



Department of Energy  
Acquisition Regulation

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# ACQUISITION LETTER

This Acquisition Letter is issued under the authority of the Procurement Executives of DOE and NNSA

**Subject: Domestic and Foreign Procurement Preference Rules**

**Reference:** Federal Acquisition Regulation (FAR) Part 25; Foreign Acquisition

## **When is this Acquisition Letter (AL) Effective?**

This AL is effective ten (10) business days from the date of issuance and supersedes AL 96-05, dated May 10, 1996.

## **When Does this Acquisition Letter Expire?**

This AL will expire when this guidance is distributed in an Acquisition Guide section or is otherwise superseded.

## **Who is the Point of Contact?**

Contact Robert Webb of the Office of Procurement and Assistance Policy at (202) 586-9264, or via e-mail at [Robert.Webb@hq.doe.gov](mailto:Robert.Webb@hq.doe.gov).

## **What is the Purpose of this Acquisition Letter?**

The purpose of this AL is to provide updated guidance to contracting personnel for the Department of Energy (DOE), the National Nuclear Security Administration (NNSA) and the Power Marketing Administrations (PMAs) regarding the laws, regulations and policies applicable to preferences in the procurement for domestic and foreign supplies, construction material and services. For purposes of this AL, when the term "DOE" is used it includes DOE, NNSA, and the PMAs, unless otherwise specified. The PMAs are the Bonneville Power Administration, the Southwestern Power Administration, the Southeastern Power Administration and the Western Power Administration. DOE Management and Operating (M&O) contractor purchasing system requirements for domestic and foreign procurement preferences also are addressed.

## What is the Background?

Numerous statutes, regulations and policies address preferences for the procurement of domestic and foreign supplies, construction material and services by Federal agencies. FAR Part 25 and agency supplemental regulations largely implement these rules. Federal Acquisition Circular 97-15, dated February 25, 2000, amended FAR Part 25 and Subpart 52.225. Further revisions to FAR Parts 2, 25, and 52 concerning domestic and foreign procurement preferences (*e.g.*, the addition of definitions of “component” and “end product” in FAR 25.003) were issued in December, 2001 (66 FR 65349, Dec.18, 2001).

**Note:** The Bonneville Power Administration uses the Bonneville Purchasing Instructions instead of the FAR but generally follows the rules for domestic and foreign procurements set forth in the FAR.

The statutory bases for domestic and foreign purchase preferences for DOE continue to be the Buy American Act (41 U.S.C. §§ 10a-10d), the international Government Procurement Agreement as implemented in the Trade Agreements Act (19 U.S.C. §2501 *et seq.*) and the North American Free Trade Agreement (see Pub.L. 103-182). Other rules that may affect such procurements are trade sanctions imposed on supplies, construction, and services offered by certain European Union countries and other prohibitions against products involving certain listed countries. The Buy American Act and the European trade sanctions also apply to purchases by M&O contractors.

**Note:** DOE policies and procedures regarding the disclosure by prospective contractors of foreign ownership, control, or influence and the regulations governing DOE’s contracting with companies owned, controlled, or influenced by foreign interests are unaffected by this AL.

Sections I through III of this AL discuss the application of domestic and foreign preference rules applicable to prime contract awards. Section IV provides guidance to DOE and NNSA contracting officers in approving M&O contractor purchasing systems and methods with regard to domestic and foreign procurement preferences. Section V prescribes appropriate clauses for use by DOE contracting officers. Section VI discusses sanctions and prohibitions against the purchase of end products, construction material, and services from certain countries. Section VII updates citations to the FAR in the DEAR that are outdated due to revisions of FAR Part 25. Attachments 1 and 2 provide versions of FAR clauses and solicitation provisions, discussed in Section V, amended to reflect their use by DOE contracting officers. Attachment 3 is a copy of the Secretarial determination authorizing waiver of the FAR sanctions clause as discussed in this AL. Attachment 4 is a copy of a deviation by the Procurement Executive of DOE and the NNSA Director, Procurement and Assistance Management authorizing the use of the solicitation provisions and clauses included in the AL in place of the prescribed FAR clauses.

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## I. Buy-American Act

### **What is the effect of the Buy American Act on DOE prime contract awards?**

DOE is subject to the Buy American Act (BAA). Its implementing regulations are set forth in FAR Part 25. The BAA establishes a preference for offers of “*domestic end products*” and “*construction material*” compared to offers of “*foreign end products*” and “*foreign construction material*” (see FAR 25.003) in Federal procurements. The BAA does not apply to services.

Exceptions to application of the BAA are set forth in FAR 25.103 and FAR 25.202 and include instances in which the purchase is valued at less than \$2,500 (see 41 U.S.C. §428(b)) or the contracting officer determines that procurement of a domestic end product would be impracticable or inconsistent with the public interest, that a domestic item is unavailable or that the price of the domestic end product is unreasonable.

### **How is the BAA preference applied?**

The BAA preference is applied in evaluative tests set forth in FAR Subpart 25.1 for supplies and FAR Subpart 25.2 for construction material.

Evaluating offers of supplies: An amount equal to six percent (if the low domestic offeror is a large business) or 12 percent (if the low domestic offeror is a small business) of the offered price for the foreign end product is added to the price of the foreign end product. If the domestic end product is less expensive than the adjusted price of the foreign end product, award would be made for the domestic end product; however, if the domestic end product is more expensive than the adjusted price of the foreign end product, award would be made for the foreign end product at its offered price. FAR Subpart 25.5, Evaluating Foreign Offers - Supply Contracts, provides examples of application of price evaluation determinations.

Evaluating offers for construction materials: An amount equal to six percent (there is no distinction based upon the size of the offeror of the domestic construction material) of the foreign offer is applied to that offer. The comparison discussed above for supplies would follow and award would be made accordingly.

### **When and how is the BAA waived?**

As described in Sections II and III below, the BAA is waived for procurements if the proposed acquisition is covered by the Trade Agreements Act (TAA) or the North American Free Trade Agreement (NAFTA).

The clauses prescribed to reflect the TAA and the NAFTA waive the BAA, as required. Therefore, contracting officers need do nothing more than include the appropriate clause to waive application of the BAA.

**How does the BAA affect the award of M&O contracts?**

DOE and NNSA contracting officers must insert the clauses at FAR 52.225-1 and FAR 52.225-9, entitled “Buy American Act-Supplies” and “Buy American Act-Construction Materials,” respectively, in M&O contracts. The clause at FAR 52.225-1 must be modified in paragraph (d) by substituting “use” for “deliver.”

## **II. Trade Agreements Act**

**What is the effect of the Trade Agreements Act on DOE prime contract awards?**

DOE is a covered entity under the World Trade Organization Agreement on Government Procurement (GPA) that is implemented into U.S. law by the Trade Agreements Act (TAA). FAR Subpart 25.4, Trade Agreements, provides policies and procedures applicable to acquisitions that are subject to the TAA and other international trade agreements.

**How is the TAA preference applied?**

As provided in FAR 25.403(a) and (b), the TAA requires Federal agencies, among other things, to waive application of the BAA preference for domestic end products and construction materials from “designated countries,” *e.g.*, “designated country end products,” or for “U.S.-made end products,” all as defined in FAR 25.003, when the estimated value of the acquisition exceeds specified thresholds.

DOE, including NNSA, must waive the BAA if the estimated value of a proposed acquisition of supplies or services exceeds \$169,000 or if the estimated value of the proposed construction exceeds \$6,481,000.

PMAs must waive the BAA if the estimated value of a proposed acquisition of supplies or services exceeds \$518,000 or the estimated value of the proposed acquisition of construction exceeds \$6,481,000. However, pursuant to a specific exception in the GPA, PMAs **shall not waive** the BAA in evaluating the offer of a Japanese or Canadian end product of any value.

**Note:** The U.S. Trade Representative periodically revises the dollar thresholds for application of the TAA (and the North American Free Trade Agreement as described below) for Federal agencies and PMAs and publishes the revisions in the Federal Register. *See, e.g.*, 67 FR 8057 (Feb. 21, 2002), 65 FR 17332 (Mar. 31, 2000).

It is important to note that, compared to the BAA, which allows consideration of any foreign end product, under the TAA, DOE **may procure only** “designated country end products” and “U.S.-made end products” and may not consider any “foreign end product.”

**Note:** DOE, including NNSA and the PMAs, are not subject to the Israeli Trade Act or the Caribbean Basin Economic Recovery Act, which provide for non-discriminatory treatment for end products or construction materials from Israel and certain Caribbean Basin countries. (M&O contractor purchases are exempt from these statutes). However, DOE, NNSA and PMAs must continue to waive the restrictions of the BAA to end products from Israel and Caribbean Basin countries listed as “designated countries” in accordance with the TAA.

**Note:** Iceland is now a “designated country” as defined in FAR 25.003 because it has acceded to the GPA. *See* 66 FR 65370 (Dec. 18, 2001).

As a practical matter, acquisition of services by Federal agencies is not affected by the TAA because U.S. procurement laws do not provide any preference in the acquisition of services; *i.e.*, the BAA does not apply to services so there is no domestic preference. Accordingly, DOE, NNSA and PMAs should continue to provide non-discriminatory treatment in the acquisition of services covered by the TAA.

### **What categories of services are not subject to the TAA?**

Certain categories of services, *e.g.*, research and development services, are not subject to the TAA. Those categories are set forth in FAR 25.401 and include in subsection (a)(2) purchases indispensable for national security or for national defense purposes. For DOE, the GPA provides examples of procurements involving national security, *e.g.*, the safeguarding of nuclear materials or technology under the authority of the Atomic Energy Act or the purchase of oil for the Strategic Petroleum Reserve.

Although not explained in FAR 25.401, pursuant to the GPA a DOE determination exempting a procurement from TAA coverage based on national security concerns must be concurred in by the Office of the U.S. Trade Representative.

An initial determination of exclusion of an acquisition from TAA coverage for national security or defense purposes must be made by the DOE Procurement Executive or the NNSA, Director, Office of Procurement and Assistance Management, as appropriate, in consultation with their respective Offices of General Counsel, prior to seeking the concurrence of the U.S. Trade Representative.

### III. North American Free Trade Agreement

#### **What is the effect of the North American Free Trade Agreement on DOE prime contract awards?**

DOE, including NNSA and the PMAs, are covered by the North American Free Trade Agreement (NAFTA), which was implemented by the North American Free Trade Agreement Implementation Act (NAFTA Act).

*DOE, including NNSA*, must waive the BAA for offers of “NAFTA country end products” as defined in FAR 25.003 for procurements with an estimated value of \$25,000 or more from Canada or with an estimated value of \$56,190 or more from Mexico, or the procurement of construction with an estimated value of \$7,304,733 or more from either Mexico or Canada.

*PMAs* must waive the BAA if the estimated value of a proposed acquisition of supplies *from Mexico* is \$280,951 or more or if the estimated value of the proposed acquisition of construction services is \$8,990,862 or more. As specifically provided in the NAFTA Act and as noted in Section II above, PMAs **may not waive** the BAA for offers of supplies or construction *from Canada* regardless of the estimated value of the procurement.

For DOE, including NNSA, NAFTA country services (defined in FAR 25.405(c)) are entitled to preferential treatment in the procurement of services with an estimated value of \$56,190 or more. For PMAs the acquisition of services is entitled to preferential treatment if the estimated value is \$280,951 or more. As noted in the discussion of the TAA, acquisitions of services are generally unaffected by applicability of NAFTA because neither U.S. procurement laws nor policy provide a basis to discriminate in the acquisition of services, *i.e.*, the BAA does not apply to services.

Exceptions to the applicability of NAFTA are set forth in FAR 25.401. The procedures for excluding a procurement covered by NAFTA based on the national security exception in FAR 25.401(a)(2) are the same as described above for the TAA.

**Note:** The U.S. Trade Representative periodically revises the dollar thresholds for application of the North American Free Trade Agreement (and the TAA) for Federal agencies and PMAs and publishes the revisions in the Federal Register. *See, e.g.,* 67 FR 8057 (Feb. 21, 2002), 65 FR 17332 (Mar. 31, 2000).

#### **IV. Domestic and Foreign Preferences under M&O Contracts**

##### **What domestic and foreign preference procurement rules apply to M&O contractor purchases?**

M&O contractors are required to follow the BAA as reflected in subparagraph (g) of DEAR 970.5244-1, *Contractor Purchasing System*.

In this regard, M&O contractors are not required to use the fixed evaluative percentage used in Federal procurements (*i.e.*, six percent or 12 percent) to determine price reasonableness for offers of supplies or construction, but instead may use other means to determine whether a domestic offer is unreasonable compared to a foreign offer. Issues of nonavailability should be treated in accordance with DEAR 970.5244-1(g).

As stated in the note in Section VI, DOE policy has been and continues to be that DOE contracting officers must ensure that approved M&O contractor purchasing systems and methods require compliance with the trade sanctions as set forth in FAR Subpart 25.6, unless the Secretarial waiver for inclusion of the clause set forth at FAR 52.225-16, *Sanctioned European Union Country Services*, applies to a given M&O contract.

##### **What domestic and foreign preference procurement rules do not apply to M&O contractor purchases?**

M&O contractors are not covered by the GPA and, therefore, are not subject to the TAA. M&O contractors also are not covered by NAFTA, the Israeli Trade Act or the Caribbean Basin Economic Recovery Act. Therefore, M&O contractors must comply with the BAA clauses in their contract as specified in Sections I and IV of this AL and paragraph (g) of the clause at 970.5244-1.

#### **V. Contract Clauses and Solicitation Provisions**

##### **What BAA, TAA and NAFTA clauses are to be used and when are they to be used in DOE prime contract awards?**



The following FAR and DOE versions of the clauses and solicitation provisions should be used as discussed below. Deviations to the standard FAR clauses and solicitation provisions have been approved by the DOE and NNSA, Directors of the Offices of Procurement and Assistance Management.

**Note:** FAC 2001-02 published December 18, 2001, at 66 FR 65349 and FAC 2001-07 published April 30, 2002, at 67 FR 21534 alter FAR clauses called for by this AL that are not subject to the DOE/NNSA or PMA deviation (*e.g.*, FAR 52.225-9) and, therefore, are not included among the clauses attached to this AL. Contracting officers should take special care to assure that the FAR clauses used are current.

**Note:** The U.S. Trade Representative periodically revises the dollar thresholds for application of the TAA and the North American Free Trade Agreement for Federal agencies and PMAs and publishes the revisions in the Federal Register. *See, e.g.*, 67 FR 8057 (Feb. 21, 2002), 65 FR 17332 (Mar. 31, 2000). The effect of such revisions is that the dollar amounts for inclusion of specific clauses stated below may change.

Acquisition of **supplies**:

- *DOE, NNSA and PMA* contracting officers shall use the clause at FAR 52.225-1, entitled “Buy American Act,” in procurements for supplies with a value exceeding \$2500 but \$25,000 or less. In those same procurements, contracting officers shall use the related solicitation provision at FAR 52.225-2, “Buy American Act Certificate.”

Contracting officers must use the clause at FAR 52.225-1 in management and operating contracts.

- *DOE and NNSA* contracting officers shall use the clause in Attachment 2, entitled “FAR 52.225-3 Buy American Act–North American Free Trade Agreement (DOE/NNSA Deviation)” in procurements valued in excess of \$25,000 but less than \$169,000. The attached Alternate I is to be used for procurements valued in excess of \$25,000 but less than \$50,000. The attached Alternate II is to be used for procurements with a value of \$50,000 or more but less than \$56,190.
- *DOE and NSA* contracting officers shall use the related solicitation provision in Attachment 2, entitled “FAR 52.225-4 Buy American Act–North American Free Trade Agreement-Certificate (DOE/NNSA Deviation),” in solicitations for supplies valued in excess of \$25,000 but less than \$169,000.

The attached Alternate I is to be used in solicitations valued in excess of \$25,000 but less than \$50,000. The attached Alternate II is to be used for solicitations with a value of \$50,000 or more but less than \$56,190.

- PMA contracting officers shall use the clause in Attachment 2, entitled “FAR 52.225-3 Buy American Act–North American Free Trade Agreement (PMA Deviation)” for procurements valued in excess of \$25,000, but less than \$518,000. As reflected in the PMA version of the clause, PMA contracting officers shall not use either Alternate I or Alternate II.
- PMA contracting officers shall use the related solicitation provision in Attachment 2, entitled “FAR 52.225-4 Buy American Act–North American Free Trade Agreement Certificate (PMA Deviation),” in solicitations for supplies valued in excess of \$25,000, but less than \$518,000.
- DOE and NNSA contracting officers shall use the clause in Attachment 2, entitled “FAR 52.225-5 Trade Agreements (DOE/NNSA Deviation)” for procurements valued at \$169,000 or more. DOE/NNSA contracting officers shall use the attached related solicitation provision, entitled “FAR 52.225-6 Trade Agreements Certificate (DOE/NNSA Deviation),” in solicitations for supplies valued at \$169,000 or more.
- PMA contracting officers shall use the clause in Attachment 2, entitled “FAR 52.225-5 Trade Agreements (PMA Deviation)” for procurements with a value of \$518,000 or more. PMA contracting officers shall use the attached, related solicitation provision, entitled “FAR 52.225-6 Trade Agreements Certificate (PMA Deviation),” in solicitations for supplies with a value of \$518,000 or more.

Acquisition of **construction**:

- DOE, NNSA and PMA contracting officers shall use the clause at FAR 52.225-9, entitled “Buy American Act-Construction Materials” in procurements for construction with a value of less than \$6,481,000. In those same procurements, DOE, NNSA and PMA contracting officers shall use the related solicitation provision at FAR 52.225-10.

Contracting officers must use the clause at FAR 52.225-9 in management and operating contracts.

- DOE and NNSA contracting officers shall use the clause at FAR 52.225-11, “Buy American Act-Construction Materials Under Trade Agreements,” in procurements for construction valued at \$6,481,000 or more.

Its Alternate I is to be used for construction procurements valued at \$6,481,000 or more but less than \$7,304,733. Contracting officers shall use the related solicitation provision at FAR 52.225-12, "Notice of Buy American Act Requirement-Construction Materials Under Trade Agreements," in solicitations for construction with a value of \$6,481,000 or more and with its Alternate II for those with a value of \$6,481,000 or more but less than \$7,304,733.

- *PMA* contracting officers shall use the clause in Attachment 2, entitled "FAR 52.225-11 Buy American-Construction Materials Under Trade Agreements (PMA Deviation)" for construction procurements with a value of \$6,481,000 or more. Contracting officers shall use Alternate I for those construction procurements valued at \$6,481,000 or more but less than \$8,990,862.
- *PMA* contracting officers shall use the related solicitation provision in Attachment 2, entitled "FAR 52.225-12 Notice of Buy American Requirement-Construction Materials Under Trade Agreements (PMA Deviation)" in solicitations for construction valued at \$6,481,000 or more and with its Alternate II for those with a value of \$6,481,00 or more but less than \$8,990,862.

## VI. Sanctions

**What is the effect of sanctions against certain European Union countries and other procurement prohibitions on DOE prime contract awards?**

### **A. Sanctions Against Certain European Union Countries.**

The Department is required to impose trade sanctions against certain European Union countries pursuant to Executive Order 13116, dated March 1, 1999. These sanctions were first imposed by the U.S. Trade Representative in 1993.

FAR Subpart 25.6 implements sanctions against offers of supplies, construction, and certain services from "Sanctioned European Union member states" identified in FAR 25.003; *i.e.*, *Austria, Belgium, Denmark, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Sweden and the United Kingdom.*

Subject to the exceptions set forth in FAR 25.6, these sanctions consist of prohibitions against the procurement of:

- (1) "Sanctioned European Union country end products," as defined in FAR 25.003 and valued at less than \$169,000;

(2) “Sanctioned European Union country construction,” as defined in FAR 25.003 and valued at less than \$6,481,000; and

(3) “Sanctioned European Union country services,” as defined in FAR 25.003 and FAR 25.601(a)(3)(i) and 25.601(a)(3)(ii) of any value.

*For PMAs* the sanctions against Sanctioned European Union country end products and Sanctioned European Union country services apply to procurements with an estimated value of less than \$518,000. The sanctions against Sanctioned European Union country construction apply to procurements when the estimated value of construction is less than \$6,481,000.

**Note:** Normally, the clause at FAR 52.225-16, *Sanctioned European Union Country Services*, would be included in DOE prime contracts, including DOE M&O contracts. When included, DOE policy has been and continues to be that DOE and NNSA contracting officers must ensure that approved M&O contractor purchasing systems and methods require compliance with the trade sanctions as set forth in FAR Subpart 25.6.

However, pursuant to FAR 25.602(b) on September 5, 2001, the Secretary of Energy waived the requirement for inclusion of FAR 52.225-16, “Sanctioned European Union Country Services,” in contracts for the management and operation of the Fermi National Accelerator Laboratory, the Princeton Plasma Physics Laboratory, and the class of similarly situated M&O contracts.

The effect of including the clause would have been to prevent contractor employees from engaging in international collaborative basic research programs in sanctioned countries and to prevent DOE’s fulfilling other international obligations. DOE and NNSA contracting officers should, therefore, not include the clause in M&O contracts which are in the same class described in paragraph 8 of the determination. A copy of the Secretarial determination is attached.

## **B. Procurement Prohibitions.**

FAR Subpart 25.7, Prohibited Sources, lists countries from whom agencies and their contractors and subcontractors must not, subject to certain exceptions, acquire supplies or services that originated from, were located in, or transported through such countries; e.g., Iran, Iraq and North Korea.

FAR Subpart 22.15, Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor, sets forth procedures for acquiring end products on the “List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor” published by the Department of Labor. *See* 66 FR 5346 (Jan. 8, 2001).

This list includes bamboo, beans, bricks, chilies, corn, pineapples, rice, rubber, shrimp, sugarcane and teak from Burma, and bricks from Pakistan.

It is unlikely these are items that will be procured by DOE, but this issue should be considered if such a requirement arose.

## VII. DEAR Changes

### What changes to the DEAR are necessitated by revisions to FAR Part 25?

Until conforming changes are made through a rulemaking, the following administrative deviations are authorized to conform the DEAR to FAR Subpart 25.

- 925.102, *Policy*. Change the reference from “FAR 25.102(a)” to “FAR 25.103(c).”
- 925.108, *Excepted articles, materials, and supplies*. Change the reference from “48 CFR 25.108(d)(1)” to “48 CFR 25.104(d)(1).”
- 925.204, *Violations*. Change the reference from “52.225-5” to “52.225-9.”
- DEAR 970.5244-1, *Contractor purchasing system*. In subparagraph (g), change the reference from “48 CFR 52.225-3” to “48 CFR 52.225-1(MAY 2002), as amended by AL 2002-06.”
- DEAR 970.5244-1, *Contractor purchasing system*: In subparagraph (g), change the reference from “48 CFR 52.225-5” to “48 CFR 52.225-9 (MAY 2002), as amended by AL 2002-06.”

## ATTACHMENT 1

### **AUTHORIZED DEVIATIONS TO FAR CLAUSES AND SOLICITATION PROVISIONS**

#### **A. DOE/NNSA, Redline/Strikeout Versions**

1. FAR 52.225-3 Buy American Act–North American Free Trade Agreement (DOE/NNSA Deviation)(AUG 2002)
2. FAR 52.225-4 Buy American Act–North American Free Trade Agreement Certificate (DOE/NNSA Deviation)(AUG 2002)
3. FAR 52.225-5 Trade Agreements (DOE/NNSA Deviation)(AUG 2002)
4. FAR 52.225-6 Trade Agreements Certificate (DOE/NNSA Deviation)(AUG 2002)

#### **B. Power Marketing Administrations, Redline/Strikeout Versions**

1. FAR 52.225-3 Buy American Act–North American Free Trade Agreement (PMA Deviation)(AUG 2002)
2. FAR 52.225-4 Buy American Act–North American Free Trade Agreement Certificate (PMA Deviation)(AUG 2002)
3. FAR 52.225-5 Trade Agreements (PMA Deviation)(AUG 2002)
4. FAR 52.225-6 Trade Agreements Certificate (PMA Deviation)(AUG 2002)
5. FAR 52.225-11 Buy American–Construction Materials Under Trade Agreements (PMA Deviation)(AUG 2002)
6. FAR 52.225-12 Notice of Buy American Requirement–Construction Materials Under Trade Agreements (PMA Deviation)(AUG 2002)

## **ATTACHMENT 2**

### **AUTHORIZED DEVIATIONS TO FAR CLAUSES AND SOLICITATION PROVISIONS**

#### **A. DOE/NNSA, Conformed Versions**

1. FAR 52.225-3 Buy American Act–North American Free Trade Agreement (DOE/NNSA Deviation)(AUG 2002)
2. FAR 52.225-4 Buy American Act–North American Free Trade Agreement Certificate (DOE/NNSA Deviation)(AUG 2002)
3. FAR 52.225-5 Trade Agreements (DOE/NNSA Deviation)(AUG 2002)
4. FAR 52.225-6 Trade Agreements Certificate (DOE/NNSA Deviation)(AUG 2002)

#### **B. Power Marketing Administrations, Conformed Versions**

1. FAR 52.225-3 Buy American Act–North American Free Trade Agreement (PMA Deviation)(AUG 2002)
2. FAR 52.225-4 Buy American Act–North American Free Trade Agreement Certificate (PMA Deviation)(AUG 2002)
3. FAR 52.225-5 Trade Agreements (PMA Deviation)(AUG 2002)
4. FAR 52.225-6 Trade Agreements Certificate (PMA Deviation)(AUG 2002)
5. FAR 52.225-11 Buy American–Construction Materials Under Trade Agreements (PMA Deviation)(AUG 2002)
6. FAR 52.225-12 Notice of Buy American Requirement–Construction Materials Under Trade Agreements (PMA Deviation)(AUG 2002)

**FAR 52.225-3 Buy American Act -- North American Free Trade Agreement--~~Israeli Trade Act--Balance of Payments Program (DOE/NNSA Deviation)(AUG 2002) (FEB 2000)~~**

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

"Component" means an article, material, or supply incorporated directly into an end product.

"Cost of components" means--

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

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

"Domestic end product" means--

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

(2) An end product 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 as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

"End product" means those articles, materials, and supplies to be acquired under the contract for public use.

"Foreign end product" means an end product other than a domestic end product.

~~"Israeli end product" means an article that--~~

~~(1) Is wholly the growth, product, or manufacture of Israel; or~~

~~(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Israel 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.~~



"North American Free Trade Agreement country" means Canada or Mexico.

"North American Free Trade Agreement country end product" means an article that--

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

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was 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 the article, provided that the value of those incidental services does not exceed that of the article itself.

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

(b) *Components of foreign origin.* Offerors may obtain from the Contracting Officer a list of foreign articles that the Contracting Officer will treat as domestic for this contract.

(c) *Implementation.* This clause implements the Buy American Act (41 U.S.C. 10a-10d); and the North American Free Trade Agreement Implementation Act (NAFTA) (19 U.S.C. 3301 note); ~~the Israeli Free Trade Area Implementation Act of 1985 (Israeli Trade Act) (19 U.S.C. 2112 note); and the Balance of Payments Program~~ by providing a preference for domestic end products, except for certain foreign end products that are NAFTA country end products ~~or Israeli end products.~~

(d) *Delivery of end products.* The Contracting Officer has determined that NAFTA ~~applies and the Israeli Trade Act apply~~ to this acquisition. Unless otherwise specified, ~~this these~~ trade agreements ~~applies apply~~ to all items in the Schedule. The Contractor shall deliver under this contract only domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled "FAR 52.225-4 Buy American Act -- North American Free Trade Agreement Certificate (DOE/NNSA Deviation)" ~~"Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program Certificate."~~ If the Contractor specified in its offer that the Contractor would supply a NAFTA country end product ~~or an Israeli end product~~, then the Contractor shall supply a NAFTA country end product, ~~an Israeli end product~~ or, at the Contractor's option, a domestic end product.

(End of clause)

*Alternate I (AUG 2002) (Feb 2000).* As prescribed in AL 2002-06 in ~~25.1101(b)(1)(ii)~~, add the following definition to paragraph (a) of the basic clause, and substitute the following paragraph (d) for paragraph (d) of the basic clause:

"Canadian end product" means an article that--

(1) Is wholly the growth, product, or manufacture of Canada; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it 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 the article, provided that the value of those incidental services does not exceed that of the article itself.

(d) *Delivery of end products.* The Contracting Officer has determined that NAFTA applies to this acquisition. Unless otherwise specified, NAFTA applies to all items in the Schedule. The Contractor shall deliver under this contract only domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled "FAR 52.225-4 Buy American Act -- North American Free Trade Agreement Certificate (DOE/NNSA Deviation)" ~~"Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payment Program Certificate."~~ If the Contractor specified in its offer that the Contractor would supply a Canadian end product, then the Contractor shall supply a Canadian end product or, at the Contractor's option, a domestic end product.

(End of alternate)

*Alternate II (AUG 2002)(Feb 2000).* As prescribed in AL 2002-06 in ~~25.1101(b)(1)(iii)~~, add the following definition to paragraph (a) of the basic clause, and substitute the following paragraph (d) for paragraph (d) of the basic clause:

"Canadian end product" means an article that--

(1) Is wholly the growth, product, or manufacture of Canada; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it 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 the article, provided that the value of those incidental services does not exceed that of the article itself.

(d) *Delivery of end products.* The Contracting Officer has determined that NAFTA applies ~~and the Israeli Trade Act apply~~ to this acquisition. Unless otherwise specified, ~~this these~~ trade agreements ~~applies apply~~ to all items in the Schedule. The Contractor shall deliver under this contract only domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled "FAR 52.225-4 Buy American Act -- North

American Free Trade Agreement Certificate (DOE/NNSA Deviation).” ~~“Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payment Program Certificate.”~~ If the Contractor specified in its offer that the Contractor would supply a Canadian end product ~~or an Israeli end product~~, then the Contractor shall supply a Canadian end product, ~~an Israeli end product~~ or, at the Contractor's option, a domestic end product.

(End of alternate)

**FAR 52.225-4 Buy American Act -- North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program Certificate (DOE/NNSA Deviation)(AUG 2002)(FEB 2000)**

(a) The offeror certifies that each end product, except those listed in paragraph (b) or (c) of this provision, is a domestic end product (as defined in the clause of this solicitation entitled “FAR 52.225-3 Buy American Act -- North American Free Trade Agreement (DOE/NNSA Deviation)” ~~“Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program”~~) and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States.

(b) The offeror certifies that the following supplies are NAFTA country end products or Israeli end products as defined in the clause of this solicitation entitled “FAR 52.225-3 Buy American Act -- North American Free Trade Agreement (DOE/NNSA Deviation).” ~~“Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program.”~~

NAFTA Country ~~or Israeli~~ End Products:

Line Item No.:	Country of Origin:

*[List as necessary]*

(c) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (b) of this provision) as defined in the clause of this solicitation entitled “FAR 52.225-3 Buy American Act -- North American Free Trade Agreement (DOE/NNSA Deviation).” ~~“Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program.”~~ The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

Other Foreign End Products:

Line Item No.:	Country of Origin:

[List as necessary]

(d) The Government will evaluate offers in accordance with the policies and procedures of Part 25 of the Federal Acquisition Regulation.

(End of provision)

*Alternate I (AUG 2002)*. As prescribed in AL 2002-06 25.1101(b)(2)(ii), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled "FAR 52.225-3 Buy American Act -- North American Free Trade Agreement (DOE/NNSA Deviation)." ~~"Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program."~~<sup>22</sup>

Canadian End Products:

Line Item No.-----

[List as necessary]

(End of Alternate)

*Alternate II (AUG 2002) (Feb 2000)*. As prescribed in AL 2002-06 in ~~25.1101(b)(2)(iii)~~, substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) The offeror certifies that the following supplies are Canadian end products ~~or Israeli end products~~ as defined in the clause of this solicitation entitled "FAR 52.225-3 Buy American Act -- North American Free Trade Agreement (DOE/NNSA Deviation)." ~~"Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program."~~<sup>22</sup>

Canadian ~~or Israeli~~ End Products:

Line Item No.:	Country of Origin:

[List as necessary]

(End of alternate)

**52.225-5 Trade Agreements (DOE/NNSA Deviation)(AUG 2002)(APR 2000)**

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

~~"Caribbean Basin country" means any of the following countries: Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, El Salvador, Grenada, Guatemala, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, Nicaragua, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago.~~

~~"Caribbean Basin country end product"~~

~~(1) Means an article that-~~

~~(i)(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, 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; and~~

~~(ii) Is not excluded from duty-free treatment for Caribbean countries under 19 U.S.C. 2703(b).~~

~~(A) For this reason, the following articles are not Caribbean Basin country end products:~~

~~(1) Tuna, prepared or preserved in any manner in airtight containers;~~

~~(2) Petroleum, or any product derived from petroleum;~~

~~(3) 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 Harmonized Tariff Schedule of the United States (HTSUS) column 2 rates of duty apply (i.e., Afghanistan, Cuba, Laos, North~~

~~Korea, and Vietnam), and~~

~~(4) Certain of the following: textiles and apparel articles; footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel; or handloomed, handmade, and folklore articles;~~

~~(B) Access to the HTSUS to determine duty-free status of articles of these types is available at <http://www.customs.ustreas.gov/impexpo/impexpo.htm>. In particular, see the following:~~

~~(1) General Note 3(c), Products Eligible for Special Tariff treatment.~~

~~(2) General Note 17, Products of Countries Designated as Beneficiary Countries under the United States-Caribbean Basin Trade Partnership Act of 2000.~~

~~(3) Section XXII, Chapter 98, Subchapter II Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note 7(b).~~

~~(4) Section XXII, Chapter 98, Subchapter XX Goods Eligible for Special Tariff Benefits under the United States-Caribbean Basin Trade Partnership Act; and~~

~~(2) Refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the acquisition, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.~~

"Designated country" means any of the following countries:

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

"Designated country end product" means an article that--

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

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was 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 the article, provided that the value of those incidental services does not exceed that of the article itself.

"End product" means those articles, materials, and supplies to be acquired under the contract for public use.

"North American Free Trade Agreement country" means Canada or Mexico.

"North American Free Trade Agreement country end product" means an article that--

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

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was 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 the article, provided that the value of those incidental services does not exceed that of the article itself.

"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.

"U.S.-made end product" means an article that is mined, produced, or manufactured in the United States or that 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) *Implementation.* This clause implements the Trade Agreements Act (19 U.S.C. 2501, *et seq.*) and the North American Free Trade Agreement Implementation Act of 1993, (NAFTA) (19 U.S.C. 3301 note), by restricting the acquisition of end products that are not U.S.-made, designated country, ~~Caribbean Basin country~~, or NAFTA country end products.

(c) *Delivery of end products.* The Contracting Officer has determined that the Trade Agreements Act and NAFTA apply to this acquisition. Unless otherwise specified, these trade agreements apply to all items in the Schedule. The Contractor shall deliver under this contract only U.S.-made, designated country, ~~Caribbean Basin country~~, or NAFTA country end products except to the extent that, in its offer, it specified delivery of other end products in the provision entitled "Trade Agreements Certificate."

(End of clause)

(a) The offeror certifies that each end product, except those listed in paragraph (b) of this provision is a U.S.-made, designated country, ~~Caribbean Basin country~~, or NAFTA country end product, as defined in the clause of this solicitation entitled "Trade Agreements."

(b) The offeror shall list as other end products those supplies that are not U.S.-made, designated country, ~~Caribbean Basin country~~, or NAFTA country end products.

Other End Products:

Line Item No.	Country of Origin:

*[List as necessary]*

(c) The Government will evaluate offers in accordance with the policies and procedures of Part 25 of the Federal Acquisition Regulation. For line items subject to the Trade Agreements Act, the Government will evaluate offers of U.S.-made, designated country, ~~Caribbean Basin country~~, or NAFTA country end products without regard to the restrictions of the Buy American Act ~~or the Balance of Payments Program~~. The Government will consider for award only offers of U.S.-made, designated country, ~~Caribbean Basin country~~, or NAFTA country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for such products are insufficient to fulfill the requirements of this solicitation.

(End of Provision)



**FAR 52.225-3 Buy American Act -- North American Free Trade Agreement--~~Israeli Trade Act--Balance of Payments Program (PMA Deviation)(AUG 2002)(FEB 2000)~~**

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

"Component" means an article, material, or supply incorporated directly into an end product.

"Cost of components" means--

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

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

"Domestic end product" means--

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

(2) An end product 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 as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

"End product" means those articles, materials, and supplies to be acquired under the contract for public use.

"Foreign end product" means an end product other than a domestic end product.

~~"Israeli end product" means an article that--~~

~~(1) Is wholly the growth, product, or manufacture of Israel; or~~

~~(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Israel 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.~~

"North American Free Trade Agreement country" means ~~Canada or~~ Mexico.

"North American Free Trade Agreement country end product" means an article that--

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

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was 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 the article, provided that the value of those incidental services does not exceed that of the article itself.

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

(b) *Components of foreign origin.* Offerors may obtain from the Contracting Officer a list of foreign articles that the Contracting Officer will treat as domestic for this contract.

(c) *Implementation.* This clause implements the Buy American Act (41 U.S.C. 10a-10d); and the North American Free Trade Agreement Implementation Act (NAFTA) (19 U.S.C. 3301 note), ~~the Israeli Free Trade Area Implementation Act of 1985 (Israeli Trade Act) (19 U.S.C. 2112 note); and the Balance of Payments Program~~ by providing a preference for domestic end products, except for certain foreign end products that are NAFTA country end products ~~or Israeli end products~~.

(d) *Delivery of end products.* The Contracting Officer has determined that NAFTA ~~applies and the Israeli Trade Act apply~~ to this acquisition. Unless otherwise specified, ~~this these~~ trade agreements ~~applies apply~~ to all items in the Schedule. The Contractor shall deliver under this contract only domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled "FAR 52.225-4 Buy American Act -- North American Free Trade Agreement--~~Israeli Trade Act-Certificate (PMA Deviation)(AUG 2002)~~" "~~Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program Certificate.~~" If the Contractor specified in its offer that the Contractor would supply a NAFTA country end product ~~or an Israeli end product~~, then the Contractor shall supply a NAFTA country end product, ~~an Israeli end product~~ or, at the Contractor's option, a domestic end product.

(End of clause)

~~Alternate I (Feb 2000). As prescribed in 25.1101(b)(1)(ii), add the following definition to paragraph (a) of the basic clause, and substitute the following paragraph (d) for paragraph (d) of~~

~~the basic clause:~~

~~"Canadian end product" means an article that--~~

~~(1) Is wholly the growth, product, or manufacture of Canada; or~~

~~(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it 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 the article, provided that the value of those incidental services does not exceed that of the article itself.~~

~~(d) *Delivery of end products.* The Contracting Officer has determined that NAFTA applies to this acquisition. Unless otherwise specified, NAFTA applies to all items in the Schedule. The Contractor shall deliver under this contract only domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled "Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payment Program Certificate." If the Contractor specified in its offer that the Contractor would supply a Canadian end product, then the Contractor shall supply a Canadian end product or, at the Contractor's option, a domestic end product.~~

~~*Alternate II (Feb 2000).* As prescribed in 25.1101(b)(1)(iii), add the following definition to paragraph (a) of the basic clause, and substitute the following paragraph (d) for paragraph (d) of the basic clause:~~

~~"Canadian end product" means an article that--~~

~~(1) Is wholly the growth, product, or manufacture of Canada; or~~

~~(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it 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 the article, provided that the value of those incidental services does not exceed that of the article itself.~~

~~(d) *Delivery of end products.* The Contracting Officer has determined that NAFTA applies and the Israeli Trade Act apply to this acquisition. Unless otherwise specified, these trade agreements apply to all items in the Schedule. The Contractor shall deliver under this contract only domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled "Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payment Program Certificate." If the Contractor specified in its offer that the~~

~~Contractor would supply a Canadian end product or an Israeli end product, then the Contractor shall supply a Canadian end product, an Israeli end product or, at the Contractor's option, a domestic end product.~~

**FAR 52.225-4 Buy American Act -- North American Free Trade Agreement--~~Israeli Trade Act--Balance of Payments Program Certificate (PMA Deviation)(AUG 2002)(FEB 2000)~~**

(a) The offeror certifies that each end product, except those listed in paragraph (b) or (c) of this provision, is a domestic end product (as defined in the clause of this solicitation entitled “FAR 52.225-3 Buy American Act -- North American Free Trade Agreement--~~Israeli Trade Act-~~ (PMA Deviation)” “~~Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program~~”) and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States.

(b) The offeror certifies that the following supplies are NAFTA country end products ~~or Israeli end products~~ as defined in the clause of this solicitation entitled “FAR 52.225-3 Buy American Act -- North American Free Trade Agreement--~~Israeli Trade Act-~~ (PMA Deviation).” “~~Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program.~~”

NAFTA Country ~~or Israeli~~ End Products:

Line Item No.:	Country of Origin:

*[List as necessary]*

(c) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (b) of this provision) as defined in the clause of this solicitation entitled “FAR 52.225-3 Buy American Act -- North American Free Trade Agreement--~~Israeli Trade Act-~~ (PMA Deviation).” “~~Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program.~~” The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

Other Foreign End Products:

Line Item No.:	Country of Origin:

[List as necessary]

(d) The Government will evaluate offers in accordance with the policies and procedures of Part 25 of the Federal Acquisition Regulation.

(End of provision)

~~Alternate I (Feb 2000). As prescribed in 25.1101(b)(2)(ii), substitute the following paragraph (b) for paragraph (b) of the basic provision:~~

~~(b) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled "Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program":~~

~~Canadian End Products:~~

~~Line Item No.-----~~

~~[List as necessary]~~

~~Alternate II (Feb 2000). As prescribed in 25.1101(b)(2)(iii), substitute the following paragraph (b) for paragraph (b) of the basic provision:~~

~~(b) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled "Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program":~~

~~Canadian or Israeli End Products:~~

Line Item No.:	Country of Origin:
-	-
-	-
-	-

~~[List as necessary]~~

**FAR 52.225-5 Trade Agreements (PMA Deviation)(AUG 2002)(APR 2000)**

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

~~"Caribbean Basin country" means any of the following countries: Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, El Salvador, Grenada, Guatemala, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, Nicaragua, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago.~~

~~"Caribbean Basin country end product"~~

~~(1) Means an article that-~~

~~(i)~~

~~(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, 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; and~~

~~(ii) Is not excluded from duty-free treatment for Caribbean countries under 19 U.S.C. 2703(b).~~

~~(A) For this reason, the following articles are not Caribbean Basin country end products:~~

~~(1) Tuna, prepared or preserved in any manner in airtight containers;~~

~~(2) Petroleum, or any product derived from petroleum;~~

~~(3) 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 Harmonized Tariff Schedule of the United States (HTSUS) column 2 rates of duty apply (*i.e.*, Afghanistan, Cuba, Laos, North Korea, and Vietnam); and~~

~~(4) Certain of the following: textiles and apparel articles, footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel; or handloomed, handmade, and folklore articles;~~

~~(B) Access to the HTSUS to determine duty-free status of articles of these types is available at <http://www.customs.ustras.gov/impexpo/impexpo.htm>. In particular, see the following:~~

~~(1) General Note 3(c), Products Eligible for Special Tariff treatment.~~

~~(2) General Note 17, Products of Countries Designated as Beneficiary Countries under the United~~

~~States-Caribbean Basin Trade Partnership Act of 2000.~~

~~(3) Section XXII, Chapter 98, Subchapter II Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note 7(b).~~

~~(4) Section XXII, Chapter 98, Subchapter XX Goods Eligible for Special Tariff Benefits under the United States-Caribbean Basin Trade Partnership Act, and~~

~~(2) Refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the acquisition, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.~~

"Designated country" means any of the following countries:

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

"Designated country end product" means an article that--

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

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was 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 the article, provided that the value of those incidental services does not exceed that of the article itself.

"End product" means those articles, materials, and supplies to be acquired under the contract for public use.

"North American Free Trade Agreement country" means ~~Canada or Mexico.~~

"North American Free Trade Agreement country end product" means an article that--

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

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was 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 the article, provided that the value of those incidental services does not exceed that of the article itself.

"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.

"U.S.-made end product" means an article that is mined, produced, or manufactured in the United States or that 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) *Implementation.* This clause implements the Trade, Agreements Act (19 U.S.C. 2501, *et seq.*) and the North American Free Trade Agreement Implementation Act of 1993, (NAFTA) (19 U.S.C. 3301 note), by restricting the acquisition of end products that are not U.S.-made, designated country, ~~Caribbean Basin country~~, or NAFTA country end products.

(c) *Delivery of end products.* The Contracting Officer has determined that the Trade Agreements Act and NAFTA apply to this acquisition. Unless otherwise specified, these trade agreements apply to all items in the Schedule. The Contractor shall deliver under this contract only U.S.-made, designated country, ~~Caribbean Basin country~~, or NAFTA country end products except to the extent that, in its offer, it specified delivery of other end products in the provision entitled "FAR 52.225-6 Trade Agreements Certificate (PMA Deviation)(AUG 2002)." "~~Trade Agreements Certificate.~~"

(End of clause)

**FAR 52.225-6 Trade Agreements Certificate (PMA Deviation)(AUG 2002)(FEB 2002)**

(a) The offeror certifies that each end product, except those listed in paragraph (b) of this provision is a U.S.-made, designated country, ~~Caribbean Basin country~~, or NAFTA country end product, as defined in the clause of this solicitation entitled "FAR 52.225-5 Trade Agreements (PMA Deviation)(AUG 2002)." "~~Trade Agreements.~~"

(b) The offeror shall list as other end products those supplies that are not U.S.-made, designated country, ~~Caribbean Basin country~~, or NAFTA country end products.

Other End Products:



Line Item No.	Country of Origin:

*[List as necessary]*

(c) The Government will evaluate offers in accordance with the policies and procedures of Part 25 of the Federal Acquisition Regulation. For line items subject to the Trade Agreements Act, the Government will evaluate offers of U.S.-made, designated country, ~~Caribbean Basin country~~, or NAFTA country end products without regard to the restrictions of the Buy American Act ~~or the Balance of Payments Program~~. The Government will consider for award only offers of U.S.-made, designated country, ~~Caribbean Basin country~~, or NAFTA country end products unless the Contracting Officer determines that there are no offers for those products or that the offers for those products are insufficient to fulfill the requirements of this solicitation.

(End of Provision)

**FAR 52.225-11 Buy American Act--~~Balance of Payments Program~~--Construction Materials Under Trade Agreements (PMA Deviation)(AUG 2002)(~~FEB 2000~~)**

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

"Component" means an article, material, or supply incorporated directly into a construction material.

"Construction material" means an article, material, or supply brought to the construction site by the Contractor or 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 construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is

issued); or

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

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

"Designated country construction material" means a construction material that--

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

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

"Domestic construction material" means--

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

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

"Foreign construction material" means a construction material other than a domestic construction material.

"North American Free Trade Agreement country" means ~~Canada~~ or Mexico.

"North American Free Trade Agreement country construction material" means a construction material that--

(1) Is wholly the growth, product, or manufacture of a North American Free Trade Agreement (NAFTA) 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 NAFTA 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.

*(b) Construction materials.*

(1) This clause implements the Buy American Act (41 U.S.C. 10a-10d) ~~and the Balance of Payments Program~~ by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the Trade Agreements Act and the North American Free Trade Agreement (NAFTA) apply to this acquisition. Therefore, the Buy American Act ~~and Balance of Payments Program~~ restrictions are waived for designated country and NAFTA country construction materials.

(2) The Contractor shall use only domestic, designated country, or NAFTA country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows: \_\_\_\_\_  
[Contracting Officer to list applicable excepted materials or indicate `none']

(4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that--

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent. ~~For determination of unreasonable cost under the Balance of Payments Program, the Contracting Officer will use a factor of 50 percent;~~

(ii) The application of the restriction of the Buy American Act ~~or Balance of Payments Program~~ to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American Act or Balance of Payments Program.

(1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of

the request, including--

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American Act or ~~Balance of Payments Program~~ applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American Act or ~~Balance of Payments Program~~ applies, use of foreign construction material is noncompliant with the Buy American Act or ~~Balance of Payments Program~~.

(d) *Data*. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison

Construction material description	Unit of measure	Quantity	Price (dollars) *
<i>Item 1</i>			
Foreign construction material			
Domestic construction material			
<i>Item 2</i>			
Foreign construction material			
Domestic construction material			

*[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]*

*[Include other applicable supporting information. ]*

*[\* Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]*

(End of clause)

*Alternate I (AUG 2002) (Jun 2000).* As prescribed in AL 2002-06 in ~~25.1102(c)(3)~~, delete the definitions of "North American Free Trade Agreement country" and "North American Free Trade Agreement country construction material" from the definitions in paragraph (a) of the basic clause and substitute the following paragraphs (b)(1) and (b)(2) for paragraphs (b)(1) and (b)(2) of the basic clause:

*(b) Construction materials.*

(1) This clause implements the Buy American Act (41 U.S.C. 10a-10d) ~~and the Balance of Payments Program~~ by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the Trade Agreements Act applies to this acquisition.

Therefore, the Buy American Act ~~and Balance of Payments Program~~ restrictions are waived for designated country construction materials.

(2) The Contractor shall use only domestic or designated country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(End of alternate)

**FAR 52.225-12 Notice of Buy American Act ~~/Balance of Payments Program~~  
Requirement-Construction Materials Under Trade Agreements (PMA Deviation)(AUG  
2002)(~~Feb 2000~~)**

(a) *Definitions.* "Construction material," "designated country construction material," "domestic construction material," "foreign construction material," and "NAFTA country construction material," as used in this provision, are defined in the clause of this solicitation entitled "FAR 52.225-11 Buy American Act--Construction Materials Under Trade Agreements (PMA Deviation)." ~~"Buy American Act--Balance of Payments Program--Construction Materials under Trade Agreements"~~ (Federal Acquisition Regulation (FAR) clause ~~52.225-11~~).

(b) *Requests for determination of inapplicability.* An offeror requesting a determination regarding the inapplicability of the Buy American Act ~~or Balance of Payments Program~~ should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of "FAR 52.225-11 Buy American Act--Balance of Payments Program--Construction Materials Under Trade Agreements (PMA Deviation)" ~~FAR clause 52.225-11~~ in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American Act ~~or Balance of Payments Program~~ before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) *Evaluation of offers.*

(1) The Government will evaluate an offer requesting exception to the requirements of the Buy American Act ~~or Balance of Payments Program~~, based on claimed unreasonable cost of domestic construction materials, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(4)(i) of "FAR 52.225-11 Buy American Act--Construction Materials Under Trade Agreements (PMA Deviation)." ~~FAR clause 52.225-11~~.

(2) If evaluation results in a tie between an offeror that requested the substitution of foreign construction material based on unreasonable cost and an offeror that did not request an exception, the Contracting Officer will award to the offeror that did not request an exception based on unreasonable cost.

(d) *Alternate offers.*

(1) When an offer includes foreign construction material, other than designated country or NAFTA country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of “FAR 52.225-11 Buy American Act--Balance of Payments Program--Construction Materials Under Trade Agreements (PMAs)(Deviation)” FAR clause ~~52.225-11~~, the offeror also may submit an alternate offer based on use of equivalent domestic, designated country, or NAFTA country construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of “FAR 52.225-11 Buy American Act--Construction Materials Under Trade Agreements (PMA Deviation)” ~~FAR clause 52.225-11~~ for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of “FAR 52.225-11 Buy American Act--Construction Materials Under Trade Agreements (PMA Deviation)” ~~FAR clause 52.225-11~~ does not apply, the Government will evaluate only those offers based on use of the equivalent domestic, designated country, or NAFTA country construction material, and the offeror shall be required to furnish such domestic, designated country, or NAFTA country construction material. An offer based on use of the foreign construction material for which an exception was requested--

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

(End of provision)

*Alternate I (AUG 2002)(Feb 2000).* As prescribed in AL 2002-06 in ~~25.1102(d)(2)~~, Ssubstitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) *Requests for determination of inapplicability.* An offeror requesting a determination regarding the inapplicability of the Buy American Act ~~or Balance of Payments Program~~ shall submit the request with its offer, including the information and applicable supporting data required by paragraphs (c) and (d) of “FAR 52.225-11 Buy American Act--Construction Materials Under Trade Agreements (PMA Deviation).” ~~FAR clause 52.225-11.~~

(End of alternate)

*Alternate II (AUG 2002) (Jun 2000).* As prescribed in AL 2002-06 in ~~25.1102(d)(3)~~, Ssubstitute the following paragraphs (a) and (d) for paragraphs (a) and (d) of the basic provision:

(a) *Definitions.* "Construction material," "designated country construction material," "domestic

construction material," and "foreign construction material," as used in this provision, are defined in the clause of this solicitation entitled "FAR 52.225-11 Buy American Act--Construction Materials Under Trade Agreements (PMA Deviation)." ~~"Buy American Act-Balance of Payments Program-Construction Materials under Trade Agreements" (Federal Acquisition Regulation (FAR) clause 52.225-11).~~

(d) *Alternate offers.*

(1) When an offer includes foreign construction material, other than designated country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of "FAR 52.225-11 Buy American Act--Construction Materials Under Trade Agreements (PMA Deviation)." ~~FAR clause 52.225-11~~, the offeror also may submit an alternate offer based on use of equivalent domestic or designated country construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of "FAR 52.225-11 Buy American Act--Construction Materials Under Trade Agreements (PMA Deviation)" ~~FAR clause 52.225-11~~ for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of "FAR 52.225-11 Buy American Act--Construction Materials Under Trade Agreements (PMA Deviation)" ~~FAR clause 52.225-11~~ does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or designated country construction material, and the offeror shall be required to furnish such domestic or designated country construction material. An offer based on use of the foreign construction material for which an exception was requested-

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

(End of provision)



**FAR 52.225-3 Buy American Act -- North American Free Trade Agreement- (DOE/NNSA Deviation)(AUG 2002)**

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

"Component" means an article, material, or supply incorporated directly into an end product.

"Cost of components" means--

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

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

"Domestic end product" means--

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

(2) An end product 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 as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

"End product" means those articles, materials, and supplies to be acquired under the contract for public use.

"Foreign end product" means an end product other than a domestic end product.

"North American Free Trade Agreement country" means Canada or Mexico.

"North American Free Trade Agreement country end product" means an article that--

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

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was 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 the article, provided that the value of those incidental services does not exceed that of the article itself.

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

(b) *Components of foreign origin.* Offerors may obtain from the Contracting Officer a list of foreign articles that the Contracting Officer will treat as domestic for this contract.

(c) *Implementation.* This clause implements the Buy American Act (41 U.S.C. 10a-10d) and the North American Free Trade Agreement Implementation Act (NAFTA) (19 U.S.C. 3301 note) by providing a preference for domestic end products, except for certain foreign end products that are NAFTA country end products .

(d) *Delivery of end products.* The Contracting Officer has determined that NAFTA applies to this acquisition. Unless otherwise specified, this trade agreement applies to all items in the Schedule. The Contractor shall deliver under this contract only domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled "FAR 52.225-4 Buy American Act -- North American Free Trade Agreement Certificate (DOE/NNSA Deviation)" If the Contractor specified in its offer that the Contractor would supply a NAFTA country end product , then the Contractor shall supply a NAFTA country end product, or, at the Contractor's option, a domestic end product.

(End of clause)

*Alternate I (AUG 2002).* As prescribed in AL 2002-06, add the following definition to paragraph (a) of the basic clause, and substitute the following paragraph (d) for paragraph (d) of the basic clause:

"Canadian end product" means an article that--

(1) Is wholly the growth, product, or manufacture of Canada; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it 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 the article, provided that the value of those incidental services does not exceed that

of the article itself.

(d) *Delivery of end products.* The Contracting Officer has determined that NAFTA applies to this acquisition. Unless otherwise specified, NAFTA applies to all items in the Schedule. The Contractor shall deliver under this contract only domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled "FAR 52.225-4 Buy American Act -- North American Free Trade Agreement Certificate (DOE/NNSA Deviation)" If the Contractor specified in its offer that the Contractor would supply a Canadian end product, then the Contractor shall supply a Canadian end product or, at the Contractor's option, a domestic end product.

(End of alternate)

*Alternate II (AUG 2002).* As prescribed in AL 2002-06, add the following definition to paragraph (a) of the basic clause, and substitute the following paragraph (d) for paragraph (d) of the basic clause:

"Canadian end product" means an article that--

(1) Is wholly the growth, product, or manufacture of Canada; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it 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 the article, provided that the value of those incidental services does not exceed that of the article itself.

(d) *Delivery of end products.* The Contracting Officer has determined that NAFTA applies to this acquisition. Unless otherwise specified, this trade agreements applies to all items in the Schedule. The Contractor shall deliver under this contract only domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled "FAR 52.225-4 Buy American Act -- North American Free Trade Agreement Certificate (DOE/NNSA Deviation)." If the Contractor specified in its offer that the Contractor would supply a Canadian end product , then the Contractor shall supply a Canadian end product, or, at the Contractor's option, a domestic end product.

(End of alternate)

**FAR 52.225-4 Buy American Act -- North American Free Trade Agreement Certificate  
(DOE/NNSA Deviation)(AUG 2002)**

(a) The offeror certifies that each end product, except those listed in paragraph (b) or (c) of this provision, is a domestic end product (as defined in the clause of this solicitation entitled “FAR 52.225-3 Buy American Act -- North American Free Trade Agreement (DOE/NNSA Deviation)” ) and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States.

(b) The offeror certifies that the following supplies are NAFTA country end products or Israeli end products as defined in the clause of this solicitation entitled “FAR 52.225-3 Buy American Act -- North American Free Trade Agreement (DOE/NNSA Deviation):”:

NAFTA Country End Products:

Line Item No.:	Country of Origin:

*[List as necessary]*

(c) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (b) of this provision) as defined in the clause of this solicitation entitled “FAR 52.225-3 Buy American Act -- North American Free Trade Agreement (DOE/NNSA Deviation).” The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

Other Foreign End Products:

Line Item No.:	Country of Origin:

*[List as necessary]*

(d) The Government will evaluate offers in accordance with the policies and procedures of Part 25 of the Federal Acquisition Regulation.

(End of provision)

*Alternate I (AUG 2002).* As prescribed in AL 2002-06 , substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled “FAR 52.225-3 Buy American Act -- North American Free Trade Agreement (DOE/NNSA Deviation):”

Canadian End Products:

Line Item No.-----

*[List as necessary]*

(End of Alternate)

*Alternate II (AUG 2002).* As prescribed in AL 2002-06, substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled “FAR 52.225-3 Buy American Act -- North American Free Trade Agreement (DOE/NNSA Deviation):”

Canadian End Products:

Line Item No.:	Country of Origin:

*[List as necessary]*

(End of alternate)

**52.225-5 Trade Agreements (DOE/NNSA Deviation)(AUG 2002)**

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

"Designated country" means any of the following countries:

Aruba, Austria, Bangladesh, Belgium, Benin, Bhutan, Botswana, Burkina Faso, Burundi, Canada,

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

"Designated country end product" means an article that--

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

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was 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 the article, provided that the value of those incidental services does not exceed that of the article itself.

"End product" means those articles, materials, and supplies to be acquired under the contract for public use.

"North American Free Trade Agreement country" means Canada or Mexico.

"North American Free Trade Agreement country end product" means an article that--

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

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was 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 the article, provided that the value of those incidental services does not exceed that of the article itself.

"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.

"U.S.-made end product" means an article that is mined, produced, or manufactured in the United States or that 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) *Implementation.* This clause implements the Trade Agreements Act (19 U.S.C. 2501, *et seq.*) and the North American Free Trade Agreement Implementation Act of 1993, (NAFTA) (19 U.S.C. 3301 note), by restricting the acquisition of end products that are not U.S.-made, designated country, or NAFTA country end products.

(c) *Delivery of end products.* The Contracting Officer has determined that the Trade Agreements Act and NAFTA apply to this acquisition. Unless otherwise specified, these trade agreements apply to all items in the Schedule. The Contractor shall deliver under this contract only U.S.-made, designated country, or NAFTA country end products except to the extent that, in its offer, it specified delivery of other end products in the provision entitled "Trade Agreements Certificate."

(End of clause)

**FAR 52.225-6 Trade Agreements Certificate (DOE/NNSA Deviation)(AUG 2002)**

(a) The offeror certifies that each end product, except those listed in paragraph (b) of this provision is a U.S.-made, designated country, or NAFTA country end product, as defined in the clause of this solicitation entitled "Trade Agreements."

(b) The offeror shall list as other end products those supplies that are not U.S.-made, designated country, or NAFTA country end products.

Other End Products:

Line Item No.	Country of Origin:

[List as necessary]

(c) The Government will evaluate offers in accordance with the policies and procedures of Part 25 of the Federal Acquisition Regulation. For line items subject to the Trade Agreements Act, the Government will evaluate offers of U.S.-made, designated country, or NAFTA country end products without regard to the restrictions of the Buy American Act.

The Government will consider for award only offers of U.S.-made, designated country, or NAFTA country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for such products are insufficient to fulfill the requirements of

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**FAR 52.225-3 Buy American Act -- North American Free Trade Agreement- (PMA Deviation)(AUG 2002)**

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

"Component" means an article, material, or supply incorporated directly into an end product.

"Cost of components" means--

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

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

"Domestic end product" means--

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

(2) An end product 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 as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

"End product" means those articles, materials, and supplies to be acquired under the contract for public use.

"Foreign end product" means an end product other than a domestic end product.

"North American Free Trade Agreement country" means Mexico.

"North American Free Trade Agreement country end product" means an article that--

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



(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was 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 the article, provided that the value of those incidental services does not exceed that of the article itself.

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

(b) *Components of foreign origin.* Offerors may obtain from the Contracting Officer a list of foreign articles that the Contracting Officer will treat as domestic for this contract.

(c) *Implementation.* This clause implements the Buy American Act (41 U.S.C. 10a-10d) and the North American Free Trade Agreement Implementation Act (NAFTA) (19 U.S.C. 3301 note), by providing a preference for domestic end products, except for certain foreign end products that are NAFTA country end products .

(d) *Delivery of end products.* The Contracting Officer has determined that NAFTA applies to this acquisition. Unless otherwise specified, this trade agreement applies to all items in the Schedule. The Contractor shall deliver under this contract only domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled "FAR 52.225-4 Buy American Act -- North American Free Trade Agreement-Certificate (PMA Deviation)(XXX 2002)" If the Contractor specified in its offer that the Contractor would supply a NAFTA country end product , then the Contractor shall supply a NAFTA country end product, or, at the Contractor's option, a domestic end product.

(End of clause)

**FAR 52.225-4 Buy American Act -- North American Free Trade Agreement- Certificate  
(PMA Deviation)(AUG 2002)**

(a) The offeror certifies that each end product, except those listed in paragraph (b) or (c) of this provision, is a domestic end product (as defined in the clause of this solicitation entitled "FAR 52.225-3 Buy American Act -- North American Free Trade Agreement- (PMA Deviation)" and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States.

(b) The offeror certifies that the following supplies are NAFTA country end products as defined in the clause of this solicitation entitled "FAR 52.225-3 Buy American Act -- North American Free Trade Agreement- (PMA Deviation):"

NAFTA Country End Products:

Line Item No.:	Country of Origin:

*[List as necessary]*

(c) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (b) of this provision) as defined in the clause of this solicitation entitled "FAR 52.225-3 Buy American Act -- North American Free Trade Agreement- (PMA Deviation)." The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

Other Foreign End Products:

Line Item No.:	Country of Origin:

*[List as necessary]*

(d) The Government will evaluate offers in accordance with the policies and procedures of Part 25 of the Federal Acquisition Regulation.

(End of provision)

**FAR 52.225-5 Trade Agreements (PMA Deviation)(AUG 2002)**

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

"Designated country" means any of the following countries:

Aruba, Austria, Bangladesh, Belgium, Benin, Bhutan, Botswana, Burkina Faso, Burundi, Canada, Cape Verde, Central African Republic, Chad, Comoros, Denmark, Djibouti, Equatorial Guinea,

Finland, France, Gambia, Germany, Greece, Guinea, Guinea-Bissau, Haiti, Hong Kong, Iceland, Ireland, Israel, Italy, Japan, Kiribati, Korea- Republic of, Lesotho, Liechtenstein, Luxembourg, Malawi, Maldives, Mali, Mozambique, Nepal, Netherlands, Niger, Norway, Portugal, Rwanda, Sao Tome and Principe, Sierra Leone, Singapore, Somalia, Spain, Sweden, Switzerland, Tanzania U.R., Togo, Tuvalu, Uganda, United Kingdom, Vanuatu, Western Samoa, Yemen.

"Designated country end product" means an article that--

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

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was 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 the article, provided that the value of those incidental services does not exceed that of the article itself.

"End product" means those articles, materials, and supplies to be acquired under the contract for public use.

"North American Free Trade Agreement country" means Mexico.

"North American Free Trade Agreement country end product" means an article that--

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

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was 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 the article, provided that the value of those incidental services does not exceed that of the article itself.

"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.

"U.S.-made end product" means an article that is mined, produced, or manufactured in the United States or that 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) *Implementation.* This clause implements the Trade, Agreements Act (19 U.S.C. 2501, *et seq.*) and the North American Free Trade Agreement Implementation Act of 1993, (NAFTA) (19 U.S.C. 3301 note), by restricting the acquisition of end products that are not U.S.-made, designated country, or NAFTA country end products.

(c) *Delivery of end products.* The Contracting Officer has determined that the Trade Agreements Act and NAFTA apply to this acquisition. Unless otherwise specified, these trade agreements apply to all items in the Schedule. The Contractor shall deliver under this contract only U.S.-made, designated country, or NAFTA country end products except to the extent that, in its offer, it specified delivery of other end products in the provision entitled "FAR 52.225-6 Trade Agreements Certificate (PMA Deviation)(AUG 2002)."

(End of clause)

**FAR 52.225-6 Trade Agreements Certificate (PMA Deviation)(AUG 2002)**

(a) The offeror certifies that each end product, except those listed in paragraph (b) of this provision is a U.S.-made, designated country, or NAFTA country end product, as defined in the clause of this solicitation entitled "FAR 52.225-5 Trade Agreements (PMA Deviation)(AUG 2002)."

(b) The offeror shall list as other end products those supplies that are not U.S.-made, designated country, or NAFTA country end products.

Other End Products:

Line Item No.	Country of Origin:

[List as necessary]

(c) The Government will evaluate offers in accordance with the policies and procedures of Part 25 of the Federal Acquisition Regulation. For line items subject to the Trade Agreements Act, the Government will evaluate offers of U.S.-made, designated country, or NAFTA country end products without regard to the restrictions of the Buy American Act . The Government will consider for award only offers of U.S.-made, designated country, or NAFTA country end products unless the Contracting Officer determines that there are no offers for those products or that the offers for those products are insufficient to fulfill the requirements of this solicitation.

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

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

"Domestic construction material" means--

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

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

"Foreign construction material" means a construction material other than a domestic construction material.

"North American Free Trade Agreement country" means Mexico.

"North American Free Trade Agreement country construction material" means a construction material that--

(1) Is wholly the growth, product, or manufacture of a North American Free Trade Agreement (NAFTA) 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 NAFTA 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.

*(b) Construction materials.*

(1) This clause implements the Buy American Act (41 U.S.C. 10a-10d) by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the Trade Agreements Act and the North American Free Trade Agreement (NAFTA) apply to this acquisition. Therefore, the Buy American Act restrictions are waived for designated country and NAFTA country construction materials.

(2) The Contractor shall use only domestic, designated country, or NAFTA country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows: \_\_\_\_\_  
[Contracting Officer to list applicable excepted materials or indicate ``none']

(4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that--

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent. ;

(ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American Act or Balance of Payments Program.

(1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including--

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act .

(d) *Data.* To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison

Constructi on material description	Unit of meas ure	Qu ant ity	Price (dollars) *
<i>Item 1</i>			
Foreign constructio n material			
Domestic constructio n material			
<i>Item 2</i>			
Foreign constructio n material			
Domestic constructio n material			

(End of Provision)

**FAR 52.225-11 Buy American Act--Construction Materials Under Trade Agreements  
(PMA Deviation)(AUG 2002)**

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

"Component" means an article, material, or supply incorporated directly into a construction material.

"Construction material" means an article, material, or supply brought to the construction site by the Contractor or 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 construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

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

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

"Designated country construction material" means a construction material that--



*[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]*

*[Include other applicable supporting information. ]*

*[\* Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]*

(End of clause)

*Alternate I (AUG 2002).* As prescribed in AL 2002-06, delete the definitions of "North American Free Trade Agreement country" and "North American Free Trade Agreement country construction material" from the definitions in paragraph (a) of the basic clause and substitute the following paragraphs (b)(1) and (b)(2) for paragraphs (b)(1) and (b)(2) of the basic clause:

*(b) Construction materials.*

(1) This clause implements the Buy American Act (41 U.S.C. 10a-10d) by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the Trade Agreements Act applies to this acquisition. Therefore, the Buy American Act restrictions are waived for designated country construction materials.

(2) The Contractor shall use only domestic or designated country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(End of Alternate)

**FAR 52.225-12 Notice of Buy American Act Requirement-Construction Materials Under Trade Agreements (PMA Deviation)(AUG 2002)**

*(a) Definitions.* "Construction material," "designated country construction material," "domestic construction material," "foreign construction material," and "NAFTA country construction material," as used in this provision, are defined in the clause of this solicitation entitled "FAR 52.225-11 Buy American Act--Construction Materials Under Trade Agreements (PMA Deviation)."

*(b) Requests for determination of inapplicability.* An offeror requesting a determination regarding the inapplicability of the Buy American Act should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of "FAR 52.225-11 Buy American Act--Balance of Payments Program--Construction Materials Under Trade Agreements (PMA Deviation)" in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

**DETERMINATION AND FINDINGS**  
**BY THE SECRETARY OF ENERGY AUTHORIZING WAIVER OF THE CLAUSE**  
**FAR 52.225-16, SANCTIONED EUROPEAN UNION COUNTRY SERVICES,**  
**FROM INCORPORATION INTO**  
**CONTRACT NO. DE-AC02-76CH03000 FOR THE MANAGEMENT AND OPERATION**  
**OF THE FERMI NATIONAL ACCELERATOR LABORATORY**  
**CONTRACT NO. DE-AC02-76CH03073 FOR THE MANAGEMENT AND OPERATION**  
**OF THE PRINCETON PLASMA PHYSICS LABORATORY AND THE CLASS OF**  
**SIMILARLY SITUATED MANAGEMENT AND OPERATING CONTRACTS**

Section 25.602(b)(1)(i) of the Federal Acquisition Regulation (FAR) provides that "the head of the agency, without power of redelegation, may authorize the award of a contract or class of contracts for sanctioned EU [European Union] country . . . services . . . the purchase of which is otherwise prohibited by 25.601(a), if the head of the agency determines that such action is necessary . . . in the public interest." This Determination and Findings relates to the award of contracts for the management and operation of the Fermi National Accelerator Laboratory (Fermilab) and the Princeton Plasma Physics Laboratory (PPPL) and the class of similarly situated management and operating contracts.

**FINDINGS:**

1. In May 1993, the United States Trade Representative imposed sanctions against certain member states of the European Union (EU) -- Austria, Belgium, Denmark, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Sweden, and the United Kingdom -- pursuant to Title VII of the Omnibus Trade and Competitiveness Act of 1988, as amended. The sanctions are in effect pursuant to Executive Order 13116, dated March 1, 1999 and have been implemented in FAR Parts 25 and 52, as described below.
2. The sanctions are described in FAR Subpart 25.6 and consist of prohibitions against the purchase of supplies valued at less than a specified dollar amount, construction services valued below a specified dollar amount, and, relevant to this Determination and Findings, specified services of any value.
3. Sanctioned EU country services are listed in FAR 25.601(a)(3)(i) and are defined in FAR 25.003 as services to be performed in a sanctioned EU member state. Among the services listed are "[m]anagement and operation of certain Government or privately owned facilities used for Government services, including federally funded research and development centers (all M codes)" in subparagraph (C), and "[r]esearch and development (all A codes)" in subparagraph (E).
4. FAR 25.1103(c)(1)(ii)(A) requires that the clause at FAR 52.225-16, "Sanctioned European Union Country Services," be placed in solicitations and contracts for services listed in FAR 25.601(a)(3)(i). FAR 52.225-16 provides, in pertinent part, "The Contractor shall not perform services under this contract in a sanctioned European member state."

5. The clause at FAR 52.225-16 must be placed in the Fermilab and PPPL management and operating contracts. A small, but important portion of the work under these contracts consists of the performance of sanctioned management and operation services and research and development services set forth in FAR 25.601(a)(3)(i)(C) and (E) in sanctioned EU member states.
6. The effect of including the clause at FAR 52.225-16 in the contract for the management and operation of Fermilab would be to prohibit employees of the contractor from fulfilling U.S. obligations in the design, construction and performance of basic collaborative research for a new particle accelerator, the Large Hadron Collider (LHC). The LHC is to be built at the European Laboratory for Particle Physics, European Center for Nuclear Research (CERN) located in Switzerland, but much of the work for the LHC will be performed in France, a sanctioned EU member state. The inability of Fermilab employees to work on this project in France would undermine decades of international cooperation in high energy physics research and make it extremely difficult for the United States to meet its obligations under the international agreement among DOE, the National Science Foundation (NSF), and CERN, signed in December 1997. Further, it would be detrimental to DOE programmatic, scientific objectives in the area of high energy physics. Approximately 60 percent of the \$531 million budgeted for this program by DOE and NSF has already been spent and the value of much of this would be put in jeopardy if the activity were halted.
7. The effect of including the clause at FAR 52.225-16 in the contract for the management and operation of PPPL would be to prevent employees of the contractor from engaging in international collaborative basic research in programs such as the Joint European Torus. That program enables the United States to perform specialized research on magnetic confinement, for which suitable facilities do not exist in the United States but are available in the United Kingdom, a sanctioned EU member state. PPPL also performs computational modeling pursuant to international research collaboration at the Tore Supra project in France, and international collaborative research at the Frascati Tokamak fusion device in Italy, a sanctioned EU member state. The inability of PPPL to work on these projects would be detrimental to DOE's programmatic objectives in the area of fusion energy sciences, undermine decades of international cooperation in plasma science and fusion energy research, and make it difficult for DOE to meet the objectives of several international agreements related to these projects.
8. The Fermilab and PPPL management and operating contracts are representative of a class of DOE management and operating contracts under which contractors may perform collaborative management and operation services and research and development services set forth in FAR 25.601(a)(3)(i)(C) and (E) in sanctioned EU member states.

**DETERMINATION:**

I hereby determine pursuant to FAR 25.602(b) that the requirement to include the clause at FAR 52.225-16 in contracts awarded for the management and operation of Fermi National Accelerator Laboratory and Princeton Plasma Physics Laboratory and the class of similarly situated management and operating contracts is waived in the public interest.

  
SECRETARY OF ENERGY

September 5, 2001  
DATE

## DEPARTMENT OF ENERGY

## NATIONAL NUCLEAR SECURITY ADMINISTRATION

## DETERMINATION AND FINDINGS

FEDERAL ACQUISITION REGULATION (FAR) CLASS DEVIATION  
REGARDING FAR 25.11 and 52.225-3, -4, -5, -6, -11, AND -12

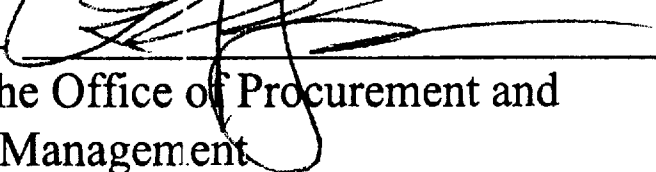
## FINDINGS:

1. The statutes, regulations, and policies that govern the actions of Federal agencies regarding foreign acquisition, such as the Buy American Act, the Balance of Payments Program, the North American Free Trade Agreement (NAFTA), the Trade Agreements Act (TAA), the Israeli Trade Act (ITA), and the Caribbean Basin Economic Recovery Act (CBERA), are stated in FAR Part 25.
2. The Department of Energy (DOE), including the National Nuclear Security Administration (NNSA) and the Power Marketing Administrations (PMAs), have been treated separately in many respects. For instance, DOE, NNSA, and PMAs are not subject to the CBERA or the ITA. The PMAs are required by the U.S. Trade Representative not to give preferred treatment under NAFTA or the TAA to Canadian products and construction materials.
3. The clauses and solicitation provisions at FAR 52.225-3, -4, -5, -6, -11, and -12, reflect application of statutes and preferences to which DOE, NNSA, and the PMAs are not subject. In order to accurately reflect the application of those clauses and solicitation provisions for use in DOE, they must be modified to exclude portions that cover the CBERA and the ITA. The portions of those clauses and solicitation provisions that relate to the NAFTA and Canada must also be modified for use by the PMAs.
4. FAR Subpart 25.11 prescribes the use of the appropriate clauses and solicitation provisions. Those prescriptions do not reflect the special treatment of DOE, NNSA, and the PMAs. The prescriptions are generally based upon dollar thresholds. The U.S. Trade Representative has designated special dollar thresholds for the PMAs. In order to properly use the clauses and solicitation provisions, the prescriptions must be adapted to reflect the obligations of DOE, NNSA, and the PMAs. In addition, on February 21, 2002 (67 FR 8057), the Trade Representative altered the dollar thresholds governing application of the various clauses and solicitation provisions, regarding NAFTA and the TAA. Those changes have not yet been implemented in the FAR.

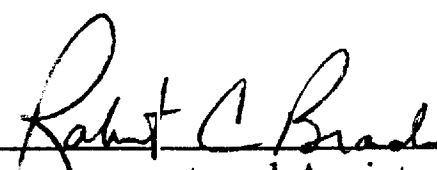
## DETERMINATION:

Based upon these findings, I hereby determine that it is necessary to deviate from the clauses and solicitation provisions at FAR 52.225-3, -4, -5, -6, -11, and -12 to properly reflect the obligations of DOE, NNSA, and the PMAs with regard to foreign acquisitions.

I further determine that it is necessary to deviate from the prescription of the clauses and solicitation provisions at FAR 25.11 in order to properly reflect their use by DOE, NNSA and the PMAs, under the laws of the United States and direction of the President and the U.S. Trade Representative. This deviation also reflects the changes in the dollar thresholds for application of the NAFTA and the TAA published by the U.S. Trade Representative at 67 FR 8057, until such time as the FAR System implements that determination of the U.S. Trade Representative.

APPROVAL   
Director of the Office of Procurement and  
Assistance Management  
Department of Energy

DATE July 12, 2002

APPROVAL   
Director of Procurement and Assistance Management  
National Nuclear Security Administration

DATE July 12, 2002