

Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less

than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.

(d) *Data.* To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON

Construction material description	Unit of measure	Quantity	Price (dollars) ¹
Item 1:			
Foreign construction material
Domestic construction material
Item 2:			
Foreign construction material
Domestic construction material

¹Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).

List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary. Include other applicable supporting information.

(End of clause)

Alternate I (MAR 2012). As prescribed in 25.1102(c)(3), add the following definition of “Bahrainian, Mexican, or Omani construction material” to paragraph (a) of the basic clause, and substitute the following paragraphs (b)(1) and (b)(2) for paragraphs (b)(1) and (b)(2) of the basic clause:

Bahrainian, Mexican, or Omani construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of Bahrain, Mexico, or Oman ; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain, Mexico, or Oman into a new and different construction material distinct from the materials from which it was transformed.

(b) *Construction materials.* (1) This clause implements the Buy American Act (41 U.S.C. chapter 83) by providing a preference for domestic construction material. In accordance with 41 U.S.C. 1907, the component test of the Buy American Act is waived for construction material that is a COTS item (See FAR 12.505(a)(2)). In addition, the Contracting Officer has determined that the WTO GPA and all the Free Trade Agreements except the Bahrain FTA, NAFTA, and the Oman FTA apply to this acquisition. Therefore, the Buy American Act restrictions are waived for designated country construction materials

other than Bahrainian, Mexican, or Omani construction materials.

(2) The Contractor shall use only domestic or designated country construction material other than Bahrainian, Mexican, or Omani construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

[64 FR 72438, Dec. 27, 1999]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §52.225-11, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

52.225-12 Notice of Buy American Act Requirement—Construction Materials Under Trade Agreements.

As prescribed in 25.1102(d)(1), insert the following provision:

NOTICE OF BUY AMERICAN ACT REQUIREMENT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (FEB 2009)

(a) *Definitions.* “Commercially available off-the-shelf (COTS) item,” “construction material,” “designated country construction material,” “domestic construction material,” and “foreign construction material,” as used in this provision, are defined in the clause of this solicitation entitled “Buy American Act—Construction Materials Under Trade Agreements” (Federal Acquisition Regulation (FAR) clause 52.225-11).

(b) *Requests for determination of inapplicability.* An offeror requesting a determination

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regarding the inapplicability of the Buy American Act should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225-11 in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) *Evaluation of offers.* (1) The Government will evaluate an offer requesting exception to the requirements of the Buy American Act, based on claimed unreasonable cost of domestic construction materials, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(4)(i) of FAR clause 52.225-11.

(2) If evaluation results in a tie between an offeror that requested the substitution of foreign construction material based on unreasonable cost and an offeror that did not request an exception, the Contracting Officer will award to the offeror that did not request an exception based on unreasonable cost.

(d) *Alternate offers.* (1) When an offer includes foreign construction material, other than designated country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225-11, the offeror also may submit an alternate offer based on use of equivalent domestic or designated country construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225-11 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225-11 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or designated country construction material, and the offeror shall be required to furnish such domestic or designated country construction material. An offer based on use of the foreign construction material for which an exception was requested—

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

(End of provision)

Alternate I (MAY 2002). As prescribed in 25.1102(d)(2), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) *Requests for determination of inapplicability.* An offeror requesting a determination regarding the inapplicability of the Buy American Act shall submit the request with its offer, including the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225-11.

Alternate II “(JUN 2009)”. As prescribed in 25.1102(d)(3), add the definition of “Bahrainian, Mexican, or Omani construction material” to paragraph (a) and substitute the following paragraph (d) for paragraph (d) of the basic provision:

(d) *Alternate offers.* (1) When an offer includes foreign construction material, except foreign construction material from a designated country other than Bahrain, Mexico, or Oman that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225-11, the offeror also may submit an alternate offer based on use of equivalent domestic or designated country construction material other than Bahrainian, Mexican, or Omani construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225-11 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225-11 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or designated country construction material other than Bahrainian, Mexican, or Omani construction material. An offer based on use of the foreign construction material for which an exception was requested—

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

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(ii) May be accepted if revised during negotiations.

[64 FR 72440, Dec. 27, 1999, as amended at 65 FR 36027, June 6, 2000; 67 FR 21537, Apr. 30, 2002; 69 FR 1057, Jan. 7, 2004; 69 FR 77878, Dec. 28, 2004; 71 FR 220, Jan. 3, 2006; 71 FR 20308, Apr. 19, 2006; 71 FR 36938, June 28, 2006; 71 FR 67778, Nov. 22, 2006; 72 FR 46359, Aug. 17, 2007; 74 FR 2724, Jan. 15, 2009; 74 FR 28429, June 15, 2009]

52.225-13 Restrictions on Certain Foreign Purchases.

As prescribed in 25.1103(a), insert the following clause:

RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)

(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn> More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR chapter V and/or on OFAC's Web site at <http://www.treas.gov/offices/enforcement/ofac>.

(c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

(End of clause)

[64 FR 72440, Dec. 27, 1999, as amended at 65 FR 36028, June 6, 2000; 68 FR 28086, May 22, 2003; 68 FR 56686, Oct. 1, 2003; 68 FR 69259, Dec. 11, 2003; 69 FR 1618, Jan. 9, 2004; 70 FR 11764, Mar. 9, 2005; 70 FR 18959, Apr. 11, 2005; 71 FR 225, Jan. 3, 2006; 73 FR 33640, June 12, 2008]

52.225-14 Inconsistency between English Version and Translation of Contract.

As prescribed in 25.1103(b), insert the following clause:

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INCONSISTENCY BETWEEN ENGLISH VERSION AND TRANSLATION OF CONTRACT (FEB 2000)

In the event of inconsistency between any terms of this contract and any translation into another language, the English language meaning shall control.

(End of clause)

[64 FR 72440, Dec. 27, 1999]

52.225-15—52.225-16 [Reserved]

52.225-17 Evaluation of Foreign Currency Offers.

As prescribed in 25.1103(c), insert the following provision:

EVALUATION OF FOREIGN CURRENCY OFFERS (FEB 2000)

If the Government receives offers in more than one currency, the Government will evaluate offers by converting the foreign currency to United States currency using [*Contracting Officer to insert source of rate*] in effect as follows:

(a) For acquisitions conducted using sealed bidding procedures, on the date of bid opening.

(b) For acquisitions conducted using negotiation procedures—

(1) On the date specified for receipt of offers, if award is based on initial offers; otherwise

(2) On the date specified for receipt of proposal revisions.

(End of provision)

[64 FR 72441, Dec. 27, 1999, as amended at 72 FR 63090, Nov. 7, 2007]

52.225-18 Place of Manufacture.

As prescribed in 25.1101(f), insert the following solicitation provision:

PLACE OF MANUFACTURE (SEP 2006)

(a) *Definitions.* As used in this clause—
Manufactured end product means any end product in Federal Supply Classes (FSC) 1000-9999, except—

(1) FSC 5510, Lumber and Related Basic Wood Materials;

(2) Federal Supply Group (FSG) 87, Agricultural Supplies;

(3) FSG 88, Live Animals;

(4) FSG 89, Food and Related Consumables;

(5) FSC 9410, Crude Grades of Plant Materials;

(6) FSC 9430, Miscellaneous Crude Animal Products, Inedible;

(7) FSC 9440, Miscellaneous Crude Agricultural and Forestry Products;

(8) FSC 9610, Ores;