52.225-23 Required Use of American Iron, Steel, and Manufactured Goods-Buy American Statute-Construction Materials under Trade Agreements.

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

Required Use of American Iron, *Steel*, and Manufactured Goods-Buy American Statute-*Construction Materials* under Trade Agreements (Nov 2023)

(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 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.

Designated country means any of the following countries:

(1) A World Trade Organization Government *Procurement* Agreement (WTO GPA) country (Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, North Macedonia, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, Ukraine, or United Kingdom);

(2) A Free Trade Agreement (*FTA*) country (Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

Designated country construction material means a *construction material* that is a WTO GPA country *construction material*, an *FTA* country *construction* material, a *least developed country construction material*, or a Caribbean Basin country *construction material*.

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*.

Free trade agreement (FTA) country construction material means a *construction material* that-

(1) Is wholly the growth, product, or manufacture of an *FTA* country; or

(2) In the case of a *construction material* that consists in whole or in part of materials from another country, has been substantially transformed in an *FTA* country into a new and different *construction material* distinct from the materials from which it was transformed.

Least developed country construction material means a *construction material* that-

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of a *construction material* that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different *construction material* distinct from the materials from which it was transformed.

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

Nondesignated country means a country other than the *United States* or a designated country.

Recovery Act designated country means any of the following countries:

(1) A World Trade Organization Government *Procurement* Agreement (WTO GPA) country (Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, Ukraine, or United Kingdom);

(2) A Free Trade Agreement country (*FTA*) (Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore); or

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos,

Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia).

Recovery Act designated country construction material means a *construction material* that is a *WTO GPA country construction material*, an *FTA* country *construction material*, or a least developed country *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.

WTO GPA country construction material means a *construction material* that-

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of a *construction material* that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different *construction material* distinct from the materials from which it was transformed.

(b) *Construction materials.*

(1) The restrictions of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) do not apply to *Recovery Act designated country* manufactured *construction material*. The restrictions of the Buy American statute do not apply to *designated country unmanufactured construction material*. Consistent with U.S. obligations under international agreements, this clause implements-

(i) Section 1605 of the Recovery Act 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) The Buy American statute by providing a preference for *unmanufactured construction material* mined or produced in the *United States* over unmanufactured *construction material* mined or produced in a *nondesignated country*.

(2) The Contractor *shall* use only *domestic construction material*, Recovery Act *designated country* manufactured *construction material*, or *designated country* unmanufactured *construction* material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to the *construction materials* 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 *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* is unreasonable when the cumulative cost of such material, when compared to the cost of comparable foreign manufactured *construction* material, other than Recovery Act designated country *construction material*, will increase the overall 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, other than *designated country 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 commercial quantities of a satisfactory quality; or

(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* other than manufactured *construction material* from a Recovery Act designated country or *unmanufactured construction material* from a *designated country* is noncompliant with the applicable 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 (*Nondesignated Country*) and Domestic *Construction Materials* Cost Comparison

***Construction Material* Description**	**Unit of Measure**	**Quantity**	**Cost (Dollars)***
Item 1:			
Foreign *construction* material	_____	_____	_____
Domestic *construction* material	_____	_____	_____
Item 2:			
Foreign *construction* material	_____	_____	_____

***Construction Material* Description**	**Unit of Measure**	**Quantity**	**Cost (Dollars)***
Domestic *construction* 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)

Alternate I (Nov 2023) . As prescribed in 25.1102 (e), add the following definition of "*Bahraini, Mexican, or Omani construction material*" to paragraph (a) of the basic clause, and substitute the following paragraphs (b)(1) and (b)(2) for paragraphs (b)(1) and (b)(2) of the basic clause:

Bahraini, Mexican, or Omani construction material means a *construction material* that-

(1)(1) Is wholly the growth, product, or manufacture of Bahrain, Mexico, or Oman; or

(2)(2) In the case of a *construction material* that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain, Mexico, or Oman into a new and different *construction material* distinct from the materials from which it was transformed.

(b) *Construction materials.* (1) The restrictions of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) do not apply to *Recovery Act designated country* manufactured *construction material*. The restrictions of the Buy American statute do not apply to *designated country* unmanufactured *construction material*. Consistent with U.S. obligations under international agreements, this clause implements-

(i) Section 1605 of the Recovery Act, 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) The Buy American statute by providing a preference for *unmanufactured construction material* mined or produced in the *United States* over unmanufactured *construction* material mined or produced in a *nondesignated country*.

(2) The Contractor *shall* use only domestic *construction material*, *Recovery Act designated country* manufactured *construction material*, or *designated country unmanufactured construction material*, other than Bahraini, Mexican, or Omani *construction material*, in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

Parent topic: 52.225 [Reserved]