

25.206 Noncompliance.

The *contracting officer* must-

- (a) Review allegations of Buy American statute violations;
- (b) Unless fraud is suspected, notify the contractor of the apparent unauthorized use of *foreign construction material* and request a reply, to include proposed corrective action; and
- (c) If the review reveals that a contractor or subcontractor has used *foreign construction material* without authorization, take appropriate action, including one or more of the following:
 - (1) Process a determination concerning the inapplicability of the Buy American statute in accordance with [25.205](#).
 - (2) Consider requiring the removal and replacement of the unauthorized *foreign construction material*.
 - (3) If removal and replacement of *foreign construction material* incorporated in a *building or work* would be impracticable, cause undue delay, or otherwise be detrimental to the interests of the Government, the *contracting officer* may determine *in writing* that the *foreign construction material* need not be removed and replaced. A determination to retain *foreign construction material* does not constitute a determination that an exception to the Buy American statute applies, and this *should* be stated in the determination. Further, a determination to retain *foreign construction material* does not affect the Government's right to suspend or debar a contractor, subcontractor, or supplier for violation of the Buy American statute, or to exercise other contractual rights and remedies, such as reducing the contract price or terminating the contract for default.
 - (4) If the noncompliance is sufficiently serious, consider exercising appropriate contractual remedies, such as terminating the contract for default. Also consider preparing and forwarding a report to the agency *suspending and debarring official* in accordance with [subpart 9.4](#). If the noncompliance appears to be fraudulent, refer the matter to other appropriate agency officials, such as the officer responsible for criminal investigation.

Parent topic: [Subpart 25.2 - Buy American-Construction Materials](#)