52.225-11 Buy American-Construction Materials under Trade Agreements.

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

Buy American-*Construction Materials* under Trade Agreements (Nov 2023)

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

Caribbean Basin country construction material means a *construction material* that—

(1) Is wholly the growth, product, or manufacture of a Caribbean Basin 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 Caribbean Basin country into a new and different *construction material* distinct from the materials from which it was transformed.

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*.

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. 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.

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—

(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.

(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.

Free Trade Agreement country construction material means a *construction material* that-

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (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 a 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.

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*.

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) 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 material*, excluding COTS *fasteners*. (See FAR 12.505(a)(2)). In addition, the *Contracting Officer* has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this *acquisition*. Therefore, the Buy American restrictions are waived for *designated country construction* materials.

(2) The Contractor *shall* use only domestic or *designated country 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 *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"]

(4) The *Contracting Officer may* add other *foreign 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) *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 restrictions 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 does not exceed 55 percent domestic content, the *Contracting Officer* will treat the lowest *offer* of foreign *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)(4)(i)(A)*(1)* of this clause.

(3) The procedures in paragraph (b)(4)(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 *offer* of foreign *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)(4)(i)(B)*(1)* of this clause.

(3) The procedures in paragraph (b)(4)(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 Act 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)(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) 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)(4)(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

Construction Material Description	Unit of Measure	Quantity	Price (Dollars)*
Item1			
Foreign *construction* material	_____	_____	_____
Domestic *construction* material	_____	_____	_____
Item1			
Foreign *construction* material	_____	_____	_____
Domestic *construction* 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 (Nov 2023) . As prescribed in 25.1102 (c)(3), 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) Is wholly the growth, product, or manufacture of Bahrain, Mexico, or Oman; 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 Bahrain, Mexico, or Oman into a new and different *construction material* distinct from the materials from which it was transformed.

(b) *Construction materials*. (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 material*, excluding COTS *fasteners*. (See 12.505(a)(2)). In addition, the *Contracting Officer* has determined that the WTO GPA and all the Free Trade Agreements except the Bahrain FTA, United States-Mexico-Canada Agreement, and the Oman FTA apply to this *acquisition*. Therefore, the Buy American statute restrictions are waived for *designated country construction materials* other than Bahraini, Mexican, or Omani *construction materials*.

(2) The Contractor *shall* use only domestic or *designated country 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.

Alternate II (Oct 2022). As prescribed in 25.1102 (c)(4) substitute the following sentence for the first sentence of 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]