



5001-06-P

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 212, 225, and 252**

**[Docket DARS-2018-0028]**

**RIN 0750-AJ71**

**Defense Federal Acquisition Regulation Supplement: Sunset of Provision Relating to the Procurement of Certain Goods (DFARS Case 2018-D007)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2018 that repeals the Fiscal Year 2015 restrictions on the source of photovoltaic devices in contracts awarded by DoD that result in DoD ownership of photovoltaic devices by means other than DoD purchase of the photovoltaic devices as end products.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before **[Insert date 60 days after date of publication in the FEDERAL REGISTER]**, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2018-D007,

using any of the following methods:

- o Federal eRulemaking Portal: <http://www.regulations.gov>.

Search for "DFARS Case 2018-D007". Select "Comment Now" and follow the instructions provided to submit a comment. Please include "DFARS Case 2018-D007" on any attached documents.

- o Email: [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include DFARS Case 2018-D007 in the subject line of the message.

- o Fax: 571-372-6094.

- o Mail: Defense Acquisition Regulations System, Attn: Amy G. Williams, OUSD(A&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov), approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy G. Williams, telephone 571-372-6106.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD is proposing to revise the DFARS to implement section 813(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018. Section 813(b) repeals section 858 of

the NDAA for FY 2015, effective October 1, 2018, but does not repeal section 846 of the NDAA for FY 2011. DoD published the final rule to implement section 858 under DFARS case 2015-D007 in the Federal Register on November 20, 2015 (80 FR 72599).

Section 858 of the NDAA for FY 2015 did not contain specific language to rescind or supersede section 846 of the NDAA for FY 2011, which was first implemented in the DFARS by an interim rule under DFARS Case 2011-D046, published in the Federal Register on December 20, 2011 (76 FR 78858), and then finalized on May 22, 2012 (77 FR 30368).

## **II. Discussion and Analysis**

### **A. Analysis of Statutory Requirements.**

#### **1. Covered contracts.**

Section 846 applies to contracts awarded by DoD, including energy savings performance contracts, utility energy service contracts, and private housing contracts, to the extent that such contracts result in ownership of photovoltaic devices by DoD. Section 846 further provides that DoD is deemed to own a photovoltaic device if the device is-

- Installed on DoD property or in a facility owned by DoD;  
and
- Reserved for the exclusive use of DOD for the full economic life of the device.

Section 858 substituted "or" for "and" in connecting the two conditions. Therefore, either one of the conditions would be sufficient to make the law applicable. By repealing section 858, the law does not apply unless both of the conditions are met. Although section 858 explicitly restricted applicability to the United States, that restriction is still equivalent to the section 846 applicability, because the Buy American statute invoked in section 846 does not apply overseas. Land leases are not addressed in this rule because land leases are outside the scope of the FAR and DFARS.

## 2. Requirements.

Section 846 requires that, with some exceptions, photovoltaic devices provided under covered contracts comply with the Buy American statute. The Buy American statute requires, for use inside the United States, that manufactured articles, materials and supplies be manufactured in the United States, substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States. When section 858 was enacted, it imposed basically the same requirement, requiring that any photovoltaic device installed under a covered contract be manufactured in the United States substantially all from articles, materials or supplies mined, produced, or manufactured in the United States, but no longer referenced the Buy American statute.

### 3. Exceptions.

Because the requirement under section 858 was separated from the explicit application of the Buy American statute, the exceptions and waivers that apply to the Buy American statute no longer automatically applied to the restrictions of section 858, unless provided for and authorized by section 858. Now that section 858 has been repealed, the following exceptions are again applicable:

- Exceptions for domestic nonavailability and acquisitions in which the values of the photovoltaic devices does not exceed the micro-purchase threshold.
- Public interest determination. The Buy American statute provides for individual or class determinations that application of the Buy American statute is inconsistent with the public interest. Through public interest class determinations, DoD does not apply the Buy American statute to (1) qualifying country end products; or (2) U.S.-made end products, if the World Trade Organization Government Procurement Agreement applies (i.e., the aggregate value of the photovoltaic devices to be utilized is \$180,000 or more). In implementing section 846, this determination was applied to photovoltaic devices not acquired as end products. Section 858 only allowed, on a case-by-case basis, determinations that application of the restriction

in 858 are not in the public interest. Such case-by-case determinations are no longer required in order to allow a contractor to utilize a qualifying country photovoltaic device or a U.S.-made photovoltaic device.

- Determination of unreasonable cost. Both the Buy American statute and section 858 allow a determination not to utilize a domestic product if the cost of the domestic product is unreasonable. With regard to determining that the cost of a domestic item is unreasonable, Executive Order 10582, Prescribing Uniform Procedures for Certain Determinations under the Buy-American Act, provides a methodology to determine unreasonable cost, using a minimum differential of 6 percent, but also provides that the head of an executive agency may determine that the use of a higher differential between the cost of materials of domestic origin and the cost of materials of foreign origin "is not unreasonable." The then Secretary of Defense, Cyrus Vance, signed a memorandum on May 7, 1964, providing for application of a 50 percent differential under the Buy American statute. Therefore, DoD proposes to continue application of a 50 percent evaluation factor when determining whether the price of domestic photovoltaic devices is unreasonable when the estimated aggregate value of the photovoltaic devices to be utilized is less than

\$180,000 (the World Trade Organization Government Procurement Agreement threshold). The application of an evaluation factor to foreign products to determine whether the price of domestic products is reasonable is not applicable when the World Trade Organization Government Procurement Agreement applies, because there is a prohibition under that agreement to buying any products that are not designated, domestic, U.S.-made, or qualifying country products. DoD has waived the application of the Buy American statute to U.S.-made products so no evaluation factor is applicable.

- Exemption for commercially available off-the-shelf (COTS) items. Pursuant to 41 U.S.C. 1907 and determinations by the Administrator of Federal Procurement Policy, the component test of the Buy American statute does not apply to the acquisition of COTS items. This exemption no longer applied to photovoltaic devices utilized under section 858, but is now re-instated under section 846.
- Trade agreements or otherwise provided by law. The restrictions of both section 846 and section 858 are subject to the exceptions provided in the Trade Agreements Act or otherwise provided by law. The Trade Agreements Act (19 U.S.C. 2501 et seq.) provides authority for the President to waive the Buy American statute and other

discriminatory provisions (e.g., sections 846 and 858) for eligible products from designated countries. This authority has been delegated to the United States Trade Representative (USTR).

B. Regulatory Implementation.

This proposed rule essentially reinstates the DFARS regulations as they existed prior to publication of the final rule under DFARS Case 2015-D007 on November 20, 2015, except for—

- Baseline changes such as increased trade agreement thresholds and addition of new qualifying countries);
- Use of the term “micro-purchase threshold” rather than a specific dollar value, to provide more flexibility when the micro-purchase threshold increases;
- Retaining the explicit statement that these restrictions only apply in the United States; and
- Restructuring of the certifications in DFARS provision 252.225-7018. In each dollar range, the first paragraph is limited to a certification that the photovoltaic devices are domestic (or U.S.-made for paragraph (6)). This avoids the necessity of identifying the country of origin for such domestic or U.S.-made products.

### **III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items**

This rule does not affect the applicability of DFARS clause 252.225-7017, Photovoltaic Devices, and DFARS provision 252.225-7018, Photovoltaic Devices—Certification. A determination was signed by the Director, Defense Procurement and Acquisition Policy, on October 13, 2011, to not apply the requirements of section 846 of the NDAA for FY 2011 to contracts at or below the simplified acquisition threshold, but to apply the rule to contracts for the acquisition of commercial items, including COTS items.

### **IV. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated

September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

#### **V. Executive Order 13771**

This proposed rule is not expected to be an E.O. 13771, Reducing Regulation and Controlling Regulatory Costs, regulatory action, because this proposed rule is not significant under E.O. 12866.

#### **VI. Regulatory Flexibility Act**

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This rule proposes to implement the repeal of section 858 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act (NDAA) for FY 2015 (Pub. L. 113-291), while retaining the requirements of section 846 of the NDAA for FY 2011, with regard to sources of contractor-purchased photovoltaic devices that become the property of DoD.

The objective of this rule is to revert to the regulations on photovoltaic devices that were in effect prior to superimposing the additional regulations required by section 858 on November 20, 2015 (80 FR 72599). By restoring the tie to the Buy American statute, this rule reinstates the Buy American

exceptions for acquisitions below the micro-purchase threshold, nonavailability, unreasonable cost, and public interest, including the DoD class determinations that exempt U.S.-made and qualifying country photovoltaic devices from the requirement of the Buy American statute, as well as the Governmentwide determination that removes the component test for commercially-available off-the-shelf items.

This rule generally applies at the prime contract level to other than small entities. When purchasing renewable power generated via on-site photovoltaic devices, DoD can either purchase the photovoltaic devices and thereby own, operate, and maintain the devices for their full economic life (already covered in DFARS part 225 under standard Buy American statute/Trade Agreements regulations) or, for example, may do some variation of the following:

- Enter into an energy savings performance contract, which is a contracting method in which the contractor provides capital to facilitate energy conservation measures and maintains them in exchange for a portion of the energy savings generated. Under this arrangement, the Government would take title to the devices during contract performance or at the conclusion of the contract. For example, DoD uses either the master indefinite delivery-indefinite quantity contract of the Department of Energy or the Army

Corps of Engineers and awards task orders off one of those contracts. Generally, the same approved contractors are on each contract. Of the approved contractors, all except one are large businesses. There are subcontracting goals that each contractor has to meet, but the ultimate task order award is most often made to a large business.

- Enter into a power purchase agreement, also referred to as a utility service contract, for the purchase of the power output of photovoltaic devices that are installed on DoD land or buildings, but owned, operated, and maintained by the contractor. At the conclusion of the contract, DoD would either require the contractor to dismantle and remove the photovoltaic equipment or abandon the equipment in place. Prime contractors for this type of contract would generally be large businesses, based on the capital costs involved in these projects. However, many developers tend to subcontract out the majority of work to smaller companies.

There are approximately 80 manufacturers of photovoltaic devices. DoD does not currently have data available on whether any of the manufacturers of photovoltaic devices are small entities, because the Federal Procurement Data System does not collect such data on subcontractors.

There are no new reporting burdens under this rule. In fact, there is a de minimis reduction in burden, because no certification will be required if the value of the photovoltaic devices does not exceed the micro-purchase threshold, and identification of country of origin will no longer be required if the photovoltaic devices are domestic or U.S.-made. Contracting officers will no longer be required to do a determination and findings in order to allow utilization of qualifying country or U.S.-made photovoltaic devices or other foreign photovoltaic devices on the bases of unreasonable cost. Furthermore, since the prime contractors subject to this rule are other than small businesses, the existing reporting requirements do not impact small entities.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

DoD did not identify any significant alternatives that meet the requirements of the statute and would have less impact on small entities. The overall effect of this rule is deregulatory and it does not have significant impact on small entities.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in

accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2018-D007), in correspondence.

#### **VII. Paperwork Reduction Act**

The rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C chapter 35); however, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 0704-0229, entitled "Defense Federal Acquisition Regulation Supplement (DFARS) Part 225, Foreign Acquisition, and related clauses at DFARS 252.225."

#### **List of Subjects in 48 CFR Parts 212, 225, and 252**

Government procurement.

**Jennifer Lee Hawes,**

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 212, 225, and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 212, 225, and 252 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

#### **PART 212-ACQUISITION OF COMMERCIAL ITEMS**

2. Amend section 212.301 by revising paragraphs (f)(ix)(J) and (K) to read as follows:

**212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.**

(f) \* \* \*

\* \* \* \* \*

(ix) \* \* \*

(J) Use the clause at 252.225-7017, Photovoltaic Devices, as prescribed in 225.7017-4(a), to comply with section 846 of Public Law 111-383.

(K) Use the provision at 252.225-7018, Photovoltaic Devices-Certificate, as prescribed in 225.7017-4(b), to comply with section 846 of Public Law 111-383.

\* \* \* \* \*

**PART 225-FOREIGN ACQUISITION**

3. Amend section 225.7017-1 by revising the definitions of "Covered contract" and "Domestic photovoltaic device" to read as follows:

**225.7017-1 Definitions.**

\* \* \* \* \*

Covered contract means an energy savings performance contract, a utility services contract, or a private housing contract awarded by DoD to be performed in the United States, if such contract results in DoD ownership of photovoltaic devices, by means other than DoD

purchase as end products. DoD is deemed to own a photovoltaic device if the device is-

(1) Installed in the United States on DoD property or in a facility owned by DoD; and

(2) Reserved for the exclusive use of DoD in the United States for the full economic life of the device.

\* \* \* \* \*

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

\* \* \* \* \*

4. Revise section 225.7017-2 to read as follows:

**225.7017-2 Restriction.**

In accordance with section 846 of the National Defense Authorization Act for Fiscal Year 2011, photovoltaic devices provided under any covered contract shall comply with 41 U.S.C. chapter 83, Buy American, subject to the exceptions to that statute provided in the Trade Agreements Act of 1979 (19 U.S.C. 2501 et seq.).

5. Revise section 225.7017-3 to read as follows:

**225.7017-3 Exceptions.**

DoD requires the contractor to utilize domestic photovoltaic devices in covered contracts that exceed the simplified acquisition threshold, with the following exceptions:

(a) Qualifying country. Qualifying country photovoltaic devices may be utilized in any covered contract, because 225.103(a)(i)(A) provides an exception to the Buy American statute for products of qualifying countries, as defined in 225.003.

(b) Buy American-unreasonable cost. For a covered contract that utilizes photovoltaic devices valued at less than \$180,000, 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 or more, only U.S.-made photovoltaic devices, designated country photovoltaic devices, or qualifying country photovoltaic devices may be utilized.

**225.7017-4 [Removed]**

6. Remove section 225.7017-4.

**225.7017-5 [Redesignated as 225.7017-4]**

7. Redesignate section 225.7017-5 as 225.7017-4 and in the newly redesignated section 225.7017-4, revise paragraph (a)(1) to read as follows:

**225.7017-4 Solicitation provision and contract clause.**

(a)(1) Use the clause at 252.225-7017, Photovoltaic Devices, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, 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.

\* \* \* \* \*

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

8. Amend section 252.225-7017 by—

a. In the introductory text, removing “225.7017-5(a)” and adding “225.7017-4(a)” in its place;

b. Removing clause date “(JAN 2018)” and adding “(DATE)” in its place;

c. In paragraph (a)—

i. Removing subparagraph designations “(i)” and “(ii)” and adding “(1)” and “(2)” in its place wherever it appears;

- ii. Removing subparagraph designations "(iii)" and "(iv)" and adding "(3)" and "(4)" in its place;
- iii. Revising the definition of "Domestic photovoltaic device";
- d. In paragraph (b), removing "858 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113-291)" and adding "846 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111-383)" in its place; and
- e. In paragraph (c)—
  - i. Revising paragraph (c)(1);
  - ii. In paragraph (c)(2), removing "photovoltaic device as specified, or," and adding "photovoltaic device, or," in its place; and
  - iii. Revising paragraphs (c)(3), (4), and (5).

The revisions read as follows:

**252.225-7017 Photovoltaic Devices.**

(a) \* \* \*

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

\* \* \* \* \*

(c) \* \* \*

(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;

\* \* \* \* \*

(3) \$80,317 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 \$180,000, 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) \$180,000 or more, then the Contractor shall utilize under this contract only U.S.-made, designated country, or qualifying country photovoltaic devices.

(End of clause)

9. Amend section 252.225-7018 by—

a. In the introductory text, removing "225.7017-5(b)" and adding "225.7017-4(b)" in its place;

b. Removing clause date "(JAN 2018)" and adding "(DATE)" in its place;

c. Revising paragraphs (b)(1) and (2); and

d. Revising paragraphs (d)(1), (d)(2) introductory text, and (d)(3) through (6).

The revisions read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(1) If more than micro-purchase threshold but less than \$180,000, 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 \$180,000 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) \* \* \*

(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 \$25,000—

\* \* \* \* \*

(3) If \$25,000 or more but less than \$80,317—

(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 Canadian photovoltaic device or a qualifying country photovoltaic device [Offeror to specify country of origin \_\_\_\_\_]; or

(iii) The foreign (other than Canadian or 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.]

(4) If \$80,317 or more 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 Free Trade Agreement country photovoltaic device (other than a Bahrainian, 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 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 \$100,000 or more but less than \$180,000—

(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 Bahrainian, 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 \$180,000 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)

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