

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

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

**Buy American and Balance of Payments Program (JUN 2012)**

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

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

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

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

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

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

(ii) Does not include bulk cargo, as defined in [46 U.S.C. 40102\(4\)](#), such as agricultural products and petroleum products.

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

*Domestic end product means—*

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

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

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

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

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

(B) The end product is a COTS item.

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

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

*Qualifying country* means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act ([22 U.S.C. 2776](#)) and with [10 U.S.C. 2457](#). Accordingly, the following are qualifying countries: Australia Austria Belgium Canada Czech Republic Denmark Egypt Finland France Germany Greece Israel Italy Luxembourg Netherlands Norway Portugal Spain Sweden Switzerland Turkey United Kingdom of Great Britain and Northern Ireland.

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

*Qualifying country end product means—*

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

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

(A) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(1) Components mined, produced, or manufactured in a qualifying country.

(2) Components mined, produced, or manufactured in the United States.

(3) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) The end product is a COTS item.

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

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

(c) The Contractor shall deliver only domestic end products unless, in its offer, it specified delivery of other end products in the Buy American —Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, the Contractor shall deliver a qualifying country end product or, at the Contractor's option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

**(End of clause)**

*Alternate I* (OCT 2011). 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) "South Caucasus/Central and South Asian (SC/CASA) state" means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

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

(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 or an SC/CASA state end product, or, at the Contractor's option, a domestic end product.

[[68 FR 15634](#), Mar. 31, 2003, as amended at [70 FR 35546](#), June 21, 2005; [74 FR 2423](#), Jan. 15, 2009; [75 FR 81918](#), Dec. 29, 2010; [76 FR 58138](#), Sept. 20, 2011; [77 FR 35882](#), June 15, 2012]

**Editorial Note:**

At [77 FR 35882](#), June 15, 2012, 252.225-7001 was amended by revising the section heading; however, the amendment could not be incorporated because there was no text for the revision.