

SUBPART 203.5—OTHER IMPROPER BUSINESS PRACTICES
(Revised March 21, 2006)

203.502-2 Subcontractor kickbacks.

(h) The DoD Inspector General has designated Special Agents of the following investigative organizations as representatives for conducting inspections and audits under the Anti-Kickback Act of 1986:

- (i) U.S. Army Criminal Investigation Command.
- (ii) Naval Criminal Investigative Service.
- (iii) Air Force Office of Special Investigations.
- (iv) Defense Criminal Investigative Service.

203.570 Prohibition on persons convicted of fraud or other defense-contract-related felonies.

203.570-1 Scope.

This subpart implements 10 U.S.C. 2408. For information on 10 U.S.C. 2408, see PGI 203.570-1.

203.570-2 Prohibition period.

DoD has sole responsibility for determining the period of the prohibition described in paragraph (b) of the clause at 252.203-7001, Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies. The prohibition period—

(a) Shall not be less than 5 years from the date of conviction unless the agency head or a designee grants a waiver in the interest of national security. Follow the waiver procedures at PGI 203.570-2(a); and

(b) May be more than 5 years from the date of conviction if the agency head or a designee makes a written determination of the need for the longer period. The agency shall provide a copy of the determination to the address at PGI 203.570-2(b).

203.570-3 Contract clause.

Use the clause at 252.203-7001, Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies, in all solicitations and contracts exceeding the simplified acquisition threshold, except solicitations and contracts for commercial items.

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SUBPART 207.1—ACQUISITION PLANS
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207.102 Policy.

When a class justification for other than full and open competition has been approved, planning for competition shall be accomplished consistent with the terms of that approval.

207.103 Agency-head responsibilities.

(d)(i) Prepare written acquisition plans for—

(A) Acquisitions for development, as defined in FAR 35.001, when the total cost of all contracts for the acquisition program is estimated at \$5 million or more;

(B) Acquisitions for production or services when the total cost of all contracts for the acquisition program is estimated at \$30 million or more for all years or \$15 million or more for any fiscal year; and

(C) Any other acquisition considered appropriate by the department or agency.

(ii) Written plans are not required in acquisitions for a final buy out or one-time buy. The terms "final buy out" and "one-time buy" refer to a single contract that covers all known present and future requirements. This exception does not apply to a multiyear contract or a contract with options or phases.

(e) Prepare written acquisition plans for acquisition programs meeting the thresholds of paragraphs (d)(i)(A) and (B) of this section on a program basis. Other acquisition plans may be written on either a program or an individual contract basis.

(g) The program manager, or other official responsible for the program, has overall responsibility for acquisition planning.

(h) For procurement of conventional ammunition, as defined in DoDD 5160.65, Single Manager for Conventional Ammunition (SMCA)--

(i) The department or agency--

(A) Must submit the acquisition plan to the SMCA at the following address:

Program Executive Officer, Ammunition
ATTN: SFAE-AMO
Building 171
Picatinny Arsenal, NJ 07806-5000

Telephone: Commercial (973) 724-7101; DSN 880-7101;

(B) Also must submit an acquisition plan to the SMCA for a new procurement covered by a previously approved acquisition plan, if the SMCA did not review the previously approved acquisition plan; and

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(C) Must not proceed with the procurement until the SMCA provides written concurrence with the acquisition plan.

(ii) The SMCA--

(A) Will review the acquisition plan to determine if it is consistent with retaining national technology and industrial base capabilities in accordance with 10 U.S.C. 2304(c)(3) and Section 806 of Pub. L. 105-261; and

(B) Will notify the department or agency of concurrence or non-concurrence. In the case of a non-concurrence, the SMCA, with assistance from the Army Office of the Executive Director for Conventional Ammunition, will attempt to resolve the matter with the department or agency. If no agreement is reached, the Assistant Secretary of the Army (Acquisition, Logistics and Technology) will make the final decision on the appropriate acquisition approach.

(i)(i) Apply design-to-cost principles—

(A) In all major defense acquisition programs (DoDD 5000.1, Defense Acquisition), unless exempted by the Secretary of Defense; and

(B) To the acquisition of systems, subsystems, and components below the thresholds for major defense acquisition programs, to the extent prescribed by DoDD 5000.1.

(ii) Consider life-cycle-cost in all acquisitions of systems and equipment.

207.104 General procedures.

(b) The planner should forward the requirements information to the contract administration organization when assistance in identification of potential sources of supply is necessary, when an existing contract is being modified or resolicited, or when contract administration resource requirements will be affected.

207.105 Contents of written acquisition plans.

For acquisitions covered by 207.103(d)(i)(A) and (B), correlate the plan to the DoD Future Years Defense Program, applicable budget submissions, and the decision coordinating paper/program memorandum, as appropriate. It is incumbent upon the planner to coordinate the plan with all those who have a responsibility for the development, management, or administration of the acquisition. The acquisition plan should be provided to the contract administration organization to facilitate resource allocation and planning for the evaluation, identification, and management of contractor performance risk.

(a) *Acquisition background and objectives.*

(1) *Statement of need.* Include—

(A) Applicability of a decision coordinating paper (DCP), acquisition decision memorandum, Defense Acquisition Board (DAB), and/or internal service reviews. Describe the options in the DCP/acquisition decision memorandum and

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delineate which option the acquisition plan supports.

(B) The date approval for operational use has been or will be obtained. If waivers are requested, describe the need for the waivers.

(C) A milestone chart depicting the acquisition objectives.

(D) Milestones for updating the acquisition plan. Indicate when the plan will be updated. Program managers should schedule updates to coincide with DAB reviews and the transition from one phase to another (e.g., engineering and manufacturing development to production and deployment).

(8) *Acquisition streamlining.* DoDD 5000.1, Defense Acquisition, and DoD 5000.2-R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs, contain policy direction on acquisition streamlining. See MIL-HDBK 248, Acquisition Streamlining, for guidance on streamlining performance requirements, the technical package, and the contract strategy.

(b) *Plan of action.*

(4) *Acquisition considerations.* When supplies or services will be acquired by placing an order under a non-DoD contract (e.g., a Federal Supply Schedule contract), regardless of whether the order is placed by DoD or by another agency on behalf of DoD, address the method of ensuring that the order will be consistent with DoD statutory and regulatory requirements applicable to the acquisition and the requirements for use of DoD appropriated funds.

(5) *Budgeting and funding.* Include specific references to budget line items and program elements, where applicable, estimated production unit cost, and the total cost for remaining production.

(6) *Product descriptions.* For development acquisitions, describe the market research undertaken to identify commercial items, commercial items with modifications, or nondevelopmental items (see FAR Part 10) that could satisfy the acquisition objectives.

(13) *Logistics considerations.*

(i) Describe the extent of integrated logistics support planning to date, including references to approved plans.

(ii) Discuss the mission profile, reliability, and maintainability (R&M) program plan, R&M predictions, redundancy, qualified parts lists, parts and material qualification, R&M requirements imposed on vendors, failure analysis, corrective action and feedback, and R&M design reviews and trade-off studies. Also discuss corrosion prevention and mitigation plans.

(iv) See DoDD 5000.1, Defense Acquisition, and DoD 5000.2-R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs, for procedures on standardization and on the DoD Parts Control Program. Also see DoD 4120.24-M,

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Defense Standardization Program (DSP) Policies and Procedures.

(S-70) Describe the extent of Computer-Aided Acquisition and Logistics Support (CALs) implementation (see MIL-HDBK 59, Department of Defense Computer-Aided Logistics Support (CALs) Program Guide, and MIL-STD-1840A, Automated Interchange of Technical Information).

(16) *Environmental and energy conservation objectives.* Discuss actions taken to ensure either elimination of or authorization to use class I ozone-depleting chemicals and substances (see 211.271).

(19) *Other considerations.*

(A) National Technology and Industrial Base. For major defense acquisition programs, address the following (Pub. L. 102-484, Section 4220)—

(1) An analysis of the capabilities of the national technology and industrial base to develop, produce, maintain, and support such program, including consideration of the following factors related to foreign dependency (Pub. L. 102-484, Section 4219(h))—

(i) The availability of essential raw materials, special alloys, composite materials, components, tooling, and production test equipment for the sustained production of systems fully capable of meeting the performance objectives established for those systems; the uninterrupted maintenance and repair of such systems; and the sustained operation of such systems.

(ii) The identification of items specified in paragraph (b)(18)(A)(1)(i) of this section that are available only from sources outside the national technology and industrial base.

(iii) The availability of alternatives for obtaining such items from within the national technology and industrial base if such items become unavailable from sources outside the national technology industrial base; and an analysis of any military vulnerability that could result from the lack of reasonable alternatives.

(iv) The effects on the national technology and industrial base that result from foreign acquisition of firms in the United States.

(2) Consideration of requirements for efficient manufacture during the design and production of the systems to be procured under the program.

(3) The use of advanced manufacturing technology, processes, and systems during the research and development phase and the production phase of the program.

(4) To the maximum extent practicable, the use of contract solicitations that encourage competing offerors to acquire, for use in the performance of the contract, modern technology, production equipment, and production systems (including hardware and software) that increase the productivity of the offerors and reduce the life-cycle costs.

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(5) Methods to encourage investment by U.S. domestic sources in advanced manufacturing technology production equipment and processes through—

(i) Recognition of the contractor's investment in advanced manufacturing technology production equipment, processes, and organization of work systems that build on workers' skill and experience, and work force skill development in the development of the contract objective; and

(ii) Increased emphasis in source selection on the efficiency of production.

(6) Expanded use of commercial manufacturing processes rather than processes specified by DoD.

(7) Elimination of barriers to, and facilitation of, the integrated manufacture of commercial items and items being produced under DoD contracts.

(8) Expanded use of commercial items, commercial items with modifications, or to the extent commercial items are not available, nondevelopmental items (see FAR Part 10).

(B) Industrial Preparedness (IP).

(1) Provide the program's IP strategy that assesses the capability of the U.S. industrial base to achieve identified surge and mobilization goals. If no IP strategy has been developed, provide supporting rationale for this position.

(2) If in the IP strategy, the development of a detailed IP plan was determined to be applicable, include the plan by text or by reference. If the development of the IP plan was determined not to be applicable, summarize the details of the analysis forming the basis of this decision.

(3) If the program involves peacetime and wartime hardware configurations which are supported by logistics support plans, identify their impact on the IP plan.

(C) Ensure compliance with DoD Instruction 4715.4, Pollution Prevention.

(D) Contract Administration. Discuss the level of Government administration anticipated or currently performed and any change proposed by the contract administration office.

(E) Special considerations for acquisition planning for crisis situations outside the United States. Ensure that the requirements of DoD Instruction 3020.37, Continuation of Essential DoD Contractor Services During Crises, are addressed. Also see the guidance at PGI 207.105(b)(19)(E).

(F) CONUS Antiterrorism Considerations. Follow the procedures at PGI 207.105(b)(19)(F) for consideration of antiterrorism measures in acquisition planning.

207.106 Additional requirements for major systems.

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(b)(1)(A) The contracting officer is prohibited by 10 U.S.C. 2305(d)(4)(A) from requiring offers for development or production of major systems that would enable the Government to use technical data to competitively reprocur identical items or components of the system if the item or component were developed exclusively at private expense, unless the contracting officer determines that—

(1) The original supplier of the item or component will be unable to satisfy program schedule or delivery requirements;

(2) Proposals by the original supplier of the item or component to meet mobilization requirements are insufficient to meet the agency's mobilization needs; or

(3) The Government is otherwise entitled to unlimited rights in technical data.

(B) If the contracting officer makes a determination, under paragraphs (b)(1)(A)(1) and (2) of this section, for a competitive solicitation, 10 U.S.C. 2305(d)(4)(B) requires that the evaluation of items developed at private expense be based on an analysis of the total value, in terms of innovative design, life-cycle costs, and other pertinent factors, of incorporating such items in the system.

207.170 Consolidation of contract requirements.

207.170-1 Scope.

This section implements 10 U.S.C. 2382.

207.170-2 Definitions.

As used in this section—

“Consolidation of contract requirements” means the use of a solicitation to obtain offers for a single contract or a multiple award contract to satisfy two or more requirements of a department, agency, or activity for supplies or services that previously have been provided to, or performed for, that department, agency, or activity under two or more separate contracts.

“Multiple award contract” means—

(1) Orders placed using a multiple award schedule issued by the General Services Administration as described in FAR Subpart 8.4;

(2) A multiple award task order or delivery order contract issued in accordance with FAR Subpart 16.5; or

(3) Any other indefinite-delivery, indefinite-quantity contract that an agency enters into with two or more sources for the same line item under the same solicitation.

207.170-3 Policy and procedures.

(a) Agencies shall not consolidate contract requirements with an estimated total value exceeding \$5,000,000 unless the acquisition strategy includes—

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- (1) The results of market research;
- (2) Identification of any alternative contracting approaches that would involve a lesser degree of consolidation; and
- (3) A determination by the senior procurement executive that the consolidation is necessary and justified.

(i) Market research may indicate that consolidation of contract requirements is necessary and justified if the benefits of the acquisition strategy substantially exceed the benefits of each of the possible alternative contracting approaches. Benefits may include costs and, regardless of whether quantifiable in dollar amounts—

- (A) Quality;
- (B) Acquisition cycle;
- (C) Terms and conditions; and
- (D) Any other benefit.

(ii) Savings in administrative or personnel costs alone do not constitute a sufficient justification for a consolidation of contract requirements unless the total amount of the cost savings is expected to be substantial in relation to the total cost of the procurement.

(b) Include the determination made in accordance with paragraph (a)(3) of this section in the contract file.

207.171 Component breakout.

207.171-1 Scope.

(a) This section provides policy for breaking out components of end items for future acquisitions so that the Government can purchase the components directly from the manufacturer or supplier and furnish them to the end item manufacturer as Government-furnished material.

(b) This section does not apply to—

- (1) The initial decisions on Government-furnished equipment or contractor-furnished equipment that are made at the inception of an acquisition program; or
- (2) Breakout of parts for replenishment (see Appendix E).

207.171-2 Definition.

“Component,” as used in this section, includes subsystems, assemblies, subassemblies, and other major elements of an end item; it does not include elements of relatively small annual acquisition value.

207.171-3 Policy.

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DoD policy is to break out components of weapons systems or other major end items under certain circumstances.

(a) When it is anticipated that a prime contract will be awarded without adequate price competition, and the prime contractor is expected to acquire any component without adequate price competition, the agency shall break out that component if—

(1) Substantial net cost savings probably will be achieved; and

(2) Breakout action will not jeopardize the quality, reliability, performance, or timely delivery of the end item.

(b) Even when either or both the prime contract and the component will be acquired with adequate price competition, the agency shall consider breakout of the component if substantial net cost savings will result from—

(1) Greater quantity acquisitions; or

(2) Such factors as improved logistics support (through reduction in varieties of spare parts) and economies in operations and training (through standardization of design).

(c) Breakout normally is not justified for a component that is not expected to exceed \$1 million for the current year's requirement.

207.171-4 Procedures.

Agencies shall follow the procedures at PGI 207.171-4 for component breakout.

SUBPART 207.5—INHERENTLY GOVERNMENTAL FUNCTIONS
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207.500 Scope of subpart.

This subpart also implements 10 U.S.C. 2383.

207.503 Policy.

(S-70) Contracts for acquisition functions.

(1) In accordance with 10 U.S.C. 2383, the head of an agency may enter into a contract for performance of the acquisition functions closely associated with inherently governmental functions that are listed at FAR 7.503(d) only if—

(i) The contracting officer determines that appropriate military or civilian DoD personnel—

(A) Cannot reasonably be made available to perform the functions;

(B) Will oversee contractor performance of the contract; and

(C) Will perform all inherently governmental functions associated with the functions to be performed under the contract; and

(ii) The contracting officer ensures that the agency addresses any potential organizational conflict of interest of the contractor in the performance of the functions under the contract (see FAR Subpart 9.5).

(2) See related information at PGI 207.503(S-70).

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SUBPART 208.4—FEDERAL SUPPLY SCHEDULES
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208.404 Use of Federal Supply Schedules.

(a)(i) Departments and agencies shall comply with the review, approval, and reporting requirements established in accordance with Subpart 217.78 when placing orders for supplies or services in amounts exceeding the simplified acquisition threshold.

(ii) When a schedule lists both foreign and domestic items that will meet the needs of the requiring activity, the ordering office must apply the procedures of Part 225 and FAR Part 25, Foreign Acquisition. When purchase of an item of foreign origin is specifically required, the requiring activity must furnish the ordering office sufficient information to permit the determinations required by Part 225 and FAR Part 25 to be made.

208.405-70 Additional ordering procedures.

(a) This subsection--

(1) Implements Section 803 of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107-107) for the acquisition of services, and establishes similar policy for the acquisition of supplies;

(2) Applies to orders for supplies or services under Federal Supply Schedules, including orders under blanket purchase agreements established under Federal Supply Schedules; and

(3) Also applies to orders placed by non-DoD agencies on behalf of DoD.

(b) Each order exceeding \$100,000 shall be placed on a competitive basis in accordance with paragraph (c) of this subsection, unless this requirement is waived on the basis of a justification that is prepared and approved in accordance with FAR 8.405-6 and includes a written determination that--

(1) A statute expressly authorizes or requires that the purchase be made from a specified source; or

(2) One of the circumstances described at FAR 16.505(b)(2)(i) through (iii) applies to the order. Follow the procedures at PGI 216.505-70 if FAR 16.505(b)(2)(ii) or (iii) is deemed to apply.

(c) An order exceeding \$100,000 is placed on a competitive basis only if the contracting officer provides a fair notice of the intent to make the purchase, including a description of the supplies to be delivered or the services to be performed and the basis upon which the contracting officer will make the selection, to--

(1) As many schedule contractors as practicable, consistent with market research appropriate to the circumstances, to reasonably ensure that offers will be

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received from at least three contractors that can fulfill the requirements, and the contracting officer--

(i)(A) Receives offers from at least three contractors that can fulfill the requirements; or

(B) Determines in writing that no additional contractors that can fulfill the requirements could be identified despite reasonable efforts to do so (documentation should clearly explain efforts made to obtain offers from at least three contractors); and

(ii) Ensures all offers received are fairly considered; or

(2) All contractors offering the required supplies or services under the applicable multiple award schedule, and affords all contractors responding to the notice a fair opportunity to submit an offer and have that offer fairly considered.

(d) See PGI 208.405-70 for additional information regarding fair notice to contractors and requirements relating to the establishment of blanket purchase agreements under Federal Supply Schedules.

208.406 Ordering activity responsibilities.

208.406-1 Order placement.

Follow the procedures at PGI 208.406-1 when ordering from schedules.

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Part 209—Contractor Qualifications

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SUBPART 209.1—RESPONSIBLE PROSPECTIVE CONTRACTORS
(Revised March 21, 2006)

209.101 Definitions.

“Entity controlled by a foreign government,” “foreign government,” and “proscribed information” are defined in the provision at 252.209-7002, Disclosure of Ownership or Control by a Foreign Government.

209.104 Standards.

209.104-1 General standards.

(e) For cost-reimbursement or incentive type contracts, or contracts which provide for progress payments based on costs or on a percentage or stage of completion, the prospective contractor’s accounting system and related internal controls must provide reasonable assurance that—

- (i) Applicable laws and regulations are complied with;
- (ii) The accounting system and cost data are reliable;
- (iii) Risk of misallocations and mischarges are minimized; and
- (iv) Contract allocations and charges are consistent with invoice procedures.

(g)(i) *Ownership or control by the government of a terrorist country.*

(A) Under 10 U.S.C. 2327(b), a contracting officer shall not award a contract of \$100,000 or more to a firm or to a subsidiary of a firm when a foreign government—

(1) Either directly or indirectly, has a significant interest—

- (i) In the firm; or
- (ii) In the subsidiary or the firm that owns the subsidiary; and

(2) Has been determined by the Secretary of State under 50 U.S.C. App. 2405(j)(1)(A) to be a government of a country that has repeatedly provided support for acts of international terrorism.

(B) The Secretary of Defense may waive the prohibition in paragraph (g)(i)(A) of this subsection in accordance with 10 U.S.C. 2327(c). This waiver authority may not be delegated.

(ii) *Ownership or control by a foreign government when access to proscribed information is required.*

(A) Under 10 U.S.C. 2536(a), no DoD contract under a national security program may be awarded to an entity controlled by a foreign government if that entity requires access to proscribed information to perform the contract.

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(B) Whenever the contracting officer has a question about application of the provision at 252.209-7002, the contracting officer may seek advice from the Director, Defense Security Programs, Office of the Assistant Secretary of Defense for Command, Control, Communications and Intelligence.

(C) In accordance with 10 U.S.C. 2536(b)(1)(A), the Secretary of Defense may waive the prohibition in paragraph (g)(ii)(A) of this subsection upon determining that the waiver is essential to the national security interests of the United States. The Secretary has delegated authority to grant this waiver to the Assistant Secretary of Defense for Command, Control, Communications and Intelligence. Waiver requests, prepared by the requiring activity in coordination with the contracting officer, shall be processed through the Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics), and shall include a proposed national interest determination. The proposed national interest determination, prepared by the requiring activity in coordination with the contracting officer, shall include:

(1) Identification of the proposed awardee, with a synopsis of its foreign ownership (include solicitation and other reference numbers to identify the action);

(2) General description of the acquisition and performance requirements;

(3) Identification of the national security interests involved and the ways in which award of the contract helps advance those interests;

(4) A statement as to availability of another entity with the capacity, capability and technical expertise to satisfy defense acquisition, technology base, or industrial base requirements; and

(5) A description of any alternate means available to satisfy the requirement, e.g., use of substitute products or technology or alternate approaches to accomplish the program objectives.

(D) In accordance with 10 U.S.C. 2536(b)(1)(B), the Secretary of Defense may, in the case of a contract awarded for environmental restoration, remediation, or waste management at a DoD facility, waive the prohibition in paragraph (g)(ii)(A) of this subsection upon—

(1) Determining that—

(i) The waiver will advance the environmental restoration, remediation, or waste management objectives of DoD and will not harm the national security interests of the United States; and

(ii) The entity to which the contract is awarded is controlled by a foreign government with which the Secretary is authorized to exchange Restricted Data under section 144 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2164(c)); and

(2) Notifying Congress of the decision to grant the waiver. The contract may be awarded only after the end of the 45-day period beginning on the date the notification is received by the appropriate Congressional committees.

209.104-4 Subcontractor responsibility.

Generally, the Canadian Commercial Corporation's (CCC) proposal of a firm as its subcontractor is sufficient basis for an affirmative determination of responsibility. However, when the CCC determination of responsibility is not consistent with other information available to the contracting officer, the contracting officer shall request from CCC and any other sources whatever additional information is necessary to make the responsibility determination.

209.104-70 Solicitation provisions.

(a) Use the provision at 252.209-7001, Disclosure of Ownership or Control by the Government of a Terrorist Country, in all solicitations expected to result in contracts of \$100,000 or more. Any disclosure that the government of a terrorist country has a significant interest in an offeror or a subsidiary of an offeror shall be forwarded through the head of the agency to the Director of Defense Procurement and Acquisition Policy, ATTN: OUSD(AT&L)DPAP(PAIC), 3060 Defense Pentagon, Washington, DC 20301-3060.

(b) Use the provision at 252.209-7002, Disclosure of Ownership or Control by a Foreign Government, in all solicitations, including those subject to the procedures in FAR Part 13, when access to proscribed information is necessary for contract performance.

209.105-1 Obtaining information.

For guidance on using the Excluded Parties List System, see PGI 209.105-1.

209.105-2 Determinations and documentation.

(a) For guidance on submission of determinations to the appropriate debarring and suspending official, see PGI 209.105-2(a).

209.106 Preaward surveys.

When requesting a preaward survey, follow the procedures at PGI 209.106.

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Part 210--Market Research

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(Added March 21, 2006)

210.001 Policy.

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Part 210—Market Research

(Added March 21, 2006)

210.001 Policy.

(a) In addition to the requirements of FAR 10.001(a), agencies shall—

(i) Conduct market research appropriate to the circumstances before soliciting offers for acquisitions that could lead to a consolidation of contract requirements as defined in 207.170-2; and

(ii) Use the results of market research to determine whether consolidation of contract requirements is necessary and justified in accordance with 207.170-3.

SUBPART 215.3—SOURCE SELECTION

(Revised March 21, 2006)

215.303 Responsibilities.

(b)(2) For high-dollar value and other acquisitions, as prescribed by agency procedures, the source selection authority shall approve a source selection plan before the solicitation is issued. Follow the procedures at PGI 215.303(b)(2) for preparation of the source selection plan.

215.304 Evaluation factors and significant subfactors.

(c)(i) In acquisitions that require use of the clause at FAR 52.219-9, Small Business Subcontracting Plan, other than those based on the lowest price technically acceptable source selection process (see FAR 15.101-2), the extent of participation of small businesses and historically black colleges or universities and minority institutions in performance of the contract shall be addressed in source selection. The contracting officer shall evaluate the extent to which offerors identify and commit to small business and historically black college or university and minority institution performance of the contract, whether as a joint venture, teaming arrangement, or subcontractor.

(A) See PGI 215.304(c)(i)(A) for examples of evaluation factors.

(B) Proposals addressing the extent of small business and historically black college or university and minority institution performance may be separate from subcontracting plans submitted pursuant to the clause at FAR 52.219-9 and should be structured to allow for consideration of offers from small businesses.

(C) When an evaluation assesses the extent that small businesses and historically black colleges or universities and minority institutions are specifically identified in proposals, the small businesses and historically black colleges or universities and minority institutions considered in the evaluation shall be listed in any subcontracting plan submitted pursuant to FAR 52.219-9 to facilitate compliance with 252.219-7003(g).

(ii) In accordance with 10 U.S.C. 2436, consider the purchase of capital assets (including machine tools) manufactured in the United States, in source selections for all major defense acquisition programs as defined in 10 U.S.C. 2430.

215.305 Proposal evaluation.

(a)(2) *Past performance evaluation.* When a past performance evaluation is required by FAR 15.304, and the solicitation includes the clause at FAR 52.219-8, Utilization of Small Business Concerns, the evaluation factors shall include the past performance of offerors in complying with requirements of that clause. When a past performance evaluation is required by FAR 15.304, and the solicitation includes the clause at FAR 52.219-9, Small Business Subcontracting Plan, the evaluation factors shall include the past performance of offerors in complying with requirements of that clause.

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SUBPART 216.4—INCENTIVE CONTRACTS

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216.402 Application of predetermined, formula-type incentives.

216.402-2 Technical performance incentives.

Contractor performance incentives should relate to specific performance areas of milestones, such as delivery or test schedules, quality controls, maintenance requirements, and reliability standards.

216.403 Fixed-price incentive contracts.

(b) Application.

(3) Individual line items may have separate incentive provisions; e.g., when dissimilar work calls for separate formulas.

216.403-2 Fixed-price incentive (successive targets) contracts.

(a) Description.

(1)(iii) The formula does not apply for the life of the contract. It is used to fix the firm target profit for the contract. To provide an incentive consistent with the circumstances, the formula should reflect the relative risk involved in establishing an incentive arrangement where cost and pricing information were not sufficient to permit the negotiation of firm targets at the outset.

216.404 Fixed-price contracts with award fees.

Award-fee provisions may be used in fixed-price contracts as provided in 216.470.

216.405 Cost-reimbursement incentive contracts.

216.405-1 Cost-plus-incentive-fee contracts.

(b) Application.

(3) Give appropriate weight to basic acquisition objectives in negotiating the range of fee and the fee adjustment formula. For example—

(A) In an initial product development contract, it may be appropriate to provide for relatively small adjustments in fee tied to the cost incentive feature, but provide for significant adjustments if the contractor meets or surpasses performance targets.

(B) In subsequent development and test contracts, it may be appropriate to negotiate an incentive formula tied primarily to the contractor's success in controlling costs.

216.405-2 Cost-plus-award-fee contracts.

(a) *Description.*

(i) Normally, award fee is not earned when the fee-determining official has determined that contractor performance has been submarginal or unsatisfactory.

(ii) The basis for all award fee determinations shall be documented in the contract file.

(b) *Application.*

(1) The cost-plus-award-fee (CPAF) contract is also suitable for level of effort contracts where mission feasibility is established but measurement of achievement must be by subjective evaluation rather than objective measurement. See Table 16-1, Performance Evaluation Criteria, for sample performance evaluation criteria and Table 16-2, Contractor Performance Evaluation Report, for a sample evaluation report.

(2) The contracting activity may—

(A) Establish a board to—

(1) Evaluate the contractor's performance; and

(2) Determine the amount of the award or recommend an amount to the contracting officer.

(B) Afford the contractor an opportunity to present information on its own behalf.

(3) The CPAF contract may include provisional award fee payments. A provisional award fee payment is a payment made within an evaluation period prior to a final evaluation for that period. The contracting officer may include provisional award fee payments in a CPAF contract on a case-by-case basis, provided those payments—

(A) Are made no more frequently than monthly;

(B) Are limited to no more than—

(1) For the initial award fee evaluation period, 50 percent of the award fee available for that period; and

(2) For subsequent award fee evaluation periods, 80 percent of the evaluation score for the prior evaluation period times the award fee available for the current period, e.g., if the contractor received 90 percent of the award fee available for the prior evaluation period, provisional payments for the current period shall not exceed 72 percent (90 percent x 80 percent) of the award fee available for the current period;

(C) Are superceded by an interim or final award fee evaluation for the applicable evaluation period. If provisional payments have exceeded the payment

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determined by the evaluation score for the applicable period, the contracting officer shall collect the debt in accordance with FAR 32.606; and

(D) May be discontinued, or reduced in such amounts deemed appropriate by the contracting officer, when the contracting officer determines that the contractor will not achieve a level of performance commensurate with the provisional payment. The contracting officer shall notify the contractor in writing of any discontinuance or reduction in provisional award fee payments.

(c) *Limitations.* The CPAF contract shall not be used—

(i) To avoid—

(A) Establishing CPFF contracts when the criteria for CPFF contracts apply, or

(B) Developing objective targets so a CPIF contract can be used.

(ii) For either engineering development or operational system development acquisitions which have specifications suitable for simultaneous research and development and production, except a CPAF contract may be used for individual engineering development or operational system development acquisitions ancillary to the development of a major weapon system or equipment, where—

(A) It is more advantageous; and

(B) The purpose of the acquisition is clearly to determine or solve specific problems associated with the major weapon system or equipment.

(2)(A) Do not apply the weighted guidelines method to CPAF contracts for either the base (fixed) fee or the award fee.

(B) The base fee shall not exceed three percent of the estimated cost of the contract exclusive of the fee.

216.470 Other applications of award fees.

The “award amount” portion of the fee may be used in other types of contracts under the following conditions:

(a) The Government wishes to motivate and reward a contractor for—

(1) Purchase of capital assets (including machine tools) manufactured in the United States, on major defense acquisition programs; or

(2) Management performance in areas which cannot be measured objectively and where normal incentive provisions cannot be used. For example, logistics support, quality, timeliness, ingenuity, and cost effectiveness are areas under the control of management which may be susceptible only to subjective measurement and evaluation.

(b) The “base fee” (fixed amount portion) is not used.

(c) The chief of the contracting office approves the use of the “award amount.”

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(d) An award review board and procedures are established for conduct of the evaluation.

(e) The administrative costs of evaluation do not exceed the expected benefits.

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TABLE 16-1, PERFORMANCE EVALUATION CRITERIA

		Submarginal	Marginal	Good	Very Good	Excellent
A Time of Delivery.	(A-1) Adherence to plan schedule.	Consistently late on 20% plans	Late on 10% plans w/o prior agreement	Occasional plan late w/o justification.	Meets plan schedule.	Delivers all plans on schedule & meets prod. Change requirements on schedule
	(A-2) Action on Anticipated delays.	Does not expose changes or resolve them as soon as recognized.	Exposes changes but is dilatory in resolution on plans.	Anticipates changes, advise Shipyards but misses completion of design plans 10%.	Keeps Yard posted on delays, resolves independently on plans.	Anticipates in good time, advise Ship- yard, resolves independently and meets production requirements.
	(A-3) Plan Main- tenance.	Does not com- plete interre- lated systems studies concurrently.	System studies completed but constr. Plan changes delayed.	Major work plans coordinated in time to meet production schedules.	Design changes from studies and interrelated plant issued in time to meet product schedules.	Design changes, studies resolved and test data issued ahead of production requirements.
B Quality of Work.	(B-1) Work Appearance.	25% dwgs. Not compatible with Shipyards repro. processes and use.	20% not compatible with Shipyards repro. processes and use.	10% not compatible with Shipyards repro. processes and use.	0% dwgs prepared by Des. Agent not compatible with Shipyards repro. processes and use.	0% dwgs. Presented incl. Des. Agent, vendors, subcontr. Not compatible with Shipyards repro processes and use.
	(B-2) Thoroughnes s and Accuracy of Work.	Is brief on plans tending to leave questionable situations for Shipyards to resolve.	Has followed guidance, type and standard dwgs.	Has followed guidance, type and standard dwgs. Questioning and resolving doubtful areas.	Work complete with notes and thorough explanations for anticipated questionable areas.	Work of highest caliber incorporating all pertinent data required including related activities.
	(B-3) Engineering Competence.	Tendency to follow past practice with no variation to meet reqmts. job in hand.	Adequate engrg. To use & adapt existing designs to suit job on hand for routine work.	Engineered to satisfy specs., guidance plans and material provided.	Displays excellent knowledge of constr. Reqmts. considering systems aspect, cost, shop capabilities and procurement problems.	Exceptional knowledge of Naval shipwork & adaptability to work process incorporating knowledge of future planning in Design.

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B Quality of Work (Cont'd)	(B-4) Liaison Effectiveness	Indifferent to requirements of associated activities, related systems, and Shipyard advice.	Satisfactory but dependent on Shipyard of force resolution of problems without constructive recommendations to subcontractors or vendors.	Maintains normal contract with associated activities depending on Shipyard for problems requiring military resolution.	Maintains independent contact with all associated activities, keeping them informed to produce compatible design with little assistance for Yard.	Maintains expert contact, keeping Yard informed, obtaining info from equipment, supplies without prompting of Shipyard.
	(B-5)	Constant surveillance required to keep job from slipping—assign to low priority to satisfy needs.	Requires occasional prodding to stay on schedule & expects Shipyard resolution of most problems.	Normal interest and desire to provide workable plans with average assistance & direction by Shipyard.	Complete & accurate job. Free of incompatibilities with little or no direction by Shipyard.	Develops complete and accurate plans, seeks out problem areas and resolves with associated activity ahead of schedule.
C Effectiveness in Controlling and/or Reducing Costs	(C-1) Utilization of Personnel	Planning of work left to designers on drafting boards.	Supervision sets & reviews goals for designers.	System planning by supervisory personnel, studies checked by engineers.	Design parameters established by system engineers & held in design plans.	Mods. to design plans limited to less than 5% as result lack engineering. System correlation.
	(C-2) Control Direct Charges (Except Labor)	Expenditures not controlled for services.	Expenditures reviewed occasionally by supervision.	Direct charges set & accounted for on each work package.	Provides services as part of normal design function without extra charges.	No cost overruns on original estimates absorbs service demands by Shipyard.
	(C-3) Performance to Cost Estimate	Does not meet cost estimate for original work or changes 30% time.	Does not meet cost estimate for original work or changes 20% time.	Exceeds original estimate on change orders 10% time and meets original design costs.	Exceeds original estimate on changing orders 5% time.	Never exceeds estimates of original package or change orders.

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TABLE 16-2, CONTRACTOR PERFORMANCE EVALAUTION REPORT							
Ratings Excellent Very Good Marginal Submarginal					Period of _____ 19__ Contract Number _____ Contractor _____ Date of Report _____ PNS Technical Monitor/s _____ _____		
CATEGORY	CRITERIA	RATING	ITEM FACTOR	EVALUATION RATING	CATEGOR Y FACTOR	EFFICIENCY RATING	
A	TIME OF DELIVERY A-1 Adherence to Plan Schedule A-2 Action on Anticipated Delays A-3 Plan Maintenance	_____ _____ _____	x x x	.40 .30 .30	= _____ = _____ = _____		
		Total Item Weighed Rating			_____	x .30	= _____
B	QUALITY OF WORK B-1 Work Appearance B-2 Thoroughness and Accuracy of Work B-3 Engineering Competence B-4 Liaison Effectiveness B-5 Independence and Initiative	_____ _____ _____ _____	x x x x	.15 .30 .20 .15 .15	= _____ = _____ = _____ = _____		
		Total Item Weighed Rating			_____	x .40	= _____

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C	EFFECTIVE- NESS IN CONTROL- LING AND/OR REDUCING COSTS C-1 Utilization of Personnel	_____	x	.30	=	_____
	C-2 Control of all Direct Charges Other than Labor	_____	x	.30	=	_____
	C-3 Performance to Cost Estimate	_____	x	.40	=	_____
	Total Item Weighed Rating	_____	x	.30	=	_____
TOTAL WEIGHT RATING _____						
Rated by: _____						
Signature(s) _____						
NOTE: Provide supporting data and/or justification for below average or outstanding item ratings.						

SUBPART 216.5—INDEFINITE-DELIVERY CONTRACTS
(Revised March 21, 2006)

216.501 General.

(a)(i) For items with a shelf-life of less than six months, consider the use of indefinite-delivery type contracts with orders to be placed either—

(A) Directly by the users; or

(B) By central purchasing offices with deliveries direct to users.

(ii) Whenever an indefinite-delivery contract is issued, the issuing office must furnish all ordering offices sufficient information for the ordering office to complete its contract reporting responsibilities under 204.670-2. This data must be furnished to the ordering activity in sufficient time for the activity to prepare its report for the action within three working days of the order.

216.501-1 Definitions.

“Multiple award contract,” as used in this subpart, means--

(1) A multiple award task order contract entered into in accordance with FAR 16.504(c); or

(2) Any other indefinite-delivery, indefinite-quantity contract that an agency enters into with two or more sources under the same solicitation.

216.501-2 General.

(a) See 217.204(e) for limitations on the period for task order or delivery order contracts awarded by DoD pursuant to 10 U.S.C. 2304a.

216.505 Ordering.

(1) Departments and agencies shall comply with the review, approval, and reporting requirements established in accordance with Subpart 217.78 when placing orders under non-DoD contracts in amounts exceeding the simplified acquisition threshold.

(2) Orders placed under indefinite-delivery contracts may be issued on DD Form 1155, Order for Supplies or Services.

216.505-70 Orders under multiple award contracts.

(a) This subsection--

(1) Implements Section 803 of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107-107) for the acquisition of services, and establishes similar policy for the acquisition of supplies;

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(2) Applies to orders for supplies or services exceeding \$100,000 placed under multiple award contracts;

(3) Also applies to orders placed by non-DoD agencies on behalf of DoD; and

(4) Does not apply to orders for architect-engineer services, which shall be placed in accordance with the procedures in FAR Subpart 36.6.

(b) Each order exceeding \$100,000 shall be placed on a competitive basis in accordance with paragraph (c) of this subsection, unless this requirement is waived on the basis of a justification that is prepared and approved in accordance with FAR 8.405-6 and includes a written determination that--

(1) A statute expressly authorizes or requires that the purchase be made from a specified source; or

(2) One of the circumstances described at FAR 16.505(b)(2)(i) through (iv) applies to the order. Follow the procedures at PGI 216.505-70 if FAR 16.505(b)(2)(ii) or (iii) is deemed to apply.

(c) An order exceeding \$100,000 is placed on a competitive basis only if the contracting officer--

(1) Provides a fair notice of the intent to make the purchase, including a description of the supplies to be delivered or the services to be performed and the basis upon which the contracting officer will make the selection, to all contractors offering the required supplies or services under the multiple award contract; and

(2) Affords all contractors responding to the notice a fair opportunity to submit an offer and have that offer fairly considered.

(d) When using the procedures in this subsection--

(1) The contracting officer should keep contractor submission requirements to a minimum;

(2) The contracting officer may use streamlined procedures, including oral presentations;

(3) The competition requirements in FAR Part 6 and the policies in FAR Subpart 15.3 do not apply to the ordering process, but the contracting officer shall consider price or cost under each order as one of the factors in the selection decision; and

(4) The contracting officer should consider past performance on earlier orders under the contract, including quality, timeliness, and cost control.

216.506 Solicitation provisions and contract clauses.

(d) If the contract is for the preparation of personal property for shipment or storage (see 247.271-4), substitute paragraph (f) at 252.247-7015, Requirements, for paragraph (f) of the clause at FAR 52.216-21, Requirements.

**SUBPART 217.78—CONTRACTS OR DELIVERY ORDERS ISSUED BY A NON-
DOD AGENCY**

(Revised March 21, 2006)

217.7800 Scope of subpart.

This subpart—

(a) Implements Section 854 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375); and

(b) Prescribes policy for the acquisition of supplies and services through the use of contracts or orders issued by non-DoD agencies.

217.7801 Definitions.

As used in this subpart—

“Assisted acquisition” means a contract awarded or a task or delivery order placed on behalf of DoD by a non-DoD agency.

“Direct acquisition” means a task or delivery order placed by a DoD official under a contract awarded by a non-DoD agency.

217.7802 Policy.

Departments and agencies shall establish and maintain procedures for reviewing and approving orders placed for supplies and services under non-DoD contracts, whether through direct acquisition or assisted acquisition, when the amount of the order exceeds the simplified acquisition threshold. These procedures shall include—

(a) Evaluating whether using a non-DoD contract for the acquisition is in the best interest of DoD. Factors to be considered include—

- (1) Satisfying customer requirements;
- (2) Schedule;
- (3) Cost effectiveness (taking into account discounts and fees); and
- (4) Contract administration (including oversight);

(b) Determining that the tasks to be accomplished or supplies to be provided are within the scope of the contract to be used;

(c) Reviewing funding to ensure that it is used in accordance with appropriation limitations;

(d) Providing unique terms, conditions, and requirements to the assisting agency for incorporation into the order or contract as appropriate to comply with all applicable DoD-unique statutes, regulations, directives, and other requirements; and

(e) Collecting and reporting data on the use of assisted acquisition for analysis. Follow the reporting requirements at PGI 217.7802.

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**SUBPART 225.70—AUTHORIZATION ACTS, APPROPRIATIONS ACTS, AND
OTHER STATUTORY RESTRICTIONS ON FOREIGN ACQUISITION**

(Revised March 21, 2006)

225.7000 Scope of subpart.

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

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

225.7001 Definitions.

As used in this subpart—

(a) “Bearing components” is defined in the clause at 252.225-7016, Restriction on Acquisition of Ball and Roller Bearings.

(b) “Component” is defined in the clauses at 252.225-7012, Preference for Certain Domestic Commodities, and 252.225-7016, Restriction on Acquisition of Ball and Roller Bearings.

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

(d) “Specialty metals” is defined in the clause at 252.225-7014, Preference for Domestic Specialty Metals.

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

225.7002-1 Restrictions.

The following restrictions implement 10 U.S.C. 2533a. Except as provided in subsection 225.7002-2, do not acquire--

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

- (1) Food.
- (2) Clothing.
- (3) Tents, tarpaulins, or covers.
- (4) Cotton and other natural fiber products.
- (5) Woven silk or woven silk blends.
- (6) Spun silk yarn for cartridge cloth.

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

(8) Canvas products.

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

(10) Any item of individual equipment (Federal Supply Class 8465) manufactured from or containing any of the fibers, yarns, fabrics, or materials listed in this paragraph (a).

(b) Specialty metals, including stainless steel flatware, unless the metals were melted in steel manufacturing facilities located within the United States.

(c) Hand or measuring tools, unless the tools were produced in the United States.

225.7002-2 Exceptions.

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

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

(b) Acquisitions of any of the items in 225.7002-1(a) or (b), if the Secretary concerned determines that items grown, reprocessed, reused, or produced in the United States cannot be acquired as and when needed in a satisfactory quality and sufficient quantity at U.S. market prices.

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

(i) The Under Secretary of Defense (Acquisition, Technology, and Logistics).

(ii) The Secretary of the Army.

(iii) The Secretary of the Navy.

(iv) The Secretary of the Air Force.

(2) The supporting documentation for the determination shall include—

(i) An analysis of alternatives that would not require a domestic nonavailability determination; and

(ii) A written certification by the requiring activity, with specificity, why such alternatives are unacceptable.

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

(4) If an official listed in paragraph (b)(1)(ii) through (iv) of this subsection makes a domestic nonavailability determination for the acquisition of titanium or a product containing titanium, that official shall—

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(i) Notify the congressional defense committees at least 10 days before the award of a contract that relies on such a determination; and

(ii) Provide a copy of the notification and the determination to the Director, Defense Procurement and Acquisition Policy, as specified in PGI 225.7002-2(b)(4).

(5) See PGI 225.7002-2(b)(5) for related policy memoranda.

(c) Acquisitions of items listed in FAR 25.104(a), unless the items are hand or measuring tools.

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

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

(f) Acquisitions of food, specialty metals, or hand or measuring tools—

(1) In support of contingency operations; or

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

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

(h) Acquisitions by vessels in foreign waters.

(i) Acquisitions of items specifically for commissary resale.

(j) Acquisitions of end products incidentally incorporating cotton, other natural fibers, or wool, for which the estimated value of the cotton, other natural fibers, or wool--

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

(2) Does not exceed the simplified acquisition threshold.

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

(l) Acquisitions of foods manufactured or processed in the United States, regardless of where the foods (and any component if applicable) were grown or produced. However, in accordance with Section 8136 of the DoD Appropriations Act for Fiscal Year 2003 (Pub. L. 107-248) and similar sections in subsequent DoD appropriations acts, this exception does not apply to fish, shellfish, or seafood manufactured or processed in the United States or fish, shellfish, or seafood contained in foods manufactured or processed in the United States.

(m) Purchases of specialty metals by subcontractors at any tier for programs other than—

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- (1) Aircraft;
- (2) Missile and space systems;
- (3) Ships;
- (4) Tank-automotive;
- (5) Weapons; and
- (6) Ammunition.

(n) Acquisitions of specialty metals and chemical warfare protective clothing when the acquisition furthers an agreement with a qualifying country (see 225.872).

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

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

(i) Draperies, floor coverings, furnishings, and bedding (Federal Supply Group 72, Household and Commercial Furnishings and Appliances);

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

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

(iv) Parachutes (Federal Supply Class 1670); or

(2) The fibers and yarns are para-aramid fibers and yarns manufactured in—

(i) The Netherlands; or

(ii) Another qualifying country (see 225.872) if the Under Secretary of Defense (Acquisition, Technology, and Logistics) makes a determination in accordance with Section 807 of Pub. L. 105-261 that—

(A) Procuring articles that contain only para-aramid fibers and yarns manufactured from suppliers within the United States would result in sole source contracts or subcontracts for the supply of such para-aramid fibers and yarns;

(B) Such sole source contracts or subcontracts would not be in the best interest of the Government or consistent with the objectives of the Competition in Contracting Act (10 U.S.C. 2304); and

(C) The qualifying country permits U.S. firms that manufacture para-aramid fibers and yarns to compete with foreign firms for the sale of para-aramid fibers and yarns in that country.

225.7002-3 Contract clauses.

Unless an exception applies—

(a) Use the clause at 252.225-7012, Preference for Certain Domestic Commodities, in solicitations and contracts exceeding the simplified acquisition threshold.

(b)(1) Use the clause at 252.225-7014, Preference for Domestic Specialty Metals, in solicitations and contracts exceeding the simplified acquisition threshold that require delivery of an article containing specialty metals.

(2) Use the clause with its Alternate I in solicitations and contracts exceeding the simplified acquisition threshold requiring delivery, for one of the following major programs, of an article containing specialty metals:

- (i) Aircraft.
- (ii) Missile and space systems.
- (iii) Ships.
- (iv) Tank-automotive.
- (v) Weapons.
- (vi) Ammunition.

(c) Use the clause at 252.225-7015, Restriction on Acquisition of Hand or Measuring Tools, in solicitations and contracts exceeding the simplified acquisition threshold that require delivery of hand or measuring tools.

225.7003 Waiver of restrictions of 10 U.S.C. 2534.

(a) The waiver procedures of this section apply only if specifically authorized by reference elsewhere in this subpart. The restrictions on certain foreign purchases under 10 U.S.C. 2534(a) may be waived as follows:

(1)(i) The Under Secretary of Defense (Acquisition, Technology, and Logistics), without power of delegation, may waive a restriction for a particular item for a particular foreign country upon determination that—

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

(B) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country, or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for

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reciprocal procurement of defense items under 225.872, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

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

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

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

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

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

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

(i) The restriction would cause unreasonable delays.

(ii) Satisfactory quality items manufactured in the United States or Canada are not available.

(iii) Application of the restriction would result in the existence of only one source for the item in the United States or Canada.

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

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

(3) A restriction is waived when it would cause unreasonable costs. The cost of an item of U.S. or Canadian origin is unreasonable if it exceeds 150 percent of the offered price, inclusive of duty, of items that are not of U.S. or Canadian origin.

(b) In accordance with the provisions of paragraphs (a)(1)(i) through (iii) of this section, the Under Secretary of Defense (Acquisition, Technology, and Logistics) has waived the restrictions of 10 U.S.C. 2534(a) for certain items manufactured in the United Kingdom, including air circuit breakers for naval vessels (see 225.7006). This waiver applies to—

(1) Procurements under solicitations issued on or after August 4, 1998; and

(2) Subcontracts and options under contracts entered into prior to August 4, 1998, under the conditions described in paragraph (a)(1)(iv) of this section.

225.7004 Restriction on acquisition of foreign buses.

225.7004-1 Restriction.

In accordance with 10 U.S.C. 2534, do not acquire a multipassenger motor vehicle (bus) unless it is manufactured in the United States or Canada.

225.7004-2 Applicability.

Apply this restriction if the buses are purchased, leased, rented, or made available under contracts for transportation services.

225.7004-3 Exceptions.

This restriction does not apply in any of the following circumstances:

(a) Buses manufactured outside the United States and Canada are needed for temporary use because buses manufactured in the United States or Canada are not available to satisfy requirements that cannot be postponed. Such use may not, however, exceed the lead time required for acquisition and delivery of buses manufactured in the United States or Canada.

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

(c) Buses manufactured outside the United States and Canada are available at no cost to the U.S. Government.

(d) The acquisition is for an amount at or below the simplified acquisition threshold.

225.7004-4 Waiver.

The waiver criteria at 225.7003(a) apply to this restriction.

225.7005 Restriction on certain chemical weapons antidote.

225.7005-1 Restriction.

In accordance with 10 U.S.C. 2534 and defense industrial mobilization requirements (see Subpart 208.72), do not acquire chemical weapons antidote contained in automatic injectors, or the components for such injectors, unless the chemical weapons antidote or component is manufactured in the United States or Canada by a company that—

(a) Is a producer under the industrial preparedness program at the time of contract award;

(b) Has received all required regulatory approvals; and

(c) Has the plant, equipment, and personnel to perform the contract in the United States or Canada at the time of contract award.

225.7005-2 Exception.

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This restriction does not apply if the acquisition is for an amount at or below the simplified acquisition threshold.

225.7005-3 Waiver.

The waiver criteria at 225.7003(a) apply to this restriction.

225.7006 Restriction on air circuit breakers for naval vessels.

225.7006-1 Restriction.

In accordance with 10 U.S.C. 2534, do not acquire air circuit breakers for naval vessels unless they are manufactured in the United States or Canada.

225.7006-2 Exceptions.

This restriction does not apply if the acquisition is—

- (a) For an amount at or below the simplified acquisition threshold; or
- (b) For spare or repair parts needed to support air circuit breakers manufactured outside the United States. Support includes the purchase of spare air circuit breakers when those from alternate sources are not interchangeable.

225.7006-3 Waiver.

- (a) The waiver criteria at 225.7003(a) apply to this restriction.
- (b) The Under Secretary of Defense (Acquisition, Technology, and Logistics) has waived the restriction for air circuit breakers manufactured in the United Kingdom. See 225.7003(b) for applicability.

225.7006-4 Solicitation provision and contract clause.

- (a) Use the provision at 252.225-7037, Evaluation of Offers for Air Circuit Breakers, in solicitations requiring air circuit breakers for naval vessels unless--
 - (1) An exception applies; or
 - (2) A waiver has been granted, other than the waiver for the United Kingdom, which has been incorporated into the provision.
- (b) Use the clause at 252.225-7038, Restriction on Acquisition of Air Circuit Breakers, in solicitations and contracts requiring air circuit breakers for naval vessels unless--
 - (1) An exception applies; or
 - (2) A waiver has been granted, other than the waiver for the United Kingdom, which has been incorporated into the clause.

225.7007 Restrictions on anchor and mooring chain.

225.7007-1 Restrictions.

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

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

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

(b) 10 U.S.C. 2534 also restricts acquisition of welded shipboard anchor and mooring chain, four inches or less in diameter, when used as a component of a naval vessel. However, the Appropriations Act restriction described in paragraph (a) of this subsection takes precedence over the restriction of 10 U.S.C. 2534.

225.7007-2 Waiver.

(a) The Secretary of the department responsible for acquisition may waive the restriction in 225.7007-1(a), on a case-by-case basis, if--

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

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

(b) Document the waiver in a written determination and findings containing--

(1) The factors supporting the waiver; and

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

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

225.7007-3 Contract clause.

Unless a waiver has been granted, use the clause at 252.225-7019, Restriction on Acquisition of Anchor and Mooring Chain, in solicitations and contracts requiring welded shipboard anchor or mooring chain four inches or less in diameter.

225.7008 Reserved.

225.7009 Restriction on ball and roller bearings.

225.7009-1 Scope.

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

225.7009-2 Restriction.

Do not acquire ball and roller bearings or bearing components unless the bearings and

bearing components are manufactured in the United States or Canada.

225.7009-3 Exception.

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

225.7009-4 Waiver.

The Secretary of the department responsible for acquisition or, for the Defense Logistics Agency, the Component Acquisition Executive, may waive the restriction in 225.7009-2, on a case-by-case basis, by certifying to the House and Senate Committees on Appropriations that--

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

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

225.7009-5 Contract clause.

Use the clause at 252.225-7016, Restriction on Acquisition of Ball and Roller Bearings, in solicitations and contracts, unless—

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

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

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

225.7010 Restriction on vessel propellers.

225.7010-1 Restriction.

In accordance with Section 8064 of the Fiscal Year 2001 DoD Appropriations Act (Pub. L. 106-259), do not use fiscal year 2000 or 2001 funds to acquire vessel propellers other than those produced by a domestic source and of domestic origin, i.e., vessel propellers—

(a) Manufactured in the United States or Canada; and

(b) For which all component castings were poured and finished in the United States or Canada.

225.7010-2 Exceptions.

This restriction does not apply to contracts or subcontracts for acquisition of commercial items.

225.7010-3 Waiver.

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

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

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

225.7010-4 Contract clause.

Use the clause at 252.225-7023, Restriction on Acquisition of Vessel Propellers, in solicitations and contracts that use fiscal year 2000 or 2001 funds for the acquisition of vessels or vessel propellers, unless—

(a) An exception applies or a waiver has been granted; or

(b) The vessels being acquired do not contain vessel propellers.

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

225.7011-1 Restriction.

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

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

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

225.7011-2 Waiver.

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

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

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

225.7011-3 Contract clause.

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

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

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

225.7012 Restriction on supercomputers.

225.7012-1 Restriction.

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

225.7012-2 Waiver.

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

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

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

225.7012-3 Contract clause.

Unless a waiver has been granted, use the clause at 252.225.7011, Restriction on Acquisition of Supercomputers, in solicitations and contracts for the acquisition of supercomputers.

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

In accordance with 10 U.S.C. 7309—

(a) Do not award a contract to construct in a foreign shipyard--

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

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

(b) Do not overhaul, repair, or maintain in a foreign shipyard, a naval vessel (or any other vessel under the jurisdiction of the Secretary of the Navy) homeported in the United States. This restriction does not apply to voyage repairs.

225.7014 Restriction on overseas military construction.

For restriction on award of military construction contracts to be performed in the United States outlying areas in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf, see 236.274(a).

225.7015 Restriction on overseas architect-engineer services.

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

225.7016 Restriction on research and development.

(a) In accordance with Pub. L. 92-570, do not use DoD appropriations to make an award to any foreign corporation, organization, person, or entity, for research and development in connection with any weapon system or other military equipment, if there is a U.S. corporation, organization, person, or entity--

- (1) Equally competent; and
- (2) Willing to perform at a lower cost.

(b) This restriction does not affect the requirements of FAR Part 35 for selection of research and development contractors. However, when a U.S. source and a foreign source are equally competent, award to the source that will provide the services at the lower cost.

225.7017 Restriction on Ballistic Missile Defense research, development, test, and evaluation.

225.7017-1 Definitions.

“Competent,” “foreign firm,” and “U.S. firm” are defined in the provision at 252.225-7018, Notice of Prohibition of Certain Contracts with Foreign Entities for the Conduct of Ballistic Missile Defense Research, Development, Test, and Evaluation.

225.7017-2 Restriction.

In accordance with Section 222 of the DoD Authorization Act for Fiscal Years 1988 and 1989 (Pub. L. 100-180), do not use any funds appropriated to or for the use of DoD to enter into or carry out a contract with a foreign government or firm, including any contract awarded as a result of a broad agency announcement, if the contract provides for the conduct of research, development, test, and evaluation (RDT&E) in connection with the Ballistic Missile Defense Program.

225.7017-3 Exceptions.

This restriction does not apply—

(a) To contracts awarded to a foreign government or firm if the contracting officer determines that--

- (1) The contract will be performed within the United States;
- (2) The contract is exclusively for RDT&E in connection with antitactical ballistic missile systems; or
- (3) The foreign government or firm agrees to share a substantial portion of the total contract cost. Consider the foreign share as substantial if it is equitable with respect to the relative benefits that the United States and the foreign parties will derive from the contract. For example, if the contract is more beneficial to the foreign party, its share of the cost should be correspondingly higher; or

(b) If the head of the contracting activity certifies in writing, before contract award, that a U.S. firm cannot competently perform a contract for RDT&E at a price equal to or less than the price at which a foreign government or firm would perform the RDT&E. The contracting officer or source selection authority, as applicable, shall make a determination that will be the basis for the certification.

- (1) The determination shall--
 - (i) Describe the contract effort;

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(ii) State the number of proposals solicited and received from both U.S. and foreign firms;

(iii) Identify the proposed awardee and the amount of the contract;

(iv) State that selection of the contractor was based on the evaluation factors contained in the solicitation, or the criteria contained in the broad agency announcement; and

(v) State that a U.S. firm cannot competently perform the effort at a price equal to, or less than, the price at which the foreign awardee would perform it.

(2) When either a broad agency announcement or program research and development announcement is used, or when the determination is otherwise not based on direct competition between foreign and domestic proposals, the determination shall not be merely conclusory.

(i) The determination shall specifically explain its basis, include a description of the method used to determine the competency of U.S. firms, and describe the cost or price analysis performed.

(ii) Alternately, the determination may contain—

(A) A finding, including the basis for such finding, that the proposal was submitted solely in response to the terms of a broad agency announcement, program research and development announcement, or other solicitation document without any technical guidance from the program office; and

(B) A finding, including the basis for such finding, that disclosure of the information in the proposal for the purpose of conducting a competitive acquisition is prohibited.

(3) Within 30 days after contract award, forward a copy of the certification and supporting documentation to the Missile Defense Agency, ATTN: MDA/DRI, 7100 Defense Pentagon, Washington, DC 20301-7100.

225.7017-4 Solicitation provision.

Unless foreign participation is otherwise excluded, use the provision at 252.225-7018, Notice of Prohibition of Certain Contracts With Foreign Entities for the Conduct of Ballistic Missile Defense Research, Development, Test, and Evaluation, in competitively negotiated solicitations for RDT&E in connection with the Ballistic Missile Defense Program.

SUBPART 229.1—GENERAL
(Revised March 21, 2006)

229.101 Resolving tax problems.

(a) Within DoD, the agency-designated legal counsels are the defense agency General Counsels, the General Counsels of the Navy and Air Force, and for the Army, the Chief, Contract Law Division, Office of the Judge Advocate General. For additional information on the designated legal counsels, see PGI 229.101(a).

(b) For information on fuel excise taxes, see PGI 229.101(b).

(c) For guidance on directing a contractor to litigate the applicability of a particular tax, see PGI 229.101(c).

(d) For information on tax relief agreements between the United States and European foreign governments, see PGI 229.101(d).

229.170 Reporting of foreign taxation on U.S. assistance programs.

229.170-1 Definition.

“Commodities,” as used in this section, means any materials, articles, supplies, goods, or equipment.

229.170-2 Policy.

(a) By law, bilateral agreements with foreign governments must include a provision that commodities acquired under contracts funded by U.S. assistance programs shall be exempt from taxation by the foreign government. If taxes or customs duties nevertheless are imposed, the foreign government must reimburse the amount of such taxes to the U.S. Government (Section 579 of Division E of the Consolidated Appropriations Act, 2003 (Pub. L. 108-7), as amended by Section 506 of Division D of the Consolidated Appropriations Act, 2004 (Pub. L. 108-199), and similar sections in subsequent acts).

(b) This foreign tax exemption—

(1) Applies to a contract or subcontract for commodities when—

(i) The funds are appropriated by the annual foreign operations appropriations act; and

(ii) The value of the contract or subcontract is \$500 or more;

(2) Does not apply to the acquisition of services;

(3) Generally is implemented through letters of offer and acceptance, other country-to-country agreements, or Federal interagency agreements; and

(4) Requires reporting of noncompliance for effective implementation.

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229.170-3 Reports.

The contracting officer shall submit a report to the designated Security Assistance Office when a foreign government or entity imposes tax or customs duties on commodities acquired under contracts or subcontracts meeting the criteria of 229.170-2(b)(1). Follow the procedures at PGI 229.170-3 for submission of reports.

229.170-4 Contract clause.

Use the clause at 252.229-7011, Reporting of Foreign Taxes – U.S. Assistance Programs, in solicitations and contracts funded with U.S. assistance appropriations provided in the annual foreign operations appropriations act.

SUBPART 237.1—SERVICE CONTRACTS—GENERAL
(Revised March 21, 2006)

237.101 Definitions.

“Increased performance of security-guard functions,” as used in this subpart, means--

(1) In the case of an installation or facility where no security-guard functions were performed as of September 10, 2001, the entire scope or extent of the performance of security-guard functions at the installation or facility after such date; and

(2) In the case of an installation or facility where security-guard functions were performed within a lesser scope of requirements or to a lesser extent as of September 10, 2001, than after such date, the increment of the performance of security-guard functions at the installation or facility that exceeds such lesser scope of requirements or extent of performance.

237.102-70 Prohibition on contracting for firefighting or security-guard functions.

(a) Under 10 U.S.C. 2465, the DoD is prohibited from entering into contracts for the performance of firefighting or security-guard functions at any military installation or facility unless—

(1) The contract is to be carried out at a location outside the United States and its outlying areas at which members of the armed forces would have to be used for the performance of firefighting or security-guard functions at the expense of unit readiness;

(2) The contract will be carried out on a Government-owned but privately operated installation;

(3) The contract (or renewal of a contract) is for the performance of a function under contract on September 24, 1983; or

(4) The contract—

(i) Is for the performance of firefighting functions;

(ii) Is for a period of 1 year or less; and

(iii) Covers only the performance of firefighting functions that, in the absence of the contract, would have to be performed by members of the armed forces who are not readily available to perform such functions by reason of a deployment.

(b) Under Section 2907 of Pub. L. 103-160, this prohibition does not apply to services at installations being closed (see Subpart 237.74).

(c) Under Section 1010 of Pub. L. 107-56, this prohibition does not apply to any contract that--

(1) Is entered into during the period of time that United States armed forces are engaged in Operation Enduring Freedom or during the period 180 days thereafter;

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(2) Is for the performance of security functions at any military installation or facility in the United States;

(3) Is awarded to a proximately located local or State government, or a combination of such governments, whether or not any such government is obligated to provide such services to the general public without compensation; and

(4) Prescribes standards for the training and other qualifications of local government law enforcement personnel who perform security functions under the contract in accordance with criteria established by the Secretary of the department concerned.

(d) Under Section 332 of Pub. L. 107-314, this prohibition does not apply to any contract that is entered into for any increased performance of security-guard functions at a military installation or facility undertaken in response to the terrorist attacks on the United States on September 11, 2001, if--

(1) Without the contract, members of the Armed Forces are or would be used to perform the increased security-guard functions;

(2) The agency has determined that--

(i) Recruiting and training standards for the personnel who are to perform the security-guard functions are comparable to the recruiting and training standards for DoD personnel who perform the same security-guard functions;

(ii) Contractor personnel performing such functions will be effectively supervised, reviewed, and evaluated; and

(iii) Performance of such functions will not result in a reduction in the security of the installation or facility; and

(3) Contract performance will not extend beyond December 1, 2005. Section 324 of Pub. L. 108-375 permits an extension of the period for contract performance through September 30, 2006, if DoD submits a report and plan to Congress on the use of this authority. See PGI 237.102-70(d)(3) for information on the reporting requirement.

237.104 Personal services contracts.

(b)(i) Authorization to acquire the personal services of experts and consultants is included in 10 U.S.C. 129b. Personal service contracts for expert and consultant services must also be authorized by a determination and findings (D&F) in accordance with department/agency regulations.

(A) Generally, the D&F should authorize one contract at a time; however, an authorizing official may issue a blanket D&F for classes of contracts.

(B) Prepare each D&F in accordance with FAR 1.7 and include a determination that—

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- (1) The duties are of a temporary or intermittent nature;
- (2) Acquisition of the services is advantageous to the national defense;
- (3) DoD personnel with necessary skills are not available;
- (4) Excepted appointment cannot be obtained;
- (5) A nonpersonal services contract is not practicable;
- (6) Statutory authority, 5 U.S.C. 3109 and other legislation, apply; and
- (7) Any other determination required by statutes has been made.

(ii) Personal services contracts for health care are authorized by 10 U.S.C. 1091.

(A) This authority may be used to acquire—

(1) Direct health care services provided in medical treatment facilities;

(2) Health care services at locations outside of medical treatment facilities (such as the provision of medical screening examinations at military entrance processing stations); and

(3) Services of clinical counselors, family advocacy program staff, and victim's services representatives to members of the Armed Forces and covered beneficiaries who require such services, provided in medical treatment facilities or elsewhere. Persons with whom a personal services contract may be entered into under this authority include clinical social workers, psychologists, psychiatrists, and other comparable professionals who have advanced degrees in counseling or related academic disciplines and who meet all requirements for State licensure and board certification requirements, if any, within their fields of specialization.

(B) Sources for personal services contracts with individuals under the authority of 10 U.S.C. 1091 shall be selected through the procedures in this section. These procedures do not apply to contracts awarded to business entities other than individuals. Selections made using the procedures in this section are exempt by statute from FAR Part 6 competition requirements (see 206.001(b)).

(C) Approval requirements for—

(1) Direct health care personal services contracts (see paragraphs (b)(ii)(A)(1) and (2) of this section) and a pay cap are in DoDI 6025.5, Personal Services Contracts for Health Care Providers.

(i) A request to enter into a personal services contract for direct health care services must be approved by the commander of the medical/dental treatment facility where the services will be performed.

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(ii) A request to enter into a personal services contract for a location outside of a medical treatment facility must be approved by the chief of the medical facility who is responsible for the area in which the services will be performed.

(2) Services of clinical counselors, family advocacy program staff, and victim's services representatives (see paragraph (b)(ii)(A)(3) of this section), shall be in accordance with agency procedures.

(D) The contracting officer must ensure that the requiring activity provides a copy of the approval with the purchase request.

(E) The contracting officer must provide adequate advance notice of contracting opportunities to individuals residing in the area of the facility. The notice must include the qualification criteria against which individuals responding will be evaluated. The contracting officer shall solicit applicants through at least one local publication which serves the area of the facility. Acquisitions under this section for personal service contracts are exempt from the posting and synopsis requirements of FAR Part 5.

(F) The contracting officer shall provide the qualifications of individuals responding to the notice to the commander of the facility for evaluation and ranking in accordance with agency procedures. Individuals must be considered solely on the basis of the professional qualifications established for the particular personal services being acquired and the Government's estimate of reasonable rates, fees, or other costs. The commander of the facility shall provide the contracting officer with rationale for the ranking of individuals, consistent with the required qualifications.

(G) Upon receipt from the facility of the ranked listing of applicants, the contracting officer shall either—

(1) Enter into negotiations with the highest ranked applicant. If a mutually satisfactory contract cannot be negotiated, the contracting officer shall terminate negotiations with the highest ranked applicant and enter into negotiations with the next highest.

(2) Enter into negotiations with all qualified applicants and select on the basis of qualifications and rates, fees, or other costs.

(H) In the event only one individual responds to an advertised requirement, the contracting officer is authorized to negotiate the contract award. In this case, the individual must still meet the minimum qualifications of the requirement and the contracting officer must be able to make a determination that the price is fair and reasonable.

(I) If a fair and reasonable price cannot be obtained from a qualified individual, the requirement should be canceled and acquired using procedures other than those set forth in this section.

(iii)(A) In accordance with 10 U.S.C. 129b(d), an agency may enter into a personal services contract if—

(1) The personal services—

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(i) Are to be provided by individuals outside the United States, regardless of their nationality;

(ii) Directly support the mission of a defense intelligence component or counter-intelligence organization of DoD; or

(iii) Directly support the mission of the special operations command of DoD; and

(2) The head of the contracting activity provides written approval for the proposed contract. The approval shall include a determination that addresses the following:

(i) The services to be procured are urgent or unique;

(ii) It would not be practical to obtain such services by other means; and

(iii) For acquisition of services in accordance with paragraph (b)(iii)(A)(1)(i) of this section, the services to be acquired are necessary and appropriate for supporting DoD activities and programs outside the United States.

(B) The contracting officer shall ensure that the applicable requirements of paragraph (b)(iii)(A)(2) of this section have been satisfied and shall include the approval documentation in the contract file.

(iv) The requirements of 5 U.S.C. 3109, Employment of Experts and Consultants; Temporary or Intermittent, do not apply to contracts entered into in accordance with paragraph (b)(iii) of this section.

(f)(i) Payment to each expert or consultant for personal services under 5 U.S.C. 3109 shall not exceed the highest rate fixed by the Classification Act Schedules for grade GS-15 (see 5 CFR 304.105(a)).

(ii) The contract may provide for the same per diem and travel expenses authorized for a Government employee, including actual transportation and per diem in lieu of subsistence for travel between home or place of business and official duty station.

(iii) Coordinate with the civilian personnel office on benefits, taxes, personnel ceilings, and maintenance of records.

237.106 Funding and term of service contracts.

(1) Personal service contracts for expert or consultant services shall not exceed 1 year. The nature of the duties must be—

(i) Temporary (not more than 1 year); or

(ii) Intermittent (not cumulatively more than 130 days in 1 year).

(2) The contracting officer may enter into a contract, exercise an option, or place an order under a contract for severable services for a period that begins in one fiscal year and ends in the next fiscal year if the period of the contract awarded, option exercised, or order placed does not exceed 1 year (10 U.S.C. 2410a).

237.109 Services of quasi-military armed forces.

See 237.102-70 for prohibition on contracting for firefighting or security-guard functions.

237.170 Approval of contracts and task orders for services.

237.170-1 Scope.

This section—

(a) Implements 10 U.S.C. 2330; and

(b) Applies to services acquired for DoD, regardless of whether the services are acquired through--

(1) A DoD contract or task order; or

(2) A contract or task order awarded by an agency other than DoD.

237.170-2 Approval requirements.

(a) *Acquisition of services through a contract or task order that is not performance based.*

(1) For acquisitions at or below \$50,000,000, obtain the approval of the official designated by the department or agency.

(2) For acquisitions exceeding \$50,000,000, obtain the approval of the senior procurement executive.

(b) *Acquisition of services through use of a contract or task order issued by a non-DoD agency.* Comply with the review, approval, and reporting requirements established in accordance with Subpart 217.78 when acquiring services through use of a contract or task order issued by a non-DoD agency.

237.171 Training for contractor personnel interacting with detainees.

237.171-1 Scope.

This section prescribes policies to prevent the abuse of detainees, as required by Section 1092 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375).

237.171-2 Definition.

“Detainee,” as used in this section, is defined in the clause at 252.237-7019, Training for Contractor Personnel Interacting with Detainees.

237.171-3 Policy.

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(a) Each DoD contract in which contractor personnel, in the course of their duties, interact with individuals detained by DoD on behalf of the U.S. Government shall include a requirement that such contractor personnel—

(1) Receive training regarding the international obligations and laws of the United States applicable to the detention of personnel; and

(2) Acknowledge receipt of the training.

(b) The combatant commander responsible for the area where the detention or interrogation facility is located will provide the training to contractor personnel. For information on combatant commander geographic areas of responsibility and point of contact information for each command, see PGI 237.171-3(b).

(c) See PGI 237.171-3(c) for additional guidance from the Secretary of Defense on implementation of Section 1092 of Pub. L. 108-375.

237.171-4 Contract clause.

Use the clause at 252.237-7019, Training for Contractor Personnel Interacting with Detainees, in solicitations and contracts for the acquisition of services if—

(a) The clause at 252.225-7040, Contractor Personnel Supporting a Force Deployed Outside the United States, is included in the solicitation or contract; or

(b) The services will be performed at a facility holding detainees, and contractor personnel in the course of their duties may be expected to interact with the detainees.

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(Revised March 21, 2006)

252.212-7000 Offeror Representations and Certifications--Commercial Items.

As prescribed in 212.301(f)(ii), use the following provision:

OFFEROR REPRESENTATIONS AND CERTIFICATIONS--COMMERCIAL ITEMS (JUN 2005)

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

(1) “Foreign person” means any person other than a United States person as defined in Section 16(2) of the Export Administration Act of 1979 (50 U.S.C. App. Sec. 2415).

(2) “United States” means the 50 States, the District of Columbia, outlying areas, and the outer Continental Shelf as defined in 43 U.S.C. 1331.

(3) “United States person” is defined in Section 16(2) of the Export Administration Act of 1979 and means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern), and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President.

(b) *Certification.* By submitting this offer, the Offeror, if a foreign person, company or entity, certifies that it—

(1) Does not comply with the Secondary Arab Boycott of Israel; and

(2) Is not taking or knowingly agreeing to take any action, with respect to the Secondary Boycott of Israel by Arab countries, which 50 U.S.C. App. Sec. 2407(a) prohibits a United States person from taking.

(c) *Representation of Extent of Transportation by Sea.* (This representation does not apply to solicitations for the direct purchase of ocean transportation services).

(1) The Offeror shall indicate by checking the appropriate blank in paragraph (c)(2) of this provision whether transportation of supplies by sea is anticipated under the resultant contract. The term “supplies” is defined in the Transportation of Supplies by Sea clause of this solicitation.

(2) Representation. The Offeror represents that it—

_____ Does anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

_____ Does not anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

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(3) Any contract resulting from this solicitation will include the Transportation of Supplies by Sea clause. If the Offeror represents that it will not use ocean transportation, the resulting contract will also include the Defense Federal Acquisition Regulation Supplement clause at 252.247-7024, Notification of Transportation of Supplies by Sea.

(End of provision)

252.212-7001 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items.

As prescribed in 212.301(f)(iii), use the following clause:

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL ITEMS (MAR 2006)

(a) The Contractor agrees to comply with the following Federal Acquisition Regulation (FAR) clause which, if checked, is included in this contract by reference to implement a provision of law applicable to acquisitions of commercial items or components.

_____ 52.203-3 Gratuities (APR 1984) (10 U.S.C. 2207)

(b) The Contractor agrees to comply with any clause that is checked on the following list of Defense FAR Supplement clauses which, if checked, is included in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items or components.

_____ 252.205-7000	Provision of Information to Cooperative Agreement Holders (DEC 1991) (10 U.S.C. 2416).
_____ 252.219-7003	Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts) (APR 1996) (15 U.S.C. 637).
_____ 252.219-7004	Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (Test Program) (JUN 1997) (15 U.S.C. 637 note).
_____ 252.225-7001	Buy American Act and Balance of Payments Program (JUN 2005) (41 U.S.C. 10a-10d, E.O. 10582).
_____ 252.225-7012	Preference for Certain Domestic Commodities (JUN 2004) (10 U.S.C. 2533a).
_____ 252.225-7014	Preference for Domestic Specialty Metals (JUN 2005) (10 U.S.C. 2533a).
_____ 252.225-7015	Restriction on Acquisition of Hand or Measuring Tools (JUN 2005) (10 U.S.C. 2533a).
_____ 252.225-7016	Restriction on Acquisition of Ball and Roller Bearings (MAR 2006) (Section 8065 of Pub. L. 107-117 and the same restriction in subsequent DoD appropriations acts).
_____ 252.225-7021	Trade Agreements (FEB 2006) (19 U.S.C. 2501-2518 and 19 U.S.C. 3301 note).
_____ 252.225-7027	Restriction on Contingent Fees for Foreign Military Sales (APR 2003) (22 U.S.C. 2779).

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_____	252.225-7028	Exclusionary Policies and Practices of Foreign Governments (APR 2003) (22 U.S.C. 2755).
_____	252.225-7036	Buy American Act--Free Trade Agreements--Balance of Payments Program (JUN 2005) (___ Alternate I) (JAN 2005) (41 U.S.C. 10a-10d and 19 U.S.C. 3301 note).
_____	252.225-7038	Restriction on Acquisition of Air Circuit Breakers (JUN 2005) (10 U.S.C. 2534(a)(3)).
_____	252.226-7001	Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns (SEP 2004) (Section 8021 of Pub. L. 107-248 and similar sections in subsequent DoD appropriations acts).
_____	252.227-7015	Technical Data--Commercial Items (NOV 1995) (10 U.S.C. 2320).
_____	252.227-7037	Validation of Restrictive Markings on Technical Data (SEP 1999) (10 U.S.C. 2321).
_____	252.232-7003	Electronic Submission of Payment Requests (JAN 2004) (10 U.S.C. 2227).
_____	252.237-7019	Training for Contractor Personnel Interacting with Detainees (SEP 2005) (Section 1092 of Pub. L. 108-375).
_____	252.243-7002	Requests for Equitable Adjustment (MAR 1998) (10 U.S.C. 2410).
_____	252.247-7023	Transportation of Supplies by Sea (MAY 2002) (___ Alternate I) (MAR 2000) (___ Alternate II) (MAR 2000) (___ Alternate III) (MAY 2002) (10 U.S.C. 2631).
_____	252.247-7024	Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).

(c) In addition to the clauses listed in paragraph (e) of the Contract Terms and Conditions Required to Implement Statutes or Executive Orders--Commercial Items clause of this contract (FAR 52.212-5), the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

252.225-7014	Preference for Domestic Specialty Metals, Alternate I (APR 2003) (10 U.S.C. 2533a).
252.237-7019	Training for Contractor Personnel Interacting with Detainees (SEP 2005) (Section 1092 of Pub. L. 108-375).
252.247-7023	Transportation of Supplies by Sea (MAY 2002) (10 U.S.C. 2631).
252.247-7024	Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).

(End of clause)

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Part 252—Solicitation Provisions and Contract Clauses

(Revised March 21, 2006)

252.225-7000 Buy American Act—Balance of Payments Program Certificate.

As prescribed in 225.1101(1), use the following provision:

BUY AMERICAN ACT--BALANCE OF PAYMENTS PROGRAM CERTIFICATE
(JUN 2005)

(a) *Definitions.* “Domestic end product,” “foreign end product,” “qualifying country,” “qualifying country end product,” and “United States” have the meanings given in the Buy American Act and Balance of Payments Program clause of this solicitation.

(b) *Evaluation.* The Government—

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

(2) Will evaluate offers of qualifying country end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program.

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

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

(i) Each end product, except those listed in paragraphs (c)(2) or (3) of this provision, is a domestic end product; and

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

(2) The offeror certifies that the following end products are qualifying country end products:

Line Item Number

Country of Origin

(3) The following end products are other foreign end products:

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Line Item Number

Country of Origin (If known)

(End of provision)

252.225-7001 Buy American Act and Balance of Payments Program.

As prescribed in 225.1101(2), use the following clause:

BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM (JUN 2005)

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

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

(2) “Domestic end product” means—

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

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

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

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

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

(4) “Foreign end product” means an end product other than a domestic end product.

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(5) “Qualifying country” means any country set forth in subsection 225.872-1 of the Defense Federal Acquisition Regulation Supplement (DFARS).

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

(7) “Qualifying country end product” means—

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

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

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

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

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

(8) “United States” means the 50 States, the District of Columbia, and outlying areas.

(b) This clause implements the Buy American Act (41 U.S.C. Section 10a-d). Unless otherwise specified, this clause applies to all line items in the contract.

(c) The Contractor shall deliver only domestic end products unless, in its offer, it specified delivery of other end products in the Buy American Act—Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, the Contractor shall deliver a qualifying country end product or, at the Contractor’s option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

252.225-7002 Qualifying Country Sources as Subcontractors.

As prescribed in 225.1101(3), use the following clause:

QUALIFYING COUNTRY SOURCES AS SUBCONTRACTORS (APR 2003)

(a) *Definition.* “Qualifying country,” as used in this clause, means any country set forth in subsection 225.872-1 of the Defense Federal Acquisition Regulation (FAR) Supplement.

(b) Subject to the restrictions in section 225.872 of the Defense FAR Supplement, the Contractor shall not preclude qualifying country sources or U.S. sources from competing for subcontracts under this contract.

(End of clause)

252.225-7003 Report of Intended Performance Outside the United States and Canada—Submission with Offer.

As prescribed in 225.7204(a), use the following provision:

REPORT OF INTENDED PERFORMANCE OUTSIDE THE UNITED STATES AND
CANADA—SUBMISSION WITH OFFER (JUN 2005)

(a) *Definition.* “United States,” as used in this provision, means the 50 States, the District of Columbia, and outlying areas.

(b) The offeror shall submit, with its offer, a report of intended performance outside the United States and Canada if—

(1) The offer exceeds \$10 million in value; and

(2) The offeror is aware that the offeror or a first-tier subcontractor intends to perform any part of the contract outside the United States and Canada that—

(i) Exceeds \$500,000 in value; and

(ii) Could be performed inside the United States or Canada.

(c) Information to be reported includes that for—

(1) Subcontracts;

(2) Purchases; and

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- (3) Intracompany transfers when transfers originate in a foreign location.
- (d) The offeror shall submit the report using—
- (1) DD Form 2139, Report of Contract Performance Outside the United States;
- or
- (2) A computer-generated report that contains all information required by DD Form 2139.
- (e) The offeror may obtain a copy of DD Form 2139 from the Contracting Officer or via the Internet at <http://www.dtic.mil/whs/directives/infomgt/forms/formsprogram.htm>.

(End of provision)

252.225-7004 Report of Intended Performance Outside the United States and Canada—Submission after Award.

As prescribed in 225.7204(b), use the following clause:

REPORT OF INTENDED PERFORMANCE OUTSIDE THE UNITED STATES AND CANADA—SUBMISSION AFTER AWARD (JUN 2005)

- (a) *Definition.* “United States,” as used in this clause, means the 50 States, the District of Columbia, and outlying areas.
- (b) *Reporting requirement.* The Contractor shall submit a report in accordance with this clause, if the Contractor or a first-tier subcontractor will perform any part of this contract outside the United States and Canada that—
- (1) Exceeds \$500,000 in value; and
 - (2) Could be performed inside the United States or Canada.
- (c) *Submission of reports.* The Contractor—
- (1) Shall submit a report as soon as practical after the information is known;
 - (2) To the maximum extent practicable, shall submit a report regarding a first-tier subcontractor at least 30 days before award of the subcontract;
 - (3) Need not resubmit information submitted with its offer, unless the information changes;
 - (4) Shall submit all reports to the Contracting Officer; and
 - (5) Shall submit a copy of each report to: Deputy Director of Defense Procurement and Acquisition Policy (Program Acquisition and International

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Contracting), OUSD(AT&L)DPAP(PAIC), Washington, DC 20301-3060.

(d) *Report format.* The Contractor—

(1) Shall submit reports using—

(i) DD Form 2139, Report of Contract Performance Outside the United States; or

(ii) A computer-generated report that contains all information required by DD Form 2139; and

(2) May obtain copies of DD Form 2139 from the Contracting Officer or via the Internet at

<http://www.dtic.mil/whs/directives/infomgt/forms/formsprogram.htm>.

(End of clause)

252.225-7005 Identification of Expenditures in the United States.

As prescribed in 225.1103(1), use the following clause:

IDENTIFICATION OF EXPENDITURES IN THE UNITED STATES (JUN 2005)

(a) *Definition.* “United States,” as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) This clause applies only if the Contractor is--

(1) A concern incorporated in the United States (including a subsidiary that is incorporated in the United States, even if the parent corporation is not incorporated in the United States); or

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

(c) On each invoice, voucher, or other request for payment under this contract, the Contractor shall identify that part of the requested payment that represents estimated expenditures in the United States. The identification—

(1) May be expressed either as dollar amounts or as percentages of the total amount of the request for payment;

(2) Should be based on reasonable estimates; and

(3) Shall state the full amount of the payment requested, subdivided into the following categories:

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(i) U.S. products--expenditures for material and equipment manufactured or produced in the United States, including end products, components, or construction material, but excluding transportation;

(ii) U.S. services--expenditures for services performed in the United States, including all charges for overhead, other indirect costs, and profit under construction or service contracts;

(iii) Transportation on U.S. carriers--expenditures for transportation furnished by U.S. flag, ocean, surface, and air carriers; and

(iv) Expenditures not identified under paragraphs (c)(3)(i) through (iii) of this clause.

(d) Nothing in this clause requires the establishment or maintenance of detailed accounting records or gives the U.S. Government any right to audit the Contractor's books or records.

(End of clause)

252.225-7006 Quarterly Reporting of Actual Contract Performance Outside the United States.

As prescribed in 225.7204(c), use the following clause:

QUARTERLY REPORTING OF ACTUAL CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES (JUN 2005)

(a) *Definition.* "United States," as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) *Reporting requirement.* Except as provided in paragraph (c) of this clause, within 10 days after the end of each quarter of the Government's fiscal year, the Contractor shall report any subcontract, purchase, or intracompany transfer that—

(1) Will be or has been performed outside the United States;

(2) Exceeds the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation; and

(3) Has not been identified in a report for a previous quarter.

(c) *Exception.* Reporting under this clause is not required if—

(1) A foreign place of performance is the principal place of performance of the contract; and

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(2) The Contractor specified the foreign place of performance in its offer.

(d) *Submission of reports.* The Contractor shall submit the reports required by this clause to: Deputy Director of Defense Procurement and Acquisition Policy (Program Acquisition and International Contracting), OUSD(AT&L)DPAP(PAIC), Washington, DC 20301-3060.

(e) *Report format.* The Contractor—

(1) Shall submit reports using—

(i) DD Form 2139, Report of Contract Performance Outside the United States; or

(ii) A computer-generated report that contains all information required by DD Form 2139; and

(2) May obtain copies of DD Form 2139 from the Contracting Officer or via the Internet at <http://www.dtic.mil/whs/directives/infomgt/forms/formsprogram.htm>.

(f) *Subcontracts.* The Contractor—

(1) Shall include the substance of this clause in all first-tier subcontracts exceeding \$500,000, except those for commercial items, construction, ores, natural gases, utilities, petroleum products and crudes, timber (logs), or subsistence;

(2) Shall provide the number of this contract to its subcontractors required to submit reports under this clause; and

(3) Shall require the subcontractor, with respect to performance of its subcontract, to comply with the requirements directed to the Contractor in paragraphs (b) through (e) of this clause.

(End of clause)

252.225-7007 Reserved.

252.225-7008 Reserved.

252.225-7009 Reserved.

252.225-7010 Reserved.

252.225-7011 Restriction on Acquisition of Supercomputers.

As prescribed in 225.7012-3, use the following clause:

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RESTRICTION ON ACQUISITION OF SUPERCOMPUTERS (JUN 2005)

Supercomputers delivered under this contract shall be manufactured in the United States or its outlying areas.

(End of clause)

252.225-7012 Preference for Certain Domestic Commodities.

As prescribed in 225.7002-3(a), use the following clause:

PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (JUN 2004)

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

(1) “Component” means any item supplied to the Government as part of an end product or of another component.

(2) “End product” means supplies delivered under a line item of this contract.

(3) “United States” means the 50 States, the District of Columbia, and outlying areas.

(4) “U.S.-flag vessel” means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b) The Contractor shall deliver under this contract only such of the following items, either as end products or components, that have been grown, reprocessed, reused, or produced in the United States:

(1) Food.

(2) Clothing.

(3) Tents, tarpaulins, or covers.

(4) Cotton and other natural fiber products.

(5) Woven silk or woven silk blends.

(6) Spun silk yarn for cartridge cloth.

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

(8) Canvas products.

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

(10) Any item of individual equipment (Federal Supply Class 8465) manufactured from or containing fibers, yarns, fabrics, or materials listed in this paragraph (b).

(c) This clause does not apply—

(1) To items listed in section 25.104(a) of the Federal Acquisition Regulation (FAR), or other items for which the Government has determined that a satisfactory quality and sufficient quantity cannot be acquired as and when needed at U.S. market prices;

(2) To end products incidentally incorporating cotton, other natural fibers, or wool, for which the estimated value of the cotton, other natural fibers, or wool--

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

(ii) Does not exceed the simplified acquisition threshold in FAR Part 2;

(3) To waste and byproducts of cotton or wool fiber for use in the production of propellants and explosives;

(4) To foods, other than fish, shellfish, or seafood, that have been manufactured or processed in the United States, regardless of where the foods (and any component if applicable) were grown or produced. Fish, shellfish, or seafood manufactured or processed in the United States and fish, shellfish, or seafood contained in foods manufactured or processed in the United States shall be provided in accordance with paragraph (d) of this clause;

(5) To chemical warfare protective clothing produced in the countries listed in subsection 225.872-1 of the Defense FAR Supplement; or

(6) To fibers and yarns that are for use in synthetic fabric or coated synthetic fabric (but does apply to the synthetic or coated synthetic fabric itself), if—

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

(A) Draperies, floor coverings, furnishings, and bedding (Federal Supply Group 72, Household and Commercial Furnishings and Appliances);

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

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

(D) Parachutes (Federal Supply Class 1670); or

(ii) The fibers and yarns are para-aramid fibers and yarns manufactured in the Netherlands.

(d)(1) Fish, shellfish, and seafood delivered under this contract, or contained in foods delivered under this contract—

(i) Shall be taken from the sea by U.S.-flag vessels; or

(ii) If not taken from the sea, shall be obtained from fishing within the United States; and

(2) Any processing or manufacturing of the fish, shellfish, or seafood shall be performed on a U.S.-flag vessel or in the United States.

(End of clause)

252.225-7013 Duty-Free Entry.

As prescribed in 225.1101(4), use the following clause:

DUTY-FREE ENTRY (JUN 2005)

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

(1) “Customs territory of the United States” means the 50 States, the District of Columbia, and Puerto Rico.

(2) “Eligible product” means—

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

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

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

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

(3) “Qualifying country” and “qualifying country end product” have the meanings given in the Trade Agreements clause, the Buy American Act and Balance of Payments Program clause, or the Buy American Act--Free Trade Agreements--Balance of Payments Program clause of this contract.

(b) Except as provided in paragraph (i) of this clause, or unless supplies were imported into the customs territory of the United States before the date of this contract or the applicable subcontract, the price of this contract shall not include any amount for duty on—

(1) End items that are eligible products or qualifying country end products;

(2) Components (including, without limitation, raw materials and intermediate assemblies) produced or made in qualifying countries, that are to be incorporated in U.S.- made end products to be delivered under this contract; or

(3) Other supplies for which the Contractor estimates that duty will exceed \$200 per shipment into the customs territory of the United States.

(c) The Contractor shall--

(1) Claim duty-free entry only for supplies that the Contractor intends to deliver to the Government under this contract, either as end items or components of end items; and

(2) Pay duty on supplies, or any portion thereof, that are diverted to nongovernmental use, other than—

(i) Scrap or salvage; or

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(ii) Competitive sale made, directed, or authorized by the Contracting Officer.

(d) Except as the Contractor may otherwise agree, the Government will execute duty-free entry certificates and will afford such assistance as appropriate to obtain the duty-free entry of supplies—

(1) For which no duty is included in the contract price in accordance with paragraph (b) of this clause; and

(2) For which shipping documents bear the notation specified in paragraph (e) of this clause.

(e) For foreign supplies for which the Government will issue duty-free entry certificates in accordance with this clause, shipping documents submitted to Customs shall—

(1) Consign the shipments to the appropriate—

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

(ii) Military installation; and

(2) Include the following information:

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

(ii) Number of the subcontract for foreign supplies, if applicable.

(iii) Identification of the carrier.

(iv)(A) For direct shipments to a U.S. military installation, the notation: “UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE Duty-Free Entry to be claimed pursuant to Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States. Upon arrival of shipment at the appropriate port of entry, District Director of Customs, please release shipment under 19 CFR Part 142 and notify Commander, Defense Contract Management Agency (DCMA) New York, ATTN: Customs Team, DCMAE-GNTF, 207 New York Avenue, Staten Island, New York, 10305-5013, for execution of Customs Form 7501, 7501A, or 7506 and any required duty-free entry certificates.”

(B) If the shipment will be consigned to other than a military

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installation, e.g., a domestic contractor's plant, the shipping document notation shall be altered to include the name and address of the contractor, agent, or broker who will notify Commander, DCMA New York, for execution of the duty-free entry certificate. (If the shipment will be consigned to a contractor's plant and no duty-free entry certificate is required due to a trade agreement, the Contractor shall claim duty-free entry under the applicable trade agreement and shall comply with the U.S. Customs Service requirements. No notification to Commander, DCMA New York, is required.)

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

(vi) Estimated value in U.S. dollars.

(vii) Activity address number of the contract administration office administering the prime contract, e.g., for DCMA Dayton, S3605A.

(f) *Preparation of customs forms.*

(1)(i) Except for shipments consigned to a military installation, the Contractor shall—

(A) Prepare any customs forms required for the entry of foreign supplies into the customs territory of the United States in connection with this contract; and

(B) Submit the completed customs forms to the District Director of Customs, with a copy to DCMA NY for execution of any required duty-free entry certificates.

(ii) Shipments consigned directly to a military installation will be released in accordance with sections 10.101 and 10.102 of the U.S. Customs regulations.

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

(g) The Contractor shall—

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

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(2) Consign the shipment as specified in paragraph (e) of this clause; and

(3) Mark on the exterior of all packages--

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

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

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

(1) The Contractor’s name, address, and Commercial and Government Entity (CAGE) code;

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

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

(4) Date of the last scheduled delivery under the prime contract or delivery order;

(5) Foreign supplier's name and address;

(6) Number of the subcontract for foreign supplies;

(7) Total dollar value of the subcontract for foreign supplies;

(8) Date of the last scheduled delivery under the subcontract for foreign supplies;

(9) List of items purchased;

(10) An agreement that the Contractor will pay duty on supplies, or any portion thereof, that are diverted to nongovernmental use other than—

(i) Scrap or salvage; or

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(ii) Competitive sale made, directed, or authorized by the Contracting Officer;

(11) Country of origin; and

(12) Scheduled delivery date(s).

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

(1) The supplies are identical in nature to supplies purchased by the Contractor or any subcontractor in connection with its commercial business; and

(2) It is not economical or feasible to account for such supplies so as to ensure that the amount of the supplies for which duty-free entry is claimed does not exceed the amount purchased in connection with this contract.

(j) The Contractor shall—

(1) Insert the substance of this clause, including this paragraph (j), in all subcontracts for—

(i) Qualifying country components; or

(ii) Nonqualifying country components for which the Contractor estimates that duty will exceed \$200 per unit;

(2) Require subcontractors to include the number of this contract on all shipping documents submitted to Customs for supplies for which duty-free entry is claimed pursuant to this clause; and

(3) Include in applicable subcontracts—

(i) The name and address of the ACO for this contract;

(ii) The name, address, and activity address number of the contract administration office specified in this contract; and

(iii) The information required by paragraphs (h)(1), (2), and (3) of this clause.

(End of clause)

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252.225-7014 Preference for Domestic Specialty Metals.

As prescribed in 225.7002-3(b)(1), use the following clause:

PREFERENCE FOR DOMESTIC SPECIALTY METALS (JUN 2005)

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

(1) “Qualifying country” means any country listed in subsection 225.872-1 of the Defense Federal Acquisition Regulation Supplement.

(2) “Specialty metals” means—

(i) Steel—

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

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

(ii) Metal alloys consisting of nickel, iron-nickel, and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10 percent;

(iii) Titanium and titanium alloys; or

(iv) Zirconium and zirconium base alloys.

(b) Any specialty metals incorporated in articles delivered under this contract shall be melted in the United States or its outlying areas.

(c) This clause does not apply to specialty metals—

(1) Melted in a qualifying country or incorporated in an article manufactured in a qualifying country; or

(2) Purchased by a subcontractor at any tier.

(End of clause)

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ALTERNATE I (APR 2003)

As prescribed in 225.7002-3(b)(2), substitute the following paragraph (c) for paragraph (c) of the basic clause, and add the following paragraph (d) to the basic clause:

(c) This clause does not apply to specialty metals melted in a qualifying country or incorporated in an article manufactured in a qualifying country.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts for items containing specialty metals.

252.225-7015 Restriction on Acquisition of Hand or Measuring Tools.

As prescribed in 225.7002-3(c), use the following clause:

RESTRICTION ON ACQUISITION OF HAND OR MEASURING TOOLS (JUN 2005)

Hand or measuring tools delivered under this contract shall be produced in the United States or its outlying areas.

(End of clause)

252.225-7016 Restriction on Acquisition of Ball and Roller Bearings.

As prescribed in 225.7009-5, use the following clause:

RESTRICTION ON ACQUISITION OF BALL AND ROLLER BEARINGS (MAR 2006)

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

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

(2) “Component,” other than bearing components, means any item supplied to the Government as part of an end product or of another component.

(3) “End product” means supplies delivered under a line item of this contract.

(b) Except as provided in paragraph (c) of this clause, all ball and roller bearings and ball and roller bearing components delivered under this contract, either as end items or components of end items, shall be wholly manufactured in the United States, its outlying areas, or Canada. Unless otherwise specified in this contract, raw materials, such as preformed bar, tube, or rod stock and lubricants, need not be mined or produced in the United States, its outlying areas, or Canada.

(c) The restriction in paragraph (b) of this clause does not apply to ball or roller bearings that are acquired as—

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- (1) Commercial components of a noncommercial end product; or
- (2) Commercial or noncommercial components of a commercial component of a noncommercial end product.

(d) The restriction in paragraph (b) of this clause may be waived upon request from the Contractor in accordance with subsection 225.7009-4 of the Defense Federal Acquisition Regulation Supplement.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts, except those for—

- (1) Commercial items; or
- (2) Items that do not contain ball or roller bearings.

(End of clause)

252.225-7017 Reserved.

252.225-7018 Notice of Prohibition of Certain Contracts with Foreign Entities for the Conduct of Ballistic Missile Defense Research, Development, Test, and Evaluation.

As prescribed in 225.7017-4, use the following provision:

NOTICE OF PROHIBITION OF CERTAIN CONTRACTS WITH FOREIGN
ENTITIES FOR THE CONDUCT OF BALLISTIC MISSILE DEFENSE RESEARCH,
DEVELOPMENT, TEST, AND EVALUATION
(JUN 2005)

(a) *Definitions.*

(1) “Competent” means the ability of an offeror to satisfy the requirements of the solicitation. This determination is based on a comprehensive assessment of each offeror's proposal including consideration of the specific areas of evaluation criteria in the relative order of importance described in the solicitation.

(2) “Foreign firm” means a business entity owned or controlled by one or more foreign nationals or a business entity in which more than 50 percent of the stock is owned or controlled by one or more foreign nationals.

(3) “U.S. firm” means a business entity other than a foreign firm.

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(b) Except as provided in paragraph (c) of this provision, the Department of Defense will not enter into or carry out any contract, including any contract awarded as a result of a broad agency announcement, with a foreign government or firm if the contract provides for the conduct of research, development, test, or evaluation in connection with the Ballistic Missile Defense Program. However, foreign governments and firms are encouraged to submit offers, since this provision is not intended to restrict access to unique foreign expertise if the contract will require a level of competency unavailable in the United States or its outlying areas.

(c) This prohibition does not apply to a foreign government or firm if—

(1) The contract will be performed within the United States or its outlying areas;

(2) The contract is exclusively for research, development, test, or evaluation in connection with antitactical ballistic missile systems;

(3) The foreign government or firm agrees to share a substantial portion of the total contract cost. The foreign share is considered substantial if it is equitable with respect to the relative benefits that the United States and the foreign parties will derive from the contract. For example, if the contract is more beneficial to the foreign party, its share of the costs should be correspondingly higher; or

(4) The U.S. Government determines that a U.S. firm cannot competently perform the contract at a price equal to or less than the price at which a foreign government or firm can perform the contract.

(d) The offeror (____) is (____) is not a U.S. firm.

(End of provision)

252.225-7019 Restriction on Acquisition of Anchor and Mooring Chain.

As prescribed in 225.7007-3, use the following clause:

RESTRICTION ON ACQUISITION OF ANCHOR AND MOORING CHAIN (JUN 2005)

(a) Welded shipboard anchor and mooring chain, four inches or less in diameter, delivered under this contract—

(1) Shall be manufactured in the United States or its outlying areas, including cutting, heat treating, quality control, testing, and welding (both forging and shot blasting process); and

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(2) The cost of the components manufactured in the United States or its outlying areas shall exceed 50 percent of the total cost of components.

(b) The Contractor may request a waiver of this restriction if adequate domestic supplies meeting the requirements in paragraph (a) of this clause are not available to meet the contract delivery schedule.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts for items containing welded shipboard anchor and mooring chain, four inches or less in diameter.

(End of clause)

252.225-7020 Trade Agreements Certificate.

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

TRADE AGREEMENTS CERTIFICATE (JAN 2005)

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

(b) *Evaluation.* The Government—

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

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

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

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

(iii) A national interest waiver has been granted.

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

(1) For all line items subject to the Trade Agreements clause of this solicitation, the offeror certifies that each end product to be delivered under this contract, except

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those listed in paragraph (c)(2) of this provision, is a U.S.-made, qualifying country, or designated country end product.

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

(Line Item Number) (Country of Origin)

(End of provision)

252.225-7021 Trade Agreements.

As prescribed in 225.1101(6), use the following clause:

TRADE AGREEMENTS (FEB 2006)

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

(1) “Caribbean Basin country end product”—

(i) Means an article that—

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

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

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

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

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

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

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

(3) “Designated country” means—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) “Qualifying country end product” means—

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

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

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

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

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

(11) “United States” means the 50 States, the District of Columbia, and outlying areas.

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

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

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

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

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

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

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

(ii) A national interest waiver has been granted.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(e) The HTSUS is available on the Internet at <http://www.customs.ustreas.gov/impoexpo/impoexpo.htm>. The following sections of the HTSUS provide information regarding duty-free status of articles specified in paragraph (a)(2)(ii)(A) of this clause:

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(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.

(End of clause)

252.225-7022 Restriction on Acquisition of Polyacrylonitrile (PAN) Carbon Fiber.

As prescribed in 225.7103-3, use the following clause:

RESTRICTION ON ACQUISITION OF POLYACRYLONITRILE (PAN) CARBON FIBER (JUN 2005)

(a) This clause applies if the end product furnished under this contract contains polyacrylonitrile carbon fibers (alternatively referred to as PAN-based carbon fibers or PAN-based graphite fibers).

(b) PAN carbon fibers contained in the end product shall be manufactured in the United States, its outlying areas, or Canada using PAN precursor produced in the United States, its outlying areas, or Canada.

(c) The Contracting Officer may waive the requirement in paragraph (b) of this clause in whole or in part. The Contractor may request a waiver from the Contracting Officer by identifying the circumstances and including a plan to qualify U.S. or Canadian sources expeditiously.

(End of clause)

252.225-7023 Restriction on Acquisition of Vessel Propellers.

As prescribed in 225.7010-4, use the following clause:

RESTRICTION ON ACQUISITION OF VESSEL PROPELLERS (JUN 2005)

(a) Except as provided in paragraph (b) of this clause, the Contractor shall deliver under this contract, whether as end items or components of end items, vessel propellers--

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- (1) Manufactured in the United States, its outlying areas, or Canada; and
 - (2) For which all component castings were poured and finished in the United States, its outlying areas, or Canada.
- (b) The restriction in paragraph (a) of this clause--
- (1) Does not apply to vessel propellers that are commercial items; and
 - (2) For other than commercial items, may be waived upon request from the Contractor in accordance with subsection 225.7020-3 of the Defense Federal Acquisition Regulation Supplement.

(End of clause)

252.225-7024 Reserved.

252.225-7025 Restriction on Acquisition of Forgings.

As prescribed in 225.7102-4, use the following clause:

RESTRICTION ON ACQUISITION OF FORGINGS (JUN 2005)

- (a) *Definitions.* As used in this clause—
- (1) “Domestic manufacture” means manufactured in the United States, its outlying areas, or Canada if the Canadian firm—
 - (i) Normally produces similar items or is currently producing the item in support of DoD contracts (as a contractor or a subcontractor); and
 - (ii) Agrees to become (upon receiving a contract/order) a planned producer under DoD's Industrial Preparedness Production Planning Program, if it is not already a planned producer for the item.
 - (2) “Forging items” means—

ITEMS	CATEGORIES
Ship propulsion shafts	Excludes service and landing craft shafts
Periscope tubes	All
Ring forgings for bull gears	All greater than 120 inches in diameter

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(b) End items and their components delivered under this contract shall contain forging items that are of domestic manufacture only.

(c) The restriction in paragraph (b) of this clause may be waived upon request from the Contractor in accordance with subsection 225.7102-3 of the Defense Federal Acquisition Regulation Supplement.

(d) The Contractor shall retain records showing compliance with the restriction in paragraph (b) of this clause until 3 years after final payment and shall make the records available upon request of the Contracting Officer.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e), in subcontracts for forging items or for other items that contain forging items.

(End of clause)

252.225-7026 Reserved.

252.225-7027 Restriction on Contingent Fees for Foreign Military Sales.

As prescribed in 225.7307(a), use the following clause.

RESTRICTION ON CONTINGENT FEES FOR FOREIGN MILITARY SALES (APR 2003)

(a) Except as provided in paragraph (b) of this clause, contingent fees, as defined in the Covenant Against Contingent Fees clause of this contract, are generally an allowable cost, provided the fees are paid to—

(1) A bona fide employee of the Contractor; or

(2) A bona fide established commercial or selling agency maintained by the Contractor for the purpose of securing business.

(b) For foreign military sales, unless the contingent fees have been identified and payment approved in writing by the foreign customer before contract award, the following contingent fees are unallowable under this contract:

(1) For sales to the Government(s) of _____, contingent fees in any amount.

(2) For sales to Governments not listed in paragraph (b)(1) of this clause, contingent fees exceeding \$50,000 per foreign military sale case.

(End of clause)

252.225-7028 Exclusionary Policies and Practices of Foreign Governments.

As prescribed in 225.7307(b), use the following clause:

EXCLUSIONARY POLICIES AND PRACTICES OF FOREIGN GOVERNMENTS
(APR 2003)

The Contractor and its subcontractors shall not take into account the exclusionary policies or practices of any foreign government in employing or assigning personnel, if—

(a) The personnel will perform functions required by this contract, either in the United States or abroad; and

(b) The exclusionary policies or practices of the foreign government are based on race, religion, national origin, or sex.

(End of clause)

252.225-7029 Reserved.

252.225-7030 Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate.

As prescribed in 225.7011-3, use the following clause:

RESTRICTION ON ACQUISITION OF CARBON, ALLOY, AND ARMOR
STEEL PLATE (APR 2003)

Carbon, alloy, and armor steel plate shall be melted and rolled in the United States or Canada if the carbon, alloy, or armor steel plate—

(a) Is in Federal Supply Class 9515 or is described by specifications of the American Society for Testing Materials or the American Iron and Steel Institute; and

(b) Will be delivered to the Government or will be purchased by the Contractor as a raw material for use in a Government-owned facility or a facility under the control of the Department of Defense.

(End of clause)

252.225-7031 Secondary Arab Boycott of Israel.

As prescribed in 225.1103(2), use the following provision:

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SECONDARY ARAB BOYCOTT OF ISRAEL (JUN 2005)

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

(1) “Foreign person” means any person (including any individual, partnership, corporation, or other form of association) other than a United States person.

(2) “United States” means the 50 States, the District of Columbia, outlying areas, and the outer Continental Shelf as defined in 43 U.S.C. 1331.

(3) “United States person” is defined in 50 U.S.C. App. 2415(2) and means—

(i) Any United States resident or national (other than an individual resident outside the United States who is employed by other than a United States person);

(ii) Any domestic concern (including any permanent domestic establishment of any foreign concern); and

(iii) Any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern that is controlled in fact by such domestic concern.

(b) *Certification.* If the offeror is a foreign person, the offeror certifies, by submission of an offer, that it—

(1) Does not comply with the Secondary Arab Boycott of Israel; and

(2) Is not taking or knowingly agreeing to take any action, with respect to the Secondary Boycott of Israel by Arab countries, which 50 U.S.C. App. 2407(a) prohibits a United States person from taking.

(End of provision)

252.225-7032 Waiver of United Kingdom Levies—Evaluation of Offers.

As prescribed in 225.1101(7), use the following provision:

WAIVER OF UNITED KINGDOM LEVIES – EVALUATION OF OFFERS
(APR 2003)

(a) Offered prices for contracts or subcontracts with United Kingdom (U.K.) firms may contain commercial exploitation levies assessed by the Government of the U.K.

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The offeror shall identify to the Contracting Officer all levies included in the offered price by describing—

- (1) The name of the U.K. firm;
- (2) The item to which the levy applies and the item quantity; and
- (3) The amount of levy plus any associated indirect costs and profit or fee.

(b) In the event of difficulty in identifying levies included in a price from a prospective subcontractor, the offeror may seek advice through the Director of Procurement, United Kingdom Defence Procurement Office, British Embassy, 3100 Massachusetts Avenue NW, Washington, DC 20006.

(c) The U.S. Government may attempt to obtain a waiver of levies pursuant to the U.S./U.K. reciprocal waiver agreement of July 1987.

(1) If the U.K. waives levies before award of a contract, the Contracting Officer will evaluate the offer without the levy.

(2) If levies are identified but not waived before award of a contract, the Contracting Officer will evaluate the offer inclusive of the levies.

(3) If the U.K. grants a waiver of levies after award of a contract, the U.S. Government reserves the right to reduce the contract price by the amount of the levy waived plus associated indirect costs and profit or fee.

(End of provision)

252.225-7033 Waiver of United Kingdom Levies.

As prescribed in 225.1101(8), use the following clause:

WAIVER OF UNITED KINGDOM LEVIES (APR 2003)

(a) The U.S. Government may attempt to obtain a waiver of any commercial exploitation levies included in the price of this contract, pursuant to the U.S./United Kingdom (U.K.) reciprocal waiver agreement of July 1987. If the U.K. grants a waiver of levies included in the price of this contract, the U.S. Government reserves the right to reduce the contract price by the amount of the levy waived plus associated indirect costs and profit or fee.

(b) If the Contractor contemplates award of a subcontract exceeding \$1 million to a U.K. firm, the Contractor shall provide the following information to the

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Contracting Officer before award of the subcontract:

- (1) Name of the U.K. firm.
- (2) Prime contract number.
- (3) Description of item to which the levy applies.
- (4) Quantity being acquired.
- (5) Amount of levy plus any associated indirect costs and profit or fee.

(c) In the event of difficulty in identifying levies included in a price from a prospective subcontractor, the Contractor may seek advice through the Director of Procurement, United Kingdom Defence Procurement Office, British Embassy, 3100 Massachusetts Avenue NW, Washington, DC 20006.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in any subcontract for supplies where a lower-tier subcontract exceeding \$1 million with a U.K. firm is anticipated.

(End of clause)

252.225-7034 Reserved.

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

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

BUY AMERICAN ACT--FREE TRADE AGREEMENTS--BALANCE OF PAYMENTS PROGRAM CERTIFICATE (JAN 2005)

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

(b) *Evaluation.* The Government—

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

(2) For line items subject to Free Trade Agreements, will evaluate offers of

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qualifying country end products or end products of Australia, Canada, Chile, Mexico, or Singapore without regard to the restrictions of the Buy American Act or the Balance of Payments Program.

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

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

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

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

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

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

<u>(Line Item Number)</u>	<u>(Country of Origin)</u>
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(ii) The offeror certifies that the following supplies are end products of Australia, Canada, Chile, Mexico, or Singapore:

<u>(Line Item Number)</u>	<u>(Country of Origin)</u>
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(iii) The following supplies are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products.

<u>(Line Item Number)</u>	<u>(Country of Origin (If known))</u>
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(End of provision)

ALTERNATE I (JAN 2005)

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

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

As prescribed in 225.1101(10)(i), use the following clause:

BUY AMERICAN ACT--FREE TRADE AGREEMENTS--BALANCE OF PAYMENTS
PROGRAM (JUN 2005)

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

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

(2) “Domestic end product” means—

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

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

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

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

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

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

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

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

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

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

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

(8) “Qualifying country end product” means—

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

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

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

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

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

(9) “United States” means the 50 States, the District of Columbia, and outlying areas.

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

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

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

ALTERNATE I (JAN 2005)

As prescribed in 225.1101(10)(i)(B), substitute the following paragraphs (a)(4) and (c) for paragraphs (a)(4) and (c) of the basic clause:

(a)(4) "Canadian end product," means an article that—

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

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in 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 its supply, provided that the value of those incidental services does not exceed the value of the product itself.

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

252.225-7037 Evaluation of Offers for Air Circuit Breakers.

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As prescribed in 225.7006-4(a), use the following provision:

EVALUATION OF OFFERS FOR AIR CIRCUIT BREAKERS (JUN 2005)

(a) The offeror shall specify, in its offer, any intent to furnish air circuit breakers that are not manufactured in the United States or its outlying areas, Canada, or the United Kingdom.

(b) The Contracting Officer will evaluate offers by adding a factor of 50 percent to the offered price of air circuit breakers that are not manufactured in the United States or its outlying areas, Canada, or the United Kingdom.

(End of provision)

252.225-7038 Restriction on Acquisition of Air Circuit Breakers.

As prescribed in 225.7006-4(b), use the following clause:

RESTRICTION ON ACQUISITION OF AIR CIRCUIT BREAKERS (JUN 2005)

Unless otherwise specified in its offer, the Contractor shall deliver under this contract air circuit breakers manufactured in the United States or its outlying areas, Canada, or the United Kingdom.

(End of clause)

252.225-7039 Reserved.

252.225-7040 Contractor Personnel Supporting a Force Deployed Outside the United States.

As prescribed in 225.7402-4(a), use the following clause:

CONTRACTOR PERSONNEL SUPPORTING A FORCE DEPLOYED OUTSIDE THE UNITED STATES (JUN 2005)

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

“Combatant Commander” means the commander of a unified or specified combatant command established in accordance with 10 U.S.C. 161.

“Theater of operations” means an area defined by the combatant commander for the conduct or support of specified operations.

(b) *General.*

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(1) This clause applies when contractor personnel deploy with or otherwise provide support in the theater of operations to U.S. military forces deployed outside the United States in—

- (i) Contingency operations;
- (ii) Humanitarian or peacekeeping operations; or
- (iii) Other military operations or exercises designated by the Combatant Commander.

(2) Contract performance in support of U.S. military forces may require work in dangerous or austere conditions. The Contractor accepts the risks associated with required contract performance in such operations.

(3) Contractor personnel are not combatants and shall not undertake any role that would jeopardize their status. Contractor personnel shall not use force or otherwise directly participate in acts likely to cause actual harm to enemy armed forces.

(c) *Support.*

(1) The Combatant Commander will develop a security plan to provide protection, through military means, of Contractor personnel engaged in the theater of operations unless the terms of this contract place the responsibility with another party.

(2)(i) All Contractor personnel engaged in the theater of operations are authorized resuscitative care, stabilization, hospitalization at level III military treatment facilities, and assistance with patient movement in emergencies where loss of life, limb, or eyesight could occur. Hospitalization will be limited to stabilization and short-term medical treatment with an emphasis on return to duty or placement in the patient movement system.

(ii) When the Government provides medical treatment or transportation of Contractor personnel to a selected civilian facility, the Contractor shall ensure that the Government is reimbursed for any costs associated with such treatment or transportation.

(iii) Medical or dental care beyond this standard is not authorized unless specified elsewhere in this contract.

(3) Unless specified elsewhere in this contract, the Contractor is responsible for all other support required for its personnel engaged in the theater of operations under this contract.

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(d) *Compliance with laws and regulations.* The Contractor shall comply with, and shall ensure that its personnel supporting a force deployed outside the United States as specified in paragraph (b)(1) of this clause are familiar with and comply with, all applicable—

(1) United States, host country, and third country national laws;

(2) Treaties and international agreements;

(3) United States regulations, directives, instructions, policies, and procedures;
and

(4) Orders, directives, and instructions issued by the Combatant Commander relating to force protection, security, health, safety, or relations and interaction with local nationals.

(e) *Pre-deployment requirements.* The Contractor shall ensure that the following requirements are met prior to deploying personnel in support of U.S. military forces. Specific requirements for each category may be specified in the statement of work or elsewhere in the contract.

(1) All required security and background checks are complete and acceptable.

(2) All deploying personnel meet the minimum medical screening requirements and have received all required immunizations as specified in the contract. The Government will provide, at no cost to the Contractor, any theater-specific immunizations and/or medications not available to the general public.

(3) Deploying personnel have all necessary passports, visas, and other documents required to enter and exit a theater of operations and have a Geneva Conventions identification card from the deployment center.

(4) Country and theater clearance is obtained for personnel. Clearance requirements are in DoD Directive 4500.54, Official Temporary Duty Abroad, and DoD 4500.54-G, DoD Foreign Clearance Guide. Contractor personnel are considered non-DoD personnel traveling under DoD sponsorship.

(f) *Processing and departure points.* Deployed contractor personnel shall—

(1) Process through the deployment center designated in the contract, or as otherwise directed by the Contracting Officer, prior to deploying. The deployment center will conduct deployment processing to ensure visibility and accountability of

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contractor personnel and to ensure that all deployment requirements are met;

(2) Use the point of departure and transportation mode directed by the Contracting Officer; and

(3) Process through a Joint Reception Center (JRC) upon arrival at the deployed location. The JRC will validate personnel accountability, ensure that specific theater of operations entrance requirements are met, and brief contractor personnel on theater-specific policies and procedures.

(g) *Personnel data list.*

(1) The Contractor shall establish and maintain with the designated Government official a current list of all contractor personnel that deploy with or otherwise provide support in the theater of operations to U.S. military forces as specified in paragraph (b)(1) of this clause. The Contracting Officer will inform the Contractor of the Government official designated to receive this data and the appropriate automated system(s) to use for this effort.

(2) The Contractor shall ensure that all employees on the list have a current DD Form 93, Record of Emergency Data Card, on file with both the Contractor and the designated Government official.

(h) *Contractor personnel.*

(1) The Contracting Officer may direct the Contractor, at its own expense, to remove and replace any contractor personnel who jeopardize or interfere with mission accomplishment or who fail to comply with or violate applicable requirements of this clause. Such action may be taken at the Government's discretion without prejudice to its rights under any other provision of this contract, including the Termination for Default clause.

(2) The Contractor shall have a plan on file showing how the Contractor would replace employees who are unavailable for deployment or who need to be replaced during deployment. The Contractor shall keep this plan current and shall provide a copy to the Contracting Officer upon request. The plan shall—

(i) Identify all personnel who are subject to military mobilization;

(ii) Detail how the position would be filled if the individual were mobilized;
and

(iii) Identify all personnel who occupy a position that the Contracting

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Officer has designated as mission essential.

(i) *Military clothing and protective equipment.*

(1) Contractor personnel supporting a force deployed outside the United States as specified in paragraph (b)(1) of this clause are prohibited from wearing military clothing unless specifically authorized in writing by the Combatant Commander. If authorized to wear military clothing, contractor personnel must wear distinctive patches, arm bands, nametags, or headgear, in order to be distinguishable from military personnel, consistent with force protection measures and the Geneva Conventions.

(2) Contractor personnel may wear military-unique organizational clothing and individual equipment (OCIE) required for safety and security, such as ballistic, nuclear, biological, or chemical protective clothing.

(3) The deployment center, or the Combatant Commander, shall issue OCIE and shall provide training, if necessary, to ensure the safety and security of contractor personnel.

(4) The Contractor shall ensure that all issued OCIE is returned to the point of issue, unless otherwise directed by the Contracting Officer.

(j) *Weapons.*

(1) If the Contractor requests that its personnel performing in the theater of operations be authorized to carry weapons, the request shall be made through the Contracting Officer to the Combatant Commander. The Combatant Commander will determine whether to authorize in-theater contractor personnel to carry weapons and what weapons will be allowed.

(2) The Contractor shall ensure that its personnel who are authorized to carry weapons—

(i) Are adequately trained;

(ii) Are not barred from possession of a firearm by 18 U.S.C. 922; and

(iii) Adhere to all guidance and orders issued by the Combatant Commander regarding possession, use, safety, and accountability of weapons and ammunition.

(3) Upon redeployment or revocation by the Combatant Commander of the

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Contractor's authorization to issue firearms, the Contractor shall ensure that all Government-issued weapons and unexpended ammunition are returned as directed by the Contracting Officer.

(k) *Vehicle or equipment licenses.* Contractor personnel shall possess the required licenses to operate all vehicles or equipment necessary to perform the contract in the theater of operations.

(l) *Purchase of scarce goods and services.* If the Combatant Commander has established an organization for the theater of operations whose function is to determine that certain items are scarce goods or services, the Contractor shall coordinate with that organization local purchases of goods and services designated as scarce, in accordance with instructions provided by the Contracting Officer.

(m) *Evacuation.*

(1) If the Combatant Commander orders a mandatory evacuation of some or all personnel, the Government will provide assistance, to the extent available, to United States and third country national contractor personnel.

(2) In the event of a non-mandatory evacuation order, unless authorized in writing by the Contracting Officer, the Contractor shall maintain personnel on location sufficient to meet obligations under this contract.

(n) *Next of kin notification and personnel recovery.*

(1) The Contractor shall be responsible for notification of the employee-designated next of kin in the event an employee dies, requires evacuation due to an injury, or is missing, captured, or abducted.

(2) In the case of missing, captured, or abducted contractor personnel, the Government will assist in personnel recovery actions in accordance with DoD Directive 2310.2, Personnel Recovery.

(o) *Mortuary affairs.* Mortuary affairs for contractor personnel who die while providing support in the theater of operations to U.S. military forces will be handled in accordance with DoD Directive 1300.22, Mortuary Affairs Policy.

(p) *Changes.* In addition to the changes otherwise authorized by the Changes clause of this contract, the Contracting Officer may, at any time, by written order identified as a change order, make changes in Government-furnished facilities, equipment, material, services, or site. Any change order issued in accordance with this paragraph (p) shall be subject to the provisions of the Changes clause of this contract.

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(q) *Subcontracts.* The Contractor shall incorporate the substance of this clause, including this paragraph (q), in all subcontracts that require subcontractor personnel to be available to deploy with or otherwise provide support in the theater of operations to U.S. military forces deployed outside the United States in—

- (1) Contingency operations;
- (2) Humanitarian or peacekeeping operations; or
- (3) Other military operations or exercises designated by the Combatant Commander.

(End of clause)

252.225-7041 Correspondence in English.

As prescribed in 225.1103(3), use the following clause:

CORRESPONDENCE IN ENGLISH (JUN 1997)

The Contractor shall ensure that all contract correspondence that is addressed to the United States Government is submitted in English or with an English translation.

(End of clause)

252.225-7042 Authorization to Perform.

As prescribed in 225.1103(4), use the following provision:

AUTHORIZATION TO PERFORM (APR 2003)

The offeror represents that it has been duly authorized to operate and to do business in the country or countries in which the contract is to be performed.

(End of provision)

252.225-7043 Antiterrorism/Force Protection for Defense Contractors Outside the United States

As prescribed in 225.7403-2, use the following clause:

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ANTITERRORISM/FORCE PROTECTION POLICY FOR DEFENSE CONTRACTORS OUTSIDE THE UNITED STATES (MAR 2006)

(a) *Definition.* “United States,” as used in this clause, means, the 50 States, the District of Columbia, and outlying areas.

(b) Except as provided in paragraph (c) of this clause, the Contractor and its subcontractors, if performing or traveling outside the United States under this contract, shall—

(1) Affiliate with the Overseas Security Advisory Council, if the Contractor or subcontractor is a U.S. entity;

(2) Ensure that Contractor and subcontractor personnel who are U.S. nationals and are in-country on a non-transitory basis, register with the U.S. Embassy, and that Contractor and subcontractor personnel who are third country nationals comply with any security related requirements of the Embassy of their nationality;

(3) Provide, to Contractor and subcontractor personnel, antiterrorism/force protection awareness information commensurate with that which the Department of Defense (DoD) provides to its military and civilian personnel and their families, to the extent such information can be made available prior to travel outside the United States; and

(4) Obtain and comply with the most current antiterrorism/force protection guidance for Contractor and subcontractor personnel.

(c) The requirements of this clause do not apply to any subcontractor that is—

(1) A foreign government;

(2) A representative of a foreign government; or

(3) A foreign corporation wholly owned by a foreign government.

(d) Information and guidance pertaining to DoD antiterrorism/force protection can be obtained from (Contracting Officer to insert applicable information cited in PGI 225.7403-1).

(End of clause)

252.225-7044 Balance of Payments Program—Construction Material.

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

BALANCE OF PAYMENTS PROGRAM--CONSTRUCTION MATERIAL (JUN 2005)

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

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

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

“Cost of components” means--

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

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

“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.

“United States” means the 50 States, the District of Columbia, and outlying areas.

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(b) *Domestic preference.* This clause implements the Balance of Payments Program by providing a preference for domestic construction material. The Contractor shall use only domestic construction material in performing this contract, except for--

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

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

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

(End of clause)

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

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

BALANCE OF PAYMENTS PROGRAM--CONSTRUCTION MATERIAL UNDER TRADE AGREEMENTS (FEB 2006)

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

“Caribbean Basin country construction material” means a construction material that—

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

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

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

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems

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incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Cost of components” means--

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

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

“Designated country” means—

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

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

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

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Montserrat,

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Netherlands Antilles, Nicaragua, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago).

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

“Domestic construction material” means--

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

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

“Free Trade Agreement country construction material” means a construction material that--

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

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

“Least developed country construction material” means a construction material that—

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

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

“United States” means the 50 States, the District of Columbia, and outlying areas.

“WTO GPA country construction material” means a construction material that—

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

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

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

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

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

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

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

(End of clause)

ALTERNATE I (FEB 2006). As prescribed in 225.7503(b), delete the definitions of "designated country" and "designated country construction material" from the definitions in paragraph (a) of the basic clause, add the following definition of "Australian, Chilean, or Moroccan construction material" to paragraph (a) of the basic clause, and substitute the following paragraphs (b) and (c) for paragraphs (b) and (c) of the basic clause:

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

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

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Australia, Chile,

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or Morocco into a new and different construction material distinct from the materials from which it was transformed.

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

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

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

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

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

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Appendix D—Component Breakout

(Removed March 21, 2006)