

**Foreign Participation in Acquisitions in Support of Operations in Afghanistan  
DFARS Case 2009-D012  
Draft Final Rule**

**PART 225—FOREIGN ACQUISITION**

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**225.003 DEFINITIONS.**

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As used in this part—

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

**(15) “South Caucasus/Central and South Asian (SC/CASA) state construction material” means construction material that—**

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

**(ii) 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.**

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

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

**(ii) 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.]**

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**SUBPART 225—TRADE AGREEMENTS**

(Revised April 8[DATE], 2010)

**225.401 Exceptions.**

(a)(2)[(A)] If a department or agency considers an individual acquisition of a product to be indispensable for national security or national defense purposes and appropriate for exclusion from the provisions of FAR Subpart 25.4, it may submit a request with supporting rationale to the Director of Defense Procurement and Acquisition Policy (OUSD(AT&L)DPAP). Approval by OUSD(AT&L)DPAP is not required if—

(A[1]) Purchase from foreign sources is restricted by statute (see S[s]ubpart 225.70);

(B[2]) Another exception in FAR 25.401 applies to the acquisition; or

(C[3]) Competition from foreign sources is restricted under S[s]ubpart 225.71.

**[(B) Public interest exceptions for certain countries when acquiring products or services in support of operations in Afghanistan are in 225.7704-1.]**

\* \* \* \* \*

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

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

\* \* \* \* \*

**[(iii) The acquisition is in support of operations in Afghanistan (see 225.7704-1).]**

**SUBPART 225.5—EVALUATING FOREIGN OFFERS—SUPPLY CONTRACTS**

**225.502 Application.**

**[Whenever the acquisition is in support of operations in Afghanistan, treat the offers of end products listed in 225.401-70 from South Caucasus or Central and South Asian states the same as qualifying country offers.]**

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**SUBPART 225.11—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

\* \* \* \* \*

**225.1101 Acquisition of supplies.**

(1)**[(i)]** Use the provision at 252.225-7000, Buy American Act-Balance of Payments Program Certificate, instead of the provision at FAR 52.225-2, Buy American Act Certificate. Use the provision in any solicitation that includes the clause at 252.225-7001, Buy American Act and Balance of Payments Program.

**[(ii) Use the provision with its Alternate I when the acquisition is of end products listed in 225.401-70 in support of operations in Afghanistan.]**

(2)**[(i)]** Use the clause at 252.225-7001, Buy American Act and Balance of Payments Program, instead of the clause at FAR 52.225-1, Buy American Act—Supplies, in solicitations and contracts unless—

**(i[A)]** All line items will be acquired from a particular source or sources under the authority of FAR 6.302-3;

**(ii[B)]** All line items must be domestic or qualifying country end products in accordance with Subpart 225.70. (However, the clause may still be required if Subpart 225.70 requires manufacture of the end product in the United States or in the United States or Canada, without a corresponding requirement for use of domestic components);

**(iii[C)]** An exception to the Buy American Act or Balance of Payments Program applies (see FAR 25.103, 225.103, and 225.7501);

**(iv[D)]** One or both of the following clauses will apply to all line items in the contract:

**(A[1])** 252.225-7021, Trade Agreements.

**(B[2])** 252.225-7036, Buy American Act—Free Trade Agreements—Balance of Payments Program; or

**(v[E)]** All line items will be acquired using a procedure specified in 225.7703-1(a).

**[(ii) Use the clause with its Alternate I when the acquisition is of end products listed in 225.401-70 in support of operations in Afghanistan.]**

\* \* \* \* \*

(5)**[(i)]** Except as provided in paragraph (7) of this section, use the provision at 252.225-7020, Trade Agreements Certificate, instead of the provision at FAR 52.225-6, Trade Agreements Certificate, in solicitations that include the clause at 252.225-7021, Trade Agreements.

**[(ii) Use the provision with its Alternate I when the acquisition is of end products in support of operations in Afghanistan.]**

(6)(i) Use the clause at 252.225-7021, Trade Agreements, instead of the clause at FAR 52.225-5, Trade Agreements, if the ~~Trade Agreements Act~~ **[World Trade Organization Government Procurement Agreement]** applies.

(ii) Use the clause with its Alternate I in solicitations and contracts that include the clause at 252.225-7024, Requirement for Products or Services from Iraq or Afghanistan, unless the clause at 252.225-7024 has been modified to provide a preference only for the products of Afghanistan.

**[(iii) Use the clause with its Alternate II when the acquisition is of end products in support of operations in Afghanistan and Alternate I is not applicable.]**

~~(iii)~~**[iv]** \* \* \*

\* \* \* \* \*

(10)**[(i)]** Use the provision at 252.225-7035, Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate, instead of the provision at FAR 52.225-4, Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, in solicitations that include the clause at 252.225-7036, Buy American Act—Free Trade Agreements—Balance of Payments Program.

**[(ii)]** Use the provision with its Alternate I when the clause at 252.225-7036 is used with its Alternate I.

**[(iii) Use the provision with its alternate II when the clause at 252.225-7036 is used with its Alternate II.]**

**(iv) Use the provision with its Alternate III when the clause at 252.225-7036 is used with its Alternate III.]**

(11)(i) Except as provided in paragraph (11)(ii) of this section, use the clause at 252.225-7036, Buy American Act—Free Trade Agreements—Balance of Payments Program, instead of the clause at FAR 52.225-3, Buy American Act—Free Trade Agreements—Israeli Trade Act, in solicitations and contracts for the items listed at 225.401-70, when the estimated value equals or exceeds \$25,000, but is less than \$203,000, and a Free Trade Agreement applies to the acquisition.

(A) Use the basic clause when the estimated value equals or exceeds \$70,079 **[except if the acquisition is of end products in support of operations in Afghanistan, use with its Alternate II].**

(B) Use the clause with its Alternate I when the estimated value equals or exceeds \$25,000 but is less than \$70,079 **[except if the acquisition is of end products in support of operations in Afghanistan, use with its Alternate III].**

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## SUBPART 225.75—BALANCE OF PAYMENTS PROGRAM

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### 225.7501 Policy.

Acquire only domestic end products for use outside the United States, and use only domestic construction material for construction to be performed outside the United States, including end products and construction material for foreign military sales, unless—

\* \* \* \* \*

(b) After receipt of offers—

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

(i) Is a qualifying country end product;

(ii) Is an eligible product;

**[(iii) If the acquisition is in support of operations in Afghanistan, a South Caucasus/Central and South Asian state end product listed in 225.401-70 (see 225.7704-2);] or**

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

(2) The construction material is an eligible product **[ or, if the acquisition is in support of operations in Afghanistan, the construction material is a South Caucasus/Central and South Asian state construction material (see 225.7704-2);] or**

\* \* \* \* \*

### 225.7503 Contract clauses.

Unless the entire acquisition is exempt from the Balance of Payments Program—

(a)**[(1)]** Use the clause at 252.225-7044, Balance of Payments Program—Construction Material, in solicitations and contracts for construction to be performed outside the United States with a value greater than the simplified acquisition threshold but less than \$7,804,000.

**[(2) Use the clause with its Alternate I if the acquisition is in support of operations in Afghanistan.]**

(b)**[(1)]** Use the clause at 252.225-7045, Balance of Payments Program—Construction Material Under Trade Agreements, in solicitations and contracts for construction to be performed outside the United States with a value of \$7,804,000 or more[, **except as provided in 225.7503(b)(iv)**].

**[(2)]** For acquisitions with a value of \$7,804,000 or more, but less than \$9,110,318, use the clause with its Alternate I [**unless the acquisition is in support of operations in Afghanistan, use the clause with its Alternate III**].

**[(3)]** If the acquisition is for construction with a value of more than \$8,817,449 or more and is in support of operations in Afghanistan, use the clause with its Alternate II.

**(4)** If the acquisition is for construction with a value of \$7,443,000 or more, but less than \$8,817,449, and is in support of operations in Afghanistan, use the clause with its Alternate III.]

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## **SUBPART 225.77—ACQUISITIONS IN SUPPORT OF OPERATIONS IN IRAQ OR AFGHANISTAN**

### **225.7700 Scope.**

This subpart implements[—

**(a)]** Section 886 and S[s]ection 892 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181)]; **and**

**(b) The determinations by the Deputy Secretary of Defense regarding participation of the countries of the South Caucasus or Central and South Asia in acquisition in support of operations in Afghanistan].**

### **225.7701 Definitions.**

As used in this subpart—

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**[225.7704 Acquisitions of products and services from South Caucasus/Central and South Asian (SC/CASA) state in support of operations in Afghanistan.**

### **225.7704-1 Applicability of trade agreements.**

**As authorized by the United States Trade Representative, the Secretary of Defense has waived the prohibition in section 302(a) of the Trade Agreements Act (see subpart**

225.4) for acquisitions by DoD, and by GSA on behalf of DoD, of products and services from SC/CASA states in direct support of operations in Afghanistan.

**225.7704-2 Applicability of balance of payments program.**

The Deputy Secretary of Defense has determined, because of importance to national security, that it would be inconsistent with the public interest to apply the provisions of the Balance of Payments Program (see subpart 225.75) to offers of end products other than arms, ammunition, and war materials (i.e., end products listed in 225.401-70) and construction materials from the SC/CASA states that are being acquired by or on behalf of the DoD in direct support of operations in Afghanistan.

**225.7704-3 Solicitation provisions and contract clauses.**

Appropriate solicitation provisions and contract clauses are prescribed as alternates to the Buy American-Trade Agreements-Balance of Payments Program solicitation provisions and contract clauses prescribed at 225.1101 and 225.7503.]

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**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

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

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

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL ITEMS (NOV 2009 [DATE])

\* \* \* \* \*

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

\* \* \* \* \*

(5)[(i)] \_\_\_\_252.225-7001, Buy American Act and Balance of Payments Program (JAN 2009) (41 U.S.C. 10a-10d, E.O. 10582).

[(ii) \_\_\_\_Alternate I (DATE) of 252.225-7001.]

\* \* \* \* \*

(11) [(i)]\_\_252.225-7021, Trade Agreements (NOV 2009 [DATE]) (19 U.S.C. 2501-2518 and 19 U.S.C. 3301 note).

[(ii)]\_\_Alternate I (DATE) of 252.225-7021.]

\* \* \* \* \*

(14)(i) \_\_252.225-7036, Buy American Act—Free Trade Agreements—Balance of Payments Program (JUL 2009 ) (41 U.S.C. 10a-10d and 19 U.S.C. 3301 note).

(ii) \_\_ Alternate I (JUL 2009[DATE]) of 252.225-7036.

[(iii)] \_\_ Alternate II (DATE) of 252.225-7036.

(iv) \_\_ Alternate III (DATE) of 252.225-7036.]

\* \* \* \* \*

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

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

BUY AMERICAN ACT—BALANCE OF PAYMENTS PROGRAM CERTIFICATE  
(DEC 2009)

\* \* \* \* \*

[ALTERNATE I (DATE)

As prescribed in 225.1101(1)(ii), add the terms “South Caucasus/Central and South Asian (SC/CASA) state” and “South Caucasus/Central and South Asian (SC/CASA) state end product” in paragraph (a) and replace the phrase “qualifying country end products” in paragraphs (b)(2) and (c)(2) with the phrase “qualifying country end products or SC/CASA state end products.”]

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

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

BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM  
(JAN 2009)

\* \* \* \* \*

[ALTERNATE I (DATE)

As prescribed in 225.1101(2)(ii), add the following definitions to paragraph (a) and substitute the following paragraphs (b) and (c) for paragraphs (b) and (c) of the basic clause:

(a)(10) “South Caucasus/Central and South Asian (SC/CASA) state” means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

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

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

(ii) 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.

(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 Act Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product 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.]

\* \* \* \* \*

**252.225-7020 Trade Agreements Certificate.**

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

**TRADE AGREEMENTS CERTIFICATE (JAN 2005)**

\* \* \* \* \*

**[ALTERNATE I (DATE)]**

As prescribed in 225.1101(5)(ii), substitute the following paragraphs (a), (b)(2), and (c) for paragraph (a), (b)(2), and (c) of the basic clause:

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

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

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

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

**(2)(i) The following supplies are SC/CASA state end products:**

<b>(Line Item Number)</b>	<b>(Country of Origin)</b>
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**(ii) The following are other nondesignated country end products:**

<b>(Line Item Number)</b>	<b>(Country of Origin)]</b>
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**252.225-7021 Trade Agreements.**

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

TRADE AGREEMENTS (NOV 2009)

\* \* \* \* \*

**[ALTERNATE II (DATE)**

**As prescribed in 225.1101(6)(iii), add the following new definitions to paragraph (a), substitute the following paragraph (c) for paragraph (c) of the basic clause, and add the following paragraph (d):**

**(a)(14) “South Caucasus/Central and South Asian (SC/CASA) state” means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.**

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

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

(ii) 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.

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

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

(2)(i) Offers of U.S.-made, qualifying country, SC/CASA state, or designated country end products from responsive, responsible offerors are either not received or are insufficient to fill the Government’s requirements; or

(ii) A national interest waiver has been granted.

(d) 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.]

\* \* \* \* \*

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

As prescribed in 225.1101(10)[(i)], use the following provision:

**BUY AMERICAN ACT—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM CERTIFICATE (DEC 2009[DATE])**

(a) *Definitions.* “Bahrainian end product,” “commercially available off-the-shelf (COTS) item,” “component,” “domestic end product,” “Free Trade Agreement country,” “Free Trade Agreement country end product,” “foreign end product,” “Moroccan end product,” [**“Peruvian end product,”**] “qualifying country end product,” and “United States,” as used in this provision, have the meanings given in the Buy American Act—Free Trade Agreements—Balance of

Payments Program clause of this solicitation.

(b) *Evaluation.* The Government—

\* \* \* \* \*

(2) For line items subject to Free Trade Agreements, will evaluate offers of qualifying country end products or Free Trade Agreement country end products other than Bahrainian end products[,] ~~or Moroccan end products[, or Peruvian end products]~~ without regard to the restrictions of the Buy American Act or the Balance of Payments Program.

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

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

**ALTERNATE I (~~OCT 2006~~[DATE])**

As prescribed in 225.1101(10)[(ii)], substitute the phrase “Canadian end product” for the phrases “Bahrainian end product,” “Free Trade Agreement country,” “Free Trade Agreement country end product,” ~~and~~ “Moroccan end product[,]” **[and “Peruvian end products”]** in paragraph (a) of the basic provision; and substitute the phrase “Canadian end products” for the phrase “Free Trade Agreement country end products other than Bahrainian end products or Moroccan end products” in paragraphs (b)(2) and (c)(2)(ii) of the basic provision, **and delete the phrase “Australian or” from paragraph (c)(2)(i) of the basic provision**].

**[ALTERNATE II (DATE)**

As prescribed in 225.1101(10)(iii), **add the terms “South Caucasus/Central and South Asian (SC/CASA) state” and “South Caucasus/Central and South Asian (SC/CASA) state end product” in paragraph (a) and substitute the following paragraphs (b)(2) and (c)(2)(i) for paragraphs (b)(2) and (c)(2)(i) of the basic clause.**

**(b)(2) For line items subject to Free Trade Agreements, will evaluate offers of qualifying country end products, SC/CASA state end products, or Free Trade Agreement country end products other than Bahrainian end products, Moroccan end**

products, or Peruvian end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program.

(c)(2)(i) The offeror certifies that the following supplies are qualifying country (except Australian or Canadian) or SC/CASA state end products:

(Line Item Number)                      (Country of Origin)

(End of provision)

**ALTERNATE III (DATE)**

As prescribed in 225.1101(10)(iv), substitute the following paragraphs (a), (b)(2), (c)(2)(i), and (c)(2)(ii) for paragraphs (a), (b)(2), (c)(2)(i), and (c)(2)(ii) of the basic clause:

(a) *Definitions.* “Canadian end product,” “commercially available off-the-shelf (COTS) item,” “domestic end product,” “foreign end product,” “qualifying country end product,” “South Caucasus/Central and South Asian (SC/CASA) state end product,” and “United States” have the meanings given in the Buy American Act—Free Trade Agreements—Balance of Payments Program clause of this solicitation.

(b)(2) For line items subject to Free Trade Agreements, will evaluate offers of qualifying country end products, SC/CASA state end products, or Canadian end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program.

(c)(2)(i) The offeror certifies that the following supplies are qualifying country (except Canadian) or SC/CASA state end products:

(Line Item Number)                      (Country of Origin)

(ii) The offeror certifies that the following supplies are Canadian end products:

(Line Item Number)                      (Country of Origin)

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

As prescribed in 225.1101(11)(i)[(A)], use the following clause:

BUY AMERICAN ACT—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM (JUL 2009[DATE])

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

\* \* \* \* \*

**[(10) “Peruvian end product” means an article that—**

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

**(ii) 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.]**

~~(10)~~**[11) “Qualifying country” means any country set forth in subsection 225.872-1 of the [the definition of “qualifying country” in] Defense F[AR]ederal Acquisition Regulation Supplement [225.003].**

~~(11)~~**[12) \* \* \***

~~(12)~~**[13) \* \* \***

~~(13)~~**[14) \* \* \***

\* \* \* \* \*

**[ALTERNATE II (DATE)**

**As prescribed in 225.1101(11)(i)(A), add the following new definitions to paragraph (a) and substitute the following paragraph (c) for paragraph (c) of the basic clause:**

**(a)(14) “South Caucasus/Central and South Asian (SC/CASA) state” means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.**

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

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

**(ii) 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.

(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, or Peruvian end products, or other foreign end products in the Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, SC/CASA state end products, or a Free Trade Agreement country end product other than a Bahrainian end product, a Moroccan 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, or a Peruvian end product or, at the Contractor’s option, a domestic end product.

**ALTERNATE III (DATE)**

As prescribed in 225.1101(11)(i)(B), add the following definitions to paragraph (a) and substitute the following paragraph (c) for paragraph (c) of the basic clause,

(a)(14) “Canadian end product,” means an article that—

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

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

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

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

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

**(ii) 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.**

**(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, Canadian end products, or other foreign end products in the Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, SC/CASA state end products, or a Canadian end product, the Contractor shall deliver a qualifying country end product, an SC/CASA state end product, a Canadian end product or, at the Contractor’s option, a domestic end product.]**

**\* \* \* \* \***

**252.225-7044 Balance of Payments Program—Construction Material.**

As prescribed in 225.7503(a)[(1)], use the following clause:

**BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL**

**(JAN 2009)**

**\* \* \* \* \***

**[ALTERNATE I (DATE) As prescribed in 225.7503(a)(2), add the following definitions to paragraph (a) and replace the phrase “domestic construction material” in the second sentence of paragraph (b) with the phrase “domestic construction material or SC/CASA state construction material.”**

**“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—**

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

**(ii) 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.]

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

As prescribed in 225.7503(b)[(1)], use the following clause:

BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL UNDER  
TRADE AGREEMENTS (JAN 2009)

\* \* \* \* \*

ALTERNATE I (~~OCT 2006~~**[DATE]**). As prescribed in 225.7503(b)[(2)], add the following definition of “Bahrainian or Mexican construction material” to paragraph (a) of the basic clause, and substitute the following paragraphs (b) and (c) for paragraphs (b) and (c) of the basic clause:

\* \* \* \* \*

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and all Free Trade Agreements except NAFTA **[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.

\* \* \* \* \*

**[ALTERNATE II(DATE) As prescribed in 225.7503(b)(iii 3), add the following definitions to paragraph (a); substitute the following paragraph (b) and the introductory text of paragraph (c) for paragraph (b) and the introductory text of paragraph (c) of the basic clause; and add the following paragraph (d):**

**“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—**

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

**(ii) 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.**

**(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—**

**(d) 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.**

**ALTERNATE III (DATE) As prescribed in 225.7503(b)(iv-4), add the following definitions to paragraph(a); substitute the following paragraph (b) and the introductory text of paragraph (c) for paragraph (b) and the introductory text of paragraph (c) of the basic clause; and add the following paragraph (d):**

**(d) “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—**

**(i) Is wholly the growth, product, or manufacture of An SC/CASA state; or**

**(ii) 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.**

**(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 NAFTA 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—**

**(d) 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.]**