**Technical Amendment**

**November 2023**

**PART 211—DESCRIBING AGENCY NEEDS**

**211.002 Policy.**

All defense technology and acquisition programs in DoD are subject to the policies and procedures in DoDD 5000.01, The Defense Acquisition System, and DoDI 5000.02, Operation of the **[Adaptive Acquisition Framework]**~~Defense Acquisition System~~.

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

**PART 215—CONTRACTING BY NEGOTIATION**

**Subpart 215.4—Contract Pricing**

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

**215.404-75 Fee requirements for FFRDCs.**

For nonprofit organizations that are FFRDCs, the contracting officer—

(a) Should consider whether any fee is appropriate. Considerations shall include the FFRDC’s—

(1) Proportion of retained earnings (as established under generally accepted accounting methods) that relates to DoD contracted effort;

(2) Facilities capital acquisition plans;

(3) Working capital funding as assessed on operating cycle cash needs; and

(4) Provision for funding unreimbursed costs deemed ordinary and necessary to the FFRDC.

(b) Shall, when a fee is considered appropriate, establish the fee objective in accordance with FFRDC fee policies in the ~~DoD FFRDC Management Plan~~ **[DoD Instruction 5000.77, DoD Federally Funded Research and Development Center Program].**

(c) Shall not use the weighted guidelines method or an alternate structured approach.

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

**PART 223—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE**

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

**Subpart 223.3—Hazardous Material Identification and Material Safety Data**

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

**223.370-3 Policy.**

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

(b) This policy is implemented by DoD Manual 4145.26~~–M~~, DoD Contractors’ Safety Manual for Ammunition and Explosives, which is incorporated into contracts under which ammunition and explosives are handled. The manual contains mandatory safety requirements for contractors. When work is to be performed on a Government-owned installation, the contracting officer may use the ammunition and explosives regulation of the DoD component or installation as a substitute for, or supplement to, DoD Manual 4145.26~~–M~~, as long as the contract cites ~~these regulations~~**[the ammunition and explosives regulation of the DoD component or installation]**.

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

**Subpart 223.72—Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives**

**223.7200 Definition.**

**[As used in this subpart—]**

“Arms, ammunition, and explosives (AA&E),” ~~as used in this subpart,~~ means those items within the scope ~~(chapter 1, paragraph B~~) of DoD **[Manual]** 5100.76~~–M~~, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives.

**223.7201 Policy.**

(a) The requirements of DoD **[Manual]** 5100.76~~–M~~, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives, shall be applied to contracts when—

(1) AA&E will be provided to the contractor or subcontractor as Government-furnished property; or

(2) The principal development, production, manufacture, or purchase of AA&E is for DoD use.

(b) The requirements of DoD **[Manual]** 5100.76~~–M~~ need not be applied to contracts when—

(1) The AA&E to be acquired under the contract is a commercial product within the meaning of FAR 2.101; or

(2) The contract will be performed in a Government-owned contractor-operated ammunition production facility. However, if subcontracts issued under such a contract will meet the criteria of paragraph (a) of this section, the requirements of DoD **[Manual]** 5100.76~~–M~~ shall apply.

**223.7202 Preaward responsibilities.**

When an acquisition involves AA&E, technical or requirements personnel shall specify in the purchase request—

(a) That AA&E is involved; and

(b) Which physical security requirements of DoD **[Manual]** 5100.76~~–M~~ apply.

**223.7203 Contract clause.**

Use the clause at 252.223–7007, Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives, in all solicitations and contracts to which DoD **[Manual]** 5100.76~~–M~~ applies, in accordance with the policy at 223.7201. Complete paragraph (b) of the clause based on information provided by cognizant technical or requirements personnel.

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

**PART 234—MAJOR SYSTEM ACQUISITION**

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

**234.003 Responsibilities.**

DoDD 5000.01, The Defense Acquisition System, and DoDI 5000.02, Operation of the **[Adaptive Acquisition Framework]**~~Defense Acquisition System~~, contain the DoD implementation of OMB Circular A-109 and OMB Circular A-11.

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

**234.005 General requirements.**

**234.005-1 Competition.**

A contract that is initially awarded from the competitive selection of a proposal resulting from a broad agency announcement (see 235.016) may contain a contract line item or contract option using funds not limited to those identified in 235.016 for the development and demonstration or initial production of technology developed under the contract, or the delivery of initial or additional items if the item or a prototype thereof is created as the result of work performed under the contract, only when it adheres to the following limitations:

(1) The contract line item or contract option shall be limited to the delivery of the minimal amount of initial or additional items or prototypes that will allow for timely competitive solicitation and award of a follow-on development or production contract for those items.

(2) The term of the contract line item or contract option shall be for not more than 2 years.

(3) The dollar value of the work to be performed pursuant to the contract line item or contract option shall not exceed $100 million in fiscal year 2017 constant dollars. (10 U.S.C. 4004)

**[(4) See PGI 234.005-1 for guidance on providing, upon request, the benefits derived from use of this competitive selection method.]**

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

**Subpart 234.71—Cost and Software Data Reporting**

**234.7100 Policy.**

(a) The cost and software data reporting (CSDR) requirement is mandatory for major defense acquisition programs (as defined in 10 U.S.C. 4201) as specified in DoDI 5000.02, Operation of the **[Adaptive Acquisition Framework]**~~Defense Acquisition System~~ and the DoD 5000.04–M–1, CSDR Manual. The CSDR system is applied in accordance with the reporting requirements established in DoDI 5000.02. The two principal components of the CSDR system are contractor cost data reporting and software resources data reporting.

(b) Prior to contract award, contracting officers shall consult with the Defense Cost and Resource Center to determine that the offeror selected for award has proposed a standard CSDR system, as described in the offeror's proposal in response to the provision at 252.234–7003, that is in compliance with DoDI 5000.02, Operation of the **[Adaptive Acquisition Framework]**~~Defense Acquisition System~~, and the DoD 5000.04–M–1, CSDR Manual.

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

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

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

**SUBPART 252.2—TEXT OF PROVISIONS AND CLAUSES**

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

**252.204-7007 Alternate A, Annual Representations and Certifications.**

As prescribed in 204.1202, use the following provision:

Alternate A, Annual Representations and Certifications (~~MAY 2021~~**[NOV 2023]**)

\* \* \* \* \*

(e) The Offeror has completed the annual representations and certifications electronically via the SAM website at **[*https://www.sam.gov*]** *~~https://www.acquisition.gov/~~*. After reviewing the SAM database information, the Offeror verifies by submission of the offer that the representations and certifications currently posted electronically that apply to this solicitation as indicated in FAR 52.204–8(c) and paragraph (d) of this provision have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer, and are incorporated in this offer by reference (see FAR 4.1201); except for the changes identified below [*Offeror to insert changes, identifying change by provision number, title, date*]. These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

\* \* \* \* \*

**252.204-7019 Notice of NIST SP 800–171 DoD Assessment Requirements.**

As prescribed in 204.7304(d), use the following provision:

NOTICE OF NIST SP 800–171 DOD ASSESSMENT REQUIREMENTS (~~MAR 2022~~**[NOV 2023]**)

(a) \* \* \*

(b) *Requirement.* In order to be considered for award, if the Offeror is required to implement NIST SP 800–171, the Offeror shall have a current assessment (*i.e.,* not more than 3 years old unless a lesser time is specified in the solicitation) (see 252.204–7020) for each covered contractor information system that is relevant to the offer, contract, task order, or delivery order. The Basic, Medium, and High NIST SP 800–171 DoD Assessments are described in the NIST SP 800–171 DoD Assessment Methodology located at *~~https://www.acq.osd.mil/asda/dpc/cp/cyber/safeguarding.html#nistSP800171~~* **[*****https://www.acq.osd.mil/asda/dpc/cp/cyber/docs/safeguarding/NIST-SP-800-171-Assessment-Methodology-Version-1.2.1-6.24.2020.pdf*]**.

\* \* \* \* \*

**252.204-7020 NIST SP 800–171 DoD Assessment Requirements.**

As prescribed in 204.7304(e), use the following clause:

NIST SP 800–171 DOD ASSESSMENT REQUIREMENTS (~~JAN 2023~~**[NOV 2023]**)

\* \* \* \* \*

(c) *Requirements.* The Contractor shall provide access to its facilities, systems, and personnel necessary for the Government to conduct a Medium or High NIST SP 800–171 DoD Assessment, as described in NIST SP 800–171 DoD Assessment Methodology at *~~https://www.acq.osd.mil/asda/dpc/cp/cyber/safeguarding.html#nistSP800171~~* **[*https://www.acq.osd.mil/asda/dpc/cp/cyber/docs/safeguarding/NIST-SP-800-171-Assessment-Methodology-Version-1.2.1-6.24.2020.pdf*]**, if necessary.

\* \* \* \* \*

(g) *Subcontracts*.

(1) \* \* \*

(2) The Contractor shall not award a subcontract or other contractual instrument, that is subject to the implementation of NIST SP 800–171 security requirements, in accordance with DFARS clause 252.204–7012 of this contract, unless the subcontractor has completed, within the last 3 years, at least a Basic NIST SP 800–171 DoD Assessment, as described in *~~https://www.acq.osd.mil/asda/dpc/cp/cyber/safeguarding.html#nistSP800171~~* **[*https://www.acq.osd.mil/asda/dpc/cp/cyber/docs/safeguarding/NIST-SP-800-171-Assessment-Methodology-Version-1.2.1-6.24.2020.pdf*]**, for all covered contractor information systems relevant to its offer that are not part of an information technology service or system operated on behalf of the Government.

\* \* \* \* \*

**252.223-7002 Safety ~~p~~[P]recautions for ~~a~~[A]mmunition and ~~e~~[E]xplosives.**

As prescribed in 223.370–5, use the following clause:

Safety Precautions for Ammunition and Explosives (~~MAY 1994~~**[NOV 2023]**)

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

(b) *Safety requirements*.

(1) The Contractor shall comply with the requirements of ~~the~~ **[DoD Manual 4145.26,]** DoD Contractors’ Safety Manual for Ammunition and Explosives, ~~DoD 4145.26–M,~~ hereafter referred to as “the manual,” in effect on the date of the solicitation for this contract. The Contractor shall also comply with any other additional requirements included in the schedule of this contract.

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

**252.223-7007 Safeguarding ~~s~~[S]ensitive ~~c~~[C]onventional ~~a~~[A]rms, ~~a~~[A]mmunition, and ~~e~~[E]xplosives.**

\* \* \* \* \*

Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives (~~SEP 1999~~**[NOV 2023]**)

(a) *Definition*. **[As used in this clause—]**

“Arms, ammunition, and explosives (AA&E),” ~~as used in this clause,~~ means those items within the scope ~~(chapter 1, paragraph B)~~ of DoD **[Manual]** 5100.76~~–M~~, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives.

(b) The requirements of DoD **[Manual]** 5100.76~~–M~~ apply to the following items of AA&E being developed, produced, manufactured, or purchased for the Government, or provided to the Contractor as Government-furnished property under this contract: \* \* \*

(c) The Contractor shall comply with the requirements of DoD **[Manual]** 5100.76~~-M~~, as specified in the statement of work. The edition of DoD **[Manual]** 5100.76~~-M~~ in effect on the date of issuance of the solicitation for this contract shall apply.

(d) The Contractor shall allow representatives of the ~~Defense Security Service (DSS)~~**[****Defense Counterintelligence and Security Agency (DCSA)]**, and representatives of other appropriate offices of the Government, access at all reasonable times into its facilities and those of its subcontractors, for the purpose of performing surveys, inspections, and investigations necessary to review compliance with the physical security standards applicable to this contract.

(e) The Contractor shall notify the cognizant ~~DSS~~**[DCSA]** field office of any subcontract involving AA&E within 10 days after award of the subcontract.

(f) **[*Subcontracts.*]** The Contractor shall ensure that the requirements of this clause are included in all subcontracts, at every tier—

(1) For the development, production, manufacture, or purchase of AA&E; or

(2) When AA&E will be provided to the subcontractor as Government-furnished property.

(g) Nothing in this clause shall relieve the Contractor of its responsibility for complying with applicable Federal, state, and local laws, ordinances, codes, and regulations (including requirements for obtaining licenses and permits) in connection with the performance of this contract.

(End of clause)

**252.225-7013 Duty-Free Entry.**

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

Duty-Free Entry (~~DEC 2022~~**[NOV 2023]**)

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

\* \* \* \* \*

*Eligible product* means—

(1) *Designated country end product,* as defined in the Trade Agreements (either basic or alternate) clause of this contract;

(2) *Free Trade Agreement country end product,* other than a *~~Bahrainian~~***[*Bahraini*]** *end product,* a *Moroccan end product,* a *Panamanian end product,* or a *Peruvian end product,* as defined in the Buy American—Free Trade Agreements—Balance of Payments Program (either basic or alternate II) clause of this contract; or

(3) *Free Trade Agreement country end product* other than a *~~Bahrainian~~***[*Bahraini*]** *end product, Korean end product,* *Moroccan end product, Panamanian end product,* or *Peruvian end product,* as defined in the Buy American—Free Trade Agreements—Balance of Payments Program (either alternate IV or alternate V) clause of this contract.

\* \* \* \* \*

**252.225-7017 Photovoltaic Devices.**

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

PHOTOVOLTAIC DEVICES (~~OCT 2023~~**[NOV 2023]**)

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

*~~Bahrainian~~***[*Bahraini*]** *photovoltaic device* means a photovoltaic device that—

\* \* \* \* \*

(c) \* \* \*

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

\* \* \* \* \*

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

As prescribed in 225.7017–4(b), use the following provision:

PHOTOVOLTAIC DEVICES—CERTIFICATE (~~DEC 2022~~**[NOV 2023]**)

(a) *Definitions*. “~~Bahrainian~~**[Bahraini]** photovoltaic device,” “Caribbean Basin photovoltaic device,” “designated country,” “designated country photovoltaic device,” “domestic photovoltaic device,” “foreign photovoltaic device,” “Free Trade Agreement country,” “Free Trade Agreement photovoltaic device,” “Korean photovoltaic device,” “least developed country photovoltaic device,” “Moroccan photovoltaic device,” “Panamanian photovoltaic device,” “Peruvian photovoltaic device,” “photovoltaic device,” “qualifying country,” “qualifying country photovoltaic device,” “United States,” “U.S.-made photovoltaic device,” and “WTO GPA country photovoltaic device” have the meanings given in the Photovoltaic Devices clause of this solicitation.

\* \* \* \* \*

(d) \* \* \*

(4) \* \* \*

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

\* \* \* \* \*

(5) \* \* \*

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

\* \* \* \* \*

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

*Basic.* As prescribed in 225.1101(9) and (9)(i), use the following provision:

Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Basic (~~DEC 2022~~**[NOV 2023]**)

(a) *Definitions.* “~~Bahrainian~~**[Bahraini]** 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,” “Panamanian 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—Free Trade Agreements—Balance of Payments Program—Basic clause of this solicitation.

(b) \* \* \*

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

(c) \* \* \*

(2) \* \* \*

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

\* \* \* \* \*

*Alternate I.* As prescribed in 225.1101(9) and (9)(ii), use the following provision, which does not use the phrases *~~Bahrainian~~***[*Bahraini*]** *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~~**[Bahraini]** end products, Moroccan end products, Panamanian end products, or Peruvian end products” in paragraphs (b)(2) and (c)(2)(ii); and does not use “Australian or” in paragraph (c)(2)(i):

\* \* \* \* \*

*Alternate II.* \* \* \*

Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate II (~~DEC 2022~~**[NOV 2023]**)

(a) *Definitions. ~~Bahrainian~~***[*Bahraini*]** *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,* *Panamanian end product, Peruvian 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 *United States,* as used in this provision, have the meanings given in the Buy American—Free Trade Agreements—Balance of Payments Program—Alternate II clause of this solicitation.

(b) \* \* \*

(2) For line items subject to the Buy American—Free Trade Agreements—Balance of Payments Program—Alternate II clause of this solicitation, will evaluate offers of qualifying country end products, SC/CASA state end products, or Free Trade Agreement country end products other than ~~Bahrainian~~**[Bahraini]** end products, Moroccan end products, Panamanian end products, or Peruvian end products without regard to the restrictions of the Buy American or the Balance of Payments Program.

(c) \* \* \*

(2) \* \* \*

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

\* \* \* \* \*

*Alternate III.* \* \* \*

Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate III (~~DEC 2022~~**[NOV 2023]**)

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

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

\* \* \* \* \*

*Alternate IV.* As prescribed in 225.1101(9) and (9)(v), use the following provision, which adds *Korean end product* to paragraph (a); and uses “Free Trade Agreement country end products other than ~~Bahrainian~~**[Bahraini]** end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products” in paragraphs (b)(2) and (c)(2)(ii), rather than “Free Trade Agreement country end products other than ~~Bahrainian~~**[Bahraini]** end products, Moroccan end products, Panamanian end products, or Peruvian end products” in paragraphs (b)(2) and (c)(2)(ii) of the basic provision:

Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate IV (~~DEC 2022~~**[NOV 2023]**)

(a) *Definitions. ~~Bahrainian~~***[*Bahraini*]** *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, Korean end product,* *Moroccan end product, Panamanian 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—Free Trade Agreements—Balance of Payments Program—Alternate IV clause of this solicitation.

(b) \* \* \*

(2) For line items subject to the Buy American—Free Trade Agreements—Balance of Payments Program—Alternate IV clause of this solicitation, will evaluate offers of qualifying country end products or Free Trade Agreement country end products other than ~~Bahrainian~~**[Bahraini]** end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products without regard to the restrictions of the Buy American or the Balance of Payments Program.

(c) \* \* \*

(2) \* \* \*

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

\* \* \* \* \*

*Alternate V.* \* \* \*

Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate V (~~DEC 2022~~**[NOV 2023]**)

(a) *Definitions. ~~Bahrainian~~***[*Bahraini*]** *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, Korean end product,* *Moroccan end product, Panamanian end product,* *Peruvian end product, qualifying country end product,* *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 Buy American—Free Trade Agreements—Balance of Payments Program—Alternate V clause of this solicitation.

(b) \* \* \*

(2) For line items subject to the Buy American—Free Trade Agreements—Balance of Payments Program—Alternate V clause of this solicitation, will evaluate offers of qualifying country end products, SC/CASA state end products, or Free Trade Agreement end products other than ~~Bahrainian~~**[Bahraini]** end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products without regard to the restrictions of the Buy American statute or the Balance of Payments Program.

(c) \* \* \*

(2) \* \* \*

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

\* \* \* \* \*

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

*Basic.* As prescribed in 225.1101(10)(i) and (10)(i)(A), use the following clause:

Buy American—Free Trade Agreements—Balance of Payments Program—Basic (~~JAN 2023~~**[NOV 2023]**)

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

*~~Bahrainian~~***[*Bahraini*]** *end product* means an article that—

\* \* \* \* \*

(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~~**[Bahraini]** 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~~**[Bahraini]** 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~~**[Bahraini]** 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.

\* \* \* \* \*

*Alternate I.* \* \* \*

Buy American—Free Trade Agreements—Balance of Payments Program—~~Basic~~**[ALTERNATE I]** (~~JAN 2023~~**[NOV 2023]**)

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

*~~Bahrainian~~***[*Bahraini*]** *end product* means an article that—

\* \* \* \* \*

*Alternate II.* \* \* \*

Buy American—Free Trade Agreements—Balance of Payments Program—Alternate II (~~JAN 2023~~**[NOV 2023]**)

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

*~~Bahrainian~~***[*Bahraini*]** *end product* means an article that—

\* \* \* \* \*

(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~~**[Bahraini]** 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~~**[Bahraini]** 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~~**[Bahraini]** 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.

\* \* \* \* \*

*Alternate III.* \* \* \*

Buy American—Free Trade Agreements—Balance of Payments Program—Alternate III (~~JAN 2023~~**[NOV 2023]**)

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

*~~Bahrainian~~***[*Bahraini*]** *end product* means an article that—

\* \* \* \* \*

*Alternate IV.* \* \* \*

Buy American—Free Trade Agreements—Balance of Payments Program—Alternate IV (~~JAN 2023~~**[NOV 2023]**)

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

*~~Bahrainian~~***[*Bahraini*]** *end product* means an article that—

\* \* \* \* \*

(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~~**[Bahraini]** 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~~**[Bahraini]** 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~~**[Bahraini]** 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.

\* \* \* \* \*

*Alternate V.* \* \* \*

Buy American—Free Trade Agreements—Balance of Payments Program—Alternate V (~~JAN 2023~~**[NOV 2023]**)

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

*~~Bahrainian~~***[*Bahraini*]** *end product* means an article that—

\* \* \* \* \*

(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~~**[Bahraini]** 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~~**[Bahraini]** 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~~**[Bahraini]** 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.

\* \* \* \* \*

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

\* \* \* \* \*

*Alternate I.* As prescribed in 225.7503(b) and (b)(2), use the following clause, which adds *~~Bahrainian~~***[*Bahraini*]** *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 I (~~OCT 2023~~**[NOV 2023]**)

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

*~~Bahrainian~~***[*Bahraini*]** *or Mexican construction material* means a construction material that—

\* \* \* \* \*

(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~~**[Bahraini]** or Mexican construction material.

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

\* \* \* \* \*

*Alternate III.* \* \* \*

Balance of Payments Program—Construction Material Under Trade Agreements—Alternate III (~~OCT 2023~~**[NOV 2023]**)

\* \* \* \* \*

(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~~**[Bahraini]** or Mexican construction material.

(c) The Contractor shall use only domestic, SC/CASA state, or designated country construction material other than ~~Bahrainian~~**[Bahraini]** or Mexican construction material in performing this contract, except for—

\* \* \* \* \*

**252.227-7018 Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program.**

As prescribed in 227.7104(a), use the following clause:

RIGHTS IN OTHER THAN COMMERCIAL TECHNICAL DATA AND COMPUTER SOFTWARE—SMALL BUSINESS INNOVATION RESEARCH (SBIR) PROGRAM (~~MAR 2023~~**[NOV 2023]**)

\* \* \* \* \*

(h) *Removal of unjustified and nonconforming markings*.

(1) *Unjustified markings*. The rights and obligations of the parties regarding the validation of restrictive markings on technical data or computer software furnished or to be furnished under this contract are contained in the Validation of Restrictive Markings on Technical Data and the Validation of Asserted Restrictions—Computer Software clauses of this contract, respectively. Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may ignore or, at the Contractor's expense, correct or strike a marking if, in accordance with the applicable procedures of those clauses, a restrictive marking is determined to be unjustified.

(2) *Nonconforming markings*. A nonconforming marking is a marking placed on technical data or computer software delivered or otherwise furnished to the Government under this contract that is not in the format authorized by this contract. Correction of nonconforming markings is not subject to the Validation of Restrictive Markings on Technical Data or the Validation of Asserted Restrictions—Computer Software clause of this contract. If the Contracting Officer notifies the Contractor of a nonconforming marking or markings and the Contractor fails to remove or correct such markings within ~~sixty (6))~~**[60]** days, the Government may ignore or, at the Contractor's expense, remove or correct any nonconforming markings.

\* \* \* \* \*