52.225-24 Notice of 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 provision:

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

(a) *Definitions*. "*Construction* material," "domestic *construction* material," "foreign *construction* material," "manufactured *construction* material," "Recovery Act designated country *construction* material," "steel," and "unmanufactured *construction* material," as used in this provision, are defined in the clause of this *solicitation* entitled "Required Use of Iron, Steel, and Manufactured Goods-Buy American statute-*Construction* Materials Under Trade Agreements" (Federal *Acquisition* Regulation (FAR) clause 52.225-23).

(b) *Requests for determination of inapplicability.* An *Offeror* requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) or 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 52.225-23 in the request. If an *Offeror* has not requested a determination regarding the inapplicability of section 1605 of the Recovery Act or 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) If the Government determines that an exception based on unreasonable cost of domestic *construction* material applies in accordance with FAR 25.604, the Government will evaluate an *offer* requesting exception to the requirements of section 1605 of the Recovery Act or the Buy American statute by adding to the offered price of the contract-

(i) 25 percent of the offered price of the contract, if foreign manufactured *construction* material is included in the *offer* based on an exception for the unreasonable cost of comparable manufactured domestic *construction* material; and

(ii) 20 percent of the cost of foreign unmanufactured *construction* material included in the *offer* based on an exception for the unreasonable cost of comparable domestic unmanufactured *construction* material.

(2) If the *solicitation* specifies award on the basis of factors in addition to cost or price, the *Contracting Officer* will apply the evaluation factors as specified in paragraph (c)(1) of this provision and use the evaluated cost or price in determining the *offer* that represents the *best value* to the Government.

(3) Unless paragraph (c)(2) of this provision applies, if two or more *offers* are equal in price, the *Contracting Officer* will give preference to an *offer* that does not include foreign *construction* material excepted at the request of the *Offeror* on the basis of unreasonable cost.

(d) *Alternate offers*.

(1) When an *offer* includes foreign *construction* material, other than Recovery Act designated country *construction* material, that is not listed by the Government in this *solicitation* in paragraph (b)(3) of FAR clause 52.225-23, the *Offeror* also *may* submit an *alternate offer* based on use of equivalent domestic or Recovery Act 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 cost comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225-23 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 52.225-23 does not apply, the Government will evaluate only those *offers* based on use of the equivalent domestic or Recovery Act designated country *construction* material, and the *Offeror shall* be required to furnish such domestic or Recovery Act 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 (e), 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 section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) or 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 52.225-23.

Alternate II (Nov 2023) . As prescribed in 25.1102 (e), 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 Recovery Act 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 52.225-23, the *offeror* also *may* submit an *alternate offer* based on use of equivalent domestic or Recovery Act 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 cost comparison table prepared in accordance with paragraphs (c)

and (d) of FAR clause 52.225-23 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 52.225-23 does not apply, the Government will evaluate only those *offers* based on use of the equivalent domestic or Recovery Act 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]