**DFARS Case 2022-D003**

**Trade Agreements Thresholds**

**Final Rule**

**PART 225-FOREIGN ACQUISITION**

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

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**225.1101 Acquisition of supplies.**

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(6) Except as provided in paragraph (6)(iv) of this section, use the basic or an alternate of the clause at [252.225-7021](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7021), Trade Agreements, instead of the clause at FAR 52.225-5, Trade Agreements, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, if the World Trade Organization Government Procurement Agreement applies, i.e., the acquisition is of end products listed at [225.401-70](http://www.acq.osd.mil/dpap/dars/dfars/html/current/225_4.htm#225.401-70), the value of the acquisition equals or exceeds $~~182,000~~**[183,000]**, and none of the exceptions at 25.401(a) applies.

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(10)(i) Except as provided in paragraph (10)(ii) of this section, use the basic or an alternate of the clause at [252.225-7036](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7036), Buy American—Free Trade Agreements—Balance of Payments Program, instead of the clause at FAR 52.225-3, Buy American—Free Trade Agreements–Israeli Trade Act, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items,for the items listed at [225.401-70](http://www.acq.osd.mil/dpap/dars/dfars/html/current/225_4.htm#225.401-70), when the estimated value equals or exceeds $25,000, but is less than $~~182,000~~**[183,000]**, unless an exception at FAR 25.401 or 225.401 applies.

(A) Use the basic clause in solicitations and contracts when the estimated value equals or exceeds $100,000, but is less than $~~182,000~~**[183,000]**, except if the acquisition is of end products in support of operations in Afghanistan.

(B) Use the alternate I clause in solicitations and contracts when the estimated value equals or exceeds $25,000, but is less than $~~83,099~~**[92,319]**, except if the acquisition is of end products in support of operations in Afghanistan.

(C) Use the alternate II clause in solicitations and contracts when the estimated value equals or exceeds $100,000, but is less than $~~182,000~~**[183,000]**, and the acquisition is of end products in support of operations in Afghanistan.

(D) Use the alternate III clause in solicitations and contracts when the estimated value equals or exceeds $25,000, but is less than $~~83,099~~**[92,319]**, and the acquisition is of end products in support of operations in Afghanistan.

(E) Use the alternate IV clause in solicitations and contractswhen the estimated value equals or exceeds $~~83,099~~**[92,319]** but is less than $100,000, except if the acquisition is of end products in support of operations in Afghanistan.

(F) Use the alternate V clause in solicitations and contracts when the estimated value equals or exceeds $~~83,099~~**[92,319]** but is less than $100,000and the acquisition is of end products in support of operations in Afghanistan.

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

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**225.7017 Utilization of domestic photovoltaic devices.**

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**225.7017-3 Exceptions.**

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

(b) *Buy American—unreasonable cost.* For a covered contract that utilizes photovoltaic devices valued at less than $~~182,000~~**[183,000]**, the exception for unreasonable cost may apply (see FAR 25.103(c). If the cost of a foreign photovoltaic device plus 50 percent is less than the cost of a domestic photovoltaic device, then the foreign photovoltaic device may be utilized.

(c) *Trade agreements—*

(1) *Free Trade Agreements.* For a covered contract that utilizes photovoltaic devices valued at $25,000 or more, photovoltaic devices may be utilized from a country covered under the acquisition by a Free Trade Agreement, depending upon dollar threshold (see FAR subpart 25.4).

(2) *World Trade Organization—Government Procurement Agreement*. For covered contracts that utilize photovoltaic devices that are valued at $~~180,000~~**[183,000]** or more, only U.S.-made photovoltaic devices, designated country photovoltaic devices, or qualifying country photovoltaic devices may be utilized.

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**SUBPART 225.75--BALANCE OF PAYMENTS PROGRAM**

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**225.7503 Contract clauses.**

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

(a) Use the basic or an alternate of the clause at [252.225-7044](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7004), Balance of Payments Program—Construction Material, in solicitations and contracts for construction to be performed outside the United States, including acquisitions of commercial items or components, with an estimated value greater than the simplified acquisition threshold but less than $~~7,008,000~~**[7,032,000]**.

(1) Use the basic clause unless the acquisition is in support of operations in Afghanistan.

(2) Use the alternate I clause if the acquisition is in support of operations in Afghanistan.

(b) Use the basic or an alternate of the clause at [252.225-7045](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#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 an estimated value of $~~7,008,000~~**[7,032,000]** or more, including acquisitions of commercial items or components.

(1) Use the basic clause in solicitations and contracts with an estimated value of $~~10,802,884~~**[12,001,460]** or more, unless the acquisition is in support of operations in Afghanistan.

(2) Use the alternate I clause in solicitations and contracts with an estimated value of $~~7,008,000~~**[7,032,000]** or more, but less than $~~10,802,884~~**[12,001,460]** unless the acquisition is in support of operations in Afghanistan.

(3) Use the alternate II clause in solicitations and contracts with an estimated value of $~~10,802,884~~**[12,001,460]** or more and is in support of operations in Afghanistan.

(4) Use the alternate III clause in solicitations and contracts with an estimated value of $~~7,008,000~~**[7,032,000]** or more, but less than $~~10,802,884~~**[12,001,460]**, and is in support of operations in Afghanistan.

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

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**252.225-7017 Photovoltaic Devices.**

As prescribed in 225.7017-4(a), use the following clause:

PHOTOVOLTAIC DEVICES (~~JAN 2020~~**[JAN 2022]**)

\* \* \* \* \*

(c) *Restriction.* If the Contractor specified in its offer in the Photovoltaic Devices—Certificate provision of the solicitation that the estimated value of the photovoltaic devices to be utilized in performance of this contract would be—

(1) More than the micro-purchase threshold but less than $25,000, then the Contractor shall utilize only domestic photovoltaic devices unless, in its offer, it specified utilization of qualifying country or other foreign photovoltaic devices in paragraph (d)(2) of the Photovoltaic Devices—Certificate provision of the solicitation.

(2) $25,000 or more but less than $~~83,099~~**[92,319]**, then the Contractor shall utilize in the performance of this contract only domestic photovoltaic devices unless, in its offer, it specified utilization of Canadian, qualifying country, or other foreign photovoltaic devices in paragraph (d)(3) of the Photovoltaic Devices—Certificate provision of the solicitation. If the Contractor certified in its offer that it will utilize a qualifying country photovoltaic device or a Canadian photovoltaic device, then the Contractor shall utilize a qualifying country photovoltaic device or a Canadian photovoltaic device, or, at the Contractor’s option, a domestic photovoltaic device;

(3) $~~83,099~~**[92,319]** or more but less than $100,000, then the Contractor shall utilize under this contract only domestic photovoltaic devices unless, in its offer, it specified utilization of Free Trade Agreement country photovoltaic devices (other than Bahrainian, Korean, Moroccan, Panamanian, or Peruvian photovoltaic devices), qualifying country photovoltaic devices, or other foreign photovoltaic devices in paragraph (d)(4) of the Photovoltaic Devices—Certificate provision of the solicitation. If the Contractor certified in its offer that it will utilize a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Korean, Moroccan, Panamanian, or Peruvian photovoltaic device) or a qualifying country photovoltaic device, then the Contractor shall utilize a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Korean, Moroccan, Panamanian, or Peruvian photovoltaic device) or a qualifying country photovoltaic device; or, at the Contractor’s option, a domestic photovoltaic device;

(4) $100,000 or more but less than $~~182,000~~**[183,000]**, then the Contractor shall utilize under this contract only domestic photovoltaic devices, unless, in its offer it specified utilization of Free Trade Agreement country photovoltaic devices (other than Bahrainian, Moroccan, Panamanian, or Peruvian photovoltaic devices), qualifying country photovoltaic devices, or other foreign photovoltaic devices in paragraph (d)(5) of the Photovoltaic Devices—Certificate provision of the solicitation. If the Contractor certified in its offer that it will utilize a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Moroccan, Panamanian, or Peruvian photovoltaic device) or a qualifying country photovoltaic device, then the Contractor shall utilize a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Moroccan, Panamanian, or Peruvian photovoltaic device) or a qualifying country photovoltaic device; or, at the Contractor’s option, a domestic photovoltaic device; or

(5) $~~182,000~~**[183,000]** or more, then the Contractor shall utilize under this contract only U.S.-made, designated country, or qualifying country photovoltaic devices.

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**252.225-7018 Photovoltaic Devices—Certificate.**

As prescribed in 225.2017-4(b), use the following provision:

PHOTOVOLTAIC DEVICES—CERTIFICATE (~~JAN 2020~~**[JAN 2022]**)

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(b) *Restrictions.* The following restrictions apply, depending on the estimated aggregate value of photovoltaic devices to be utilized under a resultant contract:

(1) If more than the micro-purchase threshold but less than $~~182,000~~**[183,000]**, then the Government will not accept an offer specifying the use of other foreign photovoltaic devices in paragraph (d)(2)(ii), (d)(3)(ii), (d)(4)(ii), or (d)(5)(ii) of this provision, unless the offeror documents to the satisfaction of the Contracting Officer that the price of the foreign photovoltaic device plus 50 percent is less than the price of a comparable domestic photovoltaic device.

(2) If $~~182,000~~**[183,000]** or more, then the Government will consider only offers that utilize photovoltaic devices that are U.S.-made, qualifying country, or designated country photovoltaic devices.

\* \* \* \* \*

(d) *Certification and identification of country of origin. [The offeror shall check the block and fill in the blank for one of the following paragraphs, based on the estimated value and the country of origin of photovoltaic devices to be utilized in performance of the contract:]*

\* \* \* \* \*

(3) If $25,000 or more but less than $~~83,099~~**[92,319]**—

\* \* \* \* \*

(4) If $~~83,099~~**[92,319]** or more but less than $100,000—

\* \* \* \* \*

(5) If $100,000 or more but less than $~~182,000~~**[183,000]**—

\* \* \* \* \*

(6) If $~~182,000~~**[183,000]** or more, the Offeror certifies that each photovoltaic device to be used in performance of the contract is—

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