



ACQUISITION
AND SUSTAINMENT

OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

In reply refer to
DARS Tracking Number: 2024-O0004

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING)
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation—Implementation of the United States Trade Representative Trade Agreements Thresholds

Effective January 1, 2024, contracting officers shall use the table in attachment 1 in lieu of the table at FAR 25.402(b) to implement the new United States Trade Representative (USTR) trade agreements thresholds. Contracting officers shall use the provision and clause in attachment 2 in lieu of the DFARS provision at 252.225-7018, Photovoltaic Devices Certificate, and the DFARS clause at 252.225-7017, Photovoltaic Devices. In addition, contracting officers shall use the following prescriptions for alternates I, III, IV, and V of the clause at 252.225-7036, Buy American—Free Trade Agreements—Balance of Payments Program, in lieu of the prescriptions at DFARS 225.1101(10)(i)(B), (D), (E), and (F):

- Use the alternate I clause in solicitations and contracts when the estimated value is less than \$100,000, except if the acquisition is of end products in support of operations in Afghanistan.
- Use the alternate III clause in solicitations and contracts when the estimated value is less than \$100,000, and the acquisition is of end products in support of operations in Afghanistan.
- Use the alternate IV clause in solicitations and contracts when the estimated value equals or exceeds \$100,000, except if the acquisition is of end products in support of operations in Afghanistan.
- Use the alternate V clause in solicitations and contracts when the estimated value equals or exceeds \$100,000 and the acquisition is of end products in support of operations in Afghanistan.

Class Deviation 2024-O0004
Implementation of the United States Trade Representative
Trade Agreements Thresholds

Approximately every two years, the trade agreements thresholds for the World Trade Organization Government Procurement Agreement and the free trade agreements (FTAs) are adjusted according to predetermined formulae under the agreements. This class deviation implements the new USTR trade agreements thresholds effective on January 1, 2024, for calendar years 2024 and 2025. The Korea FTA threshold of \$100,000 is unchanged and is now the lowest USTR FTA threshold applicable. Therefore, the prescriptions for alternates I, III, IV, and V of the clause at 252.225-7036 are revised accordingly.

This class deviation remains in effect until incorporated into the FAR and DFARS or until otherwise rescinded. My point of contact is Mr. Greg Snyder, who is available at gregory.d.snyder.civ@mail.mil.

for
John M. Tenaglia
Principal Director,
Defense Pricing and Contracting

Attachments:
As stated

Attachment 1
Class Deviation 2024-O0004

Implementation of the U.S. Trade Representative Trade Agreements Thresholds

Trade Agreement	Supply Contract (equal to or exceeding)	Construction Contract (equal to or exceeding)
WTO GPA	\$ 183,000 [174,000]	\$ 7,032,000 [6,708,000]
FTAs:		
Australia	\$ 92,319 [102,280]	\$ 7,032,000 [6,708,000]
Bahrain	\$ 183,000 [174,000]	\$ 12,001,460 [13,296,489]
CAFTA-DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua)	\$ 92,319 [102,280]	\$ 7,032,000 [6,708,000]
Chile	\$ 92,319 [102,280]	\$ 7,032,000 [6,708,000]
Colombia	\$ 92,319 [102,280]	\$ 7,032,000 [6,708,000]
Korea	\$100,000	\$ 7,032,000 [6,708,000]
Morocco	\$ 183,000 [174,000]	\$ 7,032,000 [6,708,000]
Panama	\$ 183,000 [174,000]	\$ 7,032,000 [6,708,000]
Peru	\$ 183,000 [174,000]	\$ 7,032,000 [6,708,000]
Singapore	\$ 92,319 [102,280]	\$ 7,032,000 [6,708,000]
USMCA		
-Mexico	\$ 92,319 [102,280]	\$ 12,001,460 [13,296,489]

252.225-7017 Photovoltaic Devices. (DEVIATION 2024-O0004)

Use the clause in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services, for a contract expected to exceed the simplified acquisition threshold that may be a covered contract, i.e., an energy savings performance contract, a utility service contract, or a private housing contract awarded by DoD, if such contract will result in DoD ownership of photovoltaic devices, by means other than DoD purchase as end products.

In addition, use the clause in the resultant contract, including contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, if it is a covered contract.

PHOTOVOLTAIC DEVICES (DEVIATION 2024-O0004) (JAN 2024)

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

Bahraini photovoltaic device means a photovoltaic device that—

- (1) Is wholly manufactured in Bahrain; or
- (2) In the case of a photovoltaic device that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain 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, provided that the photovoltaic device is not subsequently substantially transformed outside of Bahrain.

Caribbean Basin country photovoltaic device means a photovoltaic device that—

- (1) Is wholly manufactured in a Caribbean Basin country; or
- (2) In the case of a photovoltaic device that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country 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, provided that the photovoltaic device is not subsequently substantially transformed outside of a Caribbean Basin country.

Designated country means—

- (1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, North Macedonia, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as “the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu” (Chinese Taipei)), Ukraine, or the United Kingdom);

Implementation of the U.S. Trade Representative Trade Agreements Thresholds
Changes to the text are indicated by a change bar in the right-hand margin.

(2) A Free Trade Agreement country (Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

Designated country photovoltaic device means a WTO GPA country photovoltaic device, a Free Trade Agreement country photovoltaic device, a least developed country photovoltaic device, or a Caribbean Basin country photovoltaic device.

Domestic photovoltaic device means a photovoltaic device that is manufactured in the United States.

Foreign photovoltaic device means a photovoltaic device other than a domestic photovoltaic device.

Free Trade Agreement country means Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore.

Free Trade Agreement country photovoltaic device means a photovoltaic device that—

(1) Is wholly manufactured in a Free Trade Agreement country; or

(2) In the case of a photovoltaic device that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country 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, provided that the photovoltaic device is not subsequently substantially transformed outside of a Free Trade Agreement country.

Korean photovoltaic device means a photovoltaic device that—

(1) Is wholly manufactured in Korea; or

(2) In the case of a photovoltaic device that consists in whole or in part of materials from another country, has been substantially transformed in Korea (Republic of) 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, provided that the

photovoltaic device is not subsequently substantially transformed outside of Korea (Republic of).

Least developed country photovoltaic device means a photovoltaic device that—

- (1) Is wholly manufactured in a least developed country; or
- (2) In the case of a photovoltaic device that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country 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, provided that the photovoltaic device is not subsequently substantially transformed outside of a least developed country.

Moroccan photovoltaic device means a photovoltaic device that—

- (1) Is wholly manufactured in Morocco; or
- (2) In the case of a photovoltaic device that consists in whole or in part of materials from another country, has been substantially transformed in Morocco 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, provided that the photovoltaic device is not subsequently substantially transformed outside of Morocco.

Panamanian photovoltaic device means a photovoltaic device that—

- (1) Is wholly manufactured in Panama; or
- (2) In the case of a photovoltaic device that consists in whole or in part of materials from another country, has been substantially transformed in Panama 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, provided that the photovoltaic device is not subsequently substantially transformed outside of Panama.

Peruvian photovoltaic device means a photovoltaic device that—

- (1) Is wholly manufactured in Peru; or
- (2) In the case of a photovoltaic device 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, provided that the photovoltaic device is not subsequently substantially transformed outside of Peru.

Photovoltaic device means a device that converts light directly into electricity through a solid-state, semiconductor process.

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
Estonia
Egypt
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Lithuania
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland

Qualifying country photovoltaic device means a photovoltaic device manufactured in a qualifying country.

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

U.S.-made photovoltaic device means a photovoltaic device that—

- (1) Is manufactured in the United States; or
- (2) Is substantially transformed in the United States 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, provided that the photovoltaic device is not subsequently substantially transformed outside of the United States.

WTO GPA country photovoltaic device means a photovoltaic device that—

- (1) Is wholly manufactured in a WTO GPA country; or

Implementation of the U.S. Trade Representative Trade Agreements Thresholds
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(2) In the case of a photovoltaic device that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country 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, provided that the photovoltaic device is not subsequently substantially transformed outside of a WTO GPA country.

(b) This clause implements section 846 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111-383).

(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 \$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) \$100,000 or more but less than \$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) \$102,280 or more but less than \$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) \$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. (DEVIATION 2024-O0004)

Use the following provision in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services, that contain the clause at 252.225-7017:

PHOTOVOLTAIC DEVICES—CERTIFICATE (DEVIATION 2024-O0004) (JAN 2024)

(a) *Definitions.* “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.

(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 \$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 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 \$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 \$100,000, 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://www.cbp.gov/trade/rulings>.)

(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:]

Attachment 2
Class Deviation 2024-O0004

Implementation of the U.S. Trade Representative Trade Agreements Thresholds
Changes to the text are indicated by a change bar in the right-hand margin.

___ (1) No photovoltaic devices will be utilized in performance of the contract, or such photovoltaic devices have an estimated value that does not exceed the micro-purchase threshold.

(2) If more than the micro-purchase threshold but less than \$100,000—

___ (i) The offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device;

___ (ii) The offeror 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

___ (iii) The foreign (other than qualifying country) photovoltaic devices to be utilized in performance of the contract are the product of _____.*[Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device, i.e. that the price of the foreign photovoltaic device plus 50 percent is less than the price of a comparable domestic photovoltaic device.]*

(3) If less than \$100,000—

___ (i) The offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device;

___ (ii) The offeror 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

___ (iii) The foreign photovoltaic devices to be utilized in performance of the contract are the product of _____.*[Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device, i.e. that the price of the foreign photovoltaic device plus 50 percent is less than the price of a comparable domestic photovoltaic device.]*

(4) If \$100,000 or more but less than \$102,280—

___ (i) The offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device;

___ (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 Bahraini, Korean, Moroccan, Panamanian, or Peruvian photovoltaic device) or a qualifying country photovoltaic device *[Offeror to specify country of origin_____];* or

___ (iii) The offered foreign photovoltaic devices (other than those from countries listed in paragraph (d)(4)(ii) of this provision) are the product of _____.*[Offeror to specify country of origin, if known, and provide*

Implementation of the U.S. Trade Representative Trade Agreements Thresholds
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documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device, i.e. that the price of the foreign photovoltaic device plus 50 percent is less than the price of a comparable domestic photovoltaic device.]

(5) If \$102,280 or more but less than \$174,000—

___ (i) The offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device;

___ (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 Bahraini, Moroccan, Panamanian, or Peruvian photovoltaic device) or a qualifying country photovoltaic device [*Offeror to specify country of origin _____*]; or

___ (iii) The offered foreign photovoltaic devices (other than those from countries listed in paragraph (d)(5)(ii) of this provision) are the product of _____. [*Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device, i.e. that the price of the foreign photovoltaic device plus 50 percent is less than the price of a comparable domestic photovoltaic device.]*

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

___ (i) A U.S.-made photovoltaic device; or

___ (ii) A designated country photovoltaic device or a qualifying country photovoltaic device. [*Offeror to specify country of origin _____.*]

(End of provision)