

## 25.1102 Acquisition of construction.

When using funds other than those appropriated under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act), follow the prescriptions in paragraphs (a) through (d) of this section. Otherwise, follow the prescription in paragraph (e).

(a) Insert the clause at [52.225-9](#), Buy American-Construction Materials, in solicitations and contracts for construction that is performed in the United States valued at less than \$6,932,000.

(1) List in paragraph (b)(2) of the clause all foreign construction material excepted from the requirements of the Buy American statute.

(2) If the head of the agency determines that a higher percentage is appropriate, substitute the higher evaluation percentage in paragraph (b)(3)(i) of the clause.

(b)

(1) Insert the provision at [52.225-10](#), Notice of Buy American Requirement-Construction Materials, in solicitations containing the clause at [52.225-9](#).

(2) If insufficient time is available to process a determination regarding the inapplicability of the Buy American statute before receipt of offers, use the provision with its Alternate I.

(c) Insert the clause at [52.225-11](#), Buy American-Construction Materials under Trade Agreements, in solicitations and contracts for construction that is performed in the United States valued at \$6,932,000 or more.

(1) List in paragraph (b)(3) of the clause all foreign construction material excepted from the requirements of the Buy American statute, other than designated country construction material.

(2) If the head of the agency determines that a higher percentage is appropriate, substitute the higher evaluation percentage in paragraph (b)(4)(i) of the clause.

(3) For acquisitions valued at \$6,932,000 or more, but less than \$10,441,216, use the clause with its Alternate I. List in paragraph (b)(3) of the clause all foreign construction material excepted from the requirements of the Buy American statute, unless the excepted foreign construction material is from a designated country other than Bahrain, Mexico, and Oman.

(d)

(1) Insert the provision at [52.225-12](#), Notice of Buy American Requirement-Construction Materials under Trade Agreements, in solicitations containing the clause at [52.225-11](#).

(2) If insufficient time is available to process a determination regarding the inapplicability of the Buy American statute before receipt of offers, use the provision with its Alternate I.

(3) For acquisitions valued at \$6,932,000 or more, but less than \$10,441,216, use the provision with its Alternate II.

(e)

(1) When using funds appropriated under the Recovery Act for construction, use provisions and clauses [52.225-21](#), [52.225-22](#), [52.225-23](#), or [52.225-24](#)(with appropriate Alternates) in lieu of the provisions and clauses [52.225-9](#), [52.225-10](#), [52.225-11](#), or [52.225-12](#)(with appropriate Alternates), respectively, that would be applicable as prescribed in paragraphs (a) through (d) of this section if Recovery Act funds were not used.

(2) If these Recovery Act provisions and clauses are only applicable to a project consisting of certain line items in the contract, identify in the schedule the line items to which the provisions and clauses apply.

(3) When using clause [52.225-23](#), list foreign construction material in paragraph (b)(3) of the clause as follows:

(i) *Basic clause*. List all foreign construction materials excepted from the Buy American statute or section 1605 of the Recovery Act, other than manufactured construction material from a Recovery Act designated country or unmanufactured construction material from a designated country.

(ii) *Alternate I*. List in paragraph (b)(3) of the clause all foreign construction material excepted from the Buy American statute or section 1605 of the Recovery Act, other than-

(A) Manufactured construction material from a Recovery Act designated country other than Bahrain, Mexico, or Oman; or

(B) Unmanufactured construction material from a designated country other than Bahrain, Mexico, or Oman.

**Parent topic:** [Subpart 25.11 - Solicitation Provisions and Contract Clauses](#)