

**25.504-2**

**48 CFR Ch. 1 (10-1-10 Edition)**

Offer A .....	\$11,000	Domestic end product, small business
Offer B .....	\$10,700	Domestic end product, small business
Offer C .....	\$10,200	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 Act applies. 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 (see 25.502(c)(4)). After ap-

plying the 12 percent factor, the evaluated price of Offer C is \$11,424. Award on Offer B at \$10,700 (see 25.502(c)(4)(ii)).

[64 FR 72419, Dec. 27, 1999, as amended at 67 FR 21535, Apr. 30, 2002]

**25.504-2 WTO GPA/Caribbean Basin Trade Initiative/FTAs.**

*Example 1.*

Offer A .....	304,000	U.S.-made end product (not domestic).
Offer B .....	303,000	U.S.-made end product (domestic), small business.
Offer C .....	300,000	Eligible product.
Offer D .....	295,000	Noneligible product (not U.S.-made).

*Analysis:* Eliminate Offer D because the acquisition is covered by the WTO GPA and there is an offer of a U.S.-made or an eligible product (see 25.502(b)(1)). If the agency gives the same consideration given eligible offers to offers of U.S.-made end products that are not domestic offers, it is unnecessary to determine if U.S.-made end products are domestic (large or small business). No further analysis is necessary. Award on the low remaining offer, Offer C (see 25.502(b)(2)).

[69 FR 77875, Dec. 28, 2004, as amended at 75 FR 38690, July 2, 2010]

**25.504-3 FTA/Israeli Trade Act.**

(a) *Example 1.*

Offer A .....	\$105,000	Domestic end product, small business.
Offer B .....	100,000	Eligible product.

*Analysis:* Since the low offer is an eligible offer, award on the low offer (see 25.502(c)(1)).

(b) *Example 2.*

Offer A .....	\$105,000	Eligible product.
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Offer B ..... 103,000 Noneligible product.

*Analysis:* Since the acquisition is not covered by the WTO GPA, the contracting officer can consider the noneligible offer. Since no domestic offer was received, make a nonavailability determination and award on Offer B (see 25.502(c)(2)).

(c) *Example 3.*

Offer A .....	\$105,000	Domestic end product, large business.
Offer B .....	103,000	Eligible product.
Offer C .....	100,000	Noneligible product.

*Analysis:* Since the acquisition is not covered by the WTO GPA, the contracting officer can consider the noneligible offer. Because the eligible offer (Offer B) is lower than the domestic offer (Offer A), no evaluation factor applies to the low offer (Offer C). Award on the low offer (see 25.502(c)(3)).

[69 FR 77875, Dec. 28, 2004]

**25.504-4 Group award basis.**

(a) *Example 1.*

Item	Offers		
	A	B	C
1 .....	DO = \$55,000	EL = \$56,000	NEL = \$50,000
2 .....	NEL = 13,000	EL = 10,000	EL = 13,000
3 .....	NEL = 11,500	DO = 12,000	DO = 10,000

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Item	Offers		
	A	B	C
4 .....	NEL = 24,000	EL = 28,000	NEL = 22,000
5 .....	DO = 18,000	NEL = 10,000	DO = 14,000
	121,500	116,000	109,000

Key: DO = Domestic end product; EL = Eligible product; NEL = Noneligible product.

*Problem:* Offeror C specifies all-or-none award. Assume all offerors are large businesses. The acquisition is not covered by the WTO GPA .

*Analysis:* (see 25.503)

*STEP 1:* Evaluate Offers A & B before considering Offer C and determine which offer has the lowest evaluated cost for each line item (the tentative award pattern):

*Item 1:* Low offer A is domestic; select A.

*Item 2:* Low offer B is eligible; do not apply factor; select B.

*Item 3:* Low offer A is noneligible and Offer B is a domestic offer. Apply a 6 percent factor to Offer A. The evaluated price of Offer A is higher than Offer B; select B.

*Item 4:* Low offer A is noneligible. Since neither offer is a domestic offer, no evaluation factor applies; select A.

*Item 5:* Low offer B is noneligible; apply a 6 percent factor to Offer B. Offer A is still higher than Offer B; select B.

*STEP 2:* Evaluate Offer C against the tentative award pattern for Offers A and B:

Item	Offers		
	Low offer	Tentative award pattern from A and B	C
1 .....	A	DO=\$55,000	*NEL=\$53,000
2 .....	B	EL=10,000	EL=13,000
3 .....	B	DO=12,000	DO=10,000
4 .....	A	NEL=24,000	NEL=22,000
5 .....	B	*NEL=10,600	DO=14,000
		111,600	112,000

\* Offer + 6 percent.

On a line item basis, apply a factor to any noneligible offer if the other offer for that line item is domestic.

For Item 1, apply a factor to Offer C because Offer A is domestic and the acquisition was not covered by the WTO GPA . The evaluated price of Offer C, Item 1, becomes \$53,000 (\$50,000 plus 6 percent). Apply a factor to Offer B, Item 5, because it is a noneligible product and Offer C is domestic. The evaluated price of Offer B is \$10,600 (\$10,000 plus 6

percent). Evaluate the remaining items without applying a factor.

*STEP 3:* The tentative unrestricted award pattern from Offers A and B is lower than the evaluated price of Offer C. Award the combination of Offers A and B. Note that if Offer C had not specified all-or-none award, award would be made on Offer C for line items 1, 3, and 4, totaling an award of \$82,000.

(b) *Example 2.*

Item	Offers		
	A	B	C
1 .....	DO=\$50,000	EL=\$50,500	NEL=\$50,000
2 .....	NEL=10,300	NEL=10,000	EL=10,200
3 .....	EL=20,400	EL=21,000	NEL=20,200
4 .....	DO=10,500	DO=10,300	DO=10,400
	91,200	91,800	90,800

*Problem:* The solicitation specifies award on a group basis. Assume the Buy American Act applies and the acquisition cannot be set aside for small business concerns. All offerors are large businesses.

*Analysis:* (see 25.503(c))

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

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	Domestic [percent]	Determination
A	60,500/91,200=66.3%	Domestic
B	10,300/91,800=11.2%	Foreign
C	10,400/90,800=11.5%	Foreign

*STEP 2:* Determine whether foreign offers are eligible or noneligible offers (see 25.503(c)(2)):

	Domestic + eligible [percent]	Determination
A	N/A .....	Domestic
B	81,800/91,800=89.1%	Eligible
C	20,600/90,800=22.7%	Noneligible

*STEP 3:* Determine whether to apply an evaluation factor (see 25.503(c)(3)). The low offer (Offer C) is a foreign offer. There is no eligible offer lower than the domestic offer. Therefore, apply the factor to the low offer. Addition of the 6 percent factor (use 12 percent if Offer A is a small business) to Offer C yields an evaluated price of \$96,248 (\$90,800 + 6 percent). Award on Offer A (see 25.502(c)(4)(ii)). Note that, if Offer A were greater than Offer B, an evaluation factor would not be applied and award would be on Offer C (see 25.502(c)(3)).

[64 FR 72419, Dec. 27, 1999; 65 FR 4633, Jan. 31, 2000; 69 FR 77875, Dec. 28, 2004]

**Subpart 25.6—American Recovery and Reinvestment Act—Buy American Act—Construction Materials**

SOURCE: 74 FR 14626, Mar. 31, 2009, unless otherwise noted.

**25.600 Scope of subpart.**

This subpart implements section 1605 in Division A of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) with regard to manufactured construction material and the Buy American Act with regard to unmanufactured construction material. It applies to construction projects that use funds appropriated or otherwise provided by the Recovery Act.

[75 FR 53165, Aug. 30, 2010]

**25.601 Definitions.**

As used in this subpart—

*Domestic construction material* means the following:

(1) An unmanufactured construction material mined or produced in the

United States. (The Buy American Act applies.)

(2) A manufactured construction material that is manufactured in the United States and, if the construction material consists wholly or predominantly of iron or steel, the iron or steel was produced in the United States. (Section 1605 of the Recovery Act applies.)

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

*Manufactured construction material* means any construction material that is not unmanufactured construction material.

*Public building or public work* means a building or work, the construction, prosecution, completion, or repair of which is carried on directly or indirectly by authority of, or with funds of, a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency (see 22.401). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

*Recovery Act designated country* means a World Trade Organization Government Procurement Agreement country, a Free Trade Agreement country, or a least developed country.

*Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

*Unmanufactured construction material* means raw material brought to the construction site for incorporation into the building or work that has not been—

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

[74 FR 14626, Mar. 31, 2009, as amended at 75 FR 53165, Aug. 30, 2010]