

This is a prepublication version of the proposed rule developed by DOD, GSA, and NASA to implement section 8 of Executive Order 14005, Ensuring the Future is Made in America by All of America's Workers. The rule is scheduled to be posted in the reading room of the Office of the Federal Register on Thursday July 29, 2021. Although DoD, GSA, and NASA have taken steps to ensure the accuracy of this prepublication version, it is not the official version and the official version may reflect formatting or other administrative changes made by the Federal Register.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 25, and 52

[FAR Case 2021-008; Docket No. FAR-2021-0008, Sequence No.

1]

RIN 9000-AO22

**Federal Acquisition Regulation: Amendments to the FAR Buy**

**American Act Requirements**

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement an Executive order (E.O.) addressing domestic preferences in Government procurement.

**DATES:** Interested parties should submit comments to the Regulatory Secretariat Division at one of the addresses shown below on or before **[Insert date 60 days after date of publication in the FEDERAL REGISTER]** to be considered in the formulation of a final rule.

**Public Meeting:** A virtual public meeting will be held on August 26, 2021, from 9am to 3pm, Eastern Standard Time. The public meeting will end at the stated time, or when the

discussion ends, whichever comes first. For more details, see section V of the preamble.

**ADDRESSES:** Submit comments in response to FAR Case 2021-008 to <https://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for "FAR Case 2021-008". Select the link "Comment Now" that corresponds with "FAR Case 2021-008." Follow the instructions provided on the screen. Please include your name, company name (if any), and "FAR Case 2021-008" on your attached document. If your comment cannot be submitted using <https://www.regulations.gov>, call or email the points of contact in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

*Instructions:* Please submit comments only and cite "FAR Case 2021-008" in all correspondence related to this case.

Comments submitted in response to this notice will be made publicly available and are subject to disclosure under the Freedom of Information Act. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information, or any information that you would not want publicly disclosed unless you follow the instructions below for confidential comments. Summary information of the public comments received, including any specific comments, will be posted on [regulations.gov](https://www.regulations.gov).

All filers using the portal should use the name of the person or entity submitting comments as the name of their files, in accordance with the instructions below. Anyone submitting business confidential/proprietary information should clearly identify any business confidential/proprietary portion at the time of submission, file a statement justifying nondisclosure and referencing the specific legal authority claimed, and provide a non-confidential/non-proprietary version of the submission.

Any business confidential information should be in an uploaded file that has a file name beginning with the characters "BC." Any page containing business confidential information must be clearly marked "BUSINESS CONFIDENTIAL/PROPRIETARY" on the top of that page. The corresponding non-confidential/non-proprietary version of those comments must be clearly marked "PUBLIC." The file name of the non-confidential version should begin with the character "P." The "BC" and "P" should be followed by the name of the person or entity submitting the comments or rebuttal comments. All filers should name their files using the name of the person or entity submitting the comments. Any submissions with file names that do not begin with a "BC" will be assumed to be public and will be made publicly available through <https://www.regulations.gov>.

To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

**FOR FURTHER INFORMATION CONTACT:** Ms. Mahruba Uddowla, Procurement Analyst, at 703-605-2868 or by email at [mahruba.uddowla@gsa.gov](mailto:mahruba.uddowla@gsa.gov), for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755 or [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov). Please cite FAR Case 2021-008.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On January 25, 2021, the President signed Executive Order (E.O.) 14005, Ensuring the Future Is Made in All of America by All of America's Workers (86 FR 7475, January 28, 2021). The E.O. contemplates a series of actions to enable the United States Government to maximize the use of goods, products, and materials produced in the United States in order to strengthen and diversify domestic supplier bases and create new opportunities for U.S. firms and workers. These actions include (i) regulatory amendments to the implementation of the Buy American Act in FAR part 25 to fit the current realities of the American economy; (ii) the creation of a Made in America Office within the Office of Management and Budget to provide centralized, strategic, and holistic management of domestic sourcing activities across Federal procurement, Federal

financial assistance, and maritime policies; (iii) a public website with information on all proposed waivers to the Buy American Act and other Buy American Laws, as defined in the E.O., that helps more U.S. firms access Federal contracting and provides data to the Made in America Office to inform policy development for domestic sourcing; and (iv) a review by the Federal Acquisition Regulatory Council (FAR Council), in consultation with the Made in America Office, of the longstanding statutory exemption from the Buy American Act for commercial information technology (IT) to determine if the original purpose or other goals of the exemption remain relevant in the current economic and national security environment. Collectively, these and other efforts called for by the E.O. will promote greater economic and national security and further the Administration's commitment to build back a stronger domestic manufacturing base, create good jobs, and ensure the U.S. economy remains strong, resilient, and ready to meet the challenges of the future. Strengthening implementation of the Buy American Act will send clear demand signals to domestic producers, spurring strategic investments in domestic supply chains.

This proposed rule addresses section 8 of the E.O., which requires the FAR Council to strengthen the impact of the Buy American Act. The dollars the Federal Government spends on goods and services are a powerful tool to support

American workers and manufacturers. Contracting alone accounts for nearly \$600 billion in Federal spending. Federal law requires government agencies, in some circumstances, to give preferences to American firms; however, these preferences have not always been implemented consistently or effectively. Congress passed the Buy American Act during the Great Depression to foster American industry by protecting it from foreign competition for Federal procurement contracts. The Buy American Act is codified at 41 U.S.C. Chapter 83 as the Buy American statute and requires public agencies to procure articles, materials, and supplies that were mined, produced, or manufactured in the United States, substantially all from domestic components, subject to exceptions for nonavailability of domestic products, unreasonable cost of domestic products, and when it would not be in the public interest to buy domestic products. Additional exceptions have been added over time, such as where trade agreements apply, and for commissary resale, micro-purchases, and commercial information technology.

Currently FAR part 25, which implements the Buy American statute and all related Executive Orders, provides guidance on determining whether solicited "construction material" or "end products" are "domestic" - that is, whether they were mined, produced, or manufactured in the United States, substantially from components mined,

produced, or manufactured in the United States. The determination of whether a manufactured end product or construction material qualifies as domestic is made using a two-part test:

1. The end product or construction material must be manufactured in the United States.

2. A certain percentage of all component parts (determined by cost of the components) must also be mined, produced, or manufactured in the United States - a requirement known as the "component test" until early 2021, when it was redesignated the "domestic content test" to be consistent with terminology used in E.O. 13881, Maximizing Use of American-Made Goods, Products, and Materials. For an end product that does not consist wholly or predominantly of iron or steel or a combination of both, the cost of domestic components must exceed 55 percent of the cost of all components; the test is waived for acquisitions of commercially available off-the-shelf (COTS) items. For an end product that consists wholly or predominantly of iron or steel or a combination of both, the cost of foreign iron and steel must constitute less than 5 percent of the cost of all the components. That test is not waived for COTS items, except for COTS fasteners.

The Buy American statute does not prohibit the purchase of foreign end products or use of foreign

construction material. Instead, it encourages the use of domestic end products and construction material by imposing a price preference for them. Under the current FAR, large businesses offering domestic supplies receive a 20 percent price preference, and small businesses receive a 30 percent price preference.

The Buy American restrictions do not apply to acquisitions subject to certain trade agreements (see FAR subpart 25.4). For these acquisitions, end products and construction materials from certain countries receive nondiscriminatory treatment when evaluated alongside domestic offers. Generally, the dollar value of the acquisition determines whether and which trade agreement applies to the acquisition. For example, the World Trade Organization - Government Procurement Agreement (WTO GPA) applies to acquisitions starting at \$182,000 for supply contracts, and at \$7,008,000 for construction contracts. Exceptions to the applicability of the trade agreements are described in FAR subpart 25.4.

The percentages for the domestic content test and the price preference were increased in the FAR on January 19, 2021, through FAR case 2019-016, Maximizing Use of American-Made Goods, Products, and Materials (86 FR 6180). However, the concept of the domestic content test (formerly referred to as the component test) has been in the FAR since it was first created and published in 1983.

Section 8 of E.O. 14005 requires the FAR Council to consider amending the FAR to—

(1) Replace the component test used to identify domestic end products and domestic construction materials with a test under which domestic content is measured by the value that is added to the product through U.S.-based production or U.S. job-supporting economic activity;

(2) Increase the threshold for the domestic content requirement; and

(3) Increase the price preferences for domestic end products and domestic construction materials.

As explained above, the purpose of the amendments is to promote the procurement by the Government of goods, products, and materials from sources that will help American businesses compete in strategic industries and help America's workers thrive. Improved Buy American rules will help ensure that Federal procurement plays an important role as part of the Administration's policy to build back the American economy so it can continue to lead the global marketplace, supporting U.S.-based businesses — small and large, urban and rural, including those that have been historically disadvantaged. In pursuit of those goals, this proposed rule would provide for—

- An increase to the domestic content threshold, a schedule for future increases, and a fallback threshold that would allow for products meeting a

specific lower domestic content threshold to qualify as domestic products under certain circumstances;

- A framework for application of an enhanced price preference for a domestic product that is considered a critical product or made up of critical components; and
- A postaward domestic content reporting requirement for contractors.

The proposed rule does not seek to replace the "component test" in FAR Part 25 at this time. Instead, the FAR Council seeks additional information regarding the strengths and shortcomings of the "component test," as currently structured, and requests public comment on how domestic content might be better calculated to support America's workers and businesses, strengthening our economy, workers, and communities across the country (see related questions below).

## **II. Discussion and Analysis**

### **A. Increase to the Domestic Content Threshold.**

This rule proposes to increase the domestic content threshold initially from 55 percent to 60 percent, to increase the threshold to 65 percent in two years, and to increase the threshold to 75 percent five years after the second increase. A supplier holding a contract with a period of performance that spans the schedule of threshold increases will be required to comply with each increased

threshold for the items in the year of delivery. For example, a supplier awarded a contract in 2027 will have to comply with the 65 percent domestic content threshold initially, but in 2029 will have to supply products with 75 percent domestic content. The domestic content threshold is implemented in the FAR through the definitions of "domestic construction material" and "domestic end product." As such, this rule proposes to make amendments throughout FAR part 25 and to FAR clauses 52.225-1, 52.225-3, 52.225-9, and 52.225-11 to reflect the increases to the domestic content threshold.

**B. Fallback Threshold.**

This rule also proposes to allow, until one year after the increase of the domestic content threshold to 75 percent, for the acceptance of the former domestic content threshold in instances where end products or construction materials that meet the new domestic content threshold are not available or are of unacceptable cost. For example, if a domestic end product that exceeds the 60 percent domestic content threshold is determined to be of unreasonable cost after application of the price preference, then for evaluation purposes the Government will treat an end product that is manufactured in the United States and exceeds 55 percent domestic content, but not 60 percent domestic content, as a domestic end product. In order to implement this fallback threshold, the rule proposes to

require offerors to indicate which of their foreign end products exceed 55 percent domestic content. The fallback threshold only applies to construction material that does not consist wholly or predominantly of iron or steel or a combination of both and to end products that do not consist wholly or predominantly of iron or steel or a combination of both. Amendments are proposed throughout FAR part 25, to FAR provisions 52.212-3, 52.225-2, and 52.225-4, and to FAR clauses 52.225-9 and 52.225-11 to reflect the fallback threshold.

**C. Enhanced Price Preference for Critical Products and Critical Components.**

The rule provides for a framework through which higher price preferences will be applied for end products and construction material deemed to be critical or made up of critical components. The definitions for critical component and/or critical item are added to FAR 25.003 and to the FAR provisions and clauses at 52.212-3, 52.225-1, 52.225-2, 52.225-3, 52.225-9, and 52.225-11. The list of critical items and components is being added to newly-designated FAR 25.105; existing FAR 25.105 is proposed to be redesignated as 25.106. Procedures for applying the price preferences associated with critical items and components are added to the redesignated FAR 25.106 for supply contracts and 25.204 for construction contracts. The rule requires offerors to identify in their offer

domestic end products that contain a critical component, so that contracting officers can apply the higher price preferences when appropriate. Without such information, contracting officers would not know when a proposed domestic end product contains a critical component. An explicit requirement to provide this information is added to FAR provisions 52.212-3, 52.225-2, and 52.225-4.

The process for identifying critical items and critical components to receive the price preference would use the quadrennial critical supply chain review instituted in E.O. 14017, America's Supply Chains (86 FR 11849), as well as the National COVID Strategy. OMB will lead a subsequent assessment to further distill the list of products designated critical to those products for which procurement is likely to make a meaningful difference toward strengthening U.S. supply chains. The products that will receive a price preference will be determined in a separate rulemaking, to allow time for the supply chain review and trade pact waiver review to be completed first. Not all critical products identified through the supply chain review will necessarily qualify for the preference. The process for determining critical products will also determine the enhanced price preference for each critical item or end product with critical components.

Once the list is established in the FAR, the list will be published in the *Federal Register* for public comment no

less frequently than once every four years to reflect changes to the list.

**D. Postaward reporting requirement.**

In order to gain insight into the actual domestic content of products sold under contract and thereby support the Administration's broader supply chain security initiatives, this rule requires contractors to provide the specific domestic content of critical items, domestic end products containing a critical component, and domestic construction material containing a critical component, that were awarded under a contract. Contractors are not required to report the domestic content of COTS items. Two new FAR clauses were created to implement the reporting requirement. One clause is for supplies and one is for construction materials; prescriptions were added to FAR 25.1101 and 25.1102 to capture this requirement. Since specific critical items or critical components will not be added to the FAR until the separate rulemaking referenced in section II.C of this preamble, these clauses will not be operational until finalization of that separate rule.

**III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items**

This rule amends the provisions and clauses at FAR—

- 52.212-3, Offeror Representations and Certifications—Commercial Items;

- 52.225-1, Buy American–Supplies;
- 52.225-2, Buy American Certificate;
- 52.225-3, Buy American–Free Trade Agreements–Israeli Trade Act;
- 52.225-4, Buy American–Free Trade Agreements–Israeli Trade Act Certificate;
- 52.225-9, Buy American–Construction Materials; and
- 52.225-11, Buy American–Construction Materials Under Trade Agreements.

Those provisions and clauses continue to apply, or not apply, to acquisitions at or below the SAT and to acquisitions for commercial and COTS items as they did prior to this rule.

This rule proposes to add two clauses at FAR 52.225-XX, Domestic Content Reporting Requirement–Supplies, and FAR 52.225-YY, Domestic Content Reporting Requirement–Construction Materials. The clauses are prescribed at FAR 25.1101 for solicitations and contracts containing the clause at 52.225-1 or 52.225-3 for supply contracts, and at FAR 25.1102 for solicitations and contracts containing the clause at 52.225-9 or 52.225-11 for construction contracts. The clauses are applicable to acquisitions at or below the SAT and to acquisitions for commercial items, excluding COTS items.

The clause will apply to acquisitions at or below the SAT and to acquisitions for commercial items because exempting those acquisitions would severely limit the use of the provision. Considering the threshold at which certain trade agreements apply, the Buy American statute predominantly applies to acquisitions below the SAT. Also, according to procurement data, almost half of the acquisitions to which the Buy American statute currently applies use commercial acquisition procedures.

With respect to COTS items, the Administrator for Federal Procurement Policy, using authorities provided at 41 U.S.C. 1907 to reduce administrative burdens imposed by Government-unique requirements, waived the component test of the Buy American statute for the acquisition of COTS items in 2009. For this reason, it is not expected at this time that the clause will apply to that class of acquisitions. However, as explained in OMB Memorandum M-21-26, *Increasing Opportunities for Domestic Sourcing and Reducing the Need for Waivers from Made in America Laws*, the Made in America Office, in collaboration with the Administrator, other members of the FAR Council, and interested parties, will review the findings and conclusions of the 2009 determination. The results of that review will help to inform if and the extent to which the component test should be restored.

#### **IV. Expected Impact of the Rule**

This rule proposes three sets of changes to the FAR's implementation of the Buy American statute:

- An increase to the domestic content threshold required to be met for a product to be defined as "domestic," a schedule for future increases, and a fallback threshold that would allow for products meeting a specific lower domestic content threshold to qualify as a domestic product under certain circumstances;
- A framework for application of an enhanced price preference for a domestic product that is considered a critical product or made up of critical components; and
- A postaward domestic content reporting requirement for contractors.

The impact of each set of changes is addressed individually below.

***Scheduled increase to the domestic content threshold and the use of a fallback threshold***

The fundamental goal of the rule is to increase the share of American-made content in a domestic end product or construction material. The graduated increase is intended to drive to this goal in a proactive but measured fashion so that contractors have adequate time to make adjustments in their supply chains. When this rule is implemented, domestic industries supplying domestic end products are likely to benefit from a competitive advantage.

Federal Procurement Data System (FPDS) data for fiscal year 2020 indicate there were 121,063 new contract awards for products and construction, valued over the micro-purchase threshold through the threshold at which the WTO GPA applies, to which the Buy American statute applied. It is estimated that 37,503 of these awards were for commercially available off-the-shelf (COTS) items and since the domestic content threshold test does not apply to COTS items (except those involving iron/steel), those awards were subtracted from the 121,063 total eligible awards. After removing potential COTS item acquisitions from the data, there are estimated to be 83,560 contract awards to 14,163 unique contractors.

It is unclear if the pool of qualified suppliers would be reduced, resulting in less competition (and a possible increase in prices that the Government will pay to procure these products). The fallback threshold is intended to:

- (1) help prevent scheduled increases in the content threshold from taking work away from domestic suppliers who are actively adjusting their supply chains; and
- (2) avoid unintentionally raising the foreign content of Federal purchases through increased use of waivers while domestic suppliers adjust.

The fallback threshold would be a temporary measure designed to limit foreign content while contractors transition to U.S.-based supply chains.

In response to public comment, the FAR Council will consider larger or smaller increases in the content threshold as well as differently timed increases in the final rule. See questions for the public, below. These determinations will be based on considerations such as potential impact on competition, potential impact on supplier diversity, including participation of small disadvantaged businesses and businesses in other underserved communities, lost opportunities for American workers, and other considerations identified by public comment and other interested parties.

At least three arguments point to the possibility that any increased burden with regard to the timed increase to the domestic content threshold, on contractors in particular, could be small, if not de minimis.

First, DoD, GSA, and NASA do not anticipate significant cost from contractor familiarization with the rule given the history of rulemaking and E.O.s in this area. The basic mechanics of the Buy American statute (*e.g.*, general definitions, certifications required of offerors to demonstrate end products are domestic) remain unchanged and continue to reflect processes that are decades old. Under the proposed rule, when deciding whether to pursue a procurement or what kind of product mix (*i.e.*, domestic or foreign) and pricing to propose in response to a solicitation, offerors now will have to plan

for future changes to the domestic content threshold during the period of performance of the contemplated contract. Those offerors that make a business decision not to modify their supply chains over time to comply with the scheduled increases to the domestic content threshold will still be able to propose an offer for Federal contracts but will generally no longer enjoy a price preference.

Second, some, if not many, contractors may already be able to comply with the higher domestic content requirement needed to meet the definition of domestic end product under E.O. 14005 and the proposed rule. Laws such as the SECURE Technology Act, Public Law 115-390, which requires a series of actions to strengthen the Federal infrastructure for managing supply chain risks, are placing significantly increased emphasis on the need for Federal agencies and Federal Government contractors to identify and reduce risk in their supply chains. One way to reduce supply chain risk is to increase domestic sourcing of content. A U.S. Bureau of Economic Analysis study using 2015 data, [https://www.commerce.gov/sites/default/files/migrated/reports/2015-what-is-made-in-america\\_0.pdf](https://www.commerce.gov/sites/default/files/migrated/reports/2015-what-is-made-in-america_0.pdf), found that on average, 82 percent of the value of U.S. manufacturing output is comprised of domestic content. This seems to indicate that a domestic content threshold of 60 percent would not inflict additional burden on contractors. In addition, a preliminary analysis of available data in FPDS

on the impact of an increase earlier this year in the domestic content threshold from 50 percent to 55 percent did not appear to trigger an uptick in waivers, suggesting companies may already be incorporating content that can meet at least the 55 percent level:

|                            | Feb-April<br>2021                  | Feb-April<br>2020                  | Feb-April<br>2019                  | Feb-April<br>2018                  |
|----------------------------|------------------------------------|------------------------------------|------------------------------------|------------------------------------|
|                            | Total Spend<br>(Millions<br>of \$) | Total Spend<br>(Millions<br>of \$) | Total Spend<br>(Millions<br>of \$) | Total Spend<br>(Millions<br>of \$) |
| Total                      | \$2,861                            | \$7,578                            | \$7,570                            | \$7,635                            |
| Buy<br>American<br>Waived* | \$15                               | \$78                               | \$70                               | \$63                               |
| Percent<br>Waived          | 0.5%                               | 1.0%                               | 0.9%                               | 0.8%                               |

\* Waivers included here are Commercial Information

Technology, Domestic Non-availability, Public Interest Determination, Resale, or Unreasonable Cost. They do not include waivers due to trade agreements or DoD qualifying country, which would not be impacted by a change in the content threshold.

Third, it is anticipated that some contractors' products and construction materials may not meet the definition of domestic end product and construction material unless the contractors take steps to adjust their

supply chains to increase the domestic content. Those contractors that make a business decision not to modify their supply chains will still be able to bid on Federal contracts and could still enjoy a price preference if their end product meets the prior definition of domestic end product (*i.e.*, exceeding 55 percent). In the event that the Government does not receive any offers of domestic end products or the domestic end products are of unreasonable cost, the Government will treat the end products that have at least 55 percent domestic content as a domestic end product for evaluation purposes. Offerors now have an information collection burden of identifying when a foreign end product meets the fallback threshold (see section VIII of this preamble), but that burden should be offset by the benefit of potentially still receiving a price preference for these end products that would have been considered domestic prior to the increases to the domestic content threshold proposed in this rule.

Offerors have an option to increase the domestic content and continue to offer domestic products, in which case they may benefit from the price preference for domestic products, or they may continue to offer the same product, which will now be evaluated as foreign but may still benefit from a price preference. DoD, GSA, and NASA do not have any data on how many currently domestic products would fall into this category or have any knowledge

as to which option an offeror of such products would select, since this is a business decision for each offeror to make.

***Enhanced price preference for critical items***

The goal of the enhanced price preference for critical items and components is to provide a steady source of demand for domestically produced critical products. As explained above, the rule only creates a framework. Separate rulemaking will be undertaken to add critical products and components to the FAR and to establish the associated preferences. Therefore, the impact associated with this concept will be captured in the subsequent rulemaking.

There is an information collection burden associated with offerors identifying when a domestic end product or domestic construction material contains a critical component (see section VIII of this preamble), but that burden should be offset by the larger price preference received for these items.

***Postaward reporting requirement for contractors***

Today, the acquisition community has limited direct information on the overall level of domestic content of the items it buys, other than whether or not the content meets the required threshold. The data on the amount of actual domestic content provided in the contractors' reports is expected to provide the Made in America Office in the

Office of Management and Budget valuable insight on the domestic content of the manufactured products that are integral to U.S. national and economic security. Separate rulemaking will be undertaken to add critical items and components to the FAR and to establish the associated preferences. Therefore, the impact associated with postaward reporting for these items will be captured in the subsequent rulemaking.

This postaward reporting requirement for critical items and critical components is a step in building the Government's capability in collecting data that will enable more informed decisions in this arena, e.g., how and when to increase domestic content thresholds, what enhanced price preference level for critical items is most efficient, etc. This phased approach will provide an opportunity for the Government to evaluate the impact of this information collection, with potential expansion in future years.

There is an information collection burden associated with the reporting requirement. See section VIII of this preamble. The calculation provided in section VIII is a broad estimate since there is no specified list of critical items or components at this time.

***Request for Comments***

Based on the above, DoD, GSA, and NASA do not expect a significant cost impact on the public, but lack data to

make a definitive determination and seek information from the public to assist with this analysis and to help further inform the regulatory drafters as they develop the final rule and carry out other responsibilities under the E.O. Feedback is requested on the following questions pertaining to this proposed rule:

(1) **Increased Domestic Content Thresholds:** Do products you make or sell to the Federal Government currently meet the proposed increased domestic content thresholds of 60 percent, 65 percent, or 75 percent?

(a) Would you be willing and able to adjust your supply chain to meet the proposed new thresholds given the scheduled phase-in? Why or why not? Please discuss any obstacles that might interfere with, or opportunities—including actions by the Federal Government—that might support, your ability to meet the proposed increases in domestic content thresholds.

(b) If you are willing to make supply chain adjustments, please provide an overview of associated costs and benefits to making these changes. Explain to what extent any costs may be offset by increased Federal Government sales or price preferences. If relevant, provide an overview of expected increased economic activity through the increased use of domestic suppliers and domestic labor.

(2) **Fallback Threshold:** Please address the utility of the proposed fallback threshold, including whether it would give your company time to adjust to a higher domestic content threshold; whether the fallback threshold should increase as the domestic content threshold increases; whether the existence of the fallback threshold would delay the ability to increase Made in America content in Federal procurement; the process by which the fallback threshold should be eliminated in order to maximize the use of Made in America content; and any challenges posed by the complexity of employing a fallback threshold.

(3) **Price Preferences:** Please comment on the effectiveness of current price preference levels at promoting domestic economic activity and employment and strengthening domestic supply chains for critical items; address whether increased price preferences would be more, less, or equally as effective, and, if more effective, at what level.

(4) **Enhanced Price Preferences:** Please comment on the anticipated effectiveness of providing enhanced price preferences to strengthen the domestic supply chains for items and components deemed "critical". In particular—

(a) Which specific items or components or combination thereof, if any, should receive an enhanced price preference and why?

(b) What process should the Office of Management and Budget use to determine which of the critical items identified through the critical supply chain review under E.O. 14017 and the National COVID Strategy are likely to make a meaningful difference toward strengthening domestic supply chains such that an enhanced preference is merited? In addition to national and economic security, should the process identify items and components that are critical to other factors such as national public health and sustainability? Should the process consider the impact on the creation of well-paying jobs in identifying critical items or components?

(c) Is four years a reasonable interval for updating the critical components or item list? Why or why not?

(d) How should enhanced price preferences be applied? For example, if a finished product includes multiple critical components, what is the most effective way to apply an enhanced price preference (e.g., a single time, once per component)?

(e) Please address whether and how enhanced price preferences should be considered for commercial items that have been identified as critical and currently are subject to either a full statutory Buy American waiver (in the case of information technology) or a partial regulatory Buy American waiver (in the case of COTS items) and the reasons for your response.

(f) If particular vendors can supply products that exceed the minimum domestic content threshold by significant margins, should the Federal Government consider whether and how to incentivize such practices to maximize the use of taxpayer dollars on domestic content?

(5) **Content Calculation:** Section 8(i) of the E.O. directed the FAR Council to consider replacing the "component test" in FAR Part 25 with a test under which domestic content is measured by a "value added" calculation. Please comment on (a) how such "value" could be calculated in order to promote U.S.-based production or U.S. job-supporting economic activity; (b) whether a "value added" calculation would be superior to the current approach and why or why not; and (c) whether approaches other than a "value added" calculation should be employed to achieve the goals of the E.O. (for example, should the definition of "cost of components" in FAR 25.003 be changed).

(6) **Content Reporting:** Will the proposed requirement to report on the actual level of domestic content included in designated critical products sold to the Federal Government provide greater compliance with Made in America Laws? Why or why not?

(a) Will the requirement negatively impact small or disadvantaged businesses, such as those who are resellers or distributors? How can these impacts be mitigated?

(b) What other procedures can the Federal Government employ to better monitor compliance with Made in America Laws?

(7) **Contracting with small and disadvantaged businesses:** What specific steps should the Federal Government consider to maximize opportunities for small and disadvantaged businesses and avoid unintended barriers to entry as it works to strengthen the impact of Made in America Laws, diversify domestic supplier bases, and create new opportunities for U.S. firms and workers?

#### **V. Public Meeting**

The Made in America Office and the FAR Council are co-hosting a virtual public meeting to obtain the views of experts and interested parties in the private sector regarding implementation of section 8, as well as other sections, of E.O. 14005. The meeting will be recorded and a transcript of the meeting will be posted to *regulations.gov*, under the "FAR Case 2021-008" docket. For more details on the public meeting, such as the agenda, visit [https://www.acquisition.gov/publicmeeting\\_FAR\\_proposedrule-2021-008\\_BuyAmericanAct](https://www.acquisition.gov/publicmeeting_FAR_proposedrule-2021-008_BuyAmericanAct).

*Registration:* Individuals wishing to participate in the virtual meeting must register at [https://gsa.zoomgov.com/webinar/register/WN\\_HXrvVS0hS1-pksKSNrEKIA](https://gsa.zoomgov.com/webinar/register/WN_HXrvVS0hS1-pksKSNrEKIA). There is limited capacity of 3,000 attendees

and registration will be on a first-come, first-served basis. Early registration is encouraged. Members of the press, in addition to registering for this event, must also RSVP to [press@gsa.gov](mailto:press@gsa.gov) by August 16, 2021. For any questions regarding registration, please email [gsaombudsman@gsa.gov](mailto:gsaombudsman@gsa.gov).

*Presentations:* If you wish to make a presentation, instructions for submitting presentations will be posted at [https://www.acquisition.gov/publicmeeting\\_FAR\\_proposedrule-2021-008\\_BuyAmericanAct](https://www.acquisition.gov/publicmeeting_FAR_proposedrule-2021-008_BuyAmericanAct). Presentations will be posted to [regulations.gov](https://www.regulations.gov), under the "FAR Case 2021-008" docket.

*Other means of submitting public comments:* In lieu of, or in addition to, participating in the public meeting, interested parties may also submit written comments on the rule and responses to the questions contained in this preamble to [regulations.gov](https://www.regulations.gov) via the Federal eRulemaking Portal in accordance with the instructions in the DATES and ADDRESSES sections of this document.

*Questions for the public:* In addition to the questions in Section IV above specific to FAR case 2021-008, public feedback is also requested on the following questions pertaining to other sections of E.O. 14005:

(1) **Commercial IT:** Acquisitions of commercial IT are exempt by statute from the requirements of the Buy American statute. Section 10 of the Executive Order requires a review of the impact of this exception, which has been in effect for more than 15 years. To help inform this review,

the FAR Council seeks input on the extent to which the original purpose of the exception, or other goals of the exception, remain relevant. Under what situations, if any, do current marketplace conditions support narrowing or lifting the statutory waiver? Please be specific in your description, which might identify market segments or specific items, anticipated benefits and drawbacks of the rollback, and steps the FAR Council or other Government stakeholders might take to mitigate potential unintended consequences.

(2) **Commercially Available Off-the-Shelf Items:** In 2009, the Office of Federal Procurement Policy (OFPP), using authorities provided by Congress to reduce administrative burdens imposed by Government-unique requirements, waived the component test of the Buy American statute for acquisition of COTS items. In making the decision, OFPP concluded, in part, that manufacturers' component purchasing decisions are based on factors such as cost, quality, availability, and maintaining the state of the art, not the country of origin, making it difficult for a manufacturer to guarantee the source of its components over the term of a contract. OFPP further concluded that continued application of the content requirement created a barrier to entry which may limit the Government's ability to purchase products already in the commercial distribution systems. OFPP and the other members of the FAR Council

seek to understand the extent to which the original purpose of the partial waiver remains relevant.

i. How has the application of the COTS waiver since 2009 been consistent or inconsistent with its stated purpose? For example, has the use of COTS expanded (or narrowed) since 2009 in ways that may not have been originally contemplated? If applicable, provide specific examples of the application of the COTS waiver that demonstrate inconsistency with its original purpose.

ii. Has the COTS waiver benefitted domestic firms and their employees? Why or why not?

iii. Under what situations, if any, do current marketplace conditions support narrowing or lifting the partial waiver? Please be specific in your description, which might identify critical industries, specific market segments, or specific items; please discuss anticipated benefits and drawbacks of a rollback, including impacts on small and disadvantaged business enterprises, and steps the FAR Council or other Federal entities could take to mitigate potential unintended consequences.

iv. Regardless of any other changes to the COTS partial waiver, should the Federal Government gather data on the domestic content of all COTS items, some COTS items or categories of COTS items to inform future policy making? If so, what items or categories should be addressed? How

might this be accomplished consistent with the intent of the COTS partial waiver to reduce administrative burdens?

v. Please provide any recommendations to maintain and increase domestic production of COTS items (both manufacturing of the end product and its components) in critical industries.

(3) **Services:** How can the Federal Government promote the use of Made in America services? What standards or methodologies might be considered that could be easily adapted by commercial sellers? Are there critical services that should be accorded price preferences, and if so, why?

(4) **Trade agreements:** Because of the World Trade Organization - Government Procurement Agreement (WTO GPA) and the Trade Agreements Act (TAA), domestic content rules do not currently apply to most non-DoD goods acquisitions over \$182,000. Thus, the newly proposed domestic content threshold will not apply to many purchases that the Government makes. Under the TAA, a purchase is treated as U.S.-made if it is mined, produced, or manufactured in the United States or substantially transformed in the United States, even if it is made of 100 percent foreign content. As a result, a substantially transformed U.S.-made product may have far less domestic content when compared to a domestic end product acquired under the Buy American statute. While U.S. trade obligations are beyond the scope of this rulemaking, the Made in America Office and the FAR

Council seek to understand more about the impact of the substantial transformation test and potential lost opportunities for American workers.

i. To the best of your knowledge, what specific types of products are sold to the Federal Government that count as being made in America under the Trade Agreements Act ("U.S.-made end product"), but contain less than the current 55 percent U.S. content threshold required under the Buy American statute? Do the differing standards provide a benefit to domestic firms?

ii. Is "substantial transformation" a useful tool to promote good domestic jobs and domestic manufacturing? Why or why not?

iii. What steps could the Federal Government take, consistent with its trade obligations, to acquire useful information about the content of goods procured pursuant to trade obligations, including in critical supply chains? Useful information might include the percentage of domestic content and country of origin for certain components identified by the agency.

iv. Please provide any recommendations to maintain and increase domestic production in critical industries in acquisitions subject to trade obligations.

(5) **Additional ideas:** Please provide any additional recommendations for:

i. Strengthening content standards under the Buy American statute, including recommendations for how content is calculated and whether and why certain products or categories of products should have more stringent content standards than others.

ii. The use of waivers and exceptions to the Buy American statute, including proposals to narrow or expand the scope of existing waivers; ensure appropriate interpretation of existing waivers; and policies or practices to ensure that unnecessary waivers are not granted.

iii. Improving the Federal Government's ability to enforce the content standards in the Buy American statute, including by verifying domestic content levels.

## **VI. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review

under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

#### **VII. Congressional Review Act**

As required by the Congressional Review Act (5 U.S.C. 801-808) before an interim or final rule takes effect, DoD, GSA, and NASA will send the rule and the "Submission of Federal Rules Under the Congressional Review Act" form to each House of Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This rule is not anticipated to be a major rule under 5 U.S.C. 804.

#### **VIII. Regulatory Flexibility Act**

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601-612. This rule changes the existing minimum domestic content percentages and introduces a discretionary proposal evaluation strategy. This rule proposes to amend the required percentage of domestic content and the existing percentages for the price evaluation preferences in an effort to decrease the amount of foreign-sourced content in a U.S. manufactured product to promote economic and national security, help stimulate economic growth, and create jobs. An Initial Regulatory

Flexibility Analysis (IRFA) has been performed and is summarized as follows:

This rule proposes to amend the FAR to implement an Executive Order regarding ensuring the future is made in all of America by all of America's workers.

The objective of this rule is to strengthen domestic preferences under the Buy American statute, as required by E.O. 14005, Ensuring the Future is Made in All of America by All of America's Workers, by providing-

- An increase to the domestic content threshold required to be met for a product to be defined as "domestic," a schedule for future increases, and a fallback threshold which would allow for products meeting a specific lower domestic content threshold to qualify as a domestic product under certain circumstances;

- A framework for application of an enhanced price preference for a domestic product that is considered a critical product or made up of critical components; and

- A postaward domestic content reporting requirement for contractors.

Different parts of the rule are expected to apply to a different number and universe of small entities. The impacted small entities, by portion of the rule, are described below. But in general, the rule will apply to contracts subject to the Buy American statute. The statute does not apply to services, or overseas, nor does it apply to acquisitions to which certain trade agreements apply (e.g. World Trade Organization Government Procurement Agreement (WTO-GPA)). The maximum possible number of small entities to which the rule will apply are the 31,103 active small business registrants in the System for Award Management (SAM) who do not provide services.

*-Timed increase to the domestic content threshold and allowance of a fallback threshold.* Federal Procurement Data System (FPDS) data for fiscal year 2020 indicates there were 86,490 new contract awards to small business for products and construction, valued over the micro-purchase threshold through the threshold at which the WTO-GPA applies, to which the Buy American statute applied. It is estimated that 24,459 of these awards were for commercially available off-the-shelf (COTS) items. Because the domestic content threshold test does not apply to COTS items (except those involving iron/steel), those awards were subtracted from the 86,490 total eligible awards. After removing potential COTS item acquisitions from the data, there are estimated to be 62,031 contract awards to 11,704 unique small businesses.

*-Enhanced price preference for a critical product or component.* This rule only creates a framework. Separate rulemaking will be done to add critical products and components to the FAR and to establish the associated preferences. However, the Government assumes that 10 percent of the contract awards subject to the Buy American statute will be for critical products or components. Therefore, the

Government estimates that 8,649 (10 percent of 86,490) of awards to small businesses may be impacted. This translates to 1,632 unique small businesses.

*-Postaward reporting requirement.* The number of impacted small businesses for this part of the rule is similar to the number of those impacted by the enhanced price preference for critical products or components: the postaward reporting requirement applies to contracts awarded for critical products that are subject to the Buy American statute. However, unlike the enhanced price preference, the postaward reporting requirement will not apply to COTS item acquisitions, which results in a lower estimate of 1,170 impacted small businesses.

The proposed rule will strengthen domestic preferences under the Buy American statute and provide small businesses the opportunity and incentive to deliver U.S. manufactured products from domestic suppliers. It is expected that this rule will benefit U.S. manufacturers.

This proposed rule does not include any new recordkeeping or other compliance requirements for small businesses. However, the proposed rule does contain a few additional reporting requirements for certain offerors, including small businesses.

Small businesses who submit an offer for a solicitation subject to the Buy American statute already have to list the foreign end products included in their offer. This proposed rule will require that the offeror also identify which of these foreign end products meet or exceed the fallback domestic content threshold. This rule will also require proposals to identify which offered domestic end products contain a critical component. Without that information, contracting officers will not be able to apply the "enhanced price preference" when applicable. These reporting requirements are not specific to small businesses, so data does not exist to estimate the number of small business subject to these requirements. However, the data suggests that there will be approximately 8,800 impacted respondents total, small and other than small.

Small businesses awarded a contract containing the new clause requiring postaward reporting will need to provide to the Made in America Office domestic content information for end products that are critical products, domestic end products containing a critical component, or domestic construction material containing a critical component, if those items are awarded under the contract. Based on fiscal year 2020 data from FPDS, it is estimated that there will be 6,203 contracts awarded to 1,170 unique small businesses that would be subject to this reporting requirement.

This rule does not duplicate, overlap, or conflict with any other Federal rules.

DoD, GSA, and NASA were unable to identify any significant alternatives.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2021-008), in correspondence.

#### **IX. Paperwork Reduction Act**

The Paperwork Reduction Act (44 U.S.C 3501-3521) applies because the proposed rule contains information collection requirements. Some of those information collection requirements are additional to the paperwork burden previously approved under OMB Control Number 9000-0024, Buy American, Trade Agreements, and Duty-Free Entry. The proposed rule also contains a new information collection requirement. Accordingly, the Regulatory Secretariat Division has submitted a request for approval of a revised information collection requirement concerning information collection 9000-0024 to the Office of Management and Budget as well as a request for approval of

a new information collection requirement concerning "Domestic Content Reporting Requirement" to the Office of Management and Budget.

**With regard to existing information collection 9000-0024:**

A. Public reporting burden for this collection of information is estimated to average 0.63 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden estimated as follows:

Respondents: 16,478.  
Total Annual Responses: 69,165.  
Total Burden Hours: 43,469.

B. Request for Comments Regarding Paperwork Burden.

Submit comments on this collection of information no later than **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** through <https://www.regulations.gov> and follow the instructions on the site. All items submitted must cite OMB Control No. 9000-0024, Buy American, Trade Agreements, and Duty-Free Entry. Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three

days after submission to verify posting. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202-501-4755 or [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov).

**With regard to the new information collection for clauses 52.225-XX and 52.225-YY:**

A. Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden estimated as follows:

Respondents: 1,393.  
Total Annual Responses: 8,356.  
Total Burden Hours: 25,068.

B. Request for Comments Regarding Paperwork Burden.

Submit comments on this collection of information no later than **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** through <https://www.regulations.gov> and follow the instructions on the site. All items submitted must cite OMB Control No. 9000-XXXX, Domestic Content Reporting Requirement. Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check

<https://www.regulations.gov>, approximately two to three days after submission to verify posting. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202-501-4755 or [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov).

C. For both sets of information collections, public comments are particularly invited on:

- The necessity of this collection of information for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility;
- The accuracy of the estimate of the burden of this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Requesters may obtain a copy of the supporting statement from the General Services Administration, Regulatory Secretariat Division by calling 202-501-4755 or emailing [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov). Please cite OMB Control Number 9000-XXXX, Domestic Content Reporting Requirement or OMB

Control Number 9000-0024, Buy American, Trade Agreements,  
and Duty-Free Entry, in all correspondence.

**List of Subjects in 48 CFR Parts 1, 25, and 52**

Government procurement.

William F. Clark,  
Director,  
Office of Government-wide  
Acquisition Policy,  
Office of Acquisition Policy,  
Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 1, 25, and 52 as set forth below:

1. The authority citation for 48 CFR parts 1, 25, and 52 continues to read as follows:

**AUTHORITY:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

**PART 1—FEDERAL ACQUISITION REGULATION SYSTEM**

2. In section 1.106 amend in the table following the introductory text, by adding in numerical order, entries for "52.225-XX" and "52.225-YY" to read as follows.

**1.106 OMB approval under the Paperwork Reduction Act.**

\* \* \* \* \*

| FAR Segment | OMB Control Number |
|-------------|--------------------|
| * * * * *   | * * * * *          |
| 52.225-XX   | 9000-XXXX          |
| 52.225-YY   | 9000-XXXX          |
| * * * * *   | * * * * *          |

\* \* \* \* \*

**PART 25—FOREIGN ACQUISITION**

3. Amend section 25.003 by—

a. Adding, in alphabetical order, the definitions "Critical component" and "Critical item";

b. In the definition "Domestic construction material" revising the first sentence of paragraph

(1) (i) (B) (1); and

c. In the definition "Domestic end product" revising the first sentence of paragraph (1)(ii)(A).

The additions and revisions reads as follows:

**25.003 Definitions.**

\* \* \* \* \*

*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 25.105.

*Critical item* means a domestic construction material or domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at 25.105.

\* \* \* \* \*

*Domestic construction material* means—

(1) \* \* \*

(i) \* \* \*

(B) \* \* \*

(1) The cost of the 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. \* \* \*

\* \* \* \* \*

*Domestic end product* means—

(1) \* \* \*

(ii) \* \* \*

(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. \* \* \*

\* \* \* \* \*

4. Amend section 25.100 by—

- a. Removing the word “and” at the end of paragraph (a) (3);
- b. Redesignating paragraph (a) (4) as (a) (5); and
- c. Adding a new paragraph (a) (4).

The addition reads as follows:

**25.100 Scope of subpart.**

(a) \* \* \*

(4) Executive Order 14005, January 25, 2021; and

\* \* \* \* \*

5. Amend section 25.101 by—

- a. Removing from paragraph (a) the phrase “the Buy American statute and E.O. 13881 use” and adding in its place the phrase “the Buy American statute, E.O. 13881, and E.O. 14005 use”; and
- b. Revising the first sentence of paragraph (a) (2) (i).

The revision reads as follows:

**25.101 General.**

(a) \* \* \*

(2)(i) Except for an end product that consists wholly or predominantly of iron or steel or a combination of both, the cost of domestic components shall exceed 60 percent of the cost of all the 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. \* \* \*

\* \* \* \* \*

**25.103 [Amended]**

6. Amend section 25.103 by removing from paragraph (c) "25.105" and "Subpart 25.5" and adding "25.106" and "subpart 25.5" in their places, respectively.

**25.105 [Redesignated]**

7. Redesignate section 25.105 as section 25.106.

8. Add a new section 25.105 to read as follows:

**25.105 Critical components and critical items.**

(a) The following is a list of articles that have been determined to be a critical component or critical item and their respective preference factor(s):

(1) [Reserved]

(2) [Reserved]

(b) The list of articles and preference factors in paragraph (a) of this section will be published in the *Federal Register* for public comment no less frequently than

once every 4 years. Unsolicited recommendations for deletions from this list may be submitted at any time and should provide sufficient data and rationale to permit evaluation (see 1.502).

(c) For determining reasonableness of cost for domestic end products that contain critical components or are critical items, see 25.106(c).

9. Amend newly redesignated section 25.106 by-

a. In paragraph (a)(1) removing the phrase "paragraph (b) of this section" and adding the phrase "paragraphs (b) and (c) of this section" in its place;

b. In paragraph (a)(2) remove the word "Subpart" and adding the word "subpart" in its place;

c. Revise paragraph (b); and

d. Revising paragraph (c).

The added and revised text reads as follows:

**25.106 Determining reasonableness of cost.**

\* \* \* \* \*

(b) *For end products that are not critical items and do not contain critical components.* (1)(i) If there is a domestic offer that is not the low offer, and the restrictions of the Buy American statute apply to the low offer, the contracting officer must determine the reasonableness of the cost of the domestic offer by adding to the price of the low offer, inclusive of duty-

(A) 20 percent, if the lowest domestic offer is from a large business concern; or

(B) 30 percent, if the lowest domestic offer is from a small business concern. The contracting officer must use this factor, or another factor established in agency regulations, in small business set-asides if the low offer is from a small business concern offering the product of a small business concern that is not a domestic end product (see subpart 19.5).

(ii) The price of the domestic offer is reasonable if it does not exceed the evaluated price of the low offer after addition of the appropriate evaluation factor in accordance with paragraph (a) or (b)(1)(i) of this section. See evaluation procedures at subpart 25.5.

(2)(i) For end products that do not consist wholly or predominantly of iron or steel or a combination of both, if the procedures in paragraph (b)(1)(i) of this section result in an unreasonable cost determination for the domestic offer or there is no domestic offer received, and the low offer is for a foreign end product that does not exceed 55 percent domestic content, the contracting officer shall—

(A) Treat the lowest offer of a foreign end product that is manufactured in the United States and exceeds 55 percent domestic content as a domestic offer; and

(B) Determine the reasonableness of the cost of this offer by applying the evaluation factors listed in paragraph (b) (1) (i) to the low offer.

(ii) The price of the lowest offer of a foreign end product that exceeds 55 percent domestic content is reasonable if it does not exceed the evaluated price of the low offer after addition of the appropriate evaluation factor in accordance with paragraph (a) or (b) (1) (i) of this section. See evaluation procedures at subpart 25.5.

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

(c) *For end products that are critical items or contain critical components.* (1) (i) If there is a domestic offer that is not the low offer, and the restrictions of the Buy American statute apply to the low offer, the contracting officer shall determine the reasonableness of the cost of the domestic offer by adding to the price of the low offer, inclusive of duty-

(A) 20 percent, plus the additional preference factor identified for the critical item or end product containing critical components listed at section 25.105, if the lowest domestic offer is from a large business concern; or

(B) 30 percent, plus the additional preference factor identified for the critical item or end product containing critical components listed at section 25.105, if

the lowest domestic offer is from a small business concern. The contracting officer shall use this factor, or another factor established in agency regulations, in small business set-asides if the low offer is from a small business concern offering the product of a small business concern that is not a domestic end product (see subpart 19.5).

(ii) The price of the domestic offer is reasonable if it does not exceed the evaluated price of the low offer after addition of the appropriate evaluation factor in accordance with paragraph (a) or (b) of this section. See evaluation procedures at subpart 25.5.

(2)(i) For end products that do not consist wholly or predominantly of iron or steel or a combination of both, if the procedures in paragraph (c)(1)(ii) of this section result in an unreasonable cost determination for the domestic offer or there is no domestic offer received, and the low offer is for a foreign end product that does not exceed 55 percent domestic content, the contracting officer shall—

(A) Treat the lowest offer of a foreign end product that is manufactured in the United States and exceeds 55 percent domestic content as a domestic offer; and

(B) Determine the reasonableness of the cost of this offer by applying the evaluation factors listed in paragraph (c)(1) to the low offer.

(ii) The price of the lowest offer of a foreign end product that exceeds 55 percent domestic content is reasonable if it does not exceed the evaluated price of the low offer after addition of the appropriate evaluation factor in accordance with paragraph (a) or (b) of this section. See evaluation procedures at subpart 25.5.

(iii) The procedures in this paragraph (c) (2) will no longer apply as of January 1, 2030.

10. Amend section 25.200 by-

- a. In paragraph (a) (3) removing the word "and";
- b. Redesignating paragraph (a) (4) as paragraph (a) (5);
- c. Adding a new paragraph (a) (4); and
- d. In paragraph (c) removing the word "Subpart" and adding the word "subpart" in its place.

The addition reads as follows:

**25.200 Scope of subpart.**

(a) \* \* \*

(4) Executive Order 14005, January 25, 2021; and

\* \* \* \* \*

11. Amend section 25.201 by-

- a. In paragraph (b) removing the phrase "statute and E.O. 13881 use" and adding the phrase "statute, E.O. 13881, and E.O. 14005 use" in its place; and
- b. Revising the first sentence of paragraph (b) (2) (i).

The revision reads as follows.

**25.201 Policy.**

\* \* \* \* \*

(b) \* \* \*

(2) (i) Except for construction material that consists wholly or predominantly of iron or steel or a combination of both, the cost of domestic components must exceed 60 percent of the cost of all the 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. \* \* \*

\* \* \* \* \*

12. Amend section 25.204 by revising paragraph (b) to read as follows:

**25.204 Evaluating offers of foreign construction material.**

\* \* \* \* \*

(b) (1) *For construction materials that are not critical items and do not contain critical components.* (i) Unless the head of the agency specifies a higher percentage, the contracting officer shall add to the offered price 20 percent of the cost of any foreign construction material proposed for exception from the requirements of the Buy American statute based on the unreasonable cost of domestic construction materials. In the case of a tie, the contracting officer shall 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.

(ii) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both, if the procedures in paragraph (b) (1) (i) of this section result in an unreasonable cost determination for the domestic construction material offer or there is no domestic construction material offer received, and the low offer is for foreign construction material that does not exceed 55 percent domestic content, the contracting officer shall—

(A) 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

(B) Determine the reasonableness of the cost of this offer by applying the evaluation factor listed in paragraph (b) (1) (i) to the low offer.

(iii) The procedures in paragraph (b) (1) (ii) will no longer apply as of January 1, 2030.

(2) *For construction material that are critical items or contain critical components.* (i) The contracting officer shall add to the offered price 20 percent, plus the additional preference factor identified for the critical item or construction material containing critical components listed at section 25.105, of the cost of any

foreign construction material proposed for exception from the requirements of the Buy American statute based on the unreasonable cost of domestic construction materials. In the case of a tie, the contracting officer shall 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. See 25.105 for list of critical components and critical items.

(ii) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both, if the procedures in paragraph (b) (2) (i) of this section result in an unreasonable cost determination for the domestic construction material offer or there is no domestic construction material offer received, and the low offer is for foreign construction material that does not exceed 55 percent domestic content, the contracting officer shall—

(A) 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

(B) Determine the reasonableness of the cost of this offer by applying the evaluation factors listed in paragraph (b) (2) to the low offer.

(iii) The procedures in paragraph (c) (1) (ii) will no longer apply as of January 1, 2030.

\* \* \* \* \*

**25.501 [Amended]**

13. Amend section 25.501 by—

a. In paragraph (c) removing the word “Subpart” and adding the word “subpart” in its place; and

b. In paragraph (d) removing the word “Must” and adding the phrase “When trade agreements are involved, shall” in its place.

14. Amend section 25.502 by revising paragraphs (c) (2), (3), and (4) to read as follows:

**25.502 Application.**

\* \* \* \* \*

(c) \* \* \*

(2) If the low offer is a noneligible offer and there were no domestic offers (see 25.103(b) (3)), award on the low offer. The procedures at 25.106(b) (2) and 25.106(c) (2) do not apply.

(3) If the low offer is a noneligible offer and there is an eligible offer that is lower than the lowest domestic offer, award on the low offer. The procedures at 25.106(b) (2) and 25.106(c) (2) do not apply.

(4) Otherwise, apply the appropriate evaluation factor provided in 25.106 to the low offer. The procedures at 25.106(b) (2) and 25.106(c) (2) do not apply.

\* \* \* \* \*

15. Amend section 25.503 by—

a. In paragraph (a)(1) removing the word "Subpart" and adding the word "subpart" in its place; and

b. Adding paragraph (d) to read as follows:

**25.503 Group offers.**

\* \* \* \* \*

(d) If no trade agreement applies to a solicitation and the solicitation specifies that award will be made only on a group of line items or all line items contained in the solicitation, determine the category of end products on the basis of each line item, but determine whether to apply an evaluation factor on the basis of the group of items (see 25.504-4(c), Example 3).

(1) If the proposed price of domestic end products exceeds 50 percent of the total proposed price of the group, evaluate the entire group as a domestic offer. Evaluate all other groups as foreign offers.

(2) Apply the evaluation factor to the entire group in accordance with 25.502, except where 25.502(c)(4) applies and the evaluated price of the low offer remains less than the lowest domestic offer. Where the evaluated price of the low offer remains less than the lowest domestic offer, treat as a domestic offer any group where the proposed price of end products with a domestic content of at least 55 percent exceeds 50 percent of the total proposed price of the group.

(3) Apply the evaluation factor to the entire group in accordance with 25.502(c)(4).

16. Amend section 25.504-1 by-

a. In paragraph (a)(1), in the table revising the entry for "Offer C";

b. Revising paragraph (a)(2); and

c. Adding paragraph (c).

The revised and added text reads as follows:

**25.504-1 Buy American statute.**

(a)(1) \* \* \*

|         |          |   |
|---------|----------|---|
| *****   |          |   |
| Offer C | \$10,100 | U.S.-made end product (not domestic), small business. |

(2) *Analysis:* This acquisition is for end products for use in the United States and is set aside for small business concerns. The Buy American statute applies. Since the acquisition value is less than \$25,000 and the acquisition is set aside, none of the trade agreements apply. Perform the steps in 25.502(a). Offer C is evaluated as a foreign end product, because it is the product of a small business but is not a domestic end product because the offer is of 50% domestic content (see 25.502(c)(4)). Since Offer B is a domestic offer, apply the 30 percent factor to Offer C (see 25.106(b)(2)). The resulting evaluated price of \$13,130 remains lower than Offer B. The cost of Offer B is therefore unreasonable

(see 25.106(b)(1)(ii)). The 25.106(b)(2) procedures do not apply. Award on Offer C at \$10,100 (see 25.502(c)(4)(i)).

\* \* \* \* \*

(c)(1) Example 3.

|         |          |   |
|---------|----------|---|
| Offer A | \$14,000 | Domestic end product (complies with the required domestic content), small business        |
| Offer B | \$12,500 | U.S.-made end product (not domestic, exceeds 55% domestic content), small business        |
| Offer C | \$10,100 | U.S.-made end product (not domestic, with less than 55% domestic content), small business |

(2) *Analysis:* This acquisition is for end products for use in the United States and is set aside for small business concerns. The Buy American statute applies. Since the acquisition value is less than \$25,000 and the acquisition is set aside, none of the trade agreements apply. Perform the steps in 25.502(a). Offers B and C are initially evaluated as foreign end products, because they are the products of small businesses but are not domestic end products (see 25.502(c)(4)). Offer C is the low offer. After applying the 30 percent factor, the evaluated price of Offer C is \$13,130. The resulting evaluated price of \$13,130 remains lower than Offer A. The cost of Offer A is therefore unreasonable. Offer B is then treated as a domestic offer, because it is for a U.S.-made end product that exceeds 55 percent domestic content (see 25.106(b)(2)). Offer B is determined reasonable because it

is lower than the \$13,130 evaluated price of Offer C.

Award on Offer B at \$12,500.

17. Amend section 25.504-4 by adding paragraph (c) to read as follows:

**25.504-4 Group award basis.**

\* \* \* \* \*

(c) *Example 3.*

| Item        | Offers               |  |                      |
|-------------|----------------------|--|----------------------|
|             | A                    | B  | C                    |
| 1           | DO = \$17,800        | FO (>55%) = \$16,000   | FO (<55%) = \$11,200 |
| 2           | FO (>55%) = \$9,000  | FO (>55%) = \$8,500  | DO = \$10,200        |
| 3           | FO (<55%) = \$11,200 | FO (>55%) = \$12,000   | FO (<55%) = \$11,000 |
| 4           | DO = \$10,000        | DO = \$9,000   | FO (<55%) = \$6,400  |
| Total       | \$48,000             | \$45,500   | \$38,800             |
| <i>Key:</i> |                      |  |                      |
| DO          | =                    | Domestic end product (complies with the required domestic content) |                      |
| FO > 55%    | =                    | Foreign end product with domestic content exceeding 55%            |                      |
| FO < 55%    | =                    | Foreign end product with domestic content of 55% or less           |                      |

*Problem:* The solicitation specifies award on a group basis. Assume only the Buy American statute applies (*i.e.*, no trade agreements apply) and the acquisition cannot be

set aside for small business concerns. All offerors are large businesses.

*Analysis:* (see 25.503(d))

*STEP 1:* Determine which of the offers are domestic (see 25.503(d)(1)):

|   | Domestic<br>(percent)  | Determination |
|---|--|---------------|
| A | \$17,800 (Offer A1) + \$10,000 (Offer A4) =<br>\$27,800<br>\$27,800/\$48,000 (Offer A Total) = 58% | Domestic.     |
| B | \$9,000 (Offer B4)/\$45,500 (Offer B Total) =<br>19.8%   | Foreign.      |
| C | \$10,200 (Offer C2)/\$38,800 (Offer C Total) =<br>26.3%  | Foreign.      |

*STEP 2:* Determine which offer, domestic or foreign, is the low offer. If the low offer is a foreign offer, apply the evaluation factor (see 25.503(d)(2)). The low offer (Offer C) is a foreign offer. Therefore, apply the factor to the low offer. Addition of the 20 percent factor (use 30 percent if Offer A is a small business) to Offer C yields an evaluated price of \$46,560 (\$38,800 + 20 percent). Offer C remains the low offer.

*STEP 3:* Determine if there is a foreign offer that could be treated as a domestic offer (see 25.106(b)(2) and 25.503(d)(2)).

|   | Amount of Domestic Content<br>(percent)                         | Determination               |
|---|---|-----------------------------|
| A | N/A   | N/A                         |
| B | \$9,000 (Offer B4)/\$45,500 (Offer B Total) = 19.8% is domestic | Can be treated as domestic. |

|   |  |          |
|---|--|----------|
|   | <p>AND</p> <p>\$16,000 (Offer B1)+ \$8,500 (Offer B2)+<br/>\$12,000 (Offer B3) = \$36,500<br/>\$36,500/\$45,500 (Offer B Total) =<br/>80.2% can be treated as domestic.</p> <p>19.8% + 80.2% = 100% is domestic or<br/>can be treated as domestic.</p> |          |
| C | \$10,200 (Offer C2)/\$38,800 (Offer C<br>Total) = 26.3% is domestic.   | Foreign. |

*STEP 4:* If there is a foreign offer that could be treated as a domestic offer, compare the evaluated price of the low offer to the price of the offer treated as domestic (see 25.503(d)(3)). Offer B can be treated as a domestic offer (\$45,500). The evaluated price of the low offer (Offer C) is \$46,560. Award on Offer B.

18. Amend section 25.1101 by adding paragraph (g) to read as follows:

**25.1101 Acquisition of supplies.**

\* \* \* \* \*

(g) Insert the clause at 52.225-XX, Domestic Content Reporting Requirement-Supplies, in solicitations and contracts containing the clause at 52.225-1 or 52.225-3.

19. Amend section 25.1102 by adding paragraph (f) to read as follows:

**25.1102 Acquisition of construction.**

\* \* \* \* \*

(f) Insert the clause at 52.225-YY, Domestic Content Reporting Requirement-Construction Materials, in

solicitations and contracts containing the clause at 52.225-9 or 52.225-11.

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

20. Amend section 52.212-3 by—

- a. Revising the date of the provision;
- b. In paragraph (f)(1)(i) removing the word “product.” and adding the phrase “product and that each domestic end product listed in paragraph (f)(3) of this provision contains a critical component.” in its place;
- c. Adding two sentences to the end of paragraph (f)(1)(ii);
- d. Redesignating paragraph (f)(1)(iii) as paragraph (f)(1)(iv) and adding a new paragraph (f)(1)(iii);
- e. Removing from the newly redesignated paragraph (f)(1)(iv) “The terms “domestic end product,” and adding “The terms “critical component,” “domestic end product,” in its place;
- f. Revising the table in paragraph (f)(2);
- g. Redesignating paragraph (f)(3) as paragraph (f)(4) and adding a new paragraph (f)(3);
- h. In newly redesignated paragraph (f)(4) remove the word “Part” and adding the word “part” in its place;
- i. In paragraph (g)(1)(i)(A) removing the word “product.” and adding the phrase “product and that each domestic end product listed in paragraph (g)(1)(iv) of this provision contains a critical component.” in its place;

j. In paragraph (g) (1) (i) (B) removing the phrases "Peruvian end product," and "domestic end product," and adding in their place "Peruvian end product," "critical component," "domestic end product,";

k. Adding two sentences at the end of paragraph (g) (1) (iii) and revising the table;

l. Redesignating paragraph (g) (1) (iv) as paragraph (g) (1) (v) and adding a new paragraph (g) (1) (iv); and

m. In newly redesignated paragraph (g) (1) (v) removing the word "Part" and adding the word "part" in its place.

The revisions and additions read as follows:

**52.212-3 Offeror Representations and Certifications—  
Commercial Items.**

\* \* \* \* \*

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL ITEMS **(DATE)**

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

(ii) \* \* \* The Offeror shall also indicate whether these foreign end products exceed 55 percent domestic content. If the percentage of the domestic content is unknown, select "no".

(iii) The Offeror shall separately list the line item numbers of domestic end products that contain a critical component.

\* \* \* \* \*

(2) \* \* \*

| <b>Line item No.</b> | <b>Country of origin</b> | <b>Exceeds 55% domestic content (yes/no)</b> |
|----------------------|--------------------------|--|
|                      |                          |  |
|                      |                          |  |
|                      |                          |  |

(3) Domestic end products containing a critical component:

Line Item No. \_\_\_\_\_

[List as necessary]

(g) (1) \* \* \*

(iii) \* \* \* The Offeror shall also indicate whether these foreign end products exceed 55 percent domestic content. If the percentage of the domestic content is unknown, select "no".

Other Foreign End Products:

| <b>Line item No.</b> | <b>Country of origin</b> | <b>Exceeds 55% domestic content (yes/no)</b> |
|----------------------|--------------------------|--|
|                      |                          |  |
|                      |                          |  |
|                      |                          |  |

(iv) The Offeror shall list the line item numbers of domestic end products that contain a critical component.

Line Item No. \_\_\_\_\_

[List as necessary]

\* \* \* \* \*

21. Amend section 52.212-5 by—
  - a. Revising the date of the clause;
  - b. Removing from paragraph (b) (48) "(JAN 2021)" and adding "(DATE)" in its place; and
  - c. Removing from paragraph (b) (49) (i) "(JAN 2021)" and adding "(DATE)" in its place; and
  - d. Redesignating paragraphs (b) (53) through (b) (63) as paragraphs (b) (54) through (b) (64) and adding a new paragraph (b) (53).

The revision and addition reads as follows:

**52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.**

\* \* \* \* \*

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE  
ORDERS—COMMERCIAL ITEMS (DATE)

\* \* \* \* \*

(b) \* \* \*  
\_\_\_ (53) 52.225-XX, Domestic Content Reporting Requirement—Supplies (DATE) (Executive Order 14005).

\* \* \* \* \*

22. Amend section 52.213-4 by—
  - a. Revising the date of the clause;
  - b. In paragraph (b) (1) (xvii) removing the words "(JAN 2021)" and adding the word "(DATE)" in its place;

c. Redesignating paragraphs (b) (1) (xviii) through (b) (1) (xxi) as paragraphs (b) (1) (xx) through (b) (1) (xxiii) and adding new paragraphs (b) (1) (xviii) and (b) (1) (xix).

The revisions and additions read as follows:

**52.213-4 Terms and Conditions—Simplified Acquisitions  
(Other Than Commercial Items).**

\* \* \* \* \*

TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL  
ITEMS) (**DATE**)

(b) \* \* \*

(1) \* \* \*

(xviii) 52.225-XX, Domestic Content Reporting Requirement—Supplies (**DATE**) (Executive Order 14005) (Applies to contracts containing the clause at 52.225-1 or 52.225-3).

(xix) 52.225-YY, Domestic Content Reporting Requirement—Construction Materials (**DATE**) (Executive Order 14005) (Applies to contracts containing the clause at 52.225-9).

\* \* \* \* \*

23. Amend section 52.225-1 by—

- a. Revising the date of the clause;
- b. Adding, in alphabetical order, the definition of “Critical component”; and
- c. In the definition of “Domestic end product” revising the first sentence of paragraph (1) (ii) (A).

The addition and revision read as follows:

**52.225-1 Buy American—Supplies.**

\* \* \* \* \*

BUY AMERICAN—SUPPLIES (**DATE**)

(a) \* \* \*

*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.

*Domestic end product* means—

(1) \* \* \*

(ii) \* \* \*

(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. \* \* \*

\* \* \* \* \*

24. Amend section 52.225-2 by—

- a. Revising the date of the provision;
- b. Revising paragraph (a) (1);
- c. Adding two sentences at the end of paragraph (a) (2);
- d. Redesignating paragraph (a) (3) as paragraph (a) (4) and adding a new paragraph (a) (3);

e. In newly redesignated paragraph (a) (4) removing the phrase "The terms" and adding the phrase "The terms "critical component,"" in its place;

f. Revising the table in paragraph (b);

g. Redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c).

The revisions and additions read as follows:

**52.225-2 Buy American Certificate.**

\* \* \* \* \*

**BUY AMERICAN CERTIFICATE (DATE)**

(a) (1) The Offeror certifies that each end product, except those listed in paragraph (b) of this provision, is a domestic end product and that each domestic end product listed in paragraph (c) of this provision contains a critical component.

(2) \* \* \* The Offeror shall also indicate whether these foreign end products exceed 55 percent domestic content. If the percentage of the domestic content is unknown, select "no".

(3) The Offeror shall separately list the line item numbers of domestic end products that contain a critical component.

\* \* \* \* \*

(b) \* \* \*

| <b>Line item No.</b> | <b>Country of origin</b> | <b>Exceeds 55% domestic content (yes/no)</b> |
|----------------------|--------------------------|--|
|----------------------|--------------------------|--|

|  |  |  |
|--|--|--|
|  |  |  |
|  |  |  |
|  |  |  |

(c) Domestic end products containing a critical component:

Line Item No. \_\_\_\_\_

[List as necessary]

\* \* \* \* \*

25. Amend section 52.225-3 by-

a. Revising the date of the clause;

b. Adding, in alphabetical order, the definition of "Critical component";

c. In the definition "Domestic end product" revising the first sentence of paragraph (1)(ii)(A).

The addition and revision read as follows:

**52.225-3 Buy American-Free Trade Agreements-Israeli Trade Act.**

\* \* \* \* \*

BUY AMERICAN-FREE TRADE AGREEMENTS-ISRAELI TRADE ACT (**DATE**)

(a) \* \* \*

*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.

*Domestic end product* means-

(1) \* \* \*

(ii) \* \* \*

(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. \* \* \*

\* \* \* \* \*

26. Amend section 52.225-4 by—

- a. Revising the date of the provision;
- b. Revising paragraph (a) (1);
- c. In paragraph (a) (2) removing the phrases “Peruvian end product,” “domestic end product,” and adding in their place “Peruvian end product,” “critical component,” “domestic end product,”;
- d. Redesignating paragraph (c) as paragraph (c) (1) and adding two sentences at the end of newly designated paragraph (c) (1);
- e. Revising the table in newly designated paragraph (c) (1); and
- f. Adding paragraph (c) (2).

The revisions and additions read as follows:

**52.225-4 Buy American—Free Trade Agreements—Israeli Trade Act Certificate.**

\* \* \* \* \*

BUY AMERICAN—FREE TRADE AGREEMENTS—ISRAELI TRADE ACT CERTIFICATE (**DATE**)

(a) (1) The Offeror certifies that each end product, except those listed in paragraph (b) or (c) (1) of this provision, is a domestic end product and that each domestic end product listed in paragraph (c) (2) of this provision contains a critical component.

\* \* \* \* \*

(c) (1) \* \* \* The Offeror shall also indicate whether these foreign end products exceed 55 percent domestic content. If the percentage of the domestic content is unknown, select "no".

\* \* \* \* \*

| Line item No. | Country of origin | Exceeds 55% domestic content (yes/no) |
|---------------|-------------------|---------------------------------------|
|               |                   |                                       |
|               |                   |                                       |
|               |                   |                                       |

\* \* \* \* \*

(2) The Offeror shall list the line item numbers of domestic end products that contain a critical component.

Line Item No. \_\_\_\_\_

[List as necessary]

\* \* \* \* \*

27. Amend section 52.225-9 by-

a. Revising the date of the clause;

b. Adding, in alphabetical order, the definitions

of "Critical component" and "Critical item";

c. In the definition "Domestic construction material" revising the first sentence of paragraph (1) (ii) (A); and

d. Revising paragraph (b) (3) (i).

The revisions and additions read as follows:

**52.225-9 Buy American—Construction Materials.**

\* \* \* \* \*

BUY AMERICAN—CONSTRUCTION MATERIALS (**DATE**)

(a) \* \* \*

*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) \* \* \*

(ii) \* \* \*

(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) \* \* \*

(3) \* \* \*

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

(A) *For domestic construction material that are not critical items or do 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 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) will no longer apply as of January 1, 2030.

(B) (1) *For domestic construction material that are critical items or contain critical components.*

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) will no longer apply as of January 1, 2030.

\* \* \* \* \*

28. Amend section 52.225-11 by—

a. Revising the date of the clause;

b. Adding, in alphabetical order, the definitions of “Critical component” and “Critical item”;

c. In the definition “Domestic construction material” revising the first sentence of paragraph (1) (ii) (A); and

d. Revising paragraph (b) (4) (i).

The revisions and additions read as follows:

**52.225-11 Buy American—Construction Materials Under Trade Agreements.**

\* \* \* \* \*

BUY AMERICAN—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (**DATE**)

(a) \* \* \*

*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) \* \* \*

(ii) \* \* \*

(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) \* \* \*

(4) \* \* \*

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

(A) *For domestic construction material that are not critical items or do 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 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) do not apply effective January 1, 2030.

(B) *For domestic construction material that are critical items or contain 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) will no longer apply as of January 1, 2030.

\* \* \* \* \*

29. Add section 52.225-XX to read as follows:

**52.225-XX Domestic Content Reporting Requirement-Supplies.**

As prescribed in 25.1101(g), insert the following clause:

DOMESTIC CONTENT REPORTING REQUIREMENT-SUPPLIES (**DATE**)

(a) Definitions. As used in this clause—

*Critical item* means a domestic construction material or domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

The terms *Critical component*, *Domestic end product*, and *End product* are defined in the clause of this solicitation entitled "Buy American-Supplies" or "Buy American-Free Trade Agreements-Israeli Trade Act".

(b) *Applicability*. This clause does not apply to commercially available off-the-shelf (COTS) items.

(c) *Reporting requirement.* Within 15 days of award, the Contractor shall provide the contract number, the amount of domestic content in each critical item, and the amount of domestic content in each domestic end product containing a critical component, to the Made in America Office under the Office of Management and Budget via *MadeInAmerica@omb.eop.gov*:

| Line Item No. | Critical component/end product | Percentage of Domestic Content |
|---------------|--------------------------------|--------------------------------|
|               |                                |                                |
|               |                                |                                |
|               |                                |                                |
|               |                                |                                |

*[List as necessary]*

(End of clause)

30. Add section 52.225-YY to read as follows:

**52.225-YY Domestic Content Reporting Requirement-  
Construction Materials.**

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

DOMESTIC CONTENT REPORTING REQUIREMENT-CONSTRUCTION MATERIALS

(DATE)

(a) Definitions. As used in this clause-

The terms *Critical component*, *Critical item*, and *Domestic construction material*, are defined in the clause of this contract entitled "Buy American-Construction Materials" or "Buy American-Construction Materials under Trade Agreements".

(b) *Applicability.* This clause does not apply to commercially available off-the-shelf (COTS) items.

(c) *Reporting requirement.* Within 15 days of award, the Contractor shall provide the contract number, the amount of domestic content in each critical item, and the amount of domestic content in each domestic construction material containing a critical component, to the Made in America Office under the Office of Management and Budget via *MadeInAmerica@omb.eop.gov*:

| <b>Line Item No.</b> | <b>Critical component/end product</b> | <b>Percentage of Domestic Content</b> |
|----------------------|---------------------------------------|---------------------------------------|
|                      |                                       |                                       |
|                      |                                       |                                       |
|                      |                                       |                                       |
|                      |                                       |                                       |

*[List as necessary]*

(End of clause)