

52.225-21 Required Use of American Iron, Steel, and Manufactured Goods-Buy American Statute-Construction Materials.

As prescribed in 25.1102(e), insert the following clause:

Required Use of American Iron, *Steel*, and Manufactured Goods-Buy American Statute-*Construction Materials* (Jan 2021)

(a) *Definitions*. As used in this clause-

Component means an article, material, or supply incorporated directly into a *construction* material.

Construction material means an article, material, or supply brought to the *construction* site by the Contractor or a subcontractor for incorporation into the *building or work*. The term also includes an item brought to the site preassembled from articles, materials, or *supplies*. However, *emergency* life safety systems, such as *emergency* lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct *construction material* regardless of when or how the individual parts or *components* of those systems are delivered to the *construction* site.

Domestic construction material means the following-

(1) An unmanufactured *construction material* mined or produced in the United States. (The Buy American statute applies.)

(2) A manufactured *construction material* that is manufactured in the *United States* and, if the *construction material* consists wholly or predominantly of iron or *steel*, the iron or *steel* was produced in the *United States*. (Section 1605 of the Recovery Act applies.)

Foreign construction material means a *construction material* other than a domestic *construction material*.

Manufactured construction material means any *construction material* that is not unmanufactured *construction material*.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

United States means the 50 States, the District of Columbia, and *outlying areas*.

Unmanufactured construction material means raw material brought to the *construction* site for incorporation into the *building or work* that has not been-

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(b) Domestic preference.

(1) This clause implements-

(i) Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111-5), by requiring, unless an exception applies, that all manufactured *construction material* in the project is manufactured in the *United States* and, if the *construction material* consists wholly or predominantly of iron or *steel*, the iron or *steel* was produced in the *United States* (produced in the *United States* means that all manufacturing processes of the iron or *steel* must take place in the *United States*, except metallurgical processes involving refinement of *steel* additives); and

(ii) 41 U.S.C chapter 83, Buy American, by providing a preference for unmanufactured *construction material* mined or produced in the *United States* over unmanufactured *construction material* mined or produced in a foreign country.

(2) The Contractor *shall* use only *domestic construction material* in performing this contract, except as provided in paragraph (b)(3) and (b)(4) of this clause.

(3) This requirement does not apply to the *construction material* or *components* listed by the Government as follows:

_____ [Contracting Officer to list
applicable excepted materials or indicate "none"]

(4) The *Contracting Officer* may add other *foreign construction material* to the list in paragraph (b)(3) of this clause if the Government determines that-

(i) The cost of domestic *construction material* would be unreasonable;

(A) The cost of domestic manufactured *construction material*, when compared to the cost of comparable foreign manufactured *construction material*, is unreasonable when the cumulative cost of such material will increase the cost of the contract by more than 25 percent;

(B) The cost of domestic unmanufactured *construction material* is unreasonable when the cost of such material exceeds the cost of comparable foreign unmanufactured *construction material* by more than 20 percent;

(ii) The *construction material* is not mined, produced, or manufactured in the *United States* in sufficient and reasonably available quantities and of a satisfactory quality;

(iii) The application of the restriction of section 1605 of the Recovery Act to a particular manufactured *construction material* would be inconsistent with the public interest or the application of the Buy American statute to a particular unmanufactured *construction material* would be impracticable or inconsistent with the public interest.

(c) *Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American statute.*

(1)

(i) Any Contractor request to use *foreign construction material* in accordance with paragraph (b)(4) of this clause *shall* include adequate information for Government evaluation of the request,

including-

- (A) A description of the foreign and domestic *construction* materials;
 - (B) Unit of measure;
 - (C) Quantity;
 - (D) Cost;
 - (E) Time of delivery or availability;
 - (F) Location of the *construction* project;
 - (G) Name and address of the proposed supplier; and
 - (H) A detailed justification of the reason for use of *foreign construction materials* cited in accordance with paragraph (b)(4) of this clause.
- (ii) A request based on unreasonable cost *shall* include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this clause.
- (iii) The cost of *construction material shall* include all delivery costs to the *construction* site and any applicable duty.
- (iv) Any Contractor request for a determination submitted after contract award *shall* explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the *Contracting Officer* need not make a determination.
- (2) If the Government determines after contract award that an exception to section 1605 of the Recovery Act or the Buy American statute applies and the *Contracting Officer* and the Contractor negotiate adequate consideration, the *Contracting Officer* will modify the contract to allow use of the *foreign construction material*. However, when the basis for the exception is the unreasonable cost of a *domestic construction material*, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.
- (3) Unless the Government determines that an exception to section 1605 of the Recovery Act or the Buy American statute applies, use of *foreign construction material* is noncompliant with section 1605 of the American Recovery and Reinvestment Act or the Buy American statute.
- (d) *Data*. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor *shall* include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic *Construction Materials* Cost Comparison

| <i>Construction Material</i> Description | Unit of Measure | Quantity | Cost (Dollars)* |
|---|----------------------------|-----------------|------------------------|
|---|----------------------------|-----------------|------------------------|

Item 1:

Foreign and Domestic *Construction Materials* Cost Comparison

| <i>Construction Material Description</i> | Unit of Measure | Quantity | Cost (Dollars)* |
|---|----------------------------|-----------------|------------------------|
| Foreign <i>construction</i> material | _____ | _____ | _____ |
| Domestic <i>construction</i> material | _____ | _____ | _____ |
| <i>Item 2:</i> | | | |
| Foreign <i>construction</i> material | _____ | _____ | _____ |
| Domestic <i>construction</i> material | _____ | _____ | _____ |

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[* Include all delivery costs to the construction site.]

(End of clause)

Parent topic: [52.225 \[Reserved\]](#)