMMANDS THEATER SECURITY COOPERATION EFFORTS

PGI 225.7801 Policy.

DoD components are responsible for providing procurement and contracting support of theater security cooperation efforts conducted in support of combatant commander/Chief of Mission, to include military exercises/training, base operations, weapons procurement, aviation fuels and construction and the President's Emergency Plan for Aids relief. By http://www.acq.osd.mil/dpap/dars/pgi/docs/policy_docs/Procurement_Support_of_Theater_Security_Cooperation_Efforts.pdf and its attachment, Department of State (DoS) Cable 11 STATE 030953, “Procurement Roles and Responsibilities – General Services Officer and DoD Personnel,” DoS procurement support is normally restricted to those routine non-complex supplies and services used by U. S. Government personnel permanently assigned at post and acquired for U. S. Government employee direct use. Follow all guidance set forth in this Director, DPAP-approved cable and associated planning considerations at PGI 207.105 (b)(20)(E).

PGI 225.79 - EXPORT CONTROL

PGI 225.7901 Export-controlled items.

PGI 225.7901-2 General.

(1) *DoD Focal Point on Export Controls.*

(i) Within DoD, the focal point on export controls is the Defense Technology Security Administration (DTSA). Official authorities and responsibilities of DTSA are established in DoD Directive 5105.72.

(ii) Initial DoD acquisition workforce questions regarding the applicability of the Export Administration Regulations (EAR) or the International Traffic in Arms Regulations (ITAR) to specific procurements or items, or interpretation of DoD issuances regarding export controls, may be directed to the DTSA Policy Directorate, by phone at 571-372-2438/2377 or by visiting the DTSA web site at: http://www.dtsa.mil/SitePages/contact-us/default.aspx.

(2) *Regulations*. The Department of State and the Department of Commerce are the lead agencies responsible for regulations governing the export of defense articles, commercial products or commercial services, and dual use items.

(i) *The International Traffic in Arms Regulations (ITAR)*, issued by the Department of State, control the export of defense-related articles and services, including technical data, ensuring compliance with the Arms Export Control Act (22 U.S.C. 2751 *et seq*.). The United States Munitions List (USML) identifies defense articles, services, and related technical data that are inherently military in character and could, if exported, jeopardize national security or foreign policy interests of the United States.

(A) The ITAR is published in Title 22 of the Code of Federal Regulations (CFR), Parts 120 through 130 (22 CFR 120-130). The official version of the ITAR is maintained at http://www.gpoaccess.gov/cfr/index.html. The Department of State also maintains an on-line version at http://www.pmddtc.state.gov/regulations_laws/itar_official.html.

(B) The USML is part of the ITAR, in 22 CFR Part 121, and is available at the web sites in paragraph (2) (i) (A) of this section.

(C) The Department of State is responsible for compliance with the ITAR. Depending on the nature of questions you may have, you may contact the following Department of State office to obtain additional information:

U.S. Department of State

Bureau of Political Military Affairs

Directorate of Defense Trade Controls

Office of Defense Trade Controls Compliance

http://www.pmddtc.state.gov/about/contact_information.html.

(D) Contracting officers should not answer any questions a contractor may ask regarding how to comply with the ITAR. If asked, the contracting officer should direct the contractor’s attention to paragraph (c) of the clause at DFARS 252.225-7048 and may inform the contractor that the Department of State publishes guidance regarding ITAR compliance at http://www.pmddtc.state.gov/compliance/index.html.

(E) Contracting officers should not answer any questions a contractor may ask regarding the State Department requirement, mentioned in the clause at 252.225-7048, for contractors to register with the Department of State in accordance with the ITAR. If asked, the contracting officer should direct the contractor's attention to paragraph (b) of the clause, which directs the contractor to consult with the Department of State regarding any questions relating to compliance with the ITAR. (The registration requirements are in Subpart 122.1 of the ITAR. Subpart 122.1 requires any person who engages in the United States in the business of either manufacturing or exporting defense articles or furnishing defense services to register with the Directorate of Defense Trade Controls.)

(ii) *The Export Administration Regulations (EAR)*, issued by the Department of Commerce, control the export of dual-use items, (items that have both commercial and military or proliferation applications) and purely commercial products or commercial services. These items include commodities, software, and technology. Many items subject to the EAR are set forth by Export Control Classification Number on the Commerce Control List.

(A) The EAR is published in Title 15 of the Code of Federal Regulations, Parts 730 through 774 (15 CFR Parts 730-774), available at http://www.gpoaccess.gov/cfr/index.html and http://www.access.gpo.gov/bis/ear/ear_data.html.

(B) The Commerce Control List is part of the EAR, in Supplement No. 1 to 15 CFR Part 774, and is available at http://www.gpoaccess.gov/cfr/index.html and http://www.access.gpo.gov/bis/ear/ear_data.html.

(C) The Department of Commerce is responsible for compliance with the EAR. Depending on the nature of questions you may have, you may contact the following Department of Commerce office to obtain additional information:

U.S. Department of Commerce

Bureau of Industry and Security

Office of Exporter Services (OExS)

OExS Hotline: 202-482-4811.

(D) Contracting officers should not answer any questions a contractor may ask regarding how to comply with the EAR. If asked, the contracting officer should direct the contractor's attention to paragraph (b) of the clause at DFARS 252.225-7048 and may inform the contractor that the Department of Commerce publishes guidance regarding EAR compliance at http://www.bis.doc.gov/.

(3) *National Security Decision Directive (NSDD) 189, National Policy on the Transfer of Scientific, Technical, and Engineering Information*.

(i) NSDD 189 establishes a national policy that, to the maximum extent possible, the products of fundamental research shall remain unrestricted. NSDD 189 provides that no restrictions may be placed upon the conduct or reporting of federally funded fundamental research that has not received national security classification, except as provided in applicable U.S. statutes. As a result, contracts confined to the performance of unclassified fundamental research generally do not involve any export-controlled items, as defined in paragraph (a) of the clause at DFARS 252.225-7048.

(ii) NSDD 189 does not take precedence over statutes. NSDD 189 does not exempt any research, whether basic, fundamental, or applied, from statutes that apply to export controls such as the Arms Export Control Act, the Export Administration Act of 1979, as amended, or the U.S. International

Emergency Economic Powers Act, or the regulations that implement those statutes (the ITAR and the EAR). Thus, if export-controlled items are used to conduct research or are generated as part of the research efforts, the export control laws and regulations apply to the controlled items.

(iii) NSDD 189 is available at http://www.fas.org/irp/offdocs/nsdd/nsdd-189.htm.

(4) *DoD Instruction 2040.02, International Transfers of Technology, Articles, and Services*. This DoD instruction provides guidance to manage and control transfers of technology, articles, and services consistent with U.S. foreign policy and national security objectives. DoD Instruction 2040.02 is available at http://www.dtic.mil/whs/directives/.

(5) *Other DoD Issuances.* Other DoD issuances that address export control matters include those listed below. Except as otherwise noted, these issuances are available at http://www.dtic.mil/whs/directives/.

• DoD Instruction 2015.4, Defense Research, Development, Test and Evaluation (RDT&E) Information Exchange Program (IEP).

• DoD Directive 5000.1, The Defense Acquisition System.

• DoD Instruction 5000.2, Operation of the Defense Acquisition System.

• DoD Directive 5105.72, Defense Technology Security Administration (DTSA).

• DoD Publication 5200.1-M, Acquisition Systems Protection Program.

• DoD Instruction 5200.39, Critical Program Information (CPI) Protection Within the Department of Defense.

• DoD Publication 5220.22-M, National Industrial Security Program Operating Manual (NISPOM).

• DoD Directive 5230.25, Withholding of Unclassified Technical Data From Public Disclosure.

• DoD Instruction 5230.27, Presentation of DoD-Related Scientific and Technical Papers at Meetings.

• Defense Acquisition Guidebook, available at http://akss.dau.mil/dag/DoD5000.asp?view=document&doc=1.

• Under Secretary of Defense (Intelligence) Memorandum, Subject: Policy and Procedures for Sanitization of Department of Defense (DoD) Classified or Controlled Unclassified Information Prior to Public Release, is available here

Link to online training on export controls:

CLM 036 Technology Transfer and Export Control Fundamentals, http://icatalog.dau.mil/onlinecatalog/courses.aspx?crs_id=306

PGI 225.7902 Defense Trade Cooperation Treaties.

The following documents are accessible at: http://pmddtc.state.gov/:

• DTC Treaties.

• Implementing Arrangements.

• The provisions of the International Traffic in Arms Regulations (ITAR) (22 CFR 126.16 (Australia) and 22 CFR 126.17 (United Kingdom)) pertaining to the DTC Treaties.

• List of Defense Articles Exempted from DTC Treaty Coverage (also in 22 CFR 126 Supplement No. 1).

• List of Approved Community Members.

• Definitions.

PGI 225.7902-2 Purpose.

(1) Background.

(i) The U.S. Government controls exports of defense articles, technical data, and defense services. The controls are imposed by the Arms Export Control Act (AECA) and the Department of State regulation that implements the AECA export controls. That regulation is the ITAR. See PGI 204.7302(2)(i) for more information about the ITAR.

(ii) Under the ITAR, the Department of State manages an export licensing system in which government approvals are often necessary for companies to hold discussions about potential projects, pursue joint activities, ship hardware, or transfer know-how to one another, and even sometimes to move engineers and other personnel within branches of the same company located in different countries. This process can be challenging for U.S. exporters and for foreign firms in their supply chains.

(iii) Given the close allied relationship of the United States with Australia and the United Kingdom, the President and the respective Prime Ministers decided to reform the defense trade system between their countries with the goal of facilitating the exchange of certain defense articles, technical data, and defense services between their militaries and security authorities, and their industries. They negotiated bilateral Defense Trade Cooperation DTC Treaties to achieve this goal. These bilateral DTC Treaties establish permissions for export without export licenses for each country, if an export meets the DTC Treaty requirements.

Other exports remain under the AECA and the ITAR. The DTC Treaties are intended solely to waive certain requirements of the ITAR for specific transactions within the scope of the DTC Treaties not remove any requirements for contractors to comply with domestic U.S. law.

(iv) The Department of State regulations implementing the DTC Treaties are in the ITAR.

(2) How the DTC Treaties work.

(i) The DTC Treaties establish Approved Communities. The “Approved Community” for each DTC Treaty is defined in DFARS clause 252.225-7047. Exports of most U.S. defense articles, technical data, and defense services are permitted to go into and to move within the Approved Community, without the need for government approvals and export licenses (provided that all persons comply with statutory and regulatory requirements outside of DFARS and ITAR concerning the import of

defense articles and defense services or the possession or transfer of defense articles, including, but not limited to, regulations issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives found at 27 C.F.R. Parts 447, 478, and 479, which are unaffected by the DTC Treaties) when in support of the following:

• Combined U.S.-Australia or U.S.-U.K. military or counterterrorism operations.

• U.S.-Australia or U.S.-U.K. cooperative security and defense research, development, production, and support programs.

• Specific security and defense projects that are for the government of Australia or the government of the United Kingdom use only.

• U.S. Government end use.

(ii) Under the DTC Treaties, instead of a U.S. exporter preparing and requesting Department of State approval of an export license or other written authorization for a project, the exporter may elect to use the applicable DTC Treaty if Treaty conditions are met. If using a DTC Treaty, the exporter will check the Department of State website (http://pmddtc.state.gov/) or other appropriate reference and verify that—

• The Australian or U.K. partner is on the list of approved companies/facilities (i.e., a member of the Approved Community);

• The effort is in support of at least one of the scope areas identified in paragraph (2)(i) of this section; and

• The defense article is not on the exempted technology list. (Also in 22 CFR 126 Supplement No. 1).

If all three conditions are met, then the U.S. exporter and the Australian or U.K. partner may use the DTC Treaty exemptions in the ITAR to move qualifying defense articles without the need to obtain export licenses or other written authorizations, provided compliance with paragraph (2)(i) of this section.

(iii) A company using a DTC Treaty, in addition to checking the three lists (as explained in paragraph (2)(ii) of this section), must also comply with requirements in the applicable DTC Treaty and the associated Implementing Arrangements, and the provisions of the ITAR pertaining to the DTC Treaty. These include marking and record keeping requirements to ensure that export-controlled items are recognized as such and treated accordingly. For example, instead of normal ITAR requirements, the provisions of the ITAR pertaining to the DTC Treaties establish the requirements that apply. Similarly, DFARS 225.7902 implements requirements that relate to exports that a prospective contractor may make under a DoD solicitation or that a contractor may make in performance of a DoD contract.

The company must continue to comply with domestic laws and regulations, including those pertaining to the movement of defense articles within the United States.

PGI 225.7902-4 Procedures.

(1) Since the DTC Treaties apply only to eligible items, a solicitation or contract falls within the scope of the DTC Treaties, and is thus eligible for DTC Treaty coverage (i.e., falls within the scope of

the DTC Treaties) if it will acquire at least one defense article that is not otherwise exempt from the DTC Treaties and is required for—

(i) Combined military or counterterrorism operations as described in the Implementing Arrangements;

(ii) Cooperative security and defense research, development, production, and support programs that are identified pursuant to the Implementing Arrangements;

(iii) Cases where the government or Australia or the government of the United Kingdom is the end user in mutually agreed specific security and defense projects, that are identified pursuant to the Implementing Arrangements; or

(iv) U.S. Government end use under a solicitation or contract.

(2) Since the DTC Treaties apply only to eligible items, a solicitation or contract falls within the scope of the DTC Treaties and is thus eligible for DTC Treaty coverage when it will acquire at least one defense article that is DTC Treaty-eligible and the contract falls within the scope of the DTC Treaties. Article 3, section (2) of each DTC Treaty and Section 4 of each Implementing Arrangement require the DTC Treaty Participants to maintain lists of defense articles to be exempted from the scope of the DTC Treaties. These exempted technology lists are incorporated in Supplement No. 1 to part of the ITAR and are accessible at: http://www.pmddtc.state.gov/treaties/index.html

(3) The DTC Treaties do not apply to defense articles initially being acquired pursuant to the U.S. Foreign Military Sales (FMS) program, although, once the defense articles are acquired by the Australia or United Kingdom under an FMS case, the DTC Treaty applies as though the defense articles were exported under the DTC Treaty, subject to PGI 225.7902-2 .

(4) If a company obtains an export license, or other authorization, for the export of defense articles that might otherwise have been eligible for export without a license under a DTC Treaty, the terms of the export license, or other authorization, shall apply unless and until the company obtains approval to transition to DTC Treaty coverage. The process and requirements for transition are described in 22 CFR 126.16(i) and 22 CFR 126.17(i), respectively.