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Memo

To: SOLON Corporation

From: R&A CPAs

Date: June 2, 2009

Re: Buy American Act

Under the Buy American Act and Balance of Payments Program (Apr 2003), the purchase of supplies are restricted to domestic end products.

DFARS (Department of Defense Federal Acquisition Regulation Supplement) 225.225-7036 defines a “domestic end product” as

“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 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—

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

(B) It is inconsistent with the public interest to apply the restrictions of the

Buy American Act.

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

It goes on further to define a “component” as an article, material, or supply incorporated directly into an end product.

A “qualifying country component” means a component mined, produced, or manufactured in a qualifying country.

“Qualifying country” means any country set forth in subsection [225.872-1](#) (see below) of the Defense Federal Acquisition Regulation Supplement.

225.872 Contracting with qualifying country sources.

[225.872-1](#) General.

(a) As a result of memoranda of understanding and other international agreements, DoD has determined it inconsistent with the public interest to apply restrictions of the Buy American Act or the Balance of Payments Program to the acquisition of qualifying country end products from the following qualifying countries:

Australia
Belgium
Canada
Denmark
Egypt
Federal Republic of Germany
France
Greece
Israel
Italy
Luxembourg
Netherlands
Norway
Portugal
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland

(b) Individual acquisitions of qualifying country end products from the following qualifying countries may, on a purchase-by-purchase basis (see [225.872-4](#)), be exempted from application of the Buy American Act and the Balance of Payments Program as inconsistent with the public interest:

Austria
Finland

(c) The determination in paragraph (a) of this subsection does not limit the authority of the Secretary concerned to restrict acquisitions to domestic sources or reject an otherwise acceptable offer from a qualifying country source when considered necessary for national defense reasons.

The Program certificate must address the following:

(1) For all line items subject to the Buy American Act—Free Trade Agreements—Balance of Payments Program clause of this solicitation, the offeror certifies that—

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product; and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The offeror shall identify all end products that are not domestic end products.

(i) The offeror certifies that the following supplies are qualifying country (except Australian or Canadian) end products:

(ii) The offeror certifies that the following supplies are end products of Australia, Canada, Chile, Mexico, or Singapore:

(iii) The following supplies are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products.

The cost of qualifying country components and domestic components must exceed 50% of the total cost of components; if SOLON uses components from qualifying countries (as listed above), its products should qualify as domestic end products under the DFARS. The Program certificate should also identify all components from either a qualify country or other foreign end products. Based upon the above definitions SOLON appears likely to meet the requirements.