

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

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

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

[63 FR 11547, Mar. 9, 1998, as amended at 64 FR 51077, Sept. 21, 1999; 65 FR 19858, Apr. 13, 2000]

252.225-7037 Duty-free entry—Eligible end products.

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

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

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

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

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

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

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

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

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

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

(d) The Contractor warrants that—

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

(2) The Contractor will pay any applicable duty to the extent that such eligible end products, or any portion thereof (if not scrap or salvage) are diverted to nongovernmental use, other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer.

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

(f) All shipping documents submitted to Customs, covering eligible end products for which duty-free entry certificates are to be issued under this clause, shall—

(1) Consign the shipments to the appropriate—

(i) Military department in care of the Contractor, including the Contractor's delivery address; or

(ii) Military installation; and

(2) Include the following information—

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

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

(iii) Identification of carrier;

(iv)(A) For direct shipments to a U.S. military installation, the notation:

UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE Duty-Free Entry to be claimed pursuant to Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States. Upon arrival of shipment at

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the appropriate port of entry, District Director of Customs, please release shipment under 19 CFR part 142, and notify Commander, Defense Contract Management (DCM) New York, ATTN: Customs Team, DCMDN-GNIC, 207 New York Avenue, Building 120, Staten Island, New York 10305-5013, for execution of Customs Forms 7501, 7501A, or 7506 and any required duty-free entry certificates.

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

(v) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight);

(vi) Estimated value in U.S. dollars; and
(vii) Activity Address Number of the contract administration office actually administering the prime contract, e.g., for DCM Dayton, S3605A.

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

(2) For shipments containing both supplies that are to be accorded duty-free entry and supplies that are not, the Contractor shall identify on the customs forms those items that are eligible for duty-free entry.

(h) The Contractor agrees—

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

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

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

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

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

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

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

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

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

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

(5) Foreign supplier's name and address;

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

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

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

(9) List of items purchased;

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

(11) The scheduled delivery date(s).

(End of clause)

[63 FR 11548, Mar. 9, 1998, as amended at 65 FR 19858, Apr. 13, 2000; 65 FR 52953, Aug. 31, 2000]

252.225-7038 Restriction on acquisition of aircraft fuel cells.

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

RESTRICTION ON ACQUISITION OF AIRCRAFT FUEL CELLS (FEB 1994)

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

(End of clause)

[59 FR 11729, Mar. 14, 1994; 59 FR 38931, Aug. 1, 1994]