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Synopsis

In the June 17, 2003 *Second Improved TRS Order*, the Commission required that TRS providers offer three-way calling as a standard feature of TRS. In the August 1, 2003 *Declaratory Ruling*, the Commission recognized captioned telephone service as a type of TRS. (See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, published at 68 FR 55898, September 29, 2003, in CC Docket No. 98-67; FCC 03-190. The *Declaratory Ruling* did not waive the requirement that providers of captioned telephone service offer a three-way calling feature. On September 24, 2003, AT&T Corp. (AT&T) filed a petition for limited reconsideration of the *Second Improved TRS Order*. (See AT&T, *AT&T Petition for Limited Reconsideration and for Waiver*, CC Docket No. 98-67, CG Docket No. 03-123 (filed September 24, 2003)). AT&T requested that the

Commission waive the three-way calling requirement adopted in the *Second Improved TRS Order*. AT&T asserted that it was not possible for the TRS facility to set up a three-way call, subject to clarification regarding how three-way calling may be provided in compliance with the Commission's TRS regulations. On December 11, 2003, Ultratec, Inc. and Sprint Corporation filed a petition seeking clarification that the three-way calling requirement either does not apply to captioned telephone service or that a TRS provider complies with the rule regardless of the method used to set up the three-way call. (See *Petition for Clarification by Ultratec, Inc. and Sprint Corporation*, CC Docket No. 98-67, CG Docket No. 03-123 (file December 11, 2003)). On February 24, 2004, in response to these petitions, the Consumer & Governmental Affairs Bureau released an *Order* waiving for one year the requirement that TRS providers (including providers of captioned telephone service) offer three-way calling. (*Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket 98-67, DA 04-465, 19 FCC Rcd 2993 (February 24, 2004)). In view of the pending expiration date of the one-year February 24, 2004, waiver, the Commission now seek comment on whether this waiver should be left to expire or be extended, or whether the rule should be modified or clarified and, if so, how.

Federal Communications Commission.

Jay Keithley,

Deputy Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 05-651 Filed 1-12-05; 8:45 am]

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DEPARTMENT OF DEFENSE

48 CFR Part 206

[DFARS Case 2003-D017]

Defense Federal Acquisition Regulation Supplement; Competition Requirements; Correction

AGENCY: Department of Defense (DoD).

ACTION: Correction to final rule.

SUMMARY: DoD is issuing a correction to the final rule published at 69 FR 74990-74991 on December 15, 2004, pertaining to competition requirements. The correction shows that the change to 48 CFR part 206, section 206.001, revises only paragraph (b) of section 206.001.

EFFECTIVE DATES: December 15, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition

Regulations System, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0311; facsimile (703) 602-0350.

Correction

PART 206—[CORRECTED]

■ In the issue of Wednesday, December 15, 2004, on page 74991, in the second column, amendatory instruction 2 is corrected to read as follows:

■ 2. Section 206.001 is revised to read as follows:

206.001 Applicability.

(b) As authorized by 10 U.S.C. 1091, contracts awarded to individuals using the procedures at 237.104(b)(ii) are exempt from the competitive requirements of FAR part 6.

(S-70) Also excepted from this part are follow-on production contracts for products developed pursuant to the "other transactions" authority of 10 U.S.C. 2371 for prototype projects when—

(1) The other transaction agreement includes provisions for a follow-on production contract;

(2) The contracting officer receives sufficient information from the agreements officer and the project manager for the prototype other transaction agreement, which documents that the conditions set forth in 10 U.S.C. 2371 note, subsections (f)(2)(A) and (B) (see 32 CFR 3.9(d)), have been met; and

(3) The contracting officer establishes quantities and prices for the follow-on production contract that do not exceed the quantities and target prices established in the other transaction agreement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

[FR Doc. 05-760 Filed 1-12-05; 8:45 am]

BILLING CODE 5001-08-P

DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

[DFARS Case 2004-D013]

Defense Federal Acquisition Regulation Supplement; Free Trade Agreements—Australia and Morocco

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement

(DFARS) to implement new Free Trade Agreements with Australia and Morocco. In addition, the rule revises terminology relating to international trade agreements and the Trade Agreements Act, updates the list of "least developed countries," and extends nondiscriminatory treatment to Caribbean Basin country construction material.

DATES: *Effective Date:* January 13, 2005.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before March 14, 2005, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2004–D013, using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Defense Acquisition Regulations Web site: <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. Follow the instructions for submitting comments.

- E-mail: dfars@osd.mil. Include DFARS Case 2004–D013 in the subject line of the message.

- Fax: (703) 602–0350.

- Mail: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to <http://emissary.acq.osd.mil/dar/dfars.nsf>.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS part 225 and corresponding provisions and clauses to implement new Free Trade Agreements with Australia and Morocco, as approved by Congress in the United States-Australia Free Trade Agreement Implementation Act (Pub. L. 108–286) and the United States-Morocco Free Trade Agreement Implementation Act (Pub. L. 108–302). The new Free Trade Agreements waive the applicability of the Buy American Act for some foreign supplies and construction materials from Australia and Morocco, and specify procurement procedures designed to ensure fairness. In addition, at the request of the United States Trade Representative and for consistency with the interim FAR rule published at 69 FR 77870 on December 28, 2004, this DFARS rule makes the

following changes in terminology relating to trade agreements:

- Substitution of the term "World Trade Organization Government Procurement Agreement" in all places where the term "Trade Agreements Act" was used to mean the World Trade Organization Government Procurement Agreement.

- Redefinition of "designated country" to include World Trade Organization Government Procurement Agreement countries, Free Trade Agreement countries, least developed countries, and Caribbean Basin countries. Free Trade Agreement countries and Caribbean Basin countries are now also designated countries. Each of these terms will retain a separate definition because, in some instances, the regulation does not apply to all designated countries, but only to some of the specific subsets.

- A revised list of least developed countries that are designated as eligible countries under the Trade Agreements Act.

- Amendment of the clause at DFARS 252.225–7045, Balance of Payments Program—Construction Material Under Trade Agreements, to extend nondiscriminatory treatment to all designated country construction material, including Caribbean Basin country construction material. **Federal Register** notices issued by the United States Trade Representative under the Caribbean Basin Trade Initiative state that products of the listed Caribbean Basin countries shall continue to be treated as eligible products (unless excluded from duty-free treatment under 19 U.S.C. 2703(b)). This change is consistent with the definition of "eligible product" at 19 U.S.C. 2518(4).

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Although the rule opens up Government procurement to the products of Australia and Morocco, DoD does not believe there will be a significant economic impact on U.S. small businesses. DoD applies the trade agreements to only those non-defense items listed at DFARS 225.401–70. Acquisitions below \$100,000 that are set aside for small businesses are exempt. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small

businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2004–D013.

C. Paperwork Reduction Act

This interim rule affects the certification and information collection requirements in the provisions at DFARS 252.225–7020 and 252.225–7035, currently approved under Office of Management and Budget Control Number 0704–0229. The impact, however, is negligible.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements new Free Trade Agreements with Australia and Morocco, as approved by Congress in the United States-Australia Free Trade Agreement Implementation Act (Pub. L. 108–286) and the United States-Morocco Free Trade Agreement Implementation Act (Pub. L. 108–302). These agreements waive the applicability of the Buy American Act for some foreign supplies and construction materials from Australia and Morocco, and specify procurement procedures designed to ensure fairness. The new Free Trade Agreements became effective on January 1, 2005. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 225 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

■ 2. Section 225.103 is amended by revising paragraph (a)(i)(B) to read as follows:

225.103 Exceptions.

(a)(i) * * *

(B) For procurements covered by the World Trade Organization Government

Procurement Agreement, the Under Secretary of Defense (Acquisition, Technology, and Logistics) has determined that it is inconsistent with the public interest to apply the Buy American Act to end products that are substantially transformed in the United States.

* * * * *

■ 3. Section 225.401–70 is amended by revising the first sentence to read as follows:

225.401–70 Products subject to trade agreements.

Acquisitions of end products in the following Federal supply groups (FSG) are covered by trade agreements if the value of the acquisition is at or above the applicable trade agreement threshold and no exception applies.

* * * * *

* * * * *

■ 4. Section 225.402 is revised to read as follows:

225.402 General.

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

■ 5. Section 225.403 is amended by revising the section heading, paragraph (c) introductory text, and paragraph (c)(i) introductory text to read as follows:

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

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

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

* * * * *

■ 6. Section 225.502 is amended by revising paragraph (b) introductory text, paragraph (b)(i), and paragraph (c)(ii)(C) in the parenthetical to read as follows:

225.502 Application.

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

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

* * * * *

(c) * * *

(ii) * * *

(C) * * * (If the low offer is a qualifying country offer from a country listed at 225.872–1(b), execute a determination in accordance with 225.872–4.)

* * * * *

■ 7. Section 225.901 is amended by revising paragraph (2) to read as follows:

225.901 Policy.

* * * * *

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

* * * * *

■ 8. Section 225.7501 is amended as follows:

■ a. By redesignating paragraphs (a)(3) through (a)(5) as paragraphs (a)(4) through (a)(6), respectively;

■ b. By adding a new paragraph (a)(3); and

■ c. By revising paragraph (b) to read as follows:

225.7501 Policy.

* * * * *

(a) * * *

(3) The acquisition is covered by the World Trade Organization Government Procurement Agreement;

* * * * *

(b) After receipt of offers—

(1) The evaluated low offer (*see* Subpart 225.5) is an offer of an end product that—

(i) Is a qualifying country end product;

(ii) Is an eligible product; or

(iii) Is a nonqualifying country end product, but application of the Balance of Payments Program evaluation factor would not result in award on a domestic offer; or

(2) The construction material is an eligible product; or

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212–7001 [Amended]

■ 9. Section 252.212–7001 is amended as follows:

■ a. By revising the clause date to read “(JAN 2005)”;

■ b. In paragraph (b), in entry 252.225–7021, by removing “(DEC 2004)” and adding in its place “(JAN 2005)”;

■ c. In paragraph (b), in entry 252.225–7036, by removing “(DEC 2004)” and “(JAN 2004)” and adding in both places “(JAN 2005)”.

■ 10. Section 252.225–7013 is amended by revising the clause date, paragraph (a)(2), paragraph (h) introductory text, paragraph (h)(11), and paragraph (i) introductory text to read as follows:

252.225–7013 Duty-Free Entry.

* * * * *

Duty-Free Entry (Jan 2005)

(a) * * *

(2) *Eligible product* means—

(i) *Designated country end product* as defined in the Trade Agreements clause of this contract;

(ii) *Free Trade Agreement country end product* as defined in the Trade Agreements clause of this contract;

(iii) *End product of Australia, Canada, Chile, Mexico, or Singapore* as defined in the Buy American Act—Free Trade Agreements—Balance of Payments Program clause of this contract; or

(iv) *Canadian end product* as defined in Alternate I of the Buy American Act—Free Trade Agreements—Balance of Payments Program clause of this contract.

* * * * *

(h) The Contractor shall notify the Administrative Contracting Officer (ACO) in writing of any purchase of eligible products or qualifying country supplies to be accorded duty-free entry, that are to be imported into the United States for delivery to the Government or for incorporation in end items to be delivered to the Government. The Contractor shall furnish the notice to the ACO immediately upon award to the supplier and shall include in the notice—

* * * * *

(11) Country of origin; and

* * * * *

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

* * * * *

■ 11. Section 252.225–7020 is revised to read as follows:

252.225–7020 Trade Agreements Certificate.

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

Trade Agreements Certificate (Jan 2005)

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

(b) *Evaluation.* The Government—

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

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

(i) There are no offers of such end products;

(ii) The offers of such end products are insufficient to fulfill the Government's requirements; or

(iii) A national interest waiver has been granted.

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

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

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

(Line Item Number) (Country of Origin)

(End of provision)

■ 12. Section 252.225-7021 is amended by revising the clause date and paragraphs (a) through (c) to read as follows:

252.225-7021 Trade Agreements.

* * * * *

Trade Agreements (Jan 2005)

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

(1) *Caribbean Basin country end product*—

(i) Means an article that—

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

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

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

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

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

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

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

(3) *Designated country* means—

(i) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Aruba, Austria, Belgium, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or the United Kingdom);

(ii) A Free Trade Agreement country (Australia, Canada, Chile, Mexico, Morocco, or Singapore);

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

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

(4) *Designated country end product* means a WTO GPA country end product, a Free Trade Agreement country end product, a least developed country end product, or a Caribbean Basin country end product.

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

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

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

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

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

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

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a least developed country into a new and different

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

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

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

(10) *Qualifying country end product* means—

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

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

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

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

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

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

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

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

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

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

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

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

(2)(i) Offers of U.S.-made end products or qualifying, designated, Caribbean Basin, or Free Trade Agreement country end products from responsive, responsible offerors are either not received or are insufficient to fill the Government's requirements; or

(ii) A national interest waiver has been granted.

* * * * *

■ 13. Section 252.225-7035 is revised to read as follows:

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

As prescribed in 225.1101(9), use the following provision:

Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate (Jan 2005)

(a) *Definitions. Domestic end product, end product of Australia, Canada, Chile, Mexico, or Singapore, foreign end product, qualifying country end product, and United States* have the meanings given in the Buy American Act—Free Trade Agreements—Balance of Payments Program clause of this solicitation.

(b) *Evaluation.* The Government—

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

(2) For line items subject to Free Trade Agreements, will evaluate offers of qualifying country end products or end products of Australia, Canada, Chile, Mexico, or Singapore without regard to the restrictions of the Buy American Act or the Balance of Payments Program.

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

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

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

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

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

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

(Line Item Number) (Country of Origin)

(ii) The offeror certifies that the following supplies are end products of Australia, Canada, Chile, Mexico, or Singapore:

(Line Item Number) (Country of Origin)

(iii) The following supplies are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products.

(Line Item Number) (Country of Origin (If known))

(End of provision)

Alternate I (Jan 2005)

As prescribed in 225.1101(9), substitute the phrase “Canadian end product” for the phrase “end product of Australia, Canada, Chile, Mexico, or Singapore” in paragraph (a) of the basic provision; and substitute the phrase “Canadian end products” for the phrase “end products of Australia, Canada, Chile, Mexico, or Singapore” in paragraphs (b) and (c)(2)(ii) of the basic provision.

■ 14. Section 252.225–7036 is amended as follows:

■ a. By revising the clause date and paragraphs (a) and (c);

■ b. In Alternate I by removing “(JAN 2004)” and adding in its place “(JAN 2005)”;

■ c. In Alternate I introductory text by removing “(a)(6)” both places it appears and adding in its place “(a)(4)”; and

■ d. In Alternate I by redesignating paragraph (a)(6) as paragraph (a)(4). The revised text reads as follows:

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

* * * * *

Buy American Act—Free Trade Agreements—Balance of Payments Program (Jan 2005)

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

(1) *Component* means an article, material, or supply incorporated directly into an end product.

(2) *Domestic end product* means—

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

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

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

(B) It is inconsistent with the public interest to apply the restrictions of the Buy American Act.

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

(4) *End product of Australia, Canada, Chile, Mexico, or Singapore* means an article that—

(i) Is wholly the growth, product, or manufacture of Australia, Canada, Chile, Mexico, or Singapore; or

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

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

(6) *Qualifying country* means any country set forth in subsection 225.872–1 of the

Defense Federal Acquisition Regulation Supplement.

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

(8) *Qualifying country end product* means—

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

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

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

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

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

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

* * * * *

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

* * * * *

252.225–7044 [Amended]

■ 15. Section 252.225–7044 is amended as follows:

■ a. By revising the clause date to read “(JAN 2005)”;

■ b. In paragraph (a), in the definition of “Cost of components”, in the second sentence of paragraph (2), by removing “end product” and adding in its place “construction material”.

■ 16. Section 252.225–7045 is revised to read as follows:

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

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

Balance of Payments Program—Construction Material Under Trade Agreements (Jan 2005)

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

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

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

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

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

Cost of components means—

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

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

Designated country means—

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Aruba, Austria, Belgium, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or the United Kingdom);

(2) A Free Trade Agreement country (Australia, Canada, Chile, Mexico, Morocco, or Singapore);

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

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados,

Belize, British Virgin Islands, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Montserrat, Netherlands Antilles, Nicaragua, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago).

Designated country construction material means a construction material that is a WTO GPA country construction material, a Free Trade Agreement country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

Domestic construction material means—

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

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

Free Trade Agreement country construction material means a construction material that—

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

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

Least developed country construction material means a construction material that—

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

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

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

WTO GPA country construction material means a construction material that—

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

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

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for designated country construction materials.

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

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

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

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

(End of clause)

Alternate I (Jan 2005)

As prescribed in 225.7503(b), delete the definitions of "designated country" and "designated country construction material" from the definitions in paragraph (a) of the basic clause, add the following definition of "Australian, Chilean, or Moroccan construction material" to paragraph (a) of the basic clause, and substitute the following paragraphs (b) and (c) for paragraphs (b) and (c) of the basic clause:

Australian, Chilean, or Moroccan construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of Australia, Chile, or Morocco; or

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

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and all Free Trade Agreements except NAFTA apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for WTO GPA country, Australian, Chilean, or Moroccan, least developed country, or Caribbean Basin country construction material.

(c) The Contractor shall use only domestic, WTO GPA country, Australian, Chilean, or Moroccan, least developed country, or Caribbean Basin country construction material in performing this contract, except for—

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

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

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

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