25.1102 Acquisition of construction.

When using funds other than those appropriated under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act), follow the prescriptions in paragraphs (a) through (d) of this section. Otherwise, follow the prescription in paragraph (e).

(a) Insert the clause at 52.225-9, Buy American-*Construction Materials*, in *solicitations* and contracts for *construction* that is performed in the *United States* valued at less than $6,683,000.

(1) List in paragraph (b)(2) of the clause all *foreign construction material* excepted from the requirements of the Buy American statute.

(2) If the *head of the agency* determines that a higher percentage is appropriate, substitute the higher evaluation percentage in paragraph (b)(3)(i) of the clause.

(3) The *contracting officer shall* use the clause with its *Alternate* I to reflect the domestic content threshold that will apply to the entire period of performance, when the *senior procurement executive* allows for application of an *alternate* domestic content test for the contract in accordance with 25.201(c). For contracts that the *contracting officer* estimates will be awarded in calendar year 2022 or 2023, the *contracting* officer *shall* insert "60" in paragraph (1)(ii)(A) of the definition of "*domestic construction material*." For contracts that the *contracting* officer estimates will be awarded in calendar year 2024, 2025, 2026, 2027, or 2028, the *contracting officer shall* insert "65". For contracts that the *contracting officer* estimates will be awarded after calendar year 2028 the *contracting officer shall* insert "75".

(b)

(1) Insert the provision at 52.225-10, Notice of Buy American Requirement-*Construction Materials*, in *solicitations* containing the clause at 52.225-9.

(2) If insufficient time is available to process a determination regarding the inapplicability of the Buy American statute before receipt of *offers*, use the provision with its *Alternate* I.

(c) Insert the clause at 52.225-11, Buy American-*Construction Materials* under Trade Agreements, in *solicitations* and contracts for *construction* that is performed in the *United States* valued at $6,683,000 or more.

(1) List in paragraph (b)(3) of the clause all *foreign construction material* excepted from the requirements of the Buy American statute, other than *designated country construction material*.

(2) If the *head of the agency* determines that a higher percentage is appropriate, substitute the higher evaluation percentage in paragraph (b)(4)(i) of the clause.

(3) For *acquisitions* valued at $6,683,000 or more, but less than $13,749,689, use the clause with its *Alternate* I. List in paragraph (b)(3) of the clause all *foreign construction material* excepted from the requirements of the Buy American statute, unless the excepted *foreign construction material* is from a *designated country* other than Bahrain, Mexico, and Oman.

(4) The *contracting officer shall* use the clause with its *Alternate* II to reflect the domestic content threshold that will apply to the entire period of performance, when the *senior procurement*

executive allows for application of an *alternate* domestic content test for the contract in accordance with 25.201(c). For contracts that the *contracting officer* estimates will be awarded in calendar year 2022 or 2023, the *contracting* officer *shall* insert "60" in paragraph (1)(ii)(A) of the definition of "*domestic construction material*." For contracts that the *contracting* officer estimates will be awarded in calendar year 2024, 2025, 2026, 2027, or 2028, the *contracting officer shall* insert "65". For contracts that the *contracting officer* estimates will be awarded after calendar year 2028 the *contracting officer shall* insert "75".

(d)

(1) Insert the provision at 52.225-12, Notice of Buy American Requirement-*Construction Materials* under Trade Agreements, in *solicitations* containing the clause at 52.225-11.

(2) If insufficient time is available to process a determination regarding the inapplicability of the Buy American statute before receipt of *offers*, use the provision with its *Alternate* I.

(3) For *acquisitions* valued at $6,683,000 or more, but less than $13,749,689, use the provision with its *Alternate* II.

(e)

(1) When using funds appropriated under the Recovery Act for *construction*, use provisions and clauses 52.225-21, 52.225-22, 52.225-23, or 52.225-24 (with appropriate *Alternates*) in lieu of the provisions and clauses 52.225-9, 52.225-10, 52.225-11, or 52.225-12 (with appropriate *Alternates*), respectively, that would be applicable as prescribed in paragraphs (a) through (d) of this section if Recovery Act funds were not used.

(2) If these Recovery Act provisions and clauses are only applicable to a project consisting of certain *line items* in the contract, identify in the schedule the *line items* to which the provisions and clauses apply.

(3) When using clause 52.225-23, list *foreign construction material* in paragraph (b)(3) of the clause as follows:

(i) *Basic clause*. List all *foreign construction materials* excepted from the Buy American statute or section 1605 of the Recovery Act, other than manufactured *construction material* from a Recovery Act *designated country* or unmanufactured *construction material* from a *designated country*.

(ii) *Alternate I*. List in paragraph (b)(3) of the clause all *foreign construction material* excepted from the Buy American statute or section 1605 of the Recovery Act, other than-

(A) Manufactured *construction material* from a Recovery Act *designated country* other than Bahrain, Mexico, or Oman; or

(B) Unmanufactured *construction material* from a *designated country* other than Bahrain, Mexico, or Oman.

Parent topic: Subpart 25.11 - Solicitation Provisions and Contract Clauses