

<?xml encoding="UTF-8">

52.225-9 Buy American-Construction Materials.

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

Buy American-*Construction* Materials (Oct 2022)

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

Commercially available off-the-shelf (COTS) item—

(1) Means any item of supply (including *construction* material) that is—

(i) A *commercial product* (as defined in paragraph (1) of the definition of “*commercial product*” at Federal Acquisition Regulation (FAR) 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural *products* and petroleum *products*.

"*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. Materials purchased directly by the Government are *supplies*, not *construction* material.

Cost of components means—

(1) For *components* purchased by the Contractor, the *acquisition* cost, including transportation costs to the place of incorporation into the *construction* material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For *components* manufactured by the Contractor, all costs associated with the manufacture of the *component*, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of *components* does not include any costs associated with the manufacture of the *construction* material.

Critical component means a *component* that is mined, produced, or manufactured in the *United States* and deemed critical to the U.S. supply chain. The list of *critical components* is at FAR 25.105.

Critical item means a domestic *construction* material or domestic *end product* that is deemed critical

to U.S. supply chain resiliency. The list of critical items is at FAR [25.105](#).

Domestic construction material means—

(1) For *construction* material that does not consist wholly or predominantly of iron or *steel* or a combination of both-

(i) An unmanufactured *construction* material mined or produced in the *United States*; or

(ii) A *construction* material manufactured in the *United States*, if-

(A) The cost of its *components* mined, produced, or manufactured in the *United States* exceeds 60 percent of the cost of all its *components*, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029. *Components* of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. *Components* of unknown origin are treated as foreign; or

(B) The *construction* material is a COTS item; or

(2) For *construction* material that consists wholly or predominantly of iron or *steel* or a combination of both, a *construction* material manufactured in the *United States* if the cost of foreign iron and *steel* constitutes less than 5 percent of the cost of all *components* used in such *construction* material. The cost of *foreign iron and steel* includes but is not limited to the cost of foreign iron or *steel* mill *products* (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the *construction* material and a good faith estimate of the cost of all foreign iron or *steel* *components* excluding COTS *fasteners*. Iron or *steel* *components* of unknown origin are treated as foreign. If the *construction* material contains multiple *components*, the cost of all the materials used in such *construction* material is calculated in accordance with the definition of "cost of *components*".

Fastener means a hardware device that mechanically joins or affixes two or more objects together. Examples of *fasteners* are nuts, bolts, pins, rivets, nails, clips, and screws.

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

Foreign iron and steel means iron or *steel* *products* not 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, from the initial melting stage through the application of coatings, except metallurgical processes involving refinement of *steel* additives. The origin of the elements of the iron or *steel* is not relevant to the determination of whether it is domestic or foreign.

Predominantly of iron or steel or a combination of both means that the cost of the iron and *steel* content exceeds 50 percent of the total cost of all its *components*. The cost of iron and *steel* is the cost of the iron or *steel* mill *products* (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or *steel* *components* excluding COTS *fasteners*.

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*.

(b) Domestic preference.

(1) This clause implements 41 U.S.C. chapter 83, Buy American, by providing a preference for domestic *construction* material. In accordance with 41 U.S.C. 1907, the domestic content test of the Buy American statute is waived for *construction* material that is a COTS item, except that for *construction* material that consists wholly or predominantly of iron or *steel* or a combination of both, the domestic content test is applied only to the iron and *steel* content of the *construction* materials, excluding COTS *fasteners*. (See FAR 12.505(a)(2)). The Contractor *shall* use only *domestic construction material* in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

(2) This requirement does not apply to *information technology* that is a commercial product or to the *construction* materials or *components* listed by the Government as follows:

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

(3) The *Contracting Officer* may add other *foreign construction material* to the list in paragraph (b)(2) of this clause if the Government determines that-

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

(A) For domestic *construction material* that is not a critical item or does not contain critical components.

(1) The cost of a particular domestic *construction* material subject to the requirements of the Buy American statute is unreasonable when the cost of such material exceeds the cost of foreign material by more than 20 percent;

(2) For *construction* material that is not a COTS item and does not consist wholly or predominantly of iron or *steel* or a combination of both, if the cost of a particular domestic *construction* material is determined to be unreasonable or there is no domestic *offer* received, and the low *offer* is for *foreign construction material* that is manufactured in the *United States* and does not exceed 55 percent domestic content, the *Contracting Officer* will treat the lowest *offer* of foreign *construction* material that exceeds 55 percent domestic content as a domestic *offer* and determine whether the cost of that *offer* is unreasonable by applying the evaluation factor listed in paragraph (b)(3)(i)(A)(1) of this clause.

(3) The procedures in paragraph (b)(3)(i)(A)(2) of this clause will no longer apply as of January 1, 2030.

(B) For domestic *construction material* that is a critical item or contains critical components.

(1) The cost of a particular domestic *construction* material that is a *critical item* or contains *critical components*, subject to the requirements of the Buy American statute, is unreasonable when the cost of such material exceeds the cost of foreign material by more than 20 percent plus the additional preference factor identified for the *critical item* or *construction* material containing *critical components* listed at FAR 25.105.

(2) For *construction* material that does not consist wholly or predominantly of iron or *steel* or a combination of both, if the cost of a particular domestic *construction* material is determined to be unreasonable or there is no domestic *offer* received, and the low *offer* is for *foreign construction*

material that does not exceed 55 percent domestic content, the *Contracting Officer* will treat the lowest foreign *offer of construction material* that is manufactured in the *United States* and exceeds 55 percent domestic content as a domestic *offer*, and determine whether the cost of that *offer* is unreasonable by applying the evaluation factor listed in paragraph (b)(3)(i)(B)(1) of this clause.

(3) The procedures in paragraph (b)(3)(i)(B)(2) of this clause will no longer apply as of January 1, 2030.

(ii) The application of the restriction of the Buy American statute to a particular *construction material* would be impracticable or inconsistent with the public interest; or

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

(c) Request for determination of inapplicability of the Buy American statute.

(1)

(i) Any Contractor request to use *foreign construction material* in accordance with paragraph (b)(3) 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) Price;

(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)(3) of this clause.

(ii) A request based on unreasonable cost *shall* include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of *construction material shall* include all delivery costs to the *construction site* and any applicable duty (whether or not a duty-free certificate *may* be issued).

(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 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 price of a *domestic construction material*, adequate consideration is not less than the differential established in paragraph (b)(3)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American statute applies, use of *foreign construction material* is noncompliant with 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 Price Comparison

| <i>Construction</i> Material Description | Unit of Measure | Quantity | Price (dollars)* |
|--|-----------------|----------|------------------|
| Item1: | | | |
| Foreign <i>construction</i> material | _____ | _____ | _____ |
| Domestic <i>construction</i> material | _____ | _____ | _____ |
| Item2: | | | |
| Foreign <i>construction</i> material | _____ | _____ | _____ |
| Domestic <i>construction</i> material | _____ | _____ | _____ |

[* *Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued)*].

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

[*Include other applicable supporting information.*]

(End of clause)

Alternate I (Oct 2022). As prescribed in 25.1102 (a)(3) substitute the following sentence for the first sentence in paragraph (1)(ii)(A) of the definition of "*domestic construction material*" in paragraph (a):

(A) The cost of its *components* mined, produced, or manufactured in the *United States* exceeds __

percent of the cost of all its *components*. [*Contracting officer to insert the percentage.*]

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