

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

9. Section 52.225–X is added to read as follows:

**52.225–X Notice of Buy American Act requirement—construction materials.**

As prescribed in 25.207(a), insert the following provision:

**Notice of Buy American Act Requirement—Construction Materials (Date)**

(a) Offerors are required to comply with the requirements of FAR clause 52.225–5, Buy American Act—Construction Materials, of this solicitation. The terms “construction material” and “domestic construction material” as used in this provision, have the meanings set forth in FAR clause 52.225–5(a), Definitions.

(b) Offerors should request an exception to the Buy American Act in time to allow determination before submission of offers. For evaluation of a request for an exception to the requirements of the Buy American Act prior to bid opening, the information and applicable supporting data required by FAR clause 52.225–5(c) and (d) shall be included in the request. If a request has not been made before the time set for receipt of offers or a response has not been received to a request made prior to receipt of offers, the information and supporting data shall be included in the offer.

(c) *Evaluation of offers.* (1) For evaluation of offers, (unless agency regulations specify a higher percentage) the Government will add to the offer price 6 percent of the cost of any foreign construction material proposed for exception from the requirements of the Buy American Act based on claimed unreasonable cost of domestic construction materials.

(2) If the evaluation of offers results in a tie between an offer including foreign construction material, as evaluated, and an offer including solely domestic material, award shall be made on the offer including solely domestic material.

(3) This procedure does not apply to foreign construction material whose use is excepted by the Government under FAR clause 52.225–5(b)(2) of the solicitation.

(d) *Alternate offerors.* (1) When an offer includes foreign construction material, offerors also may submit alternate offers based on use of domestic construction material.

(2) If alternate offers are submitted, a separate SF 1442 shall be submitted for each alternate offer, and a separate price comparison table prepared in accordance

with FAR clause 52.225–5(c) and (d) shall be submitted for each offer that is based on the use of any foreign construction material.

(3) If a particular exception requested under FAR clause 52.225–5(c), is not approved—

(i) The Government will evaluate only offers based on use of the equivalent domestic construction material, and the offeror shall be required to furnish such domestic construction material;

(ii) In sealed bid procurements, any offer based on use of that particular foreign construction material must be rejected as nonresponsive; and

(iii) In negotiated procurements, any offer based on use of that particular foreign construction material may not be accepted unless revised during negotiations. (End of provision)

10. Section 52.225–5 is amended by revising the introductory paragraph; revising paragraph (a) introductory text; by removing the phrase “as used in this clause” from the definitions of “Components”, “Construction materials” and “Domestic construction materials”; by revising paragraph (b); and adding paragraphs (c) and (d) to read as follows:

**52.225–5 Buy American Act—construction materials.**

As prescribed in 25.207(b), insert the following clause:

**Buy American Act—Construction Materials (Date)**

(a) Definitions. As used in this clause

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(b)(1) The Buy American Act (41 U.S.C. 10(a)-(10(d)) requires that only domestic construction material be used in performing this contract, except as provided in subparagraphs (b)(2) or (b)(3) of this clause.

(2) This requirement does not apply to the excepted construction material or components listed by the Government below:

(list applicable accepted materials or indicate “none”.)

(3) Other foreign construction material may be used if the Government determines that—

(i) The cost would be unreasonable (the cost of a particular domestic construction material shall be determined to be unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent, unless the agency head determines a higher percentage to be appropriate);

(ii) The use of a particular domestic construction material would be impracticable; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(4) The Contractor agrees that only domestic construction material will be used by the Contractor, subcontractors, material men, and suppliers in the performance of this contract, except for foreign construction materials, if any—

(i) Listed in paragraph (b)(2) of this clause; or

(ii) Proposed by the Contractor and approved by the Government in accordance with paragraphs (c) and (d) of this clause.

(c) *Request for exceptions.* (1) Contractors proposing to use foreign construction material shall provide adequate information for Government evaluation of the request for exception to the Buy American Act. Each submission shall include a description of the foreign and domestic construction materials, including unit of measure, quantity, prices and time of delivery or availability, location of the construction project, name and address of the proposed contractor, and a detailed justification of the reason for use of foreign materials cited in accordance with subparagraph (b)(3) of this clause. A submission based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause. The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(2) If an exception to the Buy American Act is granted after contract award, the contract shall be modified to allow use of the foreign construction material, and adequate consideration shall be negotiated. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration shall not be less than the differential established in subparagraph (b)(3)(i) of this clause.

(3) If a request for an exception to the Buy American Act is not granted, the use of that particular foreign construction material will be a failure to comply with the Act.

(d) For evaluation of requests under paragraph (c) of this clause, the following information and any applicable supporting data based on the canvas of suppliers shall be included in the request.

**FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON**

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