25.001 General.

(a) 41 U.S.C. chapter 83, Buy American-

(1) Restricts the purchase of *supplies*, that are not *domestic end products*, for use within the *United States*. A *foreign end product may* be purchased if the *contracting officer* determines that the price of the lowest *domestic offer* is unreasonable or if another exception applies (see subpart 25.1); and

(2) Requires, with some exceptions, the use of only *domestic construction materials* in contracts for *construction* in the *United States* (see subpart 25.2).

(b) The restrictions in the Buy American statute are not applicable in *acquisitions* subject to certain trade agreements (see subpart 25.4). In these *acquisitions*, *end products* and *construction materials* from certain countries receive nondiscriminatory treatment in evaluation with *domestic offers*. Generally, the dollar value of the *acquisition* determines which of the trade agreements applies. Exceptions to the applicability of the trade agreements are described in subpart 25.4.

(c) The test to determine the country of origin for an *end product* under the Buy American statute (see the various country "*end product*" definitions in 25.003) is different from the test to determine the country of origin for an *end product* under the trade agreements, or the criteria for the representation on *end products* manufactured outside the *United States* (see 52.225-18).

(1) The Buy American statute uses a two-part test to define a "*domestic end product*" or "*domestic construction material*" (manufactured in the *United States* and a domestic content test). The domestic content test has been waived for *acquisition* of commercially available off-the-shelf (COTS) items, except a product that consists wholly or *predominantly of iron or steel or a combination of both* (excluding COTS *fasteners*) (see 25.101(a) and 25.201(b)).

(2) Under the trade agreements, the test to determine country of origin is "substantial transformation" (*i.e.*, transforming an article into a new and different article of commerce, with a name, character, or use distinct from the original article).

(3) For the representation at 52.225-18, the only criterion is whether the place of manufacture of an *end product* is in the *United States* or outside the *United States*, without regard to the origin of the *components*.

(4) When using funds appropriated under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), the definition of "domestic manufactured *construction material*" requires manufacture in the *United States* but does not include a requirement with regard to the origin of the *components*. If the *construction material* consists wholly or predominantly of iron or *steel*, the iron or *steel must* be produced in the *United States*.

Parent topic: Part 25 - Foreign Acquisition