

52.225-12 Notice of Buy American Requirement-Construction Materials Under Trade Agreements.

As prescribed in [25.1102\(d\)\(1\)](#), insert the following provision:

Notice of Buy American Requirement-*Construction* Materials Under Trade Agreements (May 2014)

(a) *Definitions.* "Commercially available off-the-shelf (COTS) item," "construction material," "designated country construction material," "domestic construction material," and "foreign construction material," as used in this provision, are defined in the clause of this solicitation entitled "Buy American-*Construction* Materials Under Trade Agreements" (Federal Acquisition Regulation (FAR) clause [52.225-11](#)).

(b) *Requests for determination of inapplicability.* An offeror requesting a determination regarding the inapplicability of the Buy American statute *should* submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause [52.225-11](#) in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American statute before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) *Evaluation of offers.*

(1) The Government will evaluate an offer requesting exception to the requirements of the Buy American statute, based on claimed unreasonable cost of domestic construction materials, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(4)(i) of FAR clause [52.225-11](#).

(2) If evaluation results in a tie between an offeror that requested the substitution of foreign construction material based on unreasonable cost and an offeror that did not request an exception, the Contracting Officer will award to the offeror that did not request an exception based on unreasonable cost.

(d) *Alternate offers.*

(1) When an offer includes foreign construction material, other than designated country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause [52.225-11](#), the offeror also may submit an alternate offer based on use of equivalent domestic or designated country construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate [Standard Form 1442](#) for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause [52.225-11](#) for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225-11 does not apply, the Government will evaluate only those *offers* based on use of the equivalent domestic or designated country *construction* material, and the *offeror shall* be required to furnish such domestic or designated country *construction* material. An *offer* based on use of the foreign *construction* material for which an exception was requested-

(i) Will be rejected as nonresponsive if this *acquisition* is conducted by sealed bidding; or

(ii) *May* be accepted if revised during negotiations.

(End of Provision)

Alternate I (May 2014). As prescribed in 25.1102 (d)(2), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) *Requests for determination of inapplicability*. An *offeror* requesting a determination regarding the inapplicability of the Buy American statute *shall* submit the request with its *offer*, including the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225-11.

Alternate II (June 2009). As prescribed in 25.1102 (d)(3), add the definition of "Bahrainian, Mexican, or Omani *construction* material" to paragraph (a) and substitute the following paragraph (d) for paragraph (d) of the basic provision:

(d) *Alternate offers*. (1) When an *offer* includes foreign *construction* material, except foreign *construction* material from a designated country other than Bahrain, Mexico, or Oman that is not listed by the Government in this *solicitation* in paragraph (b)(3) of FAR clause 52.225-11, the *offeror* also *may* submit an *alternate offer* based on use of equivalent domestic or designated country *construction* material other than Bahrainian, Mexican, or Omani *construction* material.

(2) If an *alternate offer* is submitted, the *offeror shall* submit a separate Standard Form 1442 for the *alternate offer*, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225-11 for the *offer* that is based on the use of any foreign *construction* material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225-11 does not apply, the Government will evaluate only those *offers* based on use of the equivalent domestic or designated country *construction* material other than Bahrainian, Mexican, or Omani *construction* material. An *offer* based on use of the foreign *construction* material for which an exception was requested-

(i) Will be rejected as nonresponsive if this *acquisition* is conducted by sealed bidding; or

(ii) *May* be accepted if revised during negotiations.

Parent topic: 52.225 [Reserved]