

DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Parts 213, 225, and 252**

[Docket DARS–2023–0024]

RIN 0750–AL74

Defense Federal Acquisition Regulation Supplement: DFARS Buy American Act Requirements (DFARS Case 2022–D019)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to supplement the Federal Acquisition Regulation implementation of an Executive order addressing domestic preferences in DoD procurement.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before August 8, 2023, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2022–D019, using any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Search for “DFARS Case 2022–D019.” Select “Comment” and follow the instructions to submit a comment. Please include your name, company name (if any), and “DFARS Case 2022–D019” on any attached document.

- *Email:* osd.dfars@mail.mil. Include DFARS Case 2022–D019 in the subject line of the message.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Kimberly Bass, telephone 703–717–3446.

SUPPLEMENTARY INFORMATION:**I. Background**

DoD is proposing to amend the DFARS to supplement the Federal Acquisition Regulation (FAR) implementation of Executive Order (E.O.) 14005, Ensuring the Future Is Made in All of America by All of America’s Workers (86 FR 7475, January

28, 2021), by addressing DoD-unique requirements. The FAR final rule, published at 87 FR 12780 on March 7, 2022 (effective October 25, 2022), implemented section 8 of E.O. 14005, which requires increasing the impact of the Buy American Act and provides for the following—

- An increase to the domestic content threshold, a schedule for future increases, and a fallback threshold that would allow for products meeting a specific lower domestic content threshold to qualify as domestic products under certain circumstances; and

- A framework for application of an enhanced price preference for a domestic product that is considered a critical item or made up of critical components.

The proposed revisions to the DFARS will supplement the FAR by making conforming changes that incorporate the DoD-unique requirements.

II. Discussion and Analysis

This proposed rule includes revisions to DFARS part 225 and the associated clauses to make conforming changes associated with implementation of E.O. 14005 that incorporate the DoD-unique requirements (*e.g.*, inclusion of qualifying countries). Revisions are proposed to the definitions of “domestic end product,” “qualifying country end product,” and “domestic construction material” to address the scheduled increases to the domestic content threshold from 55 percent to 60 percent in calendar year 2023, then to 65 percent in calendar year 2024, and to 75 percent in calendar year 2029. See DFARS 225.101(a)(ii)(A) and the conforming changes at DFARS 213.302–5(d)(i) and (ii) to allow use of the appropriate alternate.

A DoD contractor that is awarded a contract with a period of performance that spans the schedule of domestic content threshold increases will be required to comply with each increased threshold for the items in the year of delivery. However, in instances where this requirement to comply with changing domestic content thresholds would not be feasible for a particular contract, FAR 25.101(d) provides for a senior procurement executive to allow the application of an alternate domestic content test in defining “domestic end product” after consultation with Office of Management and Budget’s Made in America Office (MIAO). The alternate domestic content test will allow the contractor to comply with the domestic content threshold that applies at the time of contract award, for the entire period of performance for that contract.

The contracting officer will be required to select one of the newly created alternate clauses for 252.225–7001, Buy American—Balance of Payments Program, prescribed at 225.1101(2)(iv) and (v); and one of the newly created alternate clauses at 252.225–7036, Buy American—Free Trade Agreements—Balance of Payments Program, prescribed at 225.1101(10)(i).

This proposed rule also allows for the use of the 55 percent domestic content threshold (*i.e.*, the fallback threshold included in the FAR final rule), until one year after the increase of the domestic content threshold to 75 percent, in instances where an agency has determined that there are no end products or construction materials that meet the new domestic content threshold, or such products are of unreasonable cost. A determination is not required before January 1, 2030, if there is an offer for a foreign end product that exceeds 55 percent domestic content, including qualifying country content (see 225.103(b)(ii) and 225.202(a)(2)). This proposed rule supplements the FAR with a consistent 55 percent threshold available until 2030 for use where domestic products at a higher threshold are not available or the cost to acquire them would be unreasonable. Revisions are proposed to the definition of “domestic end product” to authorize the use of the fallback threshold if the award is made before January 1, 2030, for a foreign end product that exceeds 55 percent domestic content (see 225.103(b)(ii)).

The fallback threshold requires offerors to indicate which of their foreign end products exceed 55 percent domestic content (see proposed revisions to solicitation provisions at DFARS 252.225–7000, Buy American—Balance of Payments Program Certificate, and 252.225–7035, Buy-American—Free Trade Agreements—Balance of Payments Program Certificate). The fallback threshold only applies to construction material that does not consist wholly or predominantly of iron or steel or a combination of both and that are not commercially available off-the-shelf (COTS) items, as well as to end products that do not consist wholly or predominantly of iron or steel or a combination of both and that are not COTS items. For example, if a domestic end product that exceeds the 60 percent domestic content threshold is determined to be of unreasonable cost after application of the price preference, then for evaluation purposes DoD will treat an end product that is manufactured in the United States or a qualifying country and exceeds 55

percent domestic content, instead of 60 percent domestic content, as a domestic end product.

Proposed revisions to DFARS 225.101 implement the alternate domestic content test provided in the FAR final rule. A contract with a period of performance that spans the schedule of domestic content threshold increases will be required to comply with each increased threshold for the items in the year of delivery, unless the senior procurement executive of the contracting agency allows for application of an alternate domestic content test for that contract, under which the domestic content threshold in effect at time of contract award will apply to the entire period of performance for the contract. Therefore, newly created alternates to DFARS clauses are prescribed to reflect the domestic content threshold that will apply to the entire period of performance for that contract.

DFARS 225.1101(2)(iv) and (v) prescribe use of new Alternates II and III of the clause at 252.225–7001, Buy American and Balance of Payments Program. The clause at 252.225–7036, Buy American—Free Trade Agreements—Balance of Payments Program, and its new alternates are prescribed at 225.1101(10)(i). The contracting officer is required to select the correct alternate clause.

DFARS 225.1101(1)(i) and (ii) prescribe use of the basic solicitation provision or alternate at 252.225–7000, Buy American—Balance of Payments Program Certificate, when using an alternate domestic content threshold. DFARS 225.1101(9)(ii) prescribes use of the basic solicitation provision or alternates at 252.225–7035, Buy American—Free Trade Agreements—Balance of Payments Program Certificate, when using an alternate domestic content threshold.

The FAR final rule provided the framework through which higher price preferences will be applied to end products and construction material deemed to be critical or made up of critical components. A subsequent rulemaking under FAR Case 2022–004, Enhanced Price Preference for Critical Components and Critical Items, will establish and implement the definitive list at FAR 25.105 of critical items and critical components, along with the associated enhanced price preference(s). To align with changes to FAR subpart 25.1, the DFARS rennumbers section 225.105 to 225.106. Therefore, cross references are updated at 225.106(b).

Revisions are proposed to implement the enhanced price preference framework in the relevant DFARS

provisions and clauses, including the alternates, to add the requirement to list each domestic end product with critical components or critical items and for foreign end products that exceed the required 55 percent (except COTS items), for foreign end products that do not consist wholly or predominantly of iron or steel or a combination of both; and adds a table for the listing of critical components and critical items as applicable (see section III of this preamble).

For the application and use of the DFARS evaluation procedures for the evaluation of foreign offers for supply contracts, the proposed rule includes revisions to DFARS 225.502(c)(ii)(C) to elucidate that a qualifying country offer is subject to the domestic content requirement for end products that are wholly or predominantly of iron or steel or a combination of both if the low offer is a foreign offer exempt from the application of the Buy American statute or Balance of Payments Program evaluation factor.

The proposed rule includes conforming revisions for the definitions of “critical component”, which means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain, and “critical item”, which means a domestic construction material or domestic end product that is deemed critical to the U.S. supply chain. The lists of critical components and critical items are at FAR 25.105.

Several clarifying revisions were implemented in the FAR at 52.212–3(f)(1)(ii), Offeror Representations and Certifications—Commercial Products and Commercial Services; 52.225–2(a)(2), Buy American Certificate; and 52.225–4(c), Buy American-Free Trade Agreements—Israeli Trade Act Certificate (see 86 FR 6180 dated January 19, 2021). For consistency with the FAR, conforming revisions were made to remove the following excerpt from the DFARS: “*i.e.*, an end product that is not a COTS item and does not meet the component test in paragraph (ii) of the definition of “domestic end product”.” Accordingly, these revisions were made to the provision at 252.225–7000, Buy American—Balance of Payments Program Certificate, Basic and Alternate I, paragraph (c)(3); the provision at 252.225–7035, Buy American—Free Trade Agreements—Balance of Payments Program Certificate, Basic and Alternates I, II, III, IV, and V, paragraph (c)(2)(iii).

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Services and Commercial Products, Including Commercially Available Off-the-Shelf (COTS) Items

This proposed rule includes amendments to the following solicitation provisions and contract clauses: DFARS 252.225–7000, Buy American and Balance of Payments Program Certificate (Basic and Alternate I); DFARS 252.225–7001, Buy American and Balance of Payments Program (Basic and Alternate I); DFARS 252.225–7035, Buy American—Free Trade Agreements—Balance of Payments Program Certificate (Basic and Alternates I, II, III, IV, and V); DFARS 252.225–7036, Buy American—Free Trade Agreements—Balance of Payments Program (Basic and Alternates I, II, III, IV, and V); DFARS 252.225–7044, Balance of Payments Program—Construction Material, (Basic and Alternate I); and 252.225–7045, Balance of Payments Program—Construction Material Under Trade Agreements (Basic and Alternates I, II, and III).

In addition, this proposed rule includes new alternates for the clauses at DFARS 252.225–7001, Buy American and Balance of Payments Program, and 252.225–7036, Buy American—Free Trade Agreements—Balance of Payments Program. This proposed rule does not add any new requirements on contracts at or below the simplified acquisition threshold, for commercial products including commercially available off-the-shelf items, or for commercial services.

IV. Expected Impact of the Rule

This proposed rule includes changes to the DFARS that supplement the FAR’s implementation of E.O. 14005 via the final rule for FAR Case 2021–008 (published March 7, 2022 in the **Federal Register** at 87 FR 12780, with an effective date of October 25, 2022). The FAR final rule provided for—

1. An increase to the domestic content threshold that a product must meet to be defined as “domestic”; a schedule for future increases; and a fallback threshold that would allow products meeting a specific lower domestic content threshold to qualify as a domestic product under certain circumstances; and

2. A framework for the application of an enhanced price preference for a domestic product that is considered a critical product or is made up of critical components.

This proposed rule implements these changes in DFARS part 225 and in the

solicitation provisions and contract clauses that contain DoD-unique requirements such as the inclusion of qualifying countries. A qualifying country is a country that has a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country; the memorandum of understanding or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. The DFARS definition of “domestic end product”, for the purpose of compliance with the domestic content threshold, includes components that are mined, produced, or manufactured in the United States and in qualifying countries. The list of qualifying countries appears in the definition of “qualifying country” at DFARS 225.003 and in certain contract clauses.

It is anticipated that those domestic industries making adjustments for the increased domestic content within their supply chains to continue supplying domestic end products are more likely to benefit from a competitive advantage when the rule is implemented. Because the FAR final rule has been in effect since October 2022, potential offerors may already be making those adjustments.

The Buy American statute and the Balance of Payments Program (*e.g.*, certifications required of offerors to demonstrate end products are domestic) remain unchanged and continue to reflect processes that have been in place for decades. Under this proposed rule, as under the FAR final rule, when deciding whether to pursue a procurement and use of products (*i.e.*, domestic or foreign), offerors will have to plan for the future changes to the domestic content threshold during the period of performance of an anticipated contract, unless use of an alternate domestic content threshold, in effect at time of contract award, has been authorized.

As under the FAR final rule, those offerors that do not to modify their supply chains to comply with the scheduled increases to the domestic content threshold will still be able to propose an offer for DoD contracts. However, they may no longer have use of a price preference.

Increased domestic sourcing of content facilitates the reduction of DoD’s supply chain risk. Because the FAR final rule has been in effect since

October 2022, any increased burden with regard to the timed increases to the domestic content threshold, on contractors in particular, could be minor if not *de minimis*.

The framework for the enhanced price preference is intended to provide a stable source of demand for domestically produced critical products. This proposed rule merely supplements the FAR with the DoD-unique requirements. A separate rulemaking will be undertaken to add to the FAR critical products and components to establish the associated preferences. Therefore, the associated cost impacts and benefits will be captured in the subsequent FAR rulemaking (FAR case 2022–004, Enhanced Price Preference for Critical Components and Critical Items).

There is an information collection burden associated with offerors identifying when a domestic end product or domestic construction material contains a critical component or critical item (see section VIII of this preamble), but it is anticipated that the information collection will be fully implemented for all agencies that use the FAR in the future rulemaking for the FAR case 2022–004. Any of the associated burden should be offset by the benefits of the larger price preference received for these items. The overall cost impact of this rule is not significant, and any associated impact is anticipated to be primarily positive.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule contains few additional compliance and reporting requirements for certain offerors, including small businesses. However,

an initial regulatory flexibility analysis has been performed and is summarized as follows:

The proposed rule includes amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to supplement the Federal Acquisition Regulation (FAR) implementation of Executive Order (E.O.) 14005, Ensuring the Future Is Made in All of America by All of America’s Workers (86 FR 7475, January 28, 2021), by addressing DoD-unique requirements. The FAR final rule, published at 87 FR 12780 on March 7, 2022 (effective October 25, 2022), implemented section 8 of E.O. 14005, which requires the impact of the Buy American statute to be strengthened by providing—

- An increase to the domestic content threshold required to be met for an end product and construction material to be defined as “domestic” and a schedule for future increases;
- A fallback threshold that would allow for end products meeting a specific lower domestic content threshold to qualify as a domestic end product under certain circumstances; and
- A framework for application of an enhanced price preference for a domestic end product that is considered a critical item or is made up of critical components.

The objective of the rule is to make conforming changes associated with the FAR implementation of E.O. 14005 that incorporate the DoD-unique requirements (*e.g.*, inclusion of qualifying countries). E.O. 14005 addresses a series of actions to enable the U.S. Government to maximize the use of goods, products, and materials produced in the United States in order to strengthen and diversify domestic supplier bases and create new opportunities for U.S. firms and workers. The legal basis for this proposed rule is 41 U.S.C. 1303.

Data was obtained from the Federal Procurement Data System (FPDS) for fiscal years 2019, 2020, and 2021 on awards valued over the micro-purchase threshold for construction and for supplies. Based on the data, DoD made an average of 161,686 awards for supplies per year to approximately 14,913 small entities and an average of 177 awards for construction per year to approximately 167 small entities. This proposed rule could apply to those small entities.

The proposed rule will strengthen domestic preferences under the Buy American statute and the Balance of Payments Program and provide small businesses the opportunity and

incentive to deliver U.S.-manufactured products from domestic suppliers. It is expected that this proposed rule generally would benefit U.S. small business manufacturers. Small business manufacturers who do not already meet the increased domestic content requirements of this proposed rule may need to adjust their supply chains. DoD does not have data on how many small business manufacturers may make such adjustments.

This proposed rule includes new reporting, recordkeeping, or other compliance requirements for small businesses. Prior to this rule, small businesses already had to monitor compliance with contract requirements pertaining to the increased domestic content threshold implemented in the FAR for contracted items. This proposed rule makes conforming changes to align the DFARS with the FAR while incorporating the DoD-unique requirements. Due to small businesses' familiarity with the FAR final rule, the increases in the domestic content threshold implemented in this rule are unlikely to result in additional disruption to existing contractor supply chains.

The rule contains a few additional reporting requirements for certain offerors, including small businesses. Small businesses who submit an offer for a solicitation subject to the Buy American statute or the Balance of Payments Program already have to list the foreign end products included in their offer. This proposed rule would require that the offeror also identify which of these foreign end products are not COTS items, do not consist wholly or predominantly of iron or steel or a combination of both, and meet or exceed the fallback domestic content threshold.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known significant alternative approaches to the rule that would meet the requirements of the Executive order.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2022-D019), in correspondence.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies to this rule.

However, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved under Office of Management and Budget Control Number 0704-0229, entitled Defense Federal Acquisition Regulation Supplement (DFARS) Defense Federal Acquisition Regulation Supplement Part 225, Foreign Acquisition, and Related Clauses at 252.225; DD Form 2139.

List of Subjects in 48 CFR Parts 213, 225, and 252

Government procurement.

Jennifer D. Johnson,
Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 213, 225, and 252 are proposed to be amended as follows:

- 1. The authority citation for parts 213, 225, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

213.302-5 [Amended]

- 2. Amend section 213.302-5—
 - a. In paragraph (d) introductory text by removing “Act” and adding “statute” in its place; and
 - b. In paragraphs (d)(i) and (ii) by removing “Program,” and adding “Program, or the appropriate alternate,” in its place.

PART 225—FOREIGN ACQUISITION

- 3. Amend section 225.003—
 - a. In the definition of “Domestic end product” by revising paragraph (1)(i)(A) introductory text; and
 - b. In the definition of “Qualifying country end product” by revising paragraph (2)(i) introductory text and paragraph (ii).

225.003 Definitions.

* * * * *

Domestic end product means—

- (1) * * *
- (ii) * * *

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with FAR 25.101(d); or award is made before January 1, 2030, for a foreign end

product that exceeds 55 percent domestic content (see 225.103(b)(ii)). 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). Components of unknown origin are treated as foreign. 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—

* * * * *

Qualifying country end product means—

- * * * * *
- (2) * * *

(i) The cost of the following types of components exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract:

* * * * *

(ii) The end product is a COTS item.

* * * * *

- 4. Amend section 225.101 by—
 - a. Revising paragraph (a)(ii)(A); and
 - b. Adding paragraph (d).

225.101 General.

(a) * * *

(ii)(A) Except for an end product that consists wholly or predominantly of iron or steel or a combination of both, the cost of its U.S. and qualifying country components exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, but see paragraph (d) of this section. This test is applied to end products only and not to individual components.

* * * * *

(d)(1) In lieu of the threshold increases in FAR 25.101(a)(2)(i), use the domestic content threshold increases in paragraph (a)(ii) of this section. The senior procurement executive may approve application of an alternate domestic content test, under which the domestic content threshold in effect at the time of contract award will apply to the entire period of performance of the

contract, following consultation with the Office of Management and Budget’s Made in America Office. See PGI 225.101 for guidance on documentation requirements when the senior procurement executive approves application of an alternate domestic content test.

(2) When the senior procurement executive allows for application of an alternate domestic content test for the contract pursuant to FAR 25.101(d)(1) (but see paragraph (d)(1) of this section)—

(A) See 225.1101(2)(iv) for use of alternate II of the clause at 252.225–7001, Buy American and Balance of Payments Program;

(B) See 225.1101(2)(v) for use of alternate III of the clause at 252.225–7001, Buy American and Balance of Payments Program;

(C) See 225.1101(9) for use of the basic or alternate provision at 252.225–7035, Buy American—Free Trade Agreements—Balance of Payments Program Certificate, or the basic or alternate clause at 252.225–7036, Buy American—Free Trade Agreements—

Balance of Payments Program; and (D) See 225.1101(10)(i) for use of the basic or alternate clause at 252.225–7036, Buy American—Free Trade Agreements—Balance of Payments Program.

■ 5. Amend section 225.103—

- a. By revising paragraph (b)(ii) introductory text; and
■ b. In paragraph (c) by removing “Subpart” and adding “subpart” in its place.

225.103 Exceptions.

* * * * *

(b) * * *

(ii) A determination is not required before January 1, 2030, if there is an offer for a foreign end product that exceeds 55 percent domestic content. Except as provided in FAR 25.103(b)(3), the determination shall be approved—

* * * * *

■ 6. Redesignate section 225.105 as section 225.106 and revise newly redesignated section 225.106 to read as follows:

225.106 Determining reasonableness of cost.

(b) Use an evaluation factor of 50 percent instead of the factors specified in FAR 25.106(b)(1)(i) and (c)(1)(i).

225.170 [Amended]

■ 7. Amend section 225.170 by removing “Subpart” and adding “subpart” in its place.

■ 8. Revise section 225.202 to read as follows:

225.202 Exceptions.

(a)(2) A nonavailability determination is not required for construction materials listed in FAR 25.104(a). For other materials, a nonavailability determination shall be approved at the levels specified in 225.103(b)(ii). Use the estimated value of the construction materials to determine the approval level. A nonavailability determination is not required before January 1, 2030, if there is an offer for foreign construction material that exceeds 55 percent domestic content (also see FAR 25.204(b)(1)(ii) and (b)(2)(ii)).

■ 9. Amend section 225.502—

- a. In paragraph (c)(i)(A) by removing “subject only to the Buy American or Balance of Payments Program” and adding “subject only to the Buy American statute or the Balance of Payments Program” in its place;
■ b. In paragraph (c)(i)(B) by removing “factor” and adding “factor, but see 225.106” in its place; and
■ c. By revising paragraph (c)(ii)(C).

The revision reads as follows:

225.502 Application.

* * * * *

(c) * * *

(ii) * * *

(C) If the low offer is a foreign offer that is exempt from application of the Buy American or Balance of Payments Program evaluation factor, award on that offer. If the low offer is a qualifying country offer from a country listed at 225.872–1(b), execute a determination in accordance with 225.872–4. A qualifying country offer is subject to the domestic content requirement for end products that are wholly or predominantly of iron or steel or a combination of both.

* * * * *

■ 10. Amend section 225.1101—

- a. In paragraph (1)(i) by removing “basic clause” and adding “basic clause or alternate II of the clause” in its place;
■ b. In paragraph (1)(ii) by removing “alternate I” and adding “alternate I or alternate III of the clause” in its place;
■ c. In paragraph (2)(i) by—
■ i. Removing “basic or the alternate” and adding “basic or an alternate” in its place; and
■ ii. Removing “Act”;
■ d. In paragraph (2) by adding paragraphs (iv) and (v);
■ e. In paragraph (9)(i) by removing “basic of the clause” and adding “basic or alternate VI of the clause” in its place;
■ f. In paragraph (9)(ii) by removing “alternate I of the clause” and adding “alternate I or alternate VII of the clause” in its place;
■ g. In paragraph (9)(iii) by removing “alternate II of the clause” and adding

“alternate II or alternate VIII of the clause” in its place;

■ h. In paragraph (9)(iv) by removing “alternate III of the clause” and adding “alternate III or alternate IX of the clause” in its place;

■ i. In paragraph (9)(v) by removing “alternate IV of the clause” and adding “alternate IV or alternate X of the clause” in its place;

■ j. In paragraph (9)(vi) by removing “alternate V of the clause” and adding “alternate V or alternate XI of the clause” in its place;

■ k. In paragraph (10)(i)(D) by removing “equals or exceeds \$25,000, but”;

■ l. In paragraph (10)(i) by adding paragraphs (G) through (L); and
■ m. In paragraph (10)(ii)(B) by removing “sSection” and adding “section” in its place.

The additions read as follows:

225.1101 Acquisition of supplies.

* * * * *

(2) * * *

(iv) Use alternate II of the clause in lieu of the basic clause in solicitations and contracts if—

(A) The acquisition is not of end products listed in 225.401–70 in support of operations in Afghanistan; and

(B) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

(v) Use alternate III of the clause in lieu of Alternate I of the clause in solicitations and contracts if—

(A) The acquisition is of end products listed in 225.401–70 in support of operations in Afghanistan; and

(B) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

* * * * *

(10) * * *

(i) * * *

(G) Use the alternate VI clause in lieu of the basic clause in solicitations and contracts, except if the acquisition is of end products in support of operations in Afghanistan, when—

(1) The estimated value equals or exceeds \$100,000 but is less than \$183,000; and

(2) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

(H) Use the alternate VII clause in lieu of the alternate I clause in solicitations and contracts, except if the acquisition is of end products in support of operations in Afghanistan, when—

(1) The estimated value is less than \$92,319; and
 (2) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

(I) Use the alternate VIII clause in lieu of the alternate II clause in solicitations and contracts when—

(1) The estimated value is less than \$183,000;

(2) The acquisition is of end products in support of operations in Afghanistan; and

(3) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

(J) Use the alternate IX clause in lieu of the alternate III clause in solicitations and contracts when—

(1) The estimated value is less than \$92,319;

(2) The acquisition is of end products in support of operations in Afghanistan; and

(3) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive in accordance with FAR 25.101(d).

(K) Use the alternate X clause in lieu of the alternate IV clause in solicitations and contracts, except if the acquisition is of end products in support of operations in Afghanistan, when—

(1) The estimated value equals or exceeds \$92,319 but is less than \$100,000; and

(2) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

(L) Use the alternate XI clause in lieu of the alternate V clause in solicitations and contracts when—

(1) The estimated value equals or exceeds \$92,319 but is less than \$100,000;

(2) The acquisition is of end products in support of operations in Afghanistan; and

(3) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

* * * * *

- 11. Amend section 225.7503 by—
- a. Adding paragraphs (a)(3) and (4); and
- b. Adding paragraphs (b)(5) through (8).

The additions read as follows:

225.7503 Contract clauses.

(a) * * *

(3) Use the alternate II clause in lieu of the basic clause if an alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)), unless the acquisition is in support of operations in Afghanistan.

(4) Use the alternate III clause in lieu of the alternate I clause if—

(A) The acquisition is in support of operations in Afghanistan; and

(B) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

(b) * * *

(5) Use the alternate IV clause in lieu of the basic clause in solicitations and contracts, unless the acquisition is in support of operations in Afghanistan, when—

(A) The estimated value is \$12,001,460 or more; and

(B) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

(6) Use the alternate V clause in lieu of the alternate I clause in solicitations and contracts, unless the acquisition is in support of operations in Afghanistan, when—

(A) The estimated value is \$7,032,000 or more; and

(B) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

(7) Use the alternate VI clause in lieu of the alternate II clause in solicitations and contracts when—

(A) The estimated value is \$12,001,460 or more;

(B) The acquisition is in support of operations in Afghanistan; and

(C) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

(8) Use the alternate VII clause in lieu of the alternate III clause in solicitations and contracts when—

(A) The estimated value is \$7,032,000 or more but less than \$12,001,460;

(B) The acquisition is in support of operations in Afghanistan; and

(C) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 12. Amend section 252.225–7000—

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

■ b. In *Alternate I*, by revising the provision date and paragraphs (a) and (c).

The revisions read as follows:

252.225–7000 Buy American—Balance of Payments Program Certificate.

* * * * *

Buy American—Balance of Payments Program Certificate—Basic (Date)

(a) *Definitions.* *Commercially available off-the-shelf (COTS) item, component, critical component, critical item, domestic end product, foreign end product, qualifying country, qualifying country end product, and United States*, as used in this provision, have the meanings given in the 252.225–7001, Buy American and Balance of Payments Program—Basic clause of this solicitation.

* * * * *

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

(1) For all line items subject to the Buy American and Balance of Payments Program—Basic 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 that each domestic end product listed in paragraph (c)(4) of this provision contains a critical component or a critical item; and

(ii) For end products other than COTS items, components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country. For those end products that do not consist wholly or predominantly of iron or steel or a combination of both, the Offeror shall also indicate whether these foreign end products exceed 55 percent domestic content, except for those that are COTS items. If the percentage of the domestic content is unknown, select “no”.

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

Line item No.	Country of origin
---------------	-------------------

(3) The following end products are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products. For those foreign end products that do not consist wholly or predominantly of iron or steel or a combination of both, the Offeror shall also indicate whether these foreign end products exceed 55 percent domestic content, except for those that are COTS items. If the percentage of the domestic content is unknown, select “no”.

Line item No.	Country of origin (if known)	Exceeds 55% domestic content (yes/no)

(4) The Offeror shall separately list the line item numbers of domestic end products that contain a critical component or a critical item (see Federal Acquisition Regulation 25.105).

Domestic end products containing a critical component or a critical item:

Line Item Number _____
 [List as necessary]

* * * * *

Alternate I. * * *

Buy American—Balance of Payments Program Certificate—Alternate I (Date)

(a) *Definitions. Commercially available off-the-shelf (COTS) item, component, critical component, critical item, domestic end product, foreign end product, qualifying country, qualifying country end product, South Caucasus/Central and South Asian (SC/CASA) state, South Caucasus/Central and South Asian (SC/CASA) state end product, and United States*, as used in this provision, have the meanings given in the 252.225–7001, Buy American and Balance of Payments Program—Alternate I clause of this solicitation.

* * * * *

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

(1) For all line items subject to the Buy American and Balance of Payments Program—Alternate I 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 that each domestic end product listed in paragraph (c)(4) of this provision contains a critical component or a critical item; and

(ii) For end products other than COTS items, components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country. For those end products that do not consist wholly or predominantly of iron or steel or a combination of both, the Offeror shall also indicate whether these foreign end products exceed 55 percent domestic content, except for those that are COTS items. If the percentage of the domestic content is unknown, select “no”.

(2) The Offeror certifies that the following end products are qualifying country end products or SC/CASA state end products:

Line Item Number Country of Origin

(3) The following end products are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products. For those foreign end products that do not consist wholly or predominantly of iron or steel or a combination of both, the Offeror shall also indicate whether these foreign end products exceed 55 percent domestic content, except for those that are COTS items. If the percentage of the domestic content is unknown, select “no”.

Line Item Number Country of Origin (if known)

* * * * *

- 13. Amend section 252.225–7001—
- a. By revising the clause date;
- b. In paragraph (a)—
- i. In the definition of “Commercially available off-the-shelf (COTS) item” paragraph (1)(i) by removing “Federal Acquisition Regulation” and adding “Federal Acquisition Regulation (FAR)” in its place;
- ii. By adding, in alphabetical order, the definitions of “Critical component” and “Critical item”;
- iii. In the definition of “Domestic end product” by revising the first sentence of paragraph (1)(ii)(A) introductory text;
- iv. In the definition of “Qualifying country end product” by revising paragraph (2)(i) introductory text;
- c. By revising paragraph (b);
- d. In Alternate I—
- i. By revising the clause date;
- ii. In paragraph (a)—
- A. In the definition of “Commercially available off-the-shelf (COTS) item” paragraph (1)(i) by removing “Federal Acquisition Regulation” and adding “Federal Acquisition Regulation (FAR)” in its place;
- B. By adding, in alphabetical order, the definitions of “Critical component” and “Critical item”;
- C. In the definition of “Domestic end product” by revising the first sentence of paragraph (1)(ii)(A) introductory text;
- D. In the definition of “Qualifying country end product” by revising paragraph (2)(i) introductory text;
- e. By adding Alternate II and Alternate III.

The revisions and additions read as follows:

252.225–7001 Buy American and Balance of Payments Program.

* * * * *

Buy American and Balance of Payments Program—Basic (Date)

(a) * * *
Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means a domestic construction material or domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Domestic end product means—

- (1) * * *
- (ii) * * *

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with FAR 25.101(d), or award is made before January 1, 2030, for a foreign end product that exceeds 55 percent domestic content (see Defense Federal Acquisition Regulation Supplement 225.103(b)(ii)). * * *

* * * * *

Qualifying country end product means—

* * *

- (2) * * *

(i) The cost of the following types of components exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract:

* * * * *

(b) This clause implements 41 U.S.C. chapter 83, Buy American. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for an end product that is a COTS item (see FAR 12.505(a)(1)). Unless otherwise specified, this clause applies to all line items in the contract.

* * * * *

Alternate I. * * *

Buy American and Balance of Payments Program—Alternate I (Date)

(a) * * *

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means a domestic construction material or domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Domestic end product means—

- (1) * * *
- (ii) * * *

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered

starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with FAR 25.101(d), or award is made before January 1, 2030, for a foreign end product that exceeds 55 percent domestic content (see Defense Federal Acquisition Regulation Supplement 225.103(b)(ii)). * * *

* * * * *

Qualifying country end product means—

* * *

(2) * * *

(i) The cost of the following types of components exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract:

* * * * *

Alternate II. As prescribed in 225.1101(2)(i) and (2)(iv), use the following clause, which includes, in the definitions of “domestic end product” at paragraph (1)(ii)(A) and “qualifying country end product” at paragraph (2)(i), the domestic content threshold that will apply to the entire contract period of performance.

Buy American and Balance of Payments Program—Alternate II (Date)

(a) *Definitions.* As used in this clause—
Commercially available off-the-shelf (COTS) item—

(1) Means any item of supply (including construction material) that is—

(i) A commercial product (as defined in paragraph (1) of the definition of “commercial product” in section 2.101 of the Federal Acquisition Regulation (FAR));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

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

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means a domestic construction material or domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Domestic end product means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

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

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds, for the entire period of performance for a contract awarded in:

calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 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). Components of unknown origin are treated as foreign. 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—

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

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

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

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

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Qualifying country means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Lithuania
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

Qualifying country component means a component mined, produced, or manufactured in a qualifying country.

Qualifying country end product means—

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

(2) An end product manufactured in a qualifying country if—

(i) The cost of the following types of components exceeds, for the entire period of performance for a contract awarded in calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 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. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

United States means the 50 States, the District of Columbia, and outlying areas.

(b) This clause implements 41 U.S.C. chapter 83, Buy American. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for an end product that is a COTS item (see FAR 12.505(a)(1)). 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—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)

Alternate III. As prescribed in 225.1101(2)(i) and (2)(v), use the following clause, which includes, in the definitions of “domestic end product” at paragraph (1)(ii)(A) and “qualifying country end product” at paragraph (2)(i), the domestic content threshold that will apply to the entire contract period of performance; adds “South Caucasus/Central and South Asian (SC/CASA) state” and “South Caucasus/Central and South Asian (SC/CASA) state end product” to paragraph (a); and uses different paragraphs (b) and (c) than the basic clause:

Buy American and Balance of Payments Program—Alternate III (Date)

(a) *Definitions.* As used in this clause—
Commercially available off-the-shelf (COTS) item—

(1) Means any item of supply (including construction material) that is—

(i) A commercial product (as defined in paragraph (1) of the definition of “commercial product” in section 2.101 of the Federal Acquisition Regulation (FAR));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

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

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means a domestic construction material or domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Domestic end product means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

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

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 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). Components of unknown origin are treated as foreign. 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—

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

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

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

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

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent

of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Qualifying country means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Lithuania
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

Qualifying country component means a component mined, produced, or manufactured in a qualifying country.

Qualifying country end product means—

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

(2) An end product manufactured in a qualifying country if—

(i) The cost of the following types of components exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 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. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

South Caucasus/Central and South Asian (SC/CASA) state means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

South Caucasus/Central and South Asian (SC/CASA) state end product means an article that—

(1) Is wholly the growth, product, or manufacture of an SC/CASA state; or

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

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

United States means the 50 States, the District of Columbia, and outlying areas.

(b) This clause implements the Balance of Payments Program. 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—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 SC/CASA state end product, the Contractor shall deliver a qualifying country end product, an SC/CASA state 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)

■ 14. Amend section 252.225–7035—

■ a. By revising the provision date;

■ b. In paragraph (a) by removing ““component,”” and “Buy American” and adding ““component,” “critical component,” “critical item,”” and “252.225–7036, Buy American” in their places, respectively;

■ c. By revising paragraph (c);

■ d. By adding “(End of provision)” at the end of the provision;

■ e. In Alternate I—

■ i. By revising the introductory text;

■ ii. By revising the provision date;

■ iii. In paragraph (a) by removing ““component,”” and “Buy American” and adding ““component,” “critical component,” “critical item,”” and “252.225–7036, Buy American” in their places, respectively;

■ iv. Revising paragraph (c);

■ f. In Alternate II—

■ i. By revising the provision date;

■ ii. In paragraph (a) by removing ““component,”” and “Buy American” and adding ““component,” “critical component,” “critical item,”” and “252.225–7036, Buy American” in their places, respectively;

■ iii. By revising paragraph (c);

■ g. In Alternate III—

■ i. By revising the provision date;

■ ii. In paragraph (a) by removing ““component,”” and “Buy American” and adding ““component,” “critical component,” “critical item,”” and “252.225–7036, Buy American” in their places, respectively;

■ iii. By revising paragraph (c);

■ h. In Alternate IV—

■ i. By revising the provision date;

■ ii. In paragraph (a) by removing ““component,”” and “Buy American” and adding ““component,” “critical component,” “critical item,”” and “252.225–7036, Buy American” in their places, respectively;

■ iii. Revising paragraph (c); and

■ i. In Alternate V—

■ i. By revising the provision date;

■ ii. In paragraph (a) by removing ““component,”” and “Buy American” and adding ““component,” “critical component,” “critical item,”” and

“252.225–7036, Buy American” in their places, respectively; and

■ iii. By revising paragraph (c).

The revisions read as follows:

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

* * * * *

Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Basic (Date)

* * * * *

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

(1) For all line items subject to the Buy American—Free Trade Agreements—Balance of Payments Program—Basic 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;

(ii) Each domestic end product listed in paragraph (c)(3) of this provision contains a critical component or a critical item; and

(iii) 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) end products:

(Line item No.) (Country of origin)

(ii) The Offeror certifies that the following supplies are Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, Panamanian end products or Peruvian end products:

(Line item No.) (Country of origin)

(iii) The following supplies are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products. For those foreign end products that do not consist wholly or predominantly of iron or steel or a combination of both, the Offeror shall also indicate whether these foreign end products exceed 55 percent domestic content, except those that are COTS items. If the percentage of the domestic content is unknown, select “no”.

Line item No.	Country of origin (if known)	Exceeds 55% domestic content (yes/no)

(3) The Offeror shall list the line item numbers of domestic end products that contain a critical component or a critical item (see section 25.105 of the Federal Acquisition Regulation).

Line Item No. _____
 [List as necessary]
 (End of provision)

Alternate I. As prescribed in 225.1101(9) and (9)(ii), use the following provision, which does not use the phrases “Bahrainian end product,” “Free Trade Agreement country,” “Free Trade Agreement country end product,” “Moroccan end product,” “Panamanian end product,” and “Peruvian end products” in paragraph (a); does not use “Free Trade Agreement country end products

other than Bahrainian end products, Moroccan end products, Panamanian end products, or Peruvian end products” in paragraphs (b)(2) and (c)(2)(ii); does not use “Australian or” in paragraph (c)(2)(i); and includes “that are mined, produced, or manufactured in the United States” in paragraph (c)(2)(ii):

Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate I (Date)

* * * * *

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

(1) For all line items subject to the Buy American—Free Trade Agreements—Balance of Payments Program—Alternate I 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;

(ii) Each domestic end product listed in paragraph (c)(3) of this provision contains a critical component or a critical item; and

(iii) 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 end products:

(Line item No.) (Country of origin)

(ii) The following supplies are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products. For those foreign end products that do not consist wholly or predominantly of iron or steel or a combination of both, the Offeror shall also indicate whether these foreign end products exceed 55 percent domestic content, except those that are COTS items that are mined, produced, or manufactured in the United States. If the percentage of the domestic content is unknown, select “no”.

Line item No.	Country of origin (if known)	Exceeds 55% domestic content (yes/no)

(3) The Offeror shall list the line item numbers of domestic end products that contain a critical component or a critical item (see section 25.105 of the Federal Acquisition Regulation).

Line item No. _____

[List as necessary]

* * * * *

Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate II (Date)

* * * * *

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

(1) For all line items subject to the Buy American—Free Trade Agreements—Balance of Payments Program—Alternate II 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;

(ii) Each domestic end product listed in paragraph (c)(3) of this provision contains a critical component or a critical item; and

(iii) 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 SC/CASA state end products:

(Line item No.) (Country of origin)

(ii) The Offeror certifies that the following supplies are Free Trade Agreement country

end products other than Bahrainian end products, Moroccan end products, Panamanian end products, or Peruvian end products:

(Line item No.) (Country of origin)

(iii) The following supplies are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products. For those foreign end products that do not consist wholly or predominantly of iron or steel or a combination of both, the Offeror shall also indicate whether these foreign end products exceed 55 percent domestic content, except those that are COTS items. If the percentage of the domestic content is unknown, select “no”.

Line item No.	Country of origin (if known)	Exceeds 55% domestic content (yes/no)

(3) The Offeror shall list the line item numbers of domestic end products that contain a critical component or a critical item (see section 25.105 of the Federal Acquisition Regulation).

Line item No. _____

[List as necessary]

* * * * *

Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate III (Date)

* * * * *

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

(1) For all line items subject to the Buy American—Free Trade Agreements—Balance of Payments Program—Alternate III 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;

(ii) Each domestic end product listed in paragraph (c)(3) of this provision contains a critical component or a critical item; and

(iii) 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 or SC/CASA state end products:

(Line item No.) (Country of origin)

(ii) The Offeror certifies that the following supplies are Free Trade Agreement country

end products other than Bahrainian end products, Moroccan end products, Panamanian end products, or Peruvian end products:

(Line item No.) (Country of origin)

(iii) The following supplies are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products. For those foreign end products that do not consist wholly or predominantly of iron or steel or a combination of both, the Offeror shall also indicate whether these foreign end products exceed 55 percent domestic content, except those that are COTS items. If the percentage of the domestic content is unknown, select “no”.

Line item No.	Country of origin (if known)	Exceeds 55% domestic content (yes/no)

(3) The Offeror shall list the line item numbers of domestic end products that contain a critical component or a critical item (see section 25.105 of the Federal Acquisition Regulation).

Line item No. _____
[List as necessary]
* * * * *

Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate IV (Date)
* * * * *

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

(1) For all line items subject to the Buy American—Free Trade Agreements—Balance of Payments Program—Alternate IV 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;
(ii) Each domestic end product listed in paragraph (c)(3) of this provision contains a critical component or a critical item; and
(iii) 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) end products:

(Line item No.) (Country of origin)

(ii) The Offeror certifies that the following supplies are Free Trade Agreement country

end products other than Bahrainian end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products:

(Line item No.) (Country of origin)

(iii) The following supplies are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products. For those foreign end products that do not consist wholly or predominantly of iron or steel or a combination of both, the Offeror shall also indicate whether these foreign end products exceed 55 percent domestic content, except those that are COTS items. If the percentage of the domestic content is unknown, select “no”.

Line item No.	Country of origin (if known)	Exceeds 55% domestic content (yes/no)

(3) The Offeror shall list the line item numbers of domestic end products that contain a critical component or a critical item (see section 25.105 of the Federal Acquisition Regulation).

Line item No. _____
[List as necessary]
* * * * *

Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate V (Date)
* * * * *

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

(1) For all line items subject to the Buy American—Free Trade Agreements—Balance of Payments Program—Alternate V 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;
(ii) Each domestic end product listed in paragraph (c)(3) of this provision contains a critical component or a critical item; and
(iii) 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 SC/CASA state end products:

(Line item No.) (Country of origin)

(ii) The Offeror certifies that the following supplies are Free Trade Agreement country

end products other than Bahrainian end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products:

(Line item No.) (Country of origin)

(iii) The following supplies are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products. For those foreign end products that do not consist wholly or predominantly of iron or steel or a combination of both, the Offeror shall also indicate whether these foreign end products exceed 55 percent domestic content, except those that are COTS items. If the percentage of the domestic content is unknown, select “no”.

Line item No.	Country of origin (if known)	Exceeds 55% domestic content (yes/no)

(3) The Offeror shall list the line item numbers of domestic end products that contain a critical component or a critical item (see section 25.105 of the Federal Acquisition Regulation).

Line item No. _____
[List as necessary]
* * * * *

- 15. Amend section 252.225–7036—
- a. By revising the clause date;

- b. In paragraph (a)—
- i. In the definition of “Commercially available off-the-shelf (COTS) item” paragraph (1)(i) by removing “Federal Acquisition Regulation” and adding “Federal Acquisition Regulation (FAR)” in its place;
- ii. By adding, in alphabetical order, the definitions of “Critical component” and “Critical item”;

- iii. In the definition of “Domestic end product” by revising the first sentence of paragraph (1)(ii)(A) introductory text;
- iv. In the definition of “Qualifying country end product” by revising paragraph (2)(i) introductory text;
- c. In Alternate I—
- i. By revising the clause date;
- ii. In paragraph (a)—

- A. In the definition of “Commercially available off-the-shelf (COTS) item” paragraph (1)(i) by removing “Federal Acquisition Regulation” and adding “Federal Acquisition Regulation (FAR)” in its place;
- B. By adding, in alphabetical order, the definitions of “Critical component” and “Critical item”;
- C. In the definition of “Domestic end product” by revising the first sentence of paragraph (1)(ii)(A) introductory text;
- D. In the definition of “Qualifying country end product” by revising paragraph (2)(i) introductory text;
- iii. In paragraph (c) by removing “qualifying country, or other” and adding “qualifying country or other” in its place;
- d. In Alternate II—
- i. By revising the clause date;
- ii. In paragraph (a)—
- A. In the definition of “Commercially available off-the-shelf (COTS) item” paragraph (1)(i) by removing “Federal Acquisition Regulation” and adding “Federal Acquisition Regulation (FAR)” in its place;
- B. By adding, in alphabetical order, the definitions of “Critical component” and “Critical item”;
- C. In the definition of “Domestic end product” by revising the first sentence of paragraph (1)(ii)(A) introductory text and redesignating paragraph (1)(C) as paragraph (1)(B);
- D. In the definition of “Qualifying country end product” revising paragraph (2)(i) introductory text;
- e. In Alternate III—
- i. By revising the clause date;
- ii. In paragraph (a)—
- A. In the definition of “Commercially available off-the-shelf (COTS) item” in paragraph (1)(i) by removing “Federal Acquisition Regulation” and adding “Federal Acquisition Regulation (FAR)” in its place;
- B. By adding, in alphabetical order, the definitions of “Critical component” and “Critical item”;
- C. In the definition of “Domestic end product” by revising the first sentence of paragraph (1)(ii)(A) introductory text;
- D. In the definition “Qualifying country end product” by revising paragraph (2)(i) introductory text;
- f. In Alternate IV—
- i. By revising the clause date;
- ii. In paragraph (a)—
- A. In the definition of “Commercially available off-the-shelf (COTS) item” paragraph (1)(i) by removing “Federal Acquisition Regulation” and adding “Federal Acquisition Regulation (FAR)” in its place;
- B. By adding, in alphabetical order, the definitions of “Critical component” and “Critical item”;

- C. In the definition of “Domestic end product” by revising the first sentence of paragraph (1)(ii)(A) introductory text;
- D. In the definition of “Qualifying country end product” by revising paragraph (2)(i) introductory text;
- g. In Alternate V—
- i. By revising the clause date;
- ii. In paragraph (a)—
- A. In the definition of “Commercially available off-the-shelf (COTS) item” paragraph (1)(i) by removing “Federal Acquisition Regulation” and adding “Federal Acquisition Regulation (FAR)” in its place;
- B. By adding, in alphabetical order, the definitions of “Critical component” and “Critical item”;
- C. In the definition of “Domestic end product” by revising the first sentence of paragraph (1)(ii)(A) introductory text;
- D. In the definition of “Qualifying country end product” by revising paragraph (2)(i) introductory text; and
- h. By adding Alternates VI through XI.

The revisions and additions read as follows:

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

* * * * *

Buy American—Free Trade Agreements—Balance of Payments Program—Basic (Date)

(a) * * *
* * * * *

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Domestic end product means—

- (1) * * *
- (ii) * * *

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with Defense Federal Acquisition Regulation Supplement (DFARS) 225.101(d); or award is made before January 1, 2030, for a foreign end product that exceeds 55 percent domestic content (see DFARS 225.103(b)(ii)). * * *

* * * * *

Qualifying country end product means—

- (2) * * *

(i) The cost of the following types of components exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in

calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract:

* * *
* * * * *
Alternate I. * * *

Buy American—Free Trade Agreements—Balance of Payments Program—Alternate I (Date)

(a) * * *
* * * * *

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Domestic end product means—

- (1) * * *
- (ii) * * *

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with Defense Federal Acquisition Regulation Supplement (DFARS) 225.101(d); or award is made before January 1, 2030, for a foreign end product that exceeds 55 percent domestic content (see DFARS 225.103(b)(ii)). * * *

* * * * *

Qualifying country end product means—

- (2) * * *

(i) The cost of the following types of components exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract:

* * * * *

Alternate II. * * *

Buy American—Free Trade Agreements—Balance of Payments Program—Alternate II (Date)

(a) * * *
* * * * *

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Domestic end product means—

- (1) * * *
- (ii) * * *

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with Defense Federal Acquisition Regulation Supplement (DFARS) 225.101(d); or award is made before January 1, 2030, for a foreign end product that exceeds 55 percent domestic content (see DFARS 225.103(b)(ii)). * * *

Qualifying country end product means— * * * (2) * * * (i) The cost of the following types of components exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract: * * *

Alternate III. * * *

Buy American—Free Trade Agreements—Balance Of Payments Program—Alternate III (Date)

(a) * * * * * *Critical component* means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Domestic end product means— (1) * * * (ii) * * *

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with Defense Federal Acquisition Regulation Supplement (DFARS) 225.101(d); or award is made before January 1, 2030, for a foreign end product that exceeds 55 percent domestic content (see DFARS 225.103(b)(ii)). * * *

Qualifying country end product means— * * * (2) * * * (i) The cost of the following types of components exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in

calendar year 2029, unless an alternate percentage is established for a contract: * * *

Alternate IV. * * *

Buy American—Free Trade Agreements—Balance of Payments Program—Alternate IV (Date)

(a) * * * * * *Critical component* means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Domestic end product means— (1) * * * (ii) * * *

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with Defense Federal Acquisition Regulation Supplement (DFARS) 225.101(d); or award is made before January 1, 2030, for a foreign end product that exceeds 55 percent domestic content (see DFARS 225.103(b)(ii)). * * *

Qualifying country end product means— * * * (2) * * * (i) The cost of the following types of components exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract: * * *

Alternate V. * * *

Buy American—Free Trade Agreements—Balance of Payments Program—Alternate V (Date)

(a) * * * * * *Critical component* means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Domestic end product means— (1) * * * (ii) * * *

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the

United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with Defense Federal Acquisition Regulation Supplement (DFARS) 225.101(d); or award is made before January 1, 2030, for a foreign end product that exceeds 55 percent domestic content (see DFARS 225.103(b)(ii)). * * *

Qualifying country end product means— * * * (2) * * *

(i) The cost of the following types of components exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract: * * *

Alternate VI. As prescribed in 225.1101(10)(i) and (10)(i)(G), use the following clause, which includes, in the definitions of *domestic end product* at paragraph (1)(ii)(A) and *qualifying country end product* at paragraph (2)(i), the domestic content threshold that will apply to the entire contract period of performance:

Buy American—Free Trade Agreements—Balance of Payments Program—Alternate VI (Date)

(a) *Definitions.* As used in this clause— *Bahrainian end product* means an article that—

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

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

Commercially available off-the-shelf (COTS) item—

(1) Means any item of supply (including construction material) that is—

(i) A commercial product (as defined in paragraph (1) of the definition of “commercial product” in section 2.101 of the Federal Acquisition Regulation (FAR));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

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

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Domestic end product means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

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

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 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). Components of unknown origin are treated as foreign. 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—

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

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or

forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

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

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

Free Trade Agreement country means Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore.

Free Trade Agreement country end product means an article that—

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

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

Moroccan end product means an article that—

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

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

Panamanian end product means an article that—

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

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

Peruvian end product means an article that—

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

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

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Qualifying country means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Lithuania
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland

Turkey
United Kingdom of Great Britain and
Northern Ireland

Qualifying country component means a component mined, produced, or manufactured in a qualifying country.

Qualifying country end product means—

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

(2) An end product manufactured in a qualifying country if—

(i) The cost of the following types of components exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 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.

Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

United States means the 50 States, the District of Columbia, and outlying areas.

(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, Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, Panamanian end products, or Peruvian end products, or other foreign end products in the Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Basic provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product or a Free Trade Agreement country end product other than a Bahrainian end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product, the Contractor shall deliver a qualifying country end product, a Free Trade Agreement country end product other than a Bahrainian end product, a Moroccan end product, a Panamanian end product, or a Peruvian 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)

Alternate VII. As prescribed in 225.1101(10)(i) and (10)(i)(H), use the following clause, which includes, in the definitions of *domestic end product* at paragraph (1)(ii)(A) and *qualifying country end product* at paragraph (2)(i), the domestic content threshold that will

apply to the entire contract period of performance and uses a different paragraph (c) than the basic clause:

Buy American—Free Trade Agreements—Balance of Payments Program—Alternate VII (Date)

(a) *Definitions.* As used in this clause—
Bahrainian end product means an article that—

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

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

Commercially available off-the-shelf (COTS) item—

(1) Means any item of supply (including construction material) that is—

(i) A commercial product (as defined in paragraph (1) of the definition of “commercial product” in section 2.101 of the Federal Acquisition Regulation (FAR));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

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

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Domestic end product means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

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

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 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). Components of unknown origin are treated as foreign. 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—

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

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

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

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

Free Trade Agreement country means Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore.

Free Trade Agreement country end product means an article that—

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

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

Moroccan end product means an article that—

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

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

Panamanian end product means an article that—

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

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

Peruvian end product means an article that—

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

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

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Qualifying country means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Lithuania
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

Qualifying country component means a component mined, produced, or manufactured in a qualifying country.

Qualifying country end product means—

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

(2) An end product manufactured in a qualifying country if—

(i) The cost of the following types of components exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 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. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

United States means the 50 States, the District of Columbia, and outlying areas.

(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 or other foreign end products in the Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate I 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)

Alternate VIII. As prescribed in 225.1101(10)(i) and (10)(i)(I), use the following clause, which includes, in the definitions of *domestic end product* at paragraph (1)(ii)(A) and *qualifying country end product* at paragraph (2)(i), the domestic content threshold that will apply to the entire contract period of performance; adds *South Caucasus/Central and South Asian (SC/CASA) state* and *South Caucasus/Central and South Asian (SC/CASA) state end product* to paragraph (a); and uses a different paragraph (c) than the basic clause:

Buy American—Free Trade Agreements—Balance of Payments Program—Alternate VIII (Date)

(a) *Definitions.* As used in this clause—
Bahrainian end product means an article that—

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

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

Commercially available off-the-shelf (COTS) item—

(1) Means any item of supply (including construction material) that is—

(i) A commercial product (as defined in paragraph (1) of the definition of “commercial product” in section 2.101 of the Federal Acquisition Regulation (FAR));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

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

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Domestic end product means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

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

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 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). Components of unknown origin are treated as foreign. 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—

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

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or

forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

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

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

Free Trade Agreement country means Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore.

Free Trade Agreement country end product means an article that—

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

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

Moroccan end product means an article that—

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

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

Panamanian end product means an article that—

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

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

Peruvian end product means an article that—

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

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

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Qualifying country means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Lithuania
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland

Turkey
United Kingdom of Great Britain and
Northern Ireland

Qualifying country component means a component mined, produced, or manufactured in a qualifying country.

Qualifying country end product means—

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

(2) An end product manufactured in a qualifying country if—

(i) The cost of the following types of components exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 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.

Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

South Caucasus/Central and South Asian (SC/CASA) state means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

South Caucasus/Central and South Asian (SC/CASA) state end product means an article that—

(1) Is wholly the growth, product, or manufacture of an SC/CASA state; or

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

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

United States means the 50 States, the District of Columbia, and outlying areas.

(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, SC/CASA state end products, Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, Panamanian end products, or Peruvian end products, or other foreign end products in the Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate II provision of the solicitation. If the Contractor certified in its offer that it will deliver a

qualifying country end product, SC/CASA state end products, or a Free Trade Agreement country end product other than a Bahrainian end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product, the Contractor shall deliver a qualifying country end product, an SC/CASA state end product, a Free Trade Agreement country end product other than a Bahrainian end product, a Moroccan end product, a Panamanian end product, or a Peruvian 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)

Alternate IX. As prescribed in 225.1101(10)(i) and (10)(i)(j), use the following clause, which includes in the definitions of *domestic end product* at paragraph (1)(ii)(A) and *qualifying country end product* at paragraph (2)(i) the domestic content threshold that will apply to the entire contract period of performance; adds *South Caucasus/Central and South Asian (SC/CASA) state* and *South Caucasus/Central and South Asian (SC/CASA) state end product* to paragraph (a); and uses a different paragraph (c) than the basic clause:

Buy American—Free Trade Agreements—Balance of Payments Program—Alternate IX (Date)

(a) *Definitions.* As used in this clause—
Bahrainian end product means an article that—

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

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

Commercially available off-the-shelf (COTS) item—

(1) Means any item of supply (including construction material) that is—

(i) A commercial product (as defined in paragraph (1) of the definition of “commercial product” in section 2.101 of the Federal Acquisition Regulation (FAR));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

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

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Domestic end product means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

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

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 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). Components of unknown origin are treated as foreign. 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—

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

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron and steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good

faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

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

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

Free Trade Agreement country means Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore.

Free Trade Agreement country end product means an article that—

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

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

Moroccan end product means an article that—

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

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

Panamanian end product means an article that—

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

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

Peruvian end product means an article that—

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

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

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Qualifying country means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Lithuania
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland

Qualifying country component means a component mined, produced, or manufactured in a qualifying country.

Qualifying country end product means—

(1) An unmanufactured end product mined or produced in a qualifying country; or
(2) An end product manufactured in a qualifying country if—

(i) The cost of the following types of components exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 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. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

South Caucasus/Central and South Asian (SC/CASA) state means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

South Caucasus/Central and South Asian (SC/CASA) state end product means an article that—

(1) Is wholly the growth, product, or manufacture of an SC/CASA state; or

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

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

United States means the 50 States, the District of Columbia, and outlying areas.

(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, SC/CASA state end products, or other foreign end products in the Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate III provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product or SC/CASA state end products, the Contractor shall deliver a qualifying country end product, an SC/CASA state 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)

Alternate X. As prescribed in 225.1101(10)(i) and (10)(i)(K), use the following clause, which includes, in the definitions of “domestic end product” at paragraph (1)(ii)(A) and “qualifying country end product” at paragraph (2)(i), the domestic content threshold that will apply to the entire contract period of performance; adds “Korean end product” to paragraph (a); and uses a different paragraph (c) than the basic clause:

Buy American—Free Trade Agreements—Balance of Payments Program—Alternate X (Date)

(a) *Definitions.* As used in this clause—
Bahrainian end product means an article that—

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

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

Commercially available off-the-shelf (COTS) item—

(1) Means any item of supply (including construction material) that is—

(i) A commercial product (as defined in paragraph (1) of the definition of “commercial product” in section 2.101 of the Federal Acquisition Regulation (FAR));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

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

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Domestic end product means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

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

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 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). Components of unknown origin are treated as foreign. 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—

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

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

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

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

Free Trade Agreement country means Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador,

Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore.

Free Trade Agreement country end product means an article that—

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

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

Korean end product means an article that—

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

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

Moroccan end product means an article that—

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

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

Panamanian end product means an article that—

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

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

Peruvian end product means an article that—

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

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

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Qualifying country means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Lithuania
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland

Qualifying country component means a component mined, produced, or manufactured in a qualifying country.

Qualifying country end product means—

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

(2) An end product manufactured in a qualifying country if—

(i) The cost of the following types of components exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 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. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

United States means the 50 States, the District of Columbia, and outlying areas.

(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, Free Trade Agreement country end products other than Bahrainian end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products, or other foreign end products in the Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate IV provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product or a Free Trade Agreement country end product other than a Bahrainian end product, a Korean end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product, the Contractor shall deliver a qualifying country end product, a Free Trade Agreement country end product other than a Bahrainian end product, a Korean end product, a Moroccan end product, a Panamanian end product, or a Peruvian 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)

Alternate XI. As prescribed in 225.1101(10)(i) and (10)(i)(L), use the following clause, which includes, in the definitions of “domestic end product” at paragraph (1)(ii)(A) and “qualifying country end product” at paragraph (2)(i), the domestic content threshold

that will apply to the entire contract period of performance; adds “Korean end product,” “South Caucasus/Central and South Asian (SC/CASA) state,” and “South Caucasus/Central and South Asian (SC/CASA) state end product” to paragraph (a); and uses a different paragraph (c) than the basic clause:

Buy American—Free Trade Agreements—Balance of Payments Program—Alternate XI (Date)

(a) *Definitions*. As used in this clause—
Bahrainian end product means an article that—

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

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

Commercially available off-the-shelf (COTS) item—

(1) Means any item of supply (including construction material) that is—

(i) A commercial product (as defined in paragraph (1) of the definition of “commercial product” in section 2.101 of the Federal Acquisition Regulation (FAR));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

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

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Domestic end product means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

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

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of

all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 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). Components of unknown origin are treated as foreign. 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—

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

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

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

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

Free Trade Agreement country means Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore.

Free Trade Agreement country end product means an article that—

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

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

Korean end product means an article that—

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

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

Moroccan end product means an article that—

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

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

Panamanian end product means an article that—

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

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

Peruvian end product means an article that—

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

(2) In the case of an article that consists in whole or in part of materials from another

country, has been substantially transformed in Peru 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.

“Predominantly of iron or steel or a combination of both” means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Qualifying country means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Lithuania
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

Qualifying country component means a component mined, produced, or manufactured in a qualifying country.

Qualifying country end product means—

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

(2) An end product manufactured in a qualifying country if—

(i) The cost of the following types of components exceeds, for the entire period of

performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 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. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

South Caucasus/Central and South Asian (SC/CASA) state means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

South Caucasus/Central and South Asian (SC/CASA) state end product means an article that—

- (1) Is wholly the growth, product, or manufacture of an SC/CASA state; or
- (2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state 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.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

United States means the 50 States, the District of Columbia, and outlying areas.

(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, SC/CASA state end products, Free Trade Agreement country end products other than Bahrainian end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products, or other foreign end products in the Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate V provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, SC/CASA state end products, or a Free Trade Agreement country end product other than a Bahrainian end product, a Korean end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product, the Contractor shall deliver a qualifying country end product, an SC/CASA state end product, a Free Trade Agreement country end product other than a Bahrainian end product, a Korean end product, a Moroccan end product, a Panamanian end product, or a Peruvian 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)

- 16. Amend section 252.225–7044—
 - a. By revising the clause title and date;
 - b. In paragraph (a)—
 - i. In the definition of “Commercially available off-the-shelf (COTS) item” in paragraph (1)(i) by removing “Federal Acquisition Regulation” and adding “Federal Acquisition Regulation (FAR)” in its place;
 - ii. By adding, in alphabetical order, the definitions of “Critical component” and “Critical item”;
 - iii. In the definition of “Domestic construction material” by revising the first sentence of paragraph (1)(ii)(A);
 - c. In Alternate I—
 - i. By revising the clause title and date;
 - ii. In paragraph (a)—
 - A. In the definition of “Commercially available off-the-shelf (COTS) item” in paragraph (1)(i) by removing “Federal Acquisition Regulation” and adding “Federal Acquisition Regulation (FAR)” in its place;
 - B. By adding, in alphabetical order, the definitions of “Critical component” and “Critical item”;
 - C. In the definition of “Domestic construction material” by revising the first sentence of paragraph (1)(ii)(A); and
 - d. By adding Alternates II and III.
- The revisions and additions read as follows:

252.225–7044 Balance of Payments Program—Construction Material.

* * * * *

Balance of Payments Program—Construction Material—Basic (Date)

- (a) * * *
 - Critical component* means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.
 - Critical item* means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.
 - Domestic construction material* means—
 - (1) * * *
 - (ii) * * *
 - (A) The cost of its components mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with FAR 25.201(c). * * *
- * * * * *

Alternate I. * * *

Balance of Payments Program—Construction Material—Alternate I (Date)

- (a) * * *
 - Critical component* means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.
 - Critical item* means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.
 - Domestic construction material* means—
 - (1) * * *
 - (ii) * * *
 - (A) The cost of its components mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with FAR 25.201(c). * * *
- * * * * *

Alternate II. As prescribed in 225.7503(a) and (a)(3), use the following clause, which includes, in the definition of “domestic construction material” at paragraph (1)(ii)(A), the domestic content threshold that will apply to the entire contract period of performance:

Balance of Payments Program—Construction Material—Alternate II (Date)

- (a) *Definitions.* As used in this clause—
- Commercially available off-the-shelf (COTS) item*—
- (1) Means any item of supply (including construction material) that is—
- (i) A commercial product (as defined in paragraph (1) of the definition of “commercial product” in section 2.101 of the Federal Acquisition Regulation (FAR));
- (ii) Sold in substantial quantities in the commercial marketplace; and
- (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
- (2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.
- 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.

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Domestic construction material means—

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both—

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

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 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. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of iron and steel not produced in the United States (excluding fasteners) as estimated in good faith by the contractor, constitutes less than 5 percent of the cost of all the components used in such construction material (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not

produced in the United States, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of “cost of components” in this clause.

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

United States means the 50 States, the District of Columbia, and outlying areas.

(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 FAR part 2;

(2) Information technology that is a commercial product; or

(3) 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 III. As prescribed in 225.7503(a) and (a)(4), use the following clause, which includes, in the definition of “domestic construction material” at paragraph (1)(ii)(A), the domestic content threshold that will apply to the entire period of performance; adds definitions for “South Caucasus/Central and South Asian (SC/CASA) state” and “SC/CASA state construction material” to paragraph (a); and uses “domestic construction material or SC/CASA state construction material” instead of “domestic construction material” in the second sentence of paragraph (b):

Balance of Payments Program—Construction Material—Alternate III (Date)

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

Commercially available off-the-shelf

(COTS) item—

(1) Means any item of supply (including construction material) that is—

(i) A commercial product (as defined in paragraph (1) of the definition of “commercial product” in section 2.101 of the Federal Acquisition Regulation (FAR));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without

modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

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.

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Domestic construction material means—

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both—

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

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 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. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of iron and steel not produced in the United States (excluding fasteners) as estimated in good faith by the contractor, constitutes less than 5 percent of the cost of all the components used in such construction material (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States, utilized in the manufacture of the construction material and a good faith estimate of the cost of all iron or steel components not produced in the United States, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of “cost of components” in this clause.

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

South Caucasus/Central and South Asian (SC/CASA) state means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

SC/CASA state construction material means construction material that—

(1) Is wholly the growth, product, or manufacture of an SC/CASA state; 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 an SC/CASA state into a new and different construction material distinct from the material from which it was transformed.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

United States means the 50 States, the District of Columbia, and outlying areas.

(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 or SC/CASA state construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in FAR part 2;

(2) Information technology that is a commercial product; or

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

[Contracting Officer to list applicable excepted materials or indicate “none”].

(End of clause)

■ 17. Amend section 252.225–7045—

■ a. By revising the clause date;

■ b. In paragraph (a)—

■ i. In the definition of “Commercially available off-the-shelf (COTS) item” in paragraph (1)(i) by removing “Federal Acquisition Regulation” and adding “Federal Acquisition Regulation (FAR)” in its place;

■ ii. By adding, in alphabetical order, the definitions of “Critical component” and “Critical item”;

■ iii. In the definition of “Domestic construction material” by revising the first sentence of paragraph (1)(ii)(A);

■ c. In Alternate I—

■ i. By revising the clause date;

■ ii. In paragraph (a)—

■ A. In the definition of “Commercially available off-the-shelf (COTS) item” in paragraph (1)(i) by removing “Federal Acquisition Regulation” and adding “Federal Acquisition Regulation (FAR)” in its place;

■ B. By adding, in alphabetical order, the definitions of “Critical component” and “Critical item”;

■ C. In the definition of “Domestic construction material” by revising the first sentence of paragraph (1)(ii)(A);

■ d. In Alternate II—

■ i. By revising the clause date;

■ ii. In paragraph (a)—

■ A. In the definition of “Commercially available off-the-shelf (COTS) item” in paragraph (1)(i) by removing “Federal Acquisition Regulation” and adding “Federal Acquisition Regulation (FAR)” in its place;

■ B. By adding, in alphabetical order, the definitions of “Critical component” and “Critical item”;

■ C. In the definition of “Domestic construction material” by revising the first sentence of paragraph (1)(ii)(A);

■ e. In Alternate III—

■ i. By revising the clause date;

■ ii. In paragraph (a)—

■ A. In the definition of “Commercially available off-the-shelf (COTS) item” in paragraph (1)(i) by removing “Federal Acquisition Regulation” and adding “Federal Acquisition Regulation (FAR)” in its place;

■ B. By adding, in alphabetical order, the definitions of “Critical component” and “Critical item”;

■ C. In the definition of “Domestic construction material” by revising the first sentence of paragraph (1)(ii)(A); and

■ f. By adding Alternates IV through VII.

The revisions and additions read as follows:

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

* * * * *

Balance of Payments Program—Construction Material Under Trade Agreements—Basic (Date)

(a) * * *

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

* * * * *

Domestic construction material means—

(1) * * *

(ii) * * *

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with FAR 25.201(c). * * *

* * * * *

Alternate I. * * *

Balance of Payments Program—Construction Material Under Trade Agreements—Alternate I (Date)

(a) * * *

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

* * * * *

Domestic construction material means—

(1) * * *

(ii) * * *

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with FAR 25.201(c). * * *

* * * * *

Alternate II. * * *

Balance of Payments Program—Construction Material Under Trade Agreements—Alternate II (Date)

(a) * * *

Critical component means a component that is mined, produced, or manufactured in

the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

* * * * *

Domestic construction material means—

- (1) * * *
(ii) * * *

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with FAR 25.201(c).

* * * * *

Alternate III. * * *

- (a) * * *

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

* * * * *

Domestic construction material means—

- (1) * * *
(ii) * * *

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with FAR 25.201(c).

* * * * *

Alternate IV. As prescribed in 225.7503(b) and (b)(5), use the following clause, which includes, in the definition of "domestic construction material" at paragraph (1)(ii)(A), the domestic content threshold that will apply to the entire contract period of performance:

Balance of Payments Program—Construction Material Under Trade Agreements—Alternate IV (Date)

(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.

Commercially available off-the-shelf (COTS) item—

(1) Means any item of supply (including construction material) that is—

(i) A commercial product (as defined in paragraph (1) of the definition of "commercial product" in section 2.101 of the Federal Acquisition Regulation (FAR));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. 40102), such as agricultural products and petroleum products.

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.

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Designated country means—

- (1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, 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, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania,

Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as "the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu" (Chinese Taipei)), Ukraine, or the United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore);

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

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, 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) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both—

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

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 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. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of iron and steel not produced in the United States (excluding fasteners) as estimated in good faith by the contractor, constitutes less than 5 percent of the cost of all the components used in such construction material (produced in the United States

means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States, utilized in the manufacture of the construction material and a good faith estimate of the cost of all iron or steel components not produced in the United States, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of “cost of components” in this clause.

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.

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

United States means the 50 States, the District of Columbia, and outlying areas.

WTO GPA country construction material means a construction material that—

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

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

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has

determined that the WTO GPA and Free Trade Agreements apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for designated country construction materials.

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

(1) Construction material valued at or below the simplified acquisition threshold in FAR part 2;

(2) Information technology that is a commercial product; or

(3) 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 V. As prescribed in 225.7503(b) and (b)(6), use the following clause, which includes, in the definition of “domestic construction material” at paragraph (1)(ii)(A), the domestic content threshold that will apply to the entire contract period of performance; adds “Bahrainian or Mexican construction material” to paragraph (a); and uses a different paragraph (b) and (c) than the basic clause:

Balance of Payments Program—Construction Material Under Trade Agreements—Alternate V (Date)

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

Bahrainian or Mexican construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of Bahrain or Mexico; 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 Bahrain or Mexico into a new and different construction material distinct from the materials from which it was transformed.

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.

Commercially available off-the-shelf (COTS) item—

(1) Means any item of supply (including construction material) that is—

(i) A commercial product (as defined in paragraph (1) of the definition of “commercial product” in section 2.101 of the Federal Acquisition Regulation (FAR));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. 40102), such as agricultural products and petroleum products.

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.

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Designated country means—

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, 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, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as “the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu” (Chinese Taipei)), Ukraine, or the United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic

Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, 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) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both—

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

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 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. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of iron and steel not produced in the United States (excluding fasteners) as estimated in good faith by the contractor, constitutes less than 5 percent of the cost of all the components used in such construction material (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States, utilized in the manufacture of the construction material and a good faith estimate of the cost of all iron or steel components not produced in the United States, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material

contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of “cost of components” in this clause.

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.

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

United States means the 50 States, the District of Columbia, and outlying areas.

WTO GPA country construction material means a construction material that—

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

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

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and all Free Trade Agreements except United States-Mexico-Canada Agreement and the Bahrain Free Trade Agreement apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for designated country construction material other than Bahrainian or Mexican construction material.

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

(1) Construction material valued at or below the simplified acquisition threshold in FAR part 2; or

(2) Information technology that is a commercial product; or

(3) 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 VI. As prescribed in 225.7503(b) and (b)(7), use the following clause, which includes, in the definition of “domestic construction material” at paragraph (1)(ii)(A), the domestic content threshold that will apply to the entire contract period of performance; adds “South Caucasus/Central and South Asian (SC/CASA) state” and “SC/CASA state construction material” to paragraph (a); uses a different paragraph (b) and introductory text for paragraph (c) than the basic clause; and adds paragraph (d):

Balance of Payments Program—Construction Material Under Trade Agreements—Alternate VI (Date)

(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.

Commercially available off-the-shelf (COTS) item—

(1) Means any item of supply (including construction material) that is—

(i) A commercial product (as defined in paragraph (1) of the definition of “commercial product” in section 2.101 of the Federal Acquisition Regulation (FAR));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. 40102), such as agricultural products and petroleum products.

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.

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Designated country means—

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, 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, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as “the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu” (Chinese Taipei)), Ukraine, or the United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore);

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

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, 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) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both—

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

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 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. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of iron and steel not produced in the United States (excluding fasteners) as estimated in good faith by the contractor, constitutes less than 5 percent of the cost of all the components used in such construction material (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States, utilized in the manufacture of the construction material and a good faith estimate of the cost of all iron or steel components not produced in the United States, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of “cost of components” in this clause.

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.

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

South Caucasus/Central and South Asian (SC/CASA) state means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

SC/CASA state construction material means construction material that—

(1) Is wholly the growth, product, or manufacture of an SC/CASA state; 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 an SC/CASA state into a new and different construction material distinct from the material from which it was transformed.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

United States means the 50 States, the District of Columbia, and outlying areas.

WTO GPA country construction material means a construction material that—

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

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

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA, Free Trade Agreements, and other waivers relating to acquisitions in support of operations in Afghanistan apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for SC/CASA state and designated country construction materials.

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

(1) Construction material valued at or below the simplified acquisition threshold in FAR part 2;

(2) Information technology that is a commercial product; or

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

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

(d) If the Contractor is from an SC/CASA state, the Contractor shall inform its government of its participation in this acquisition and that it generally will not have such opportunity in the future unless its government provides reciprocal procurement opportunities to U.S. products and services and suppliers of such products and services.

(End of clause)

Alternate VII. As prescribed in 225.7503(b) and (b)(8), use the following clause, which includes, in the definition of "domestic construction material" at paragraph (1)(ii)(A), the domestic content threshold that will apply to the entire contract period of performance; adds "South Caucasus/Central and South Asian (SC/CASA state)" and "SC/CASA state construction material" to paragraph (a); uses a different paragraph (b) and introductory text for paragraph (c) than the basic clause; and adds paragraph (d):

Balance of Payments Program—Construction Material Under Trade Agreements—Alternate VII (Date)

(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.

Commercially available off-the-shelf (COTS) item—

(1) Means any item of supply (including construction material) that is—

(i) A commercial product (as defined in paragraph (1) of the definition of "commercial product" in section 2.101 of the Federal Acquisition Regulation (FAR));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. 40102), such as agricultural products and petroleum products.

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.

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

Designated country means—

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, 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, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as "the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu" (Chinese Taipei)), Ukraine, or the United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore);

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

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and

Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, 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) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both—

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

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 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. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of iron and steel not produced in the United States (excluding fasteners) as estimated in good faith by the contractor, constitutes less than 5 percent of the cost of all the components used in such construction material (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States, utilized in the manufacture of the construction material and a good faith estimate of the cost of iron or steel components not produced in the United States, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of "cost of components" in this clause.

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.

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

South Caucasus/Central and South Asian (SC/CASA) state means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

SC/CASA state construction material means construction material that—

(1) Is wholly the growth, product, or manufacture of an SC/CASA state; 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 an SC/CASA state into a new and different construction material distinct from the material from which it was transformed.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

United States means the 50 States, the District of Columbia, and outlying areas.

WTO GPA country construction material means a construction material that—

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

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

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA, all Free Trade Agreements except United States-Mexico-Canada Agreement and the Bahrain Free Trade Agreement, and other waivers relating to acquisitions in support of operations in Afghanistan apply to this

acquisition. Therefore, the Balance of Payments Program restrictions are waived for SC/CASA state and designated country construction material other than Bahrainian or Mexican construction material.

(c) The Contractor shall use only domestic, SC/CASA state, or designated country construction material other than Bahrainian or Mexican construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in FAR part 2;

(2) Information technology that is a commercial product; or

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

[Contracting Officer to list applicable excepted materials or indicate “none”].

(d) If the Contractor is from an SC/CASA state, the Contractor shall inform its government of its participation in this acquisition and that it generally will not have such opportunity in the future unless its government provides reciprocal procurement opportunities to U.S. products and services and suppliers of such products and services.

(End of clause)

[FR Doc. 2023–12019 Filed 6–8–23; 8:45 am]

BILLING CODE 5001–06–P