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addition of the appropriate evaluation factor in accordance with paragraph (a) or (b) of this section. (See evaluation procedures at Subpart 25.5.)

Subpart 25.2—Buy American Act—Construction Materials

25.200 Scope of subpart.

This subpart implements the Buy American Act (41 U.S.C. 10a–10d) and Executive Order 10582, December 17, 1954. It applies to contracts for the construction, alteration, or repair of any public building or public work in the United States.

25.201 Policy.

Except as provided in 25.202, use only domestic construction materials in construction contracts performed in the United States.

25.202 Exceptions.

(a) When one of the following exceptions applies, the contracting officer may acquire foreign construction materials without regard to the restrictions of the Buy American Act:

(1) *Impracticable or inconsistent with public interest.* The head of the agency may determine that application of the restrictions of the Buy American Act to a particular construction material would be impracticable or would be inconsistent with the public interest. The public interest exception applies when an agency has an agreement with a foreign government that provides a blanket exception to the Buy American Act.

(2) *Nonavailability.* The head of the contracting activity may determine that a particular construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. The determinations of nonavailability of the articles listed at 25.104(a) and the procedures at 25.104(b) also apply if any of those articles are acquired as construction materials.

(3) *Unreasonable cost.* The contracting officer concludes that the cost of domestic construction material is unreasonable in accordance with 25.204.

(b) *Determination and findings.* When a determination is made for any of the reasons stated in this section that certain foreign construction materials may be used, the contracting officer must list the excepted materials in the contract. The agency must make the findings justifying the exception available for public inspection.

(c) *Acquisitions under trade agreements.* For construction contracts with an estimated acquisition value of $6,806,000 or more, see 25.403. If the acquisition value is $7,068,419 or more, also see 25.405.

[64 FR 72419, Dec. 27, 1999, as amended at 65 FR 36026, June 6, 2000]

25.203 Preaward determinations.

(a) For any acquisition, an offeror may request from the contracting officer a determination concerning the inapplicability of the Buy American Act for specifically identified construction materials. The time for submitting the request is specified in the solicitation in paragraph (b) of either 52.225–10 or 52.225–12, whichever applies. The information and supporting data that must be included in the request are also specified in the solicitation in paragraphs (c) and (d) of either 52.225–9 or 52.225–11, whichever applies.

(b) Before award, the contracting officer must evaluate all requests based on the information provided and may supplement this information with other readily available information.

25.204 Evaluating offers of foreign construction material.

(a) Offerors proposing to use foreign construction material other than that listed by the Government in the applicable clause at 52.225–9, paragraph (b)(2), or 52.225–11, paragraph (b)(3), or excepted under the Trade Agreements Act or NAFTA (paragraph (b)(2) of 52.225–11), must provide the information required by paragraphs (c) and (d) of the respective clauses.

(b) Unless the head of the agency specifies a higher percentage, the contracting officer must add to the offered price 6 percent of the cost of any foreign construction material proposed for exception from the requirements of the Buy American Act based on the unreasonable cost of domestic construction materials. In the case of a tie, the