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 FARclause 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 (Nov 2023). As prescribed in 25.1102 (d)(3), add the definition of "Bahraini, 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 Bahraini, 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 Bahraini, 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]