**DFARS Case 2023-D023**

**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 products and commercial services, 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 $~~183,000~~**[174,000]**, and none of the exceptions at 25.401(a) applies.

(i) \* \* \*

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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 products and commercial services, 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 is less than $~~183,000~~**[174,000]**, 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 $~~183,000~~**[174,000]**, 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 is less than $~~92,319~~**[****102,280]**, 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 $~~183,000~~**[174,000]**, 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 is less than $~~92,319~~**[102,280]**, 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 $~~92,319~~**[102,280]** but is less than ~~$100,000~~**[174,000]**, 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 $~~92,319~~**[102,280]** but is less than $~~100,000~~**[174,000]** and the acquisition is of end products in support of operations in Afghanistan.

(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~~**[174,000]**; 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~~**[102,280]**; 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 **[equals or exceeds $100,000, but]** is less than $~~183,000~~**[174,000]**;

(*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~~**[102,280]**;

(*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~~**[102,280]** but is less than $~~100,000~~**[174,000]**; 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~~**[102,280]** but is less than $~~100,000~~**[174,000]**;

(*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)).

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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 $~~183,000~~**[174,000]**, 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 $~~183,000~~**[174,000]** 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 products or commercial components, with an estimated value greater than the simplified acquisition threshold but less than $~~7,032,000~~**[6,708,000]**.

(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.

(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—

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

(ii) 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) 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 $~~7,032,000~~**[6,708,000]** or more, including acquisitions of commercial products or commercial components.

(1) Use the basic clause in solicitations and contracts with an estimated value of $~~12,001,460~~**[****13,296,489]** 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 $~~7,032,000~~**[6,708,000]** or more, but less than $~~12,001,460~~**[13,296,489]** 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 $~~12,001,460~~**[13,296,489]** 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 $~~7,032,000~~**[6,708,000]** or more, but less than $~~12,001,460~~**[13,296,489]**, and is in support of operations in Afghanistan.

(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—

(i) The estimated value is $~~12,001,460~~**[13,296,489]** or more; and

(ii) 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—

(i) The estimated value is $~~7,032,000~~**[6,708,000]** or more**[, but less than $13,296,489]**; and

(ii) 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—

(i) The estimated value is $~~12,001,460~~**[13,296,489]** or more;

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

(iii) 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—

(i) The estimated value is $~~7,032,000~~**[6,708,000]** or more but less than $~~12,001,460~~**[13,296,489]**;

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

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

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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 (~~NOV 2023~~**[MAR 2024]**)

\* \* \* \* \*

(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 $~~92,319~~**[100,000]**, 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) $~~92,319~~**[100,000]** or more but less than $~~100,000~~**[102,280]**, 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 Bahraini, 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 Bahraini, 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 Bahraini, Korean, Moroccan, Panamanian, or Peruvian photovoltaic device) or a qualifying country photovoltaic device; or, at the Contractor’s option, a domestic photovoltaic device;

(3) $100,000or more but less than $~~183,000~~**[174,000]**, 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 Bahraini, 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 Bahraini, 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 Bahraini, Moroccan, Panamanian, or Peruvian photovoltaic device) or a qualifying country photovoltaic device; or, at the Contractor’s option, a domestic photovoltaic device; or

(4) $~~183,000~~**[174,000]** or more, then the Contractor shall utilize under this contract only U.S.-made, designated country, or qualifying country photovoltaic devices.

(End of clause)

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

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

PHOTOVOLTAIC DEVICES—CERTIFICATE (~~NOV 2023~~**[MAR 2024]**)

\* \* \* \* \*

(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 $~~183,000~~**[174,000]**, 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 **[O]**~~o~~fferor 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 $~~183,000~~**[174,000]** 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.

(c) *Country in which a designated country photovoltaic device was wholly manufactured or was substantially transformed*. If the estimated value of the photovoltaic devices to be utilized under a resultant contract exceeds $~~92,319~~**[102,280]**, the Offeror's certification that such photovoltaic device (e.g., solar panel) is a designated country photovoltaic device shall be consistent with country of origin determinations by the U.S. Customs and Border Protection with regard to importation of the same or similar photovoltaic devices into the United States. If the Offeror is uncertain as to what the country of origin would be determined to be by the U.S. Customs and Border Protection, the Offeror shall request a determination from U.S. Customs and Border Protection. (See *~~http~~***[*https*]***://www.cbp.gov/trade/rulings*.)

(d) *Certification and identification of country of origin. [The* **[*O*]***~~o~~fferor 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:]*

\* \* \* \* \*

(2) If more than the micro-purchase threshold but less than $~~92,319~~**[100,000]**—

\_\_\_\_(i) The **[O]**~~o~~fferor certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device;

\_\_\_\_(ii) The **[O]**~~o~~fferor certifies that each photovoltaic device to be utilized in performance of the contract is a qualifying country photovoltaic device *[Offeror to specify country of origin\_\_\_\_]*; or

\* \* \* \* \*

(3) If less than $~~92,319~~**[****100,000]**—

\_\_\_\_(i) The **[O]**~~o~~fferor certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device;

\_\_\_\_(ii) The **[O]**~~o~~fferor certifies that each photovoltaic device to be utilized in performance of the contract is a qualifying country photovoltaic device *[Offeror to specify country of origin\_\_\_\_]*; or

\* \* \* \* \*

(4) If $~~92,319~~**[100,000]** or more but less than $~~100,000~~**[102,280]**—

\_\_\_\_(i) The **[O]**~~o~~fferor certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device;

\_\_\_\_(ii) The **[O]**~~o~~fferor certifies that each photovoltaic device to be utilized in performance of the contract is a Free Trade Agreement country photovoltaic device (other than a Bahraini, Korean, Moroccan, Panamanian, or Peruvian photovoltaic device) or a qualifying country photovoltaic device *[Offeror to specify country of origin\_\_\_\_\_\_]*; or

\* \* \* \* \*

(5) If $100,000or more but less than $~~183,000~~**[174,000]**—

\_\_\_\_(i) The **[O]**~~o~~fferor certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device;

\_\_\_\_(ii) The **[O]**~~o~~fferor certifies that each photovoltaic device to be utilized in performance of the contract is a Free Trade Agreement country photovoltaic device (other than a Bahraini, Moroccan, Panamanian, or Peruvian photovoltaic device) or a qualifying country photovoltaic device *[Offeror to specify country of origin\_\_\_\_\_\_]*; or

\* \* \* \* \*

(6) If $~~183,000~~**[174,000]** or more, the Offeror certifies that each photovoltaic device to be used in performance of the contract is—

\* \* \* \* \*