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25.001 General.

(a) 41 U.S.C. chapter 83, Buy American—

(1) Restricts the purchase of supplies, that are not domestic end products, for use within the United States. A foreign end product may be purchased if the contracting officer determines that the price of the lowest domestic offer is unreasonable or if another exception applies (see subpart 25.1); and

(2) Requires, with some exceptions, the use of only domestic construction materials in contracts for construction in the United States (see subpart 25.2).

(b) The restrictions in the Buy American statute are not applicable in acquisitions subject to certain trade agreements (see subpart 25.4). In these acquisitions, end products and construction materials from certain countries receive nondiscriminatory treatment in evaluation with domestic offers. Generally, the dollar value of the acquisition determines which of the trade agreements applies. Exceptions to the applicability of the trade agreements are described in subpart 25.4.

(c) The test to determine the country of origin for an end product under the Buy American statute (see the “domestic end product” definition in 25.003) is different from the test to determine the country of origin for an end product under the trade agreements (see the various country “end product” definitions in 25.003), or the criteria for the representation on end products manufactured outside the United States (see 52.225-18).

(1) The Buy American statute uses a two-part test to define a “domestic end product” or “domestic construction material” (manufactured in the United States and a domestic content test). The domestic content test has been waived for acquisition of commercially available off-the-shelf (COTS) items, except a product that consists wholly or predominantly of iron or steel or a combination of both (excluding COTS fasteners) (see 25.101(a) and 25.201(b)).

(2) Under the trade agreements, the test to determine country of origin is “substantial transformation” (*i.e.*, transforming an article into a new and different article of commerce, with a name, character, or use distinct from the original article).

(3) For the representation at 52.225-18, the only criterion is whether the place of manufacture of an end product is in the United States or outside the United States, without regard to the origin of the components.

25.002 [Reserved]

25.003 Definitions.

As used in this part—

Caribbean Basin country means any of the following countries: Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago.

Caribbean Basin country end product —

(1) Means an article that—

(i)

(A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(B) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed; and

(ii) Is not excluded from duty-free treatment for Caribbean countries under 19 U.S.C. 2703(b).

(A) For this reason, the following articles are not Caribbean Basin country end products:

(1) Tuna, prepared or preserved in any manner in airtight containers.

(2) Petroleum, or any product derived from petroleum.

(3) Watches and watch parts (including cases, bracelets, and straps) of whatever type including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Harmonized Tariff Schedule of the United States (HTSUS) column 2 rates of duty apply (*i.e.*, Afghanistan, Cuba, Laos, North Korea, and Vietnam).

(4) Certain of the following: textiles and apparel articles; footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel; or handloomed, handmade, and folklore articles.

(B) Access to the HTSUS to determine duty-free status of articles of the types listed in paragraph (1)(ii)(A)(4) of this definition is available via the Internet at <https://usitc.gov/tata/hts/index.htm>. In particular, see the following:

(1) General Note 3(c), Products Eligible for Special Tariff treatment.

(2) General Note 17, Products of Countries Designated as Beneficiary Countries under the United States-Caribbean Basin Trade Partnership Act of 2000.

(3) Section XXII, Chapter 98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note 7(b).

(4) Section XXII, Chapter 98, Subchapter XX, Goods Eligible for Special Tariff Benefits under the United States-Caribbean Basin Trade Partnership Act; and

(2) Refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the acquisition, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

Civil aircraft and related articles means—

(1) All aircraft other than aircraft to be purchased for use by the Department of Defense or the U.S. Coast Guard;

(2) The engines (and parts and components for incorporation into the engines) of these aircraft;

(3) Any other parts, components, and subassemblies for incorporation into the aircraft; and

(4) Any ground flight simulators, and parts and components of these simulators, for use with respect to the aircraft, whether to be used as original or replacement equipment in the manufacture, repair, maintenance, rebuilding, modification, or conversion of the aircraft and without regard to whether the aircraft or articles receive duty-free treatment under section 601(a)(2) of the Trade Agreements Act.

Component means an article, material, or supply incorporated directly into an end product or construction material.

Construction material means an article, material, or supply brought to the construction site by a contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

Cost of components means—

(1) For components purchased by the contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product or construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

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.

Designated country means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, North Macedonia, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as “the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu” (Chinese Taipei)), Ukraine, or United Kingdom);

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

Designated country end product means a WTO GPA country end product, an FTA country end product, a least developed country end product, or a Caribbean Basin country end product.

Domestic construction material means—

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) 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 (unless an alternate percentage is established for a contract in accordance with FAR 25.201(c)). Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

(B) The construction material is a commercially available off-the-shelf (COTS) item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of foreign iron and steel constitutes less than 5 percent of the cost of all the components used in such construction material. The cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the construction material and a good faith estimate of the cost of all foreign iron or steel components excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of “cost of components” in this section.

Domestic end product means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured end product mined or produced in the United States;

(ii) An end product manufactured in the United States, if—

(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 (unless an alternate percentage is established for a contract in accordance with FAR 25.101(d)). Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of foreign iron and steel constitutes less than 5 percent of the cost of all the components used in the end product. The cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the end product and a good faith estimate of the cost of all foreign iron or steel components excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the definition of “cost of components” in this section.

Domestic offer means an offer of a domestic end product. When the solicitation specifies that award will be made on a group of line items, a domestic offer means an offer where the proposed price of the domestic end products exceeds 50 percent of the total proposed price of the group.

Eligible offer means an offer of an eligible product. When the solicitation specifies that award will be made on a group of line items, an eligible offer means a foreign offer where the combined proposed price of the eligible products and the domestic end products exceeds 50 percent of the total proposed price of the group.

Eligible product means a foreign end product, construction material, or service that, due to applicability of a trade agreement to a particular acquisition, is not subject to discriminatory treatment.

End product means those articles, materials, and supplies to be acquired for public use.

Fastener means a hardware device that mechanically joins or affixes two or more objects together. Examples of fasteners are nuts, bolts, pins, rivets, nails, clips, and screws.

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

Foreign contractor means a contractor or subcontractor organized or existing under the laws of a country other than the United States.

Foreign end product means an end product other than a domestic end product.

Foreign iron and steel means iron or steel products not produced in the United States. Produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, from the initial melting stage through the application of coatings, except metallurgical processes involving refinement of steel additives. The origin of the elements of the iron or steel is not relevant to the determination of whether it is domestic or foreign.

Foreign offer means any offer other than a domestic offer.

Free Trade Agreement country means Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore.

Free Trade Agreement country end product means an article that—

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an FTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

Israeli end product means an article that—

- (1) Is wholly the growth, product, or manufacture of Israel; or
- (2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Israel into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

Least developed country means any of the following countries: Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia.

Least developed country end product means an article that—

- (1) Is wholly the growth, product, or manufacture of a least developed country; or
- (2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

Noneligible offer means an offer of a noneligible product.

Noneligible product means a foreign end product that is not an eligible product.

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

United States means the 50 States, the District of Columbia, and outlying areas.

U.S.-made end product means an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

World Trade Organization Government Procurement Agreement (WTO GPA) country means any of the following countries: Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, North Macedonia, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, Ukraine, or United Kingdom.

WTO GPA country end product means an article that—

- (1) Is wholly the growth, product, or manufacture of a WTO GPA country; or
- (2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

Subpart 25.1 —Buy American—Supplies

25.100 Scope of subpart.

This subpart—

(a) Implements—

- (1) 41 U.S.C. chapter 83, Buy American;
- (2) Executive Order 10582, December 17, 1954;
- (3) Executive Order 13881, July 15, 2019;
- (4) Executive Order 14005, January 25, 2021; and

(5) Waiver of the domestic content test of the Buy American statute for acquisition of commercially available off-the-shelf (COTS) items in accordance with 41 U.S.C. 1907, but see 25.101(a)(2)(ii).

(b) Applies to supplies acquired for use in the United States, including supplies acquired under contracts set aside for small business concerns, if—

(1) The supply contract exceeds the micro-purchase threshold; or

(2) The supply portion of a contract for services that involves the furnishing of supplies (e.g., lease) exceeds the micro-purchase threshold.

25.101 General.

(a) The Buy American statute restricts the purchase of supplies that are not domestic end products. For manufactured end products, the Buy American statute, E.O. 13881, and E.O. 14005 use a two-part test to define a domestic end product.

(1) The article must be manufactured in the United States; and

(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 must exceed 60 percent of the cost of all the components, except that the percentage is 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029. But see paragraph (d) of this section. In accordance with 41 U.S.C. 1907, this domestic content test of the Buy American statute has been waived for acquisitions of COTS items (but see paragraph (a)(2)(ii) of this section).

(ii) 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 used in the end product (see the definition of “foreign iron and steel” at 25.003). The cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the end product and a good faith estimate of the cost of all foreign iron or steel components excluding COTS fasteners. This domestic content test of the Buy American statute has not been waived for acquisitions of COTS items in this category, except for COTS fasteners.

(b) The Buy American statute applies to small business set-asides. A manufactured product of a small business concern is a U.S.-made end product, but is not a domestic end product unless it meets the domestic content test in paragraph (a)(2) of this section.

(c) Exceptions that allow the purchase of a foreign end product are listed at 25.103. The unreasonable cost exception is implemented through the use of an evaluation factor applied to low foreign offers that are not eligible offers. The evaluation factor is not used to provide a preference for one foreign offer over another.

(d)

(1) A contract with a period of performance that spans the schedule of domestic content threshold increases specified in paragraph (a)(2)(i) of this section must comply with each increased threshold for the items in the year of delivery, unless the senior procurement executive of the contracting agency allows for application of an alternate domestic content test for that contract under which the domestic content threshold in effect at time of contract award will apply to the entire period of performance for the contract. This authority is not delegable. The senior procurement executive must consult the Office of Management and Budget's Made in America Office (MIAO) before allowing the use of the alternate domestic content test.

(2) When a senior procurement executive allows for application of an alternate domestic content test for a contract—

(i) See 25.601(a)(1)(ii) or 25.601(b)(1)(v) for use of the appropriate Alternate clause to reflect the domestic content threshold that will apply to the entire period of performance for that contract; and

(ii) Use the fill-in at 52.213-4(b)(1)(xviii)(B) instead of including 52.225-1 Alternate I when using 52.213-4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services).

25.102 Policy.

Except as provided in 25.103, acquire only domestic end products for public use inside the United States.

25.103 Exceptions.

When one of the following exceptions applies, the contracting officer may acquire a foreign end product without regard to the restrictions of the Buy American statute:

(a) *Public interest.* The head of the agency may make a determination that domestic preference would be inconsistent with the public interest. This exception applies when an agency has an agreement with a foreign government that provides a blanket exception to the Buy American statute.

(b) *Nonavailability.* The Buy American statute does not apply with respect to articles, materials, or supplies if articles, materials, or supplies of the class or kind to be acquired, either as end items or components, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

(1) *Class nonavailability determinations.*

(i) A nonavailability determination has been made for the articles listed in 25.104. This determination does not necessarily mean that there is no domestic source for the listed items, but that domestic sources can only meet 50 percent or less of total U.S. Government and nongovernment demand.

(ii) Before acquisition of an article on the list, the procuring agency is responsible to conduct market research appropriate to the circumstances, including seeking of domestic sources. This applies to acquisition of an article as—

(A) An end product; or

(B) A significant component (valued at more than 50 percent of the value of all the components).

(iii) The determination in paragraph (b)(1)(i) of this section does not apply if the contracting officer learns at any time before the time designated for receipt of bids in sealed bidding or final offers in negotiation that an article on the list is available domestically in sufficient and reasonably available commercial quantities of a satisfactory quality to meet the requirements of the solicitation. The contracting officer must—

(A) Ensure that the appropriate Buy American statute provision and clause are included in the solicitation (see 25.601(a), 25.601(b), or 25.602);

(B) Specify in the solicitation that the article is available domestically and that offerors and contractors may not treat foreign components of the same class or kind as domestic components; and

(C) Submit a copy of supporting documentation to your agency representative at the FAR Council, in accordance with agency procedures, for possible removal of the article from the list.

(2) Individual nonavailability determinations.

(i) The head of the contracting activity must first make a determination that an article, material, or supply is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality (i.e., individual nonavailability waiver determinations) in accordance with agency procedures. Prior to award, the agency must comply with the procedures in paragraph (b)(2)(iii) of this section. A determination is not required before January 1, 2030, if there is an offer for a foreign end product that exceeds 55 percent domestic content (see 25.106(b)(2) and 25.106(c)(2)).

(ii) If the contracting officer considers that the nonavailability of an article is likely to affect future acquisitions, the contracting officer may submit a copy of the determination and supporting documentation to its agency representative at the FAR Council, in accordance with agency procedures, for possible addition to the list in 25.104.

(iii) Contracting officers must submit a proposed individual nonavailability waiver for review and posting to MadeinAmerica.gov using the digital waiver portal by the MIAO, unless an exception applies. The contracting officer must not make an award until the contracting officer has received confirmation that the MIAO has completed its review of the proposed nonavailability waiver determination; MIAO has waived the requirement for a review; or an exception to posting the proposed nonavailability waiver determination applies. Agencies will issue final waivers only after completing coordination with the Office of Management and Budget (OMB).

(A) Contracting officers must post a proposed individual nonavailability waiver determination to MadeinAmerica.gov by inputting the required information into a digital waiver. The digital waiver requires the standardized nonavailability waiver determination information listed in the OMB guidance, and additional information, such as the proposed duration of the nonavailability waiver determination and whether the waiver determination is for an indefinite-delivery type contract (i.e., a “multi-procurement waiver” in the digital form) or for a contract that is not an indefinite-delivery type contract (i.e., an “individual waiver” in the digital form).

(B) Unless waived, all proposed nonavailability waiver determination information posted using the digital waiver will be reviewed by MIAO. Certain information from the nonavailability waiver determination will be available to the public at MadeinAmerica.gov immediately upon posting the proposed waiver and prior to review by MIAO. The digital waiver identifies for the contracting officer those fields that will be made public and those fields that are not public because they are for government use only. Contracting officers must not enter source selection information (see 2.101 and 3.104) in any field. Contracting officers must not enter in the public fields any information that cannot be made public.

(C) MIAO plans to complete the majority of nonavailability waiver determination reviews within 15 business days from submission to OMB. Waivers involving certain small dollar transactions (e.g., over the micro-purchase threshold but less than \$25,000), will generally be reviewed by MIAO rapidly but waivers for larger and more complex acquisitions, or waivers implicating critical supply chains, may take the full 15 business days. Contracting officers should consider the timeframes above for acquisition planning.

(D) Contracting officers are not required to post proposed individual nonavailability waiver determinations to MadeinAmerica.gov prior to waiver determination issuance when–

(1) The acquisition is conducted under reduced competition due to urgency (see FAR 6.103-2 and 13.106-1(b)) or where the agency is obligated by law to act more quickly than the review procedures established in this section allow. In these instances, contracting officers must file an urgent requirement report for such waivers using information found in the digital waiver portal within 30 days of award. MIAO will make relevant information available to the public on MadeinAmerica.gov but will not make a determination on such waivers; or

(2) The acquisition is for products that have been determined to be nonavailable on a class basis and are listed in 25.104.

(c) *Unreasonable cost.* The contracting officer may determine that the cost of a domestic end product would be unreasonable, in accordance with 25.106 and subpart 25.5.

(d) *Resale.* The contracting officer may purchase foreign end products specifically for commissary resale.

(e) *Information technology that is a commercial product.* The restriction on purchasing foreign end products does not apply to the acquisition of information technology that is a commercial product, when using fiscal year 2004 or subsequent fiscal year funds (section 535(a) of Division F, Title V, Consolidated Appropriations Act, 2004, and similar sections in subsequent appropriations acts).

25.104 Nonavailable articles.

(a) The following articles have been determined to be nonavailable in accordance with 25.103(b)(1)(i):

(1) Antimony, as metal or oxide.

(2) Bamboo shoots.

(3) Bananas.

(4) Bismuth.

(5) Books, trade, text, technical, or scientific; newspapers; pamphlets; magazines; periodicals; printed briefs and films; not printed in the United States and for which domestic editions are not available.

(6) Brazil nuts, unroasted.

(7) Capers.

(8) Cashew nuts.

(9) Chestnuts.

(10) Chrome ore or chromite.

(11) Cocoa beans.

(12) Coconut and coconut meat, unsweetened, in shredded, desiccated, or similarly prepared form.

(13) Coffee, raw or green bean.

(14) Cork, wood or bark and waste.

(15) Cover glass, microscope slide.

(16) Fair linen, altar.

(17) Fibers of the following types: abaca, abace, agave, coir, flax, jute, jute burlaps, palmyra, and sisal.

- (18) Grapefruit sections, canned.
- (19) Hemp yarn.
- (20) Hog bristles for brushes.
- (21) Hyoscine, bulk.
- (22) Modacrylic fiber.
- (23) Nitroguanidine (also known as picrite).
- (24) Oranges, mandarin, canned.
- (25) Pineapple, canned.
- (26) Quartz crystals.
- (27) Rubber, crude and latex (natural).
- (28) Rutile.
- (29) Silk, raw and unmanufactured.
- (30) Spare and replacement parts for equipment of foreign manufacture, and for which domestic parts are not available.
- (31) Spices and herbs, in bulk.
- (32) Swords and scabbards.
- (33) Tapioca flour and cassava.
- (34) Tartar, crude; tartaric acid and cream of tartar in bulk.
- (35) Tea in bulk.
- (36) Tin in bars, blocks, and pigs.
- (37) Vanilla beans.
- (38) Venom, cobra.
- (39) Water chestnuts.

(b) This list will be published in the Federal Register for public comment no less frequently than once every five years.

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) -(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.

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

25.106 Determining reasonableness of cost.

(a) The contracting officer—

(1) Must use the evaluation factors in paragraphs (b) and (c) of this section unless the head of the agency makes a written determination that the use of higher factors is more appropriate. If the determination applies to all agency acquisitions, the agency evaluation factors must be published in agency regulations; and

(2) Must not apply evaluation factors to offers of eligible products if the acquisition is subject to a trade agreement under subpart 25.4.

(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 part 19).

(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 are not COTS items and 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 must —

(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) of this section 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 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, 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 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 part 19).

(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 are not COTS items and 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 must —

(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) of this section 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.

Subpart 25.2 —Buy American—Construction Materials

25.200 Scope of subpart.

(a) This subpart implements—

(1) 41 U.S.C. chapter 83, Buy American;

(2) Executive Order 10582, December 17, 1954;

(3) Executive Order 13881, July 15, 2019;

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

(5) Waiver of the domestic content test of the Buy American statute for acquisitions of commercially available off-the-shelf (COTS) items in accordance with 41 U.S.C. 1907, but see 25.201(b)(2)(ii).

(b) It applies to contracts for the construction, alteration, or repair of any public building or public work in the United States.

25.201 Policy.

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

(b) The Buy American statute restricts the purchase of construction materials that are not domestic construction materials. For manufactured construction materials, the Buy American statute, E.O. 13881, and E.O. 14005 use a two-part test to define domestic construction materials.

(1) The article must be manufactured in the United States; and

(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, but see paragraph (c) of this section. In accordance with 41 U.S.C. 1907, this domestic content test of the Buy American statute has been waived for acquisitions of COTS items (see part 12).

(ii) For construction material 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 used in such construction material (see the definition of “foreign iron and steel” at 25.003). The cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the construction material and a good faith estimate of the cost of all foreign iron or steel components excluding COTS fasteners. This domestic content test of the Buy American statute has not been

waived for acquisitions of COTS items in this category, except for COTS fasteners.

(c)

(1) A contract with a period of performance that spans the schedule of domestic content threshold increases specified in paragraph (b)(2)(i) of this section must comply with each increased threshold for the items in the year of delivery, unless the senior procurement executive of the contracting agency allows for application of an alternate domestic content test for that contract under which the domestic content threshold in effect at time of contract award will apply to the entire period of performance for the contract. This authority is not delegable. The senior procurement executive must consult the Office of Management and Budget's Made in America Office before allowing the use of the alternate domestic content test.

(2) When a senior procurement executive allows for application of an alternate domestic content test for a contract, see 25.602(a)(3) or (c)(4) for use of the appropriate Alternate clause to reflect the domestic content threshold that will apply to the entire period of performance for that contract.

25.202 Exceptions.

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

(1) *Impracticable or inconsistent with public interest.* The head of the agency may determine that application of the restrictions of the Buy American statute 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 statute.

(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 nonavailability waiver determinations of the articles listed at 25.104(a) and the procedures at 25.103(b)(1) also apply if any of those articles are acquired as construction materials. A determination is not required before January 1, 2030, if there is an offer for a foreign construction material that exceeds 55 percent domestic content (see 25.204(a)(1)(ii) and 25.204(a)(2)(ii)).

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

(4) *Information technology that is a commercial product.* The restriction on purchasing foreign construction material does not apply to the acquisition of information technology that is a commercial product, when using Fiscal Year 2004 or subsequent fiscal year funds in accordance with section 535(a) of Division F, Title V, Consolidated Appropriations Act, 2004, and similar sections in subsequent appropriations acts.

(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 \$6,708,000 or more, see subpart 25.4.

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 statute for specifically identified construction materials.

(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)

(1) *For construction material that is not a critical item and does not contain critical components.*

(i) Unless the head of the agency specifies a higher percentage, the contracting officer must 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 must 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 is not a COTS item and does not consist wholly or predominantly of iron or steel or a combination of both, if the procedures in paragraph (a)(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 must —

(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 (a)(1)(i) to the low offer.

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

(2) For construction material that is a critical item or contains critical components.

(i) The contracting officer must 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 must 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 the list of critical components and critical items.

(ii) For construction material that is not a COTS item and does not consist wholly or predominantly of iron or steel or a combination of both, if the procedures in paragraph (a)(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 must —

(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 this paragraph (a)(2) to the low offer.

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

(b) If the contracting officer awards a contract to an offeror that proposed foreign construction material not listed in the applicable clause in the solicitation (paragraph (b)(2) of 52.225-9, or paragraph (b)(3) of 52.225-11), the contracting officer must add the excepted materials to the list in the contract clause.

25.205 Postaward determinations.

(a) If a contractor requests a determination regarding the inapplicability of the Buy American statute after contract award, the contractor must explain why it could not request the determination before contract award or why the need for such determination otherwise was not reasonably foreseeable. If the contracting officer concludes that the contractor should have made the request before contract award, the contracting officer may deny the request.

(b) The contracting officer must base evaluation of any request for a determination regarding the inapplicability of the Buy American statute made after contract award on information required by paragraphs (c) and (d) of the applicable clause at 52.225-9 or 52.225-11 and/or other readily available information.

(c) If a determination, under 25.202(a), is made after contract award that an exception to the Buy American statute applies, the contracting officer must negotiate adequate consideration and modify the contract to allow use of the foreign construction material. When the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is at least the differential established in 25.202(a) or in accordance with agency procedures.

25.206 Noncompliance.

The contracting officer must—

(a) Review allegations of Buy American statute violations;

(b) Unless fraud is suspected, notify the contractor of the apparent unauthorized use of foreign construction material and request a reply, to include proposed corrective action; and

(c) If the review reveals that a contractor or subcontractor has used foreign construction material without authorization, take appropriate action, including one or more of the following:

(1) Process a determination concerning the inapplicability of the Buy American statute in accordance with 25.205.

(2) Consider requiring the removal and replacement of the unauthorized foreign construction material.

(3) If removal and replacement of foreign construction material incorporated in a building or work would be impracticable, cause undue delay, or otherwise be detrimental to the interests of the Government, the contracting officer may determine in writing that the foreign construction material need not be removed and replaced. A determination to retain foreign construction material does not constitute a determination that an exception to the Buy American statute applies, and this should be stated in the determination. Further, a determination to retain foreign construction material does not affect the Government's right to suspend or debar a contractor, subcontractor, or supplier for violation of the Buy American statute, or to exercise other contractual rights and remedies, such as reducing the contract price or terminating the contract for default.

(4) If the noncompliance is sufficiently serious, consider exercising appropriate contractual remedies, such as terminating the contract for default. Also consider preparing and forwarding a report to the agency suspending and debarring official in accordance with subpart 9.4. If the noncompliance appears to be fraudulent, refer the matter to other appropriate agency officials, such as the officer responsible for criminal investigation.

Subpart 25.3 [Reserved]

Subpart 25.4 —Trade Agreements

25.400 Scope of subpart.

(a) This subpart provides policies and procedures applicable to acquisitions that are covered by—

(1) The World Trade Organization Government Procurement Agreement (WTO GPA), as approved by Congress in the Uruguay Round Agreements Act (Pub. L. 103-465);

(2) Free Trade Agreements (FTA), consisting of—

- (i) USMCA (United States-Mexico-Canada Agreement, as approved by Congress in the United States-Mexico-Canada Agreement Implementation Act (Government Procurement Agreement applicable only to the United States and Mexico) (Pub. L. 116-113) (19 U.S.C. chapter 29 (sections 4501-4732)));
- (ii) Chile FTA (the United States-Chile Free Trade Agreement, as approved by Congress in the United States-Chile Free Trade Agreement Implementation Act (Pub. L. 108-77) (19 U.S.C. 3805 note));
- (iii) Singapore FTA (the United States-Singapore Free Trade Agreement, as approved by Congress in the United States-Singapore Free Trade Agreement Implementation Act (Pub. L. 108-78) (19 U.S.C. 3805 note));
- (iv) Australia FTA (the United States-Australia Free Trade Agreement, as approved by Congress in the United States-Australia Free Trade Agreement Implementation Act (Pub. L. 108-286) (19 U.S.C. 3805 note));
- (v) Morocco FTA (The United States—Morocco Free Trade Agreement, as approved by Congress in the United States—Morocco Free Trade Agreement Implementation Act (Pub. L. 108-302) (19 U.S.C. 3805 note));
- (vi) CAFTA-DR (The Dominican Republic-Central America-United States Free Trade Agreement, as approved by Congress in the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (Pub. L. 109-53) (19 U.S.C. 4001 note));
- (vii) Bahrain FTA (the United States-Bahrain Free Trade Agreement, as approved by Congress in the United States-Bahrain Free Trade Agreement Implementation Act (Pub. L. 109-169) (19 U.S.C. 3805 note));
- (viii) Oman FTA (the United States-Oman Free Trade Agreement, as approved by Congress in the United States-Oman Free Trade Agreement Implementation Act (Pub. L. 109-283) (19 U.S.C. 3805 note));
- (ix) Peru FTA (the United States-Peru Trade Promotion Agreement, as approved by Congress in the United States-Peru Trade Promotion Agreement Implementation Act (Pub. L. 110-138) (19 U.S.C. 3805 note));
- (x) Korea FTA (the United States-Korea Free Trade Agreement Implementation Act (Pub. L. 112-41) (19 U.S.C. 3805 note));
- (xi) Colombia FTA (the United States-Colombia Trade Promotion Agreement Implementation Act (Pub. L. 112-42) (19 U.S.C. 3805 note)); and

(xii) Panama FTA (the United States-Panama Trade Promotion Agreement Implementation Act (Pub. L. 112-43) (19 U.S.C. 3805 note));

(3) The least developed country designation made by the U.S. Trade Representative, pursuant to the Trade Agreements Act (19 U.S.C. 2511(b)(4)), in acquisitions covered by the WTO GPA;

(4) The Caribbean Basin Trade Initiative (CBTI) (determination of the U.S. Trade Representative that end products or construction material granted duty-free entry from countries designated as beneficiaries under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701, *et seq.*), with the exception of Panama, must be treated as eligible products in acquisitions covered by the WTO GPA);

(5) The Israeli Trade Act (the U.S.-Israel Free Trade Area Agreement, as approved by Congress in the United States-Israel Free Trade Area Implementation Act of 1985 (19 U.S.C. 2112 note)); or

(6) The Agreement on Trade in Civil Aircraft (U.S. Trade Representative waiver of the Buy American statute for signatories of the Agreement on Trade in Civil Aircraft, as implemented in the Trade Agreements Act of 1979 (19 U.S.C. 2513)).

(b) For application of the trade agreements that are unique to individual agencies, see agency regulations.

25.401 Exceptions.

(a) This subpart does not apply to—

(1) Acquisitions set aside for small businesses;

(2) Acquisitions of arms, ammunition, or war materials, or purchases indispensable for national security or for national defense purposes;

(3) Acquisitions of end products for resale;

(4) Acquisitions under subpart 8.2, Acquisition From AbilityOne Participating Nonprofit Agencies, and acquisitions from Federal Prison Industries, Inc., under subpart 8.3;

(5) Other acquisitions not using full and open competition, if authorized by 6.102 or 6.103, when the limitation of competition would preclude use of the procedures of this subpart; or sole source acquisitions justified in accordance with 12.102; and

(6) Goods and services specifically excluded under individual trade agreements, such as exceptions negotiated by the U.S. Trade Representative for particular agencies. See the agency supplementary regulations.

(b) In the World Trade Organization Government Procurement Agreement (WTO GPA) and each FTA, there is a U.S. schedule that lists services that are excluded from that agreement in acquisitions by the United States. Acquisitions of the following services are excluded from coverage by the U.S. schedule of the WTO GPA or an FTA as indicated in this table:

25.402 General.

(a)

(1) The Trade Agreements Act (19 U.S.C. 2501, *et seq.*) provides the authority for the President to waive the Buy American statute and other discriminatory provisions for eligible products from countries that have signed an international trade agreement with the United States, or that meet certain other criteria, such as being a least developed country. The President has delegated this waiver authority to the U.S. Trade Representative. In acquisitions covered by the WTO GPA, Free Trade Agreements, or the Israeli Trade Act, the U.S. Trade Representative has waived the Buy American statute and other discriminatory provisions for eligible products. Offers of eligible products receive equal consideration with domestic offers.

(2) The contracting officer must determine the origin of services by the country in which the firm providing the services is established. See subpart 25.5 for evaluation procedures for supply contracts covered by trade agreements.

(b) The value of the acquisition is a determining factor in the applicability of trade agreements. Most of these dollar thresholds are subject to revision by the U.S. Trade Representative approximately every 2 years. The various thresholds are summarized as follows:

25.403 World Trade Organization Government Procurement Agreement and Free Trade Agreements.

(a) Eligible products from WTO GPA and FTA countries are entitled to the nondiscriminatory treatment specified in 25.402(a)(1). The WTO GPA and FTAs specify procurement procedures designed to ensure fairness (see 25.408).

(b) *Thresholds.*

(1) To determine whether the acquisition of products by lease, rental, or lease-purchase contract (including lease-to-ownership, or lease-with-option-to purchase) is covered by the WTO GPA or an FTA, calculate the estimated acquisition value as follows:

(i) If a fixed-term contract of 12 months or less is contemplated, use the total estimated value of the acquisition.

(ii) If a fixed-term contract of more than 12 months is contemplated, use the total estimated value of the acquisition plus the estimated residual value of the leased equipment at the conclusion of the contemplated term of the contract.

(iii) If an indefinite-term contract is contemplated, use the estimated monthly payment multiplied by the total number of months that ordering would be possible under the proposed contract, *i.e.*, the initial ordering period plus any optional ordering periods.

(iv) If there is any doubt as to the contemplated term of the contract, use the estimated monthly payment multiplied by 48.

(2) The estimated value includes the value of all options.

(3) If, in any 12-month period, recurring or multiple awards for the same type of product or products are anticipated, use the total estimated value of these projected awards to determine whether the WTO GPA or an FTA applies. Do not divide any acquisition with the intent of reducing the estimated value of the acquisition below the dollar threshold of the WTO GPA or an FTA.

(c) *Purchase restriction.* Under the Trade Agreements Act (19 U.S.C. 2512), in acquisitions covered by the WTO GPA, acquire only U.S.-made or designated country end products or U.S. or designated country services, unless offers for such end products or services are either not received or are insufficient to fulfill the requirements. This purchase restriction does not apply below the WTO GPA threshold for supplies and services, even if the acquisition is covered by an FTA.

25.404 Least developed countries.

For acquisitions covered by the WTO GPA, least developed country end products, construction material, and services must be treated as eligible products.

25.405 Caribbean Basin Trade Initiative.

Under the Caribbean Basin Trade Initiative, the United States Trade Representative has determined that, for acquisitions covered by the WTO GPA, Caribbean Basin country end products, construction material, and services must be treated as eligible products. In accordance with Section 201 (a)(3) of the Dominican Republic—Central America—United States Free Trade Implementation Act (Pub. L. 109-53) (19 U.S.C. 4031), when the CAFTA-DR agreement enters into force with respect to a country, that country is no longer designated as a beneficiary country for purposes of the Caribbean Basin Economic Recovery Act, and is therefore no longer included in the definition of “Caribbean Basin country” for purposes of the Caribbean Basin Trade Initiative.

25.406 Israeli Trade Act.

Acquisitions of supplies by most agencies are covered by the Israeli Trade Act, if the estimated value of the acquisition is \$50,000 or more but does not exceed the WTO GPA threshold for supplies (see 25.402(b)). Agencies other than the Department of Defense, the Department of Energy, the Department of Transportation, the Bureau of Reclamation of the Department of the Interior, the Federal Housing Finance Board, and the Office of Thrift Supervision must evaluate offers of Israeli end products without regard to the restrictions of the Buy American statute. The Israeli Trade Act does not prohibit the purchase of other foreign end products. In accordance with Section 201 (a)(3) of the Dominican Republic—Central America—United States Free Trade Implementation Act (Pub. L. 109-53), when the CAFTA-DR agreement enters into force with respect to a country, that country is no longer designated as a beneficiary country for purposes of the Caribbean Basin Economic Recovery Act, and is therefore no longer included in the definition of “Caribbean Basin country” for purposes of the Caribbean Basin Trade Initiative.

25.407 Agreement on Trade in Civil Aircraft.

Under the authority of Section 303 of the Trade Agreements Act, the U.S. Trade Representative has waived the Buy American statute for civil aircraft and related articles that meet the substantial transformation test of the Trade Agreements Act, from countries that are parties to the Agreement on Trade in Civil Aircraft. Those countries are Albania, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Macao China, Malta, Montenegro, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Taiwan (Chinese Taipei), and the United Kingdom.

25.408 Procedures.

(a) If the WTO GPA or an FTA applies (see 25.401), the contracting officer must—

- (1) Comply with the requirements of 5.201, Solicitation notice;
- (2) Comply with the requirements of 5.301, General;
- (3) Not include technical requirements in solicitations solely to preclude the acquisition of eligible products; and
- (4) Specify in solicitations that offerors must submit offers in the English language and in U.S. dollars (see 52.214-34, Submission of Offers in the English Language, and 52.214-35, Submission of Offers in U.S. Currency, or paragraph (c)(5) of 52.215-1, Instruction to Offerors—Competitive Acquisitions).

(b) See subpart 25.5 for evaluation procedures.

Subpart 25.5 —Evaluating Foreign Offers—Supply Contracts

25.501 General.

The contracting officer—

- (a) Must apply the evaluation procedures of this subpart to each line item of an offer unless either the offer or the solicitation specifies evaluation on a group basis (see 25.503);
- (b) May rely on the offeror's certification of end product origin when evaluating a foreign offer; and
- (c) When trade agreements are involved, must not use the Buy American statute evaluation factors prescribed in this subpart to provide a preference for one foreign offer over another foreign offer.

25.502 Application.

- (a) Unless otherwise specified in agency regulations, perform the following steps in the order presented:
 - (1) Eliminate all offers or offerors that are unacceptable for reasons other than price; e.g., nonresponsive, debarred or suspended, or a prohibited source (see part 40).
 - (2) Rank the remaining offers by price.
 - (3) If the solicitation specifies award on the basis of factors in addition to cost or price, apply the evaluation factors as specified in this section and use the evaluated

cost or price in determining the offer that represents the best value to the Government.

(b) For acquisitions covered by the WTO GPA (see subpart 25.4)—

- (1) Consider only offers of U.S.-made or designated country end products, unless no offers of such end products were received;
- (2) If the agency gives the same consideration given eligible offers to offers of U.S.-made end products that are not domestic end products, award on the low offer. Otherwise, evaluate in accordance with agency procedures; and
- (3) If there were no offers of U.S.-made or designated country end products, make a nonavailability waiver determination and award on the low offer (see 25.403(c)).

(c) For acquisitions not covered by the WTO GPA, but subject to the Buy American statute (an FTA or the Israeli Trade Act also may apply), the following applies:

- (1) If the low offer is a domestic offer or an eligible offer under an FTA or the Israeli Trade Act, award on that offer.
- (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.
 - (i) If the evaluated price of the low offer remains less than the lowest domestic offer, award on the low offer.
 - (ii) If the price of the lowest domestic offer is less than the evaluated price of the low offer, award on the lowest domestic offer.

(d) *Ties.*

- (1) If application of an evaluation factor results in a tie between a domestic offer and a foreign offer, award on the domestic offer.

(2) If no evaluation preference was applied (*i.e.*, offers afforded nondiscriminatory treatment under the Buy American statute), resolve ties between domestic and foreign offers by a witnessed drawing of lots by an impartial individual.

(3) Resolve ties between foreign offers from small business concerns (under the Buy American statute, a small business offering a manufactured article that does not meet the definition of “domestic end product” is a foreign offer) or foreign offers from a small business concern and a large business concern in accordance with 14.408-6(a).

25.503 Group offers.

(a) If the solicitation specifies that award will be made only on a group of line items or on all line items contained in the solicitation, or an offer restricts award to a group of line items or to all line items contained in the offer, reject the offer—

(1) If any part of the award would consist of prohibited end products (see part 40); or

(2) If the acquisition is covered by the WTO GPA and any part of the offer consists of items restricted in accordance with 25.403(c).

(b) If an offer restricts award to a group of line items or to all line items contained in the offer, determine for each line item whether to apply an evaluation factor.

(1) First, evaluate offers that do not specify an award restriction on a line item basis in accordance with 25.502, determining a tentative award pattern by selecting for each line item the offer with the lowest evaluated price.

(2) Evaluate an offer that specifies an award restriction against the offered prices of the tentative award pattern, applying the appropriate evaluation factor on a line item basis.

(3) Compute the total evaluated price for the tentative award pattern and the offer that specified an award restriction.

(4) Unless the total evaluated price of the offer that specified an award restriction is less than the total evaluated price of the tentative award pattern, award based on the tentative award pattern.

(c) For acquisitions not covered by the WTO GPA, if 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.

(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) For foreign offers, if the proposed price of domestic end products and eligible products exceeds 50 percent of the total proposed price of the group, evaluate the entire group as an eligible offer.

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

(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 (*i.e.*, domestic or foreign) on the basis of each line item, but determine whether to apply an evaluation factor on the basis of the group of items.

(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).

Subpart 25.6 —Solicitation Provisions and Contract Clauses

25.601 Acquisition of supplies.

The following provisions and clauses apply to the acquisition of supplies and the acquisition of services involving the furnishing of supplies.

(a)

(1)

(i) Insert the clause at 52.225-1, Buy American—Supplies, in solicitations and contracts with a value exceeding the micro-purchase threshold but not exceeding \$50,000; and in solicitations and contracts with a value exceeding

\$50,000, if none of the clauses prescribed in paragraphs (b) and (c) of this section apply, except if—

(A) The solicitation is restricted to domestic end products in accordance with 6.103;

(B) The acquisition is for supplies for use within the United States and an exception to the Buy American statute applies (e.g., public interest, or information technology that is a commercial product), other than individual nonavailability waiver determinations (see 25.103(b)(2)); or

(C) The acquisition is for supplies for use outside the United States.

(ii) The contracting officer must use the clause with its Alternate I to reflect the domestic content threshold that will apply to the entire period of performance, when the senior procurement executive allows for application of an alternate domestic content test for the contract in accordance with 25.101(d). For contracts that the contracting officer estimates will be awarded in calendar year 2022 or 2023, the contracting officer must insert “60” in paragraph (1)(ii)(A) of the definition of “domestic end product.” For contracts that the contracting officer estimates will be awarded in calendar year 2024, 2025, 2026, 2027, or 2028, the contracting officer must insert “65”. For contracts that the contracting officer estimates will be awarded after calendar year 2028 the contracting officer must insert “75”.

(2) Insert the provision at 52.225-2, Buy American Certificate, in solicitations containing the clause at 52.225-1.

(b)

(1)

(i) Insert the clause at 52.225-3, Buy American—Free Trade Agreements—Israeli Trade Act, in solicitations and contracts if—

(A) The acquisition is for supplies, or for services involving the furnishing of supplies, for use within the United States, and the acquisition value is \$50,000 or more, but is less than \$174,000;

(B) The acquisition is not for information technology that is a commercial product, using fiscal year 2004 or subsequent fiscal year funds; and

(C) No exception in 25.401 applies. For acquisitions of agencies not subject to the Israeli Trade Act (see 25.406), see agency regulations.

(ii) If the acquisition value is \$50,000 or more but is less than \$100,000, use the clause with its Alternate II.

(iii) If the acquisition value is \$100,000 or more but is less than \$102,280, use the clause with its Alternate III.

(iv) The contracting officer must use the clause with its Alternate IV to reflect the domestic content threshold that will apply to the entire period of performance, when the senior procurement executive allows for application of an alternate domestic content test for the contract in accordance with 25.102(d). For contracts that the contracting officer estimates will be awarded in calendar year 2022 or 2023, the contracting officer must insert “60” in paragraph (1)(ii)(A) of the definition of “domestic end product.” For contracts that the contracting officer estimates will be awarded in calendar year 2024, 2025, 2026, 2027, or 2028, the contracting officer must insert “65”. For contracts that the contracting officer estimates will be awarded after calendar year 2028 the contracting officer must insert “75”.

(2)

(i) Insert the provision at 52.225-4, Buy American—Free Trade Agreements—Israeli Trade Act Certificate, in solicitations containing the clause at 52.225-3.

(ii) If the acquisition value is \$50,000 or more but is less than \$100,000, use the provision with its Alternate II.

(iii) If the acquisition value is \$100,000 or more, but is less than \$102,280, use the provision with its Alternate III.

(c)

(1) Insert the clause at 52.225-5, Trade Agreements, in solicitations and contracts valued at \$174,000 or more, if the acquisition is covered by the WTO GPA (see subpart 25.4) and the agency has determined that the restrictions of the Buy American statute are not applicable to U.S.-made end products. If the agency has not made such a determination, the contracting officer must follow agency procedures.

(2) Insert the provision at 52.225-6, Trade Agreements Certificate, in solicitations containing the clause at 52.225-5.

(d) Insert the provision at 52.225-7, Waiver of Buy American Statute for Civil Aircraft and Related Articles, in solicitations for civil aircraft and related articles (see 25.407), if the acquisition value is less than \$174,000.

(e) Reserved.

(f) Insert the provision at 52.225-18, Place of Manufacture, in solicitations that are predominantly for the acquisition of manufactured end products, (*i.e.*, the estimated value of the manufactured end products exceeds the estimated value of other items to be acquired as a result of the solicitation).

25.602 Acquisition of construction.

The following provisions and clauses apply to the acquisition of construction.

(a) Insert the clause at 52.225-9, Buy American—Construction Materials, in solicitations and contracts for construction that is performed in the United States valued at less than \$6,708,000.

(1) List in paragraph (b)(2) of the clause all foreign construction material excepted from the requirements of the Buy American statute.

(2) If the head of the agency determines that a higher percentage is appropriate, substitute the higher evaluation percentage in paragraph (b)(3)(i) of the clause.

(3) The contracting officer must use the clause with its Alternate I to reflect the domestic content threshold that will apply to the entire period of performance, when the senior procurement executive allows for application of an alternate domestic content test for the contract in accordance with 25.201(c). For contracts that the contracting officer estimates will be awarded in calendar year 2022 or 2023, the contracting officer must insert “60” in paragraph (1)(ii)(A) of the definition of “domestic construction material.” For contracts that the contracting officer estimates will be awarded in calendar year 2024, 2025, 2026, 2027, or 2028, the contracting officer must insert “65”. For contracts that the contracting officer estimates will be awarded after calendar year 2028 the contracting officer must insert “75”.

(b)

(1) Insert the provision at 52.225-10, Notice of Buy American Requirement—Construction Materials, in solicitations containing the clause at 52.225-9.

(2) If insufficient time is available to process a determination regarding the inapplicability of the Buy American statute before receipt of offers, use the provision with its *Alternate I*.

(c) Insert the clause at 52.225-11, Buy American—Construction Materials under Trade Agreements, in solicitations and contracts for construction that is performed in the United States valued at \$6,708,000 or more.

(1) List in paragraph (b)(3) of the clause all foreign construction material excepted from the requirements of the Buy American statute, other than designated country construction material.

(2) If the head of the agency determines that a higher percentage is appropriate, substitute the higher evaluation percentage in paragraph (b)(4)(i) of the clause.

(3) For acquisitions valued at \$6,708,000 or more, but less than \$13,296,489, use the clause with its Alternate I. List in paragraph (b)(3) of the clause all foreign construction material excepted from the requirements of the Buy American statute, unless the excepted foreign construction material is from a designated country other than Bahrain, Mexico, and Oman.

(4) The contracting officer must use the clause with its Alternate II to reflect the domestic content threshold that will apply to the entire period of performance, when the senior procurement executive allows for application of an alternate domestic content test for the contract in accordance with 25.201(c). For contracts that the contracting officer estimates will be awarded in calendar year 2022 or 2023, the contracting officer must insert “60” in paragraph (1)(ii)(A) of the definition of “domestic construction material.” For contracts that the contracting officer estimates will be awarded in calendar year 2024, 2025, 2026, 2027, or 2028, the contracting officer must insert “65”. For contracts that the contracting officer estimates will be awarded after calendar year 2028 the contracting officer must insert “75”.

(d)

(1) Insert the provision at 52.225-12, Notice of Buy American Requirement—Construction Materials under Trade Agreements, in solicitations containing the clause at 52.225-11.

(2) If insufficient time is available to process a determination regarding the inapplicability of the Buy American statute before receipt of offers, use the provision with its *Alternate I*.

(3) For acquisitions valued at \$6,708,000 or more, but less than \$13,296,489, use the provision with its Alternate II.

25.603 Other clause.

Insert the clause at 52.225-14, Inconsistency Between English Version and Translation of Contract, in solicitations and contracts if anticipating translation into another language.

Subpart 25.7 —Contracts Performed Outside the United States

25.701 Contractor personnel in a designated operational area or supporting a diplomatic or consular mission outside the United States.

25.701-1 Scope.

(a) This section applies to contracts requiring contractor personnel to perform outside the United States—

(1) In a designated operational area during—

- (i) Contingency operations;
- (ii) Humanitarian or peacekeeping operations; or
- (iii) Other military operations or military exercises, when designated by the combatant commander; or

(2) When supporting a diplomatic or consular mission—

- (i) That has been designated by the Department of State as a danger pay post, see <https://aoprals.state.gov/>; or
- (ii) That the contracting officer determines is a post at which application of the clause at FAR 52.225-19, Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission outside the United States, is appropriate.

(b) Any of the types of operations listed in paragraph (a)(1) of this section may include stability operations such as—

- (1) Establishment or maintenance of a safe and secure environment; or
- (2) Provision of emergency infrastructure reconstruction, humanitarian relief, or essential governmental services (until feasible to transition to local government).

(c) This section does not apply to personal services contracts (see part 37), unless specified otherwise in agency procedures.

25.701-2 Government support.

(a) Generally, contractors are responsible for providing their own logistical and security support, including logistical and security support for their employees. The agency must provide logistical or security support only when the appropriate agency official, in accordance with agency guidance, determines that—

(1) Such Government support is available and is needed to ensure continuation of essential contractor services; and

(2) The contractor cannot obtain adequate support from other sources at a reasonable cost.

(b) The contracting officer must specify in the contract, and in the solicitation if possible, the exact support to be provided, and whether this support is provided on a reimbursable basis, citing the authority for the reimbursement.

25.701-3 Weapons.

The contracting officer must follow agency procedures and the weapons policy established by the combatant commander or the chief of mission when authorizing contractor personnel to carry weapons (see paragraph (i) of the clause at 52.225-19, Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission outside the United States).

25.701-4 Contract clause.

Insert the clause at 52.225-19, Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission outside the United States, in solicitations and contracts, other than personal service contracts with individuals, that will require contractor personnel to perform outside the United States—

(a) In a designated operational area during—

(1) Contingency operations;

(2) Humanitarian or peacekeeping operations; or

(3) Other military operations or military exercises, when designated by the combatant commander; or

(b) When supporting a diplomatic or consular mission—

(1) That has been designated by the Department of State as a danger pay post, see <https://aoprals.state.gov/>; or

(2) That the contracting officer determines is a post at which application of the clause FAR 52.225-19, Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission outside the United States, is appropriate.

25.702 Contractors performing private security functions outside the United States.

25.702-1 Scope.

This section prescribes policy for implementing section 862 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2008 (Pub. L. 110-181), as amended by section 853 of the NDAA for FY 2009 (Pub. L. 110-417), and sections 831 and 832 of the NDAA for FY 2011 (Pub. L. 111-383) (see 10 U.S.C. Subtitle A, Part V, Subpart G Note).

25.702-2 Definitions.

As used in this section—

Area of combat operations means an area of operations designated as such by the Secretary of Defense when enhanced coordination of contractors performing private security functions working for Government agencies is required.

Other significant military operations means activities, other than combat operations, as part of a contingency operation outside the United States that are carried out by United States Armed Forces in an uncontrolled or unpredictable high-threat environment where personnel performing security functions may be called upon to use deadly force (see 25.702-3(a)(2)).

Private security functions means activities engaged in by a contractor, as follows—

- (1) Guarding of personnel, facilities, designated sites, or property of a Federal agency, the contractor or subcontractor, or a third party; or
- (2) Any other activity for which personnel are required to carry weapons in the performance of their duties in accordance with the terms of the contract.

25.702-3 Applicability.

- (a) This section applies to contracts that require performance outside the United States—

- (1) In an area of combat operations as designated by the Secretary of Defense; or
- (2) In an area of other significant military operations as designated by the Secretary of Defense, and only upon agreement of the Secretary of Defense and the Secretary of State.

(b) For these designations contact the Department of Defense (DoD) at <https://www.acq.osd.mil/asda/dpc/contact-us.html>.

(c) When the applicability requirements of this subsection are met, contractors and subcontractors must comply with 32 CFR part 159, whether the contract is for the performance of private security functions as a primary deliverable or the provision of private security functions is ancillary to the stated deliverables.

(d) The requirements of section 25.702 do not apply to—

- (1) Contracts entered into by elements of the intelligence community in support of intelligence activities; or
- (2) Temporary arrangements entered into on a non-DoD contract for the performance of private security functions by individual indigenous personnel not affiliated with a local or expatriate security company. These temporary arrangements must still comply with local law.

25.702-4 Policy.

(a) *General.*

(1) The policy, responsibilities, procedures, accountability, training, equipping, and conduct of personnel performing private security functions in designated areas are addressed at 32 CFR part 159, entitled “Private Security Contractors Operating in Contingency Operations.” Contractor responsibilities include ensuring that employees are aware of, and comply with, relevant orders, directives, and instructions; keeping appropriate personnel records; accounting for weapons; registering and identifying armored vehicles, helicopters, and other military vehicles; and reporting specified incidents in which personnel performing private security functions under a contract are involved.

(2) In addition, contractors are required to fully cooperate with any Government-authorized investigation into incidents reported pursuant to paragraph (c)(3) of the clause at 52.225-26, Contractors Performing Private Security Functions Outside the United States, by providing access to employees performing private security

functions and relevant information in the possession of the contractor regarding the incident concerned.

(b) *Implementing guidance.* In accordance with 32 CFR part 159—

(1) Geographic combatant commanders will provide the DoD contractors performing private security functions with guidance and procedures for the operational environment in their area of responsibility; and

(2) In a designated area of combat operations, or areas of other significant military operations, as designated by the Secretary of Defense and only upon agreement of the Secretary of Defense and the Secretary of State, the relevant Chief of Mission will provide implementing instructions for non-DoD contractors performing private security functions and their personnel consistent with the standards set forth by the geographic combatant commander. In accordance with 32 CFR 159.4(c), the Chief of Mission has the option of instructing non-DoD contractors performing private security functions and their personnel to follow the guidance and procedures of the geographic combatant commander and/or a sub-unified commander or joint force commander where specifically authorized by the combatant commander to do so and notice of that authorization is provided to non-DoD agencies.

25.702-5 Remedies.

(a) In addition to other remedies available to the Government—

(1) The contracting officer may direct the contractor, at its own expense, to remove and replace any contractor or subcontractor personnel performing private security functions who fail to comply with or violate applicable requirements. Such action may be taken at the Government's discretion without prejudice to its rights under any other contract provision, e.g., termination for default;

(2) The contracting officer must include the contractor's failure to comply with the requirements of this section in appropriate databases of past performance and consider any such failure in any responsibility determination or evaluation of past performance; and

(3) In the case of award-fee contracts, the contracting officer must consider a contractor's failure to comply with the requirements of this subsection in the evaluation of the contractor's performance during the relevant evaluation period, and may treat such failure as a basis for reducing or denying award fees for such period or for recovering all or part of award fees previously paid for such period.

(b) If the performance failures are severe, prolonged, or repeated, the contracting officer must refer the matter to the appropriate suspending and debarring official.

25.702-6 Contract clause.

(a) Use the clause at 52.225-26, Contractors Performing Private Security Functions Outside the United States, in solicitations and contracts for performance outside the United States in an area of—

- (1) Combat operations, as designated by the Secretary of Defense; or
- (2) Other significant military operations, as designated by the Secretary of Defense and only upon agreement of the Secretary of Defense and the Secretary of State.

(b) The clause is not required to be used for—

- (1) Contracts entered into by elements of the intelligence community in support of intelligence activities; or
- (2) Temporary arrangements entered into by non-DoD contractors for the performance of private security functions by individual indigenous personnel not affiliated with a local or expatriate security company.

Subpart 25.8 —Other International Agreements and Coordination

25.801 General.

Treaties and agreements between the United States and foreign governments affect the evaluation of offers from foreign entities and the performance of contracts in foreign countries.

25.802 Procedures.

(a) When placing contracts with contractors located outside the United States, for performance outside the United States, contracting officers must—

- (1) Determine the existence and applicability of any international agreements and ensure compliance with these agreements; and
- (2) Conduct the necessary advance acquisition planning and coordination between the appropriate U.S. executive agencies and foreign interests as required by these agreements.

(b) The Department of State publishes many international agreements in the “United States Treaties and Other International Agreements” series. Copies of this publication normally are available in overseas legal offices and U.S. diplomatic missions.

(c) Contracting officers must award all contracts with Taiwanese firms or organizations through the American Institute of Taiwan (AIT). AIT is under contract to the Department of State.

Subpart 25.9 —Customs and Duties

25.900 Scope of subpart.

This subpart provides policies and procedures for exempting from import duties certain supplies purchased under Government contracts.

25.901 Policy.

United States laws impose duties on foreign supplies imported into the customs territory of the United States. Certain exemptions from these duties are available to Government agencies. Agencies must use these exemptions when the anticipated savings to appropriated funds will outweigh the administrative costs associated with processing required documentation.

25.902 Procedures.

For regulations governing importations and duties, see the Customs Regulations issued by the U.S. Customs Service, Department of the Treasury (19 CFR Chapter 1). Except as provided elsewhere in the Customs Regulations (see 19 CFR 10.100), all shipments of imported supplies purchased under Government contracts are subject to the usual Customs entry and examination requirements. Unless the agency obtains an exemption (see 25.903), those shipments are also subject to duty.

25.903 Exempted supplies.

(a) Subchapters VIII and X of Chapter 98 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) list supplies for which exemptions from duty may be obtained when imported into the customs territory of the United States under a Government contract. For certain of these supplies, the contracting agency must certify to the Commissioner of Customs that they are for the purpose stated in the Harmonized Tariff Schedule (see 19 CFR 10.102-104, 10.114, and 10.121 and 15 CFR part 301 for requirements and formats).

(b) Supplies (excluding equipment) for Government-operated vessels or aircraft may be withdrawn from any customs-bonded warehouse, from continuous customs custody elsewhere than in a bonded warehouse, or from a foreign-trade zone, free of duty and internal revenue tax as provided in 19 U.S.C. 1309 and 1317. The contracting activity must cite this authority on the appropriate customs form when making purchases (see 19 CFR 10.59-10.65).

25.904 Contract clause.

Insert the clause at 52.225-8, Duty-Free Entry, in solicitations and contracts for supplies that may be imported into the United States and for which duty-free entry may be obtained in accordance with 25.903(a), if the value of the acquisition—

(a) Exceeds the simplified acquisition threshold; or

(b) Does not exceed the simplified acquisition threshold, but the savings from waiving the duty is anticipated to be more than the administrative cost of waiving the duty.

When used for acquisitions that do not exceed the simplified acquisition threshold, the contracting officer may modify paragraphs (c)(1) and (j)(2) of the clause to reduce the dollar figure.

Subpart 25.10 —Additional Foreign Acquisition Regulations

25.1001 Waiver of right to examination of records.

(a) *Policy.* The clause at 52.215-2, Audit and Records—Negotiation, prescribed at 15.209(b), and paragraph (b)(1)(iii) of 12.205, implement 10 U.S.C. 3841 and 41 U.S.C. 4706.

(1) Insert the appropriate basic clause, whenever possible, in negotiated contracts with foreign contractors.

(2) The contracting officer may use 52.215-2 with its *Alternate III* after—

(i) Exhausting all reasonable efforts to include the basic clause;

(ii) Considering factors such as alternate sources of supply, additional cost, and time of delivery; and

(iii) The head of the agency has executed a determination and findings in accordance with paragraph (b) of this section, with the concurrence of the Comptroller General. However, concurrence of the Comptroller General is not required if the contractor is a foreign government or agency thereof or is

precluded by the laws of the country involved from making its records available for examination.

(b) *Determination and findings.* The determination and findings must—

- (1) Identify the contract and its purpose, and identify if the contract is with a foreign contractor or with a foreign government or an agency of a foreign government;
- (2) Describe the efforts to include the basic clause;
- (3) State the reasons for the contractor's refusal to include the basic clause;
- (4) Describe the price and availability of the supplies or services from the United States and other sources; and
- (5) Determine that it will best serve the interest of the United States to use the appropriate alternate clause in paragraph (a)(2) of this section.

25.1002 Use of foreign currency.

25.1002-1 Policy.

(a) Unless an international agreement or the WTO GPA (see 25.408(a)(4)) requires a specific currency, contracting officers must determine whether solicitations for contracts to be entered into and performed outside the United States will require submission of offers in U.S. currency or a specified foreign currency. In unusual circumstances, the contracting officer may permit submission of offers in other than a specified currency.

(b) To ensure a fair evaluation of offers, solicitations generally should require all offers to be priced in the same currency. However, if the solicitation permits submission of offers in other than a specified currency, the contracting officer must convert the offered prices to U.S. currency for evaluation purposes. The contracting officer must use the current market exchange rate from a commonly used source in effect as follows:

- (1) For acquisitions conducted using sealed bidding procedures, on the date of bid opening.
- (2) For acquisitions conducted using negotiation procedures—
 - (i) On the date specified for receipt of offers, if award is based on initial offers; otherwise
 - (ii) On the date specified for receipt of final proposal revisions.

(c) If a contract is priced in foreign currency, the agency must ensure that adequate funds are available to cover currency fluctuations to avoid a violation of the Anti-Deficiency Act (31 U.S.C. 1341, 1342, 1511-1519).

25.1002-2 Solicitation provision.

Insert the provision at 52.225-17, Evaluation of Foreign Currency Offers, in solicitations that permit the use of other than a specified currency. Insert in the provision the source of the rate to be used in the evaluation of offers.

Subpart 25.11 [Reserved]

Part 52 – Solicitation Provisions and Contract Clauses

[52.225 \[Reserved\]](#)

[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.](#)

[52.225-5 Trade Agreements.](#)

[52.225-6 Trade Agreements Certificate.](#)

[52.225-7 Waiver of Buy American Statute for Civil Aircraft and Related Articles.](#)

[52.225-8 Duty-Free Entry.](#)

[52.225-9 Buy American-Construction Materials.](#)

[52.225-10 Notice of Buy American Requirement-Construction Materials.](#)

[52.225-11 Buy American-Construction Materials under Trade Agreements.](#)

[52.225-12 Notice of Buy American Requirement-Construction Materials Under Trade Agreements.](#)

[52.225-13 \[Reserved\]](#)

[52.225-14 Inconsistency between English Version and Translation of Contract.](#)

[52.225-15 \[Reserved\]](#)

[52.225-16 \[Reserved\]](#)

[52.225-17 Evaluation of Foreign Currency Offers.](#)

[52.225-18 Place of Manufacture.](#)

[52.225-19 Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States.](#)

[52.225-20 \[Reserved\]](#)

[52.225-21 \[Reserved\]](#)

[52.225-22 \[Reserved\]](#)

[52.225-23 \[Reserved\]](#)

[52.225-24 \[Reserved\]](#)

[52.225-25 \[Reserved\]](#)

[52.225-26 Contractors Performing Private Security Functions Outside the United States.](#)

52.225 [Reserved]

52.225-1 Buy American-Supplies

As prescribed in 25.601(a)(1)(i), insert the following clause:

BUY AMERICAN-SUPPLIES (DEVIATION JAN 2026)

(a) *Definitions.* As used in this clause—

Commercially available off-the-shelf (COTS) item—

(1) Means any item of supply (including construction material) that is—

- (i) A commercial product (as defined in paragraph (1) of the definition of “commercial product” at Federal Acquisition Regulation (FAR) 2.101);
- (ii) Sold in substantial quantities in the commercial marketplace; and
- (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

Component means an article, material, or supply incorporated directly into an end product.

Cost of components means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

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) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both-

(i) An unmanufactured end product mined or produced in the United States;

(ii) An end product manufactured in the United States, if-

(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. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of foreign iron and steel constitutes less than 5 percent of the cost of all the components used in the end product. The cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the end product and a good faith estimate of the cost of all foreign iron or steel components excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the definition of “cost of components”.

End product means those articles, materials, and supplies to be acquired under the contract for public use.

Fastener means a hardware device that mechanically joins or affixes two or more objects together. Examples of fasteners are nuts, bolts, pins, rivets, nails, clips, and screws.

Foreign end product means an end product other than a domestic end product.

Foreign iron and steel means iron or steel products not produced in the United States. Produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, from the initial melting stage through the application of coatings, except metallurgical processes involving refinement of steel additives. The origin of the elements of the iron or steel is not relevant to the determination of whether it is domestic or foreign.

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

United States means the 50 States, the District of Columbia, and outlying areas.

(b) 41 U.S.C. chapter 83, Buy American, provides a preference for domestic end products for supplies acquired for use in the United States. In accordance with 41 U.S.C. 1907, the domestic content test of the Buy American statute is waived for an end product that is a COTS item (see (a)(1)), except that for an end product that consists wholly or predominantly of iron or steel or a combination of both, the domestic content test is applied only to the iron and steel content of the end product, excluding COTS fasteners.

(c) Offerors may obtain from the Contracting Officer a list of foreign articles that the Contracting Officer will treat as domestic for this contract.

(d) The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the solicitation entitled "Buy American Certificate."

(End of clause)

Alternate I (Oct 2022). As prescribed in 25.1101 (a)(1)(ii) substitute the following sentence for the first sentence of paragraph (1)(ii)(A) of the definition of “domestic end product” in paragraph (a):

(A) The cost of its components mined, produced, or manufactured in the United States exceeds __ percent of the cost of all its components.

[Contracting officer to insert the percentage.]

52.225-2 Buy American Certificate.

As prescribed in 25.1101(a)(2), insert the following provision:

BUY AMERICAN CERTIFICATE (OCT 2022)

(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 list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products. For those foreign end products that do not consist wholly or predominantly of iron or steel or a combination of both, the Offeror shall also indicate whether these foreign end products exceed 55 percent domestic content, except for those that are COTS items. 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 (see FAR 25.105).

(4) The terms “commercially available off-the-shelf (COTS) item,” “critical component,” “domestic end product,” “end product,” and “foreign end product” are defined in the clause of this solicitation entitled “Buy American-Supplies.”

(b) Foreign End Products:

Line Item No.	Country of Origin	Exceeds 55% domestic content (yes/no)

[List as necessary]

(c) Domestic end products containing a critical component:

Line Item No. ____

[List as necessary]

(d) The Government will evaluate offers in accordance with the policies and procedures of part 25 of the Federal Acquisition Regulation.

(End of provision)

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

As prescribed in 25.601(b)(1)(i), insert the following clause:

BUY AMERICAN-FREE TRADE AGREEMENTS-ISRAELI TRADE ACT (DEVIATION JAN 2026)

(a) *Definitions.* As used in this clause—

Bahraini, Moroccan, Omani, Panamanian, or Peruvian end product means an article that—

(1) Is wholly the growth, product, or manufacture of Bahrain, Morocco, Oman, Panama, or Peru; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain, Morocco, Oman, Panama, or Peru into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

Commercially available off-the-shelf (COTS) item—

(1) Means any item of supply (including construction material) that is-

(i) A commercial product (as defined in paragraph (1) of the definition of “commercial product” at Federal Acquisition Regulation (FAR) 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

Component means an article, material, or supply incorporated directly into an end product.

Cost of components means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

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) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured end product mined or produced in the United States;

(ii) An end product manufactured in the United States, if—

(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. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of foreign iron and steel constitutes less than 5 percent of the cost of all the components used in the end product. The cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the end product and a good faith estimate of the cost of all foreign iron or steel components excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the definition of “cost of components”.

End product means those articles, materials, and supplies to be acquired under the contract for public use.

Fastener means a hardware device that mechanically joins or affixes two or more objects together. Examples of fasteners are nuts, bolts, pins, rivets, nails, clips, and screws.

Foreign end product means an end product other than a domestic end product.

Foreign iron and steel means iron or steel products not produced in the United States. Produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, from the initial melting stage through the application of coatings, except metallurgical processes involving refinement of steel additives. The origin of the elements of the iron or steel is not relevant to the determination of whether it is domestic or foreign.

Free Trade Agreement country means Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore.

Free Trade Agreement country end product means an article that-

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of

calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

Israeli end product means an article that—

- (1) Is wholly the growth, product, or manufacture of Israel; or
- (2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Israel into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

United States means the 50 States, the District of Columbia, and outlying areas.

(b) *Components of foreign origin.* Offerors may obtain from the Contracting Officer a list of foreign articles that the Contracting Officer will treat as domestic for this contract.

(c) *Delivery of end products.* 41 U.S.C. chapter 83, Buy American statute, provides a preference for domestic end products for supplies acquired for use in the United States. In accordance with 41 U.S.C. 1907, the domestic content test of the Buy American statute is waived for an end product that is a COTS item (see (a)(1)), except that for an end product that consists wholly or predominantly of iron or steel or a combination of both, the domestic content test is applied only to the iron and steel content of the end product, excluding COTS fasteners. Unless otherwise specified, these trade agreements apply to all items in the Schedule. The Contractor shall deliver under this contract only domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled “Buy American-Free Trade Agreements-Israeli Trade Act Certificate.” If the Contractor specified in its offer that the Contractor would supply a Free Trade Agreement country end product (other than a Bahraini, Moroccan, Omani, Panamanian, or Peruvian end product) or an Israeli end product, then the Contractor shall supply a Free Trade Agreement country end

product (other than a Bahraini, Moroccan, Omani, Panamanian, or Peruvian end product), an Israeli end product or, at the Contractor's option, a domestic end product.

(End of clause)

Alternate I [Reserved]

Alternate II (Jan 2025). As prescribed in 25.1101 (b)(1)(ii), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) *Delivery of end products*. 41 U.S.C. chapter 83 provides a preference for domestic end products for supplies acquired for use in the United States. In accordance with 41 U.S.C. 1907, the domestic content test of the Buy American statute is waived for an end product that is a COTS item (see 12.505(a)(1)), except that for an end product that consists wholly or predominantly of iron or steel or a combination of both, the domestic content test is applied only to the iron and steel content of the end product, excluding COTS fasteners. In addition, the Contracting Officer has determined that the Israeli Trade Act applies to this acquisition. Unless otherwise specified, this trade agreement applies to all items in the Schedule. The Contractor shall deliver under this contract only domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled "Buy American—Free Trade Agreements—Israeli Trade Act Certificate." If the Contractor specified in its offer that the Contractor would supply an Israeli end product, then the Contractor shall supply an Israeli end product or, at the Contractor's option, a domestic end product.

Alternate III (Feb 2024). As prescribed in 25.1101 (b)(1)(iii), delete the definition of "Bahraini, Moroccan, Omani, Panamanian, or Peruvian end product" and add in its place the following definition of "Korean end product" in paragraph (a) of the basic clause; and substitute the following paragraph (c) for paragraph (c) of the basic clause:

Korean end product means an article that—

- (1) Is wholly the growth, product, or manufacture of Korea (Republic of); or
- (2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Korea (Republic of) into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

(c) *Delivery of end products.* [41 U.S.C. chapter 83](#) provides a preference for domestic end products for supplies acquired for use in the United States. In accordance with [41 U.S.C.1907](#), the domestic content test of the Buy American statute is waived for an end product that is a COTS item (see (a)(1)), except that for an end product that consists wholly or predominantly of iron or steel or a combination of both, the domestic content test is applied only to the iron and steel content of the end product, excluding COTS fasteners. In addition, the Contracting Officer has determined that the Korea (Republic of) FTA and the Israeli Trade Act apply to this acquisition. Unless otherwise specified, these trade agreements apply to all items in the Schedule. The Contractor shall deliver under this contract only domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled “Buy American—Free Trade Agreements—Israeli Trade Act Certificate.” If the Contractor specified in its offer that the Contractor would supply a Korean end product or an Israeli end product, then the Contractor shall supply a Korean end product, an Israeli end product, or at the Contractor’s option, a domestic end product.

Alternate IV (Oct 2022). As prescribed in 25.1101 (b)(1)(iv) substitute the following sentence for the first sentence of paragraph (1)(ii)(A) of the definition of *domestic end product* in paragraph (a):

(A) The cost of its components mined, produced, or manufactured in the United States exceeds __ percent of the cost of all its components.
[Contracting officer to insert the percentage.]

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

As prescribed in 25.601(b)(2)(i), insert the following provision:

BUY AMERICAN-FREE TRADE AGREEMENTS-ISRAELI TRADE ACT CERTIFICATE (DEVIATION JAN 2026)

(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.

(2) The terms “Bahraini, Moroccan, Omani, Panamanian, or Peruvian end product,” “commercially available off-the-shelf (COTS) item,” “critical component,” “domestic end product,” “end product,” “foreign end product,” “Free Trade Agreement country,” “Free Trade Agreement country end product,” “Israeli end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American-Free Trade Agreements-Israeli Trade Act.”

(b) The Offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahraini, Moroccan, Omani, Panamanian, or Peruvian end products) or Israeli end products as defined in the clause of this solicitation entitled “Buy American-Free Trade Agreements-Israeli Trade Act”:

Free Trade Agreement Country End Products (Other than Bahraini, Moroccan, Omani, Panamanian, or Peruvian End Products) or Israeli End Products:

Line Item No.	Country of Origin

[List as necessary]

(c) (1) The Offeror shall list those supplies that are foreign end products (other than those listed in paragraph (b) of this provision) as defined in the clause of this solicitation entitled “Buy American-Free Trade Agreements-Israeli Trade Act.” The Offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products. For those foreign end products that do not consist wholly or predominantly of iron or steel or a combination of both, the Offeror shall also indicate whether these foreign end products exceed 55 percent domestic content, except for those that are COTS items. If the percentage of the domestic content is unknown, select “no”.

Other Foreign End Products:

Line Item No.	Country of Origin	Exceeds 55% domestic content (yes/no)

[List as necessary]

(2) The Offeror shall list the line item numbers of domestic end products that contain a critical component (see FAR 25.105).

Line Item No. ____

[List as necessary]

(d) The Government will evaluate offers in accordance with the policies and procedures of part 25 of the Federal Acquisition Regulation.

(End of provision)

Alternate I [Reserved]

Alternate II (Jan 2025). As prescribed in 25.1101 (b)(2)(ii), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) The offeror certifies that the following supplies are Israeli end products as defined in the clause of this solicitation entitled “Buy American—Free Trade Agreements—Israeli Trade Act”.

Israeli End Products:

Line Item No.

[List as necessary]

Alternate III (Jan 2025). As prescribed in 25.1101 (b)(2)(iii), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) The Offeror certifies that the following supplies are Korean end products or Israeli end products as defined in the clause of this solicitation entitled “Buy American—Free Trade Agreements—Israeli Trade Act”.

Korean End Products or Israeli End Products:

Line Item No.	Country of Origin

[List as necessary]

52.225-5 Trade Agreements.

As prescribed in 25.1101(c)(1), insert the following clause:

TRADE AGREEMENTS (NOV 2023)

(a) *Definitions.* As used in this clause-

Caribbean Basin country end product—

(1) Means an article that-

(i) (A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(B) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed; and

(ii) Is not excluded from duty-free treatment for Caribbean countries under [19 U.S.C.2703\(b\)](#).

(A) For this reason, the following articles are not Caribbean Basin country end products:

(1) *Tuna, prepared or preserved in any manner in airtight containers;*

(2) *Petroleum, or any product derived from petroleum;*

(3) *Watches and watch parts (including cases, bracelets, and straps) of whatever type including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Harmonized Tariff Schedule of the United States (HTSUS) column 2 rates of duty apply (i.e., Afghanistan, Cuba, Laos, North Korea, and Vietnam); and*

(4) *Certain of the following: textiles and apparel articles; footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel; or handloomed, handmade, and folklore articles;*

(B) Access to the HTSUS to determine duty-free status of articles of these types is available at <https://usitc.gov/tata/hts/index.htm>. In particular, see the following:

(1) General Note 3(c), Products Eligible for Special Tariff treatment.

(2) General Note 17, Products of Countries Designated as Beneficiary Countries under the United States-Caribbean Basin Trade Partnership Act of 2000.

(3) Section XXII, Chapter 98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note 7(b).

(4) Section XXII, Chapter 98, Subchapter XX, Goods Eligible for Special Tariff Benefits under the United States-Caribbean Basin Trade Partnership Act; and

(2) Refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the acquisition, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

Designated country means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, North Macedonia, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as “the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei)”), Ukraine, or United Kingdom);

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome

and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

Designated country end product means a WTO GPA country end product, an FTA country end product, a least developed country end product, or a Caribbean Basin country end product.

End product means those articles, materials, and supplies to be acquired under the contract for public use.

Free Trade Agreement country end product means an article that-

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an FTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

Least developed country end product means an article that-

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

United States means the 50 States, the District of Columbia, and outlying areas.

U.S.-made end product means an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

WTO GPA country end product means an article that-

- (1) Is wholly the growth, product, or manufacture of a WTO GPA country; or
- (2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services, (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

(b) *Delivery of end products.* The Contracting Officer has determined that the WTO GPA and FTAs apply to this acquisition. Unless otherwise specified, these trade agreements apply to all items in the Schedule. The Contractor shall deliver under this contract only U.S.-made or designated country end products except to the extent that, in its offer, it specified delivery of other end products in the provision entitled "Trade Agreements Certificate."

(End of clause)

52.225-6 Trade Agreements Certificate.

As prescribed in 25.1101(c)(2), insert the following provision:

TRADE AGREEMENTS CERTIFICATE (FEB 2021)

(a) The offeror certifies that each end product, except those listed in paragraph (b) of this provision, is a U.S.-made or designated country end product, as defined in the clause of this solicitation entitled "Trade Agreements."

(b) The offeror shall list as other end products those supplies that are not U.S.-made or designated country end products.

Other End Products:

Line Item No.	Country of Origin
---------------	-------------------

[List as necessary]

(c) The Government will evaluate offers in accordance with the policies and procedures of part 25 of the Federal Acquisition Regulation. For line items covered by the WTO GPA, the Government will evaluate offers of U.S.-made or designated country end products without regard to the restrictions of the Buy American statute. The Government will consider for award only offers of U.S.-made or designated country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for those products are insufficient to fulfill the requirements of this solicitation.

(End of provision)

52.225-7 Waiver of Buy American Statute for Civil Aircraft and Related Articles.

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

WAIVER OF BUY AMERICAN STATUTE FOR CIVIL AIRCRAFT AND RELATED ARTICLES (FEB 2016)

(a) *Definition.* “Civil aircraft and related articles,” as used in this provision, means-

- (1) All aircraft other than aircraft to be purchased for use by the Department of Defense or the U.S. Coast Guard;
- (2) The engines (and parts and components for incorporation into the engines) of these aircraft;
- (3) Any other parts, components, and subassemblies for incorporation into the aircraft; and
- (4) Any ground flight simulators, and parts and components of these simulators, for use with respect to the aircraft, whether to be used as original or replacement equipment in the manufacture, repair, maintenance, rebuilding, modification, or conversion of the aircraft, and without regard to whether the aircraft or articles receive duty-free treatment under section 601(a)(2) of the Trade Agreements Act.

(b) The U.S. Trade Representative has waived the Buy American statute for acquisitions of civil aircraft and related articles from countries that are parties to the Agreement on Trade in Civil Aircraft. Those countries are Albania, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Macao China, Malta, Montenegro, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Taiwan (Chinese Taipei), and the United Kingdom.

(c) For the purpose of this waiver, an article is a product of a country only if-

(1) It is wholly the growth, product, or manufacture of that country; or

(2) In the case of an article that consists in whole or in part of materials from another country, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

(d) The waiver is subject to modification or withdrawal by the U.S. Trade Representative.

(End of provision)

52.225-8 Duty-Free Entry.

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

DUTY-FREE ENTRY (OCT 2010)

(a) *Definition.* "Customs territory of the United States" means the States, the District of Columbia, and Puerto Rico.

(b) Except as otherwise approved by the Contracting Officer, the Contractor shall not include in the contract price any amount for duties on supplies specifically identified in the Schedule to be accorded duty-free entry.

(c) Except as provided in paragraph (d) of this clause or elsewhere in this contract, the following procedures apply to supplies not identified in the Schedule to be accorded duty-free entry:

(1) The Contractor shall notify the Contracting Officer in writing of any purchase of foreign supplies (including, without limitation, raw materials, components, and intermediate assemblies) in excess of \$20,000 that are to be imported into the customs territory of the United States for delivery to the Government under this contract, either as end products or for incorporation into end products. The

Contractor shall furnish the notice to the Contracting Officer at least 20 calendar days before the importation. The notice shall identify the-

- (i) Foreign supplies;
- (ii) Estimated amount of duty; and
- (iii) Country of origin.

(2) The Contracting Officer will determine whether any of these supplies should be accorded duty-free entry and will notify the Contractor within 10 calendar days after receipt of the Contractor's notification.

(3) Except as otherwise approved by the Contracting Officer, the contract price shall be reduced by (or the allowable cost shall not include) the amount of duty that would be payable if the supplies were not entered duty-free.

(d) The Contractor is not required to provide the notification under paragraph (c) of this clause for purchases of foreign supplies if-

- (1) The supplies are identical in nature to items purchased by the Contractor or any subcontractor in connection with its commercial business; and
- (2) Segregation of these supplies to ensure use only on Government contracts containing duty-free entry provisions is not economical or feasible.

(e) The Contractor shall claim duty-free entry only for supplies to be delivered to the Government under this contract, either as end products or incorporated into end products, and shall pay duty on supplies, or any portion of them, other than scrap, salvage, or competitive sale authorized by the Contracting Officer, diverted to nongovernmental use.

(f) The Government will execute any required duty-free entry certificates for supplies to be accorded duty-free entry and will assist the Contractor in obtaining duty-free entry for these supplies.

(g) Shipping documents for supplies to be accorded duty-free entry shall consign the shipments to the contracting agency in care of the Contractor and shall include the-

- (1) Delivery address of the Contractor (or contracting agency, if appropriate);
- (2) Government prime contract number;
- (3) Identification of carrier;

(4) Notation “UNITED STATES GOVERNMENT, _____ [agency] _____, Duty-free entry to be claimed pursuant to Item No(s) _____ [from Tariff Schedules] _____, Harmonized Tariff Schedules of the United States. Upon arrival of shipment at port of entry, District Director of Customs, please release shipment under 19 CFR Part 142 and notify [cognizant contract administration office] for execution of Customs Forms 7501 and 7501-A and any required duty-free entry certificates.”;

(5) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and

(6) Estimated value in United States dollars.

(h) The Contractor shall instruct the foreign supplier to-

(1) Consign the shipment as specified in paragraph (g) of this clause;

(2) Mark all packages with the words “UNITED STATES GOVERNMENT” and the title of the contracting agency; and

(3) Include with the shipment at least two copies of the bill of lading (or other shipping document) for use by the District Director of Customs at the port of entry.

(i) The Contractor shall provide written notice to the cognizant contract administration office immediately after notification by the Contracting Officer that duty-free entry will be accorded foreign supplies or, for duty-free supplies identified in the Schedule, upon award by the Contractor to the overseas supplier. The notice shall identify the-

(1) Foreign supplies;

(2) Country of origin;

(3) Contract number; and

(4) Scheduled delivery date(s).

(j) The Contractor shall include the substance of this clause in any subcontract if-

(1) Supplies identified in the Schedule to be accorded duty-free entry will be imported into the customs territory of the United States; or

(2) Other foreign supplies in excess of \$20,000 may be imported into the customs territory of the United States.

(End of clause)

52.225-9 Buy American-Construction Materials.

As prescribed in 25.602(a), insert the following clause:

BUY AMERICAN-CONSTRUCTION MATERIALS (DEVIATION JAN 2026)

(a) *Definitions.* As used in this clause—

Commercially available off-the-shelf (COTS) item—

(1) Means any item of supply (including construction material) that is—

(i) A commercial product (as defined in paragraph (1) of the definition of “commercial product” at Federal Acquisition Regulation (FAR) 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in [46 U.S.C. 40102\(4\)](#), such as agricultural products and petroleum products.

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

Cost of components means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit.

Cost of components does not include any costs associated with the manufacture of the construction material.

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) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both-

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(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. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.

Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of foreign iron and steel constitutes less than 5 percent of the cost of all components used in such construction material. The cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the construction material and a good faith estimate of the cost of all foreign iron or steel components excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of “cost of components”.

Fastener means a hardware device that mechanically joins or affixes two or more objects together. Examples of fasteners are nuts, bolts, pins, rivets, nails, clips, and screws.

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

Foreign iron and steel means iron or steel products not produced in the United States. Produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, from the initial melting stage through the application of coatings, except metallurgical processes involving refinement of steel additives. The origin of the elements of the iron or steel is not relevant to the determination of whether it is domestic or foreign.

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

“United States” means the 50 States, the District of Columbia, and outlying areas.

(b) Domestic preference. (1) This clause implements [41 U.S.C. chapter 83](#), Buy American, by providing a preference for domestic construction material. In accordance with [41 U.S.C. 1907](#), the domestic content test of the Buy American statute is waived for construction material that is a COTS item, except that for construction material that consists wholly or predominantly of iron or steel or a combination of both, the domestic content test is applied only to the iron and steel content of the construction materials, excluding COTS fasteners. (See FAR (a)(2)). The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

(2) This requirement does not apply to information technology that is a commercial product or to the construction materials or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate “none”]

(3) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(2) of this clause if the Government determines that-

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

(A) For domestic construction material that is not a critical item or does 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 is not a COTS item and 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) of this clause will no longer apply as of January 1, 2030.

(B) For domestic construction material that is a critical item or contains 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 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) of this clause will no longer apply as of January 1, 2030.

(ii) The application of the restriction of the Buy American statute to a particular construction material would be impracticable or inconsistent with the public interest; 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.

(c) Request for determination of inapplicability of the Buy American statute. (1) (i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for Government evaluation of the request, including-

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request 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.

(iii) 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).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such

determination and could not have requested the determination before contract award. If the 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 statute 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)(3)(i) of this clause.

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

(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)*
Item1:			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
Item2:			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
[* Include 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.]			

<i>[Include other applicable supporting information.]</i>

(End of clause)

Alternate I (Oct 2022). As prescribed in 25.1102 (a)(3) substitute the following sentence for the first sentence in paragraph (1)(ii)(A) of the definition of “domestic construction material” in paragraph (a):

(A) The cost of its components mined, produced, or manufactured in the United States exceeds __ percent of the cost of all its components.

[Contracting officer to insert the percentage.]

52.225-10 Notice of Buy American Requirement-Construction Materials.

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

NOTICE OF BUY AMERICAN REQUIREMENT-CONSTRUCTION MATERIALS (MAY 2014)

(a) *Definitions.* “Commercially available off-the-shelf (COTS) item,” “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-Construction Materials” (Federal Acquisition Regulation (FAR) clause 52.225-9).

(b) *Requests for determinations of inapplicability.* An offeror requesting a determination regarding the inapplicability of the Buy American statute 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 the clause at FAR 52.225-9 in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American statute 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 statute, based on claimed unreasonable cost of domestic construction material, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(3)(i) of the clause at FAR 52.225-9.

(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 not listed by the Government in this solicitation in paragraph (b)(2) of the clause at FAR 52.225-9, the offeror also may submit an alternate offer based on use of equivalent domestic 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 the clause at FAR 52.225-9 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 the clause at FAR 52.225-9 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic construction material, and the offeror shall be required to furnish such domestic 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 2014). As prescribed in 25.1102 (b)(2), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) Requests for determinations of inapplicability. An offeror requesting a determination regarding the inapplicability of the Buy American statute shall submit the request with its offer, including the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR 52.225-9.

52.225-11 Buy American-Construction Materials under Trade Agreements.

As prescribed in 25.602(c), insert the following clause:

BUY AMERICAN-CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (DEVIATION
JAN 2026)

(a) *Definitions.* As used in this clause—

Caribbean Basin country construction material means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a Caribbean Basin country; 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 a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

Commercially available off-the-shelf (COTS) item—

- (1) Means any item of supply (including construction material) that is—
 - (i) A commercial product (as defined in paragraph (1) of the definition of “commercial product” at Federal Acquisition Regulation (FAR) 2.101);
 - (ii) Sold in substantial quantities in the commercial marketplace; and
 - (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
- (2) Does not include bulk cargo, as defined in [46 U.S.C. 40102\(4\)](#), such as agricultural products and petroleum products.

Component means an article, material, or supply incorporated directly into a construction material.

Construction material means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

Cost of components means—

- (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material

(whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

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.

Designated country means any of the following countries:

- (1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, North Macedonia, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, Ukraine, or United Kingdom);
- (2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore);
- (3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or
- (4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti,

Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

Designated country construction material means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

Domestic construction material means—

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both-

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(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) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of foreign iron and steel constitutes less than 5 percent of the cost of all components used in such construction material. The cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the construction material and a good faith estimate of the cost of all foreign iron or steel components excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of “cost of components”.

Fastener means a hardware device that mechanically joins or affixes two or more objects together. Examples of fasteners are nuts, bolts, pins, rivets, nails, clips, and screws.

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

Foreign iron and steel means iron or steel products not produced in the United States. Produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, from the initial melting stage through the application of coatings, except metallurgical processes involving refinement of steel additives. The origin of the elements of the iron or steel is not relevant to the determination of whether it is domestic or foreign.

Free Trade Agreement country construction material means a construction material that-

- (1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; 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 a FTA country into a new and different construction material distinct from the materials from which it was transformed.

Least developed country construction material means a construction material that-

- (1) Is wholly the growth, product, or manufacture of a least developed country; 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 a least developed country into a new and different construction material distinct from the materials from which it was transformed.

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

United States means the 50 States, the District of Columbia, and outlying areas.

WTO GPA country construction material means a construction material that-

- (1) Is wholly the growth, product, or manufacture of a WTO GPA country; 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 a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) Construction materials.

(1) This clause implements [41 U.S.C. chapter 83](#), Buy American, by providing a preference for domestic construction material. In accordance with [41 U.S.C. 1907](#), the domestic content test of the Buy American statute is waived for construction material that is a COTS item, except that for construction material that consists wholly or predominantly of iron or steel or a combination of both, the domestic content test is applied only to the iron and steel content of the construction material, excluding COTS fasteners. (See FAR (a)(2)). In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American restrictions are waived for designated country construction materials.

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

(3) The requirement in paragraph (b)(2) of this clause does not apply to information technology that is a commercial product or to the construction materials or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate "none"]

(4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that-

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

(A) For domestic construction material that is not a critical item or does 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 is not a COTS item and 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) of this clause will no longer apply as of January 1, 2030.

(B) For domestic construction material that is a critical item or contains 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) of this clause will no longer apply as of January 1, 2030.

(ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; 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.

(c) Request for determination of inapplicability of the Buy American statute. (1) (i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including-

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request 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.

(iii) 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).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the 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 statute 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 statute applies, use of foreign construction material is noncompliant with the Buy American statute.

(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)*
Item1			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
Item1			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

[* *Include 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 (Nov 2023). As prescribed in 25.1102 (c)(3), add the following definition of “Bahraini, 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:

“Bahraini, 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 [41 U.S.C. chapter 83](#), Buy American, by providing a preference for domestic construction material. In accordance with [41 U.S.C. 1907](#), the domestic content test of the Buy American statute is waived for construction material that is a COTS item, except that for construction material that consists wholly or predominantly of iron or steel or a combination of both, the domestic content test is applied only to the iron and steel content of the construction material, excluding COTS fasteners. (See (a)(2)). In addition, the Contracting Officer has determined that the WTO GPA and all the Free Trade Agreements except the Bahrain FTA, United States-Mexico-Canada Agreement, and the Oman FTA apply to this acquisition. Therefore, the Buy American statute restrictions are waived for designated country construction materials other than Bahraini, Mexican, or Omani construction materials.

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

Alternate II (Oct 2022). As prescribed in 25.1102 (c)(4) substitute the following sentence for the first sentence of paragraph (1)(ii)(A) of the definition of *domestic construction material* in paragraph (a):

(A) The cost of its components mined, produced, or manufactured in the United States exceeds __ percent of the cost of all its components.
[Contracting officer to insert the percentage.]

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

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

NOTICE OF BUY AMERICAN REQUIREMENT-CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (MAY 2014)

(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-Construction Materials Under Trade Agreements” (Federal Acquisition Regulation (FAR) clause 52.225-11).

(b) *Requests for determination of inapplicability.* An offeror requesting a determination regarding the inapplicability of the Buy American statute 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 statute 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 statute, 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 2014). 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 statute 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 (Nov 2023). As prescribed in 25.1102 (d)(3), add the definition of “Bahraini, 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 Bahraini, 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 Bahraini, 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
- (ii) May be accepted if revised during negotiations.

52.225-13 [Reserved]

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

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

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)

52.225-15 [Reserved]

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)

52.225-18 Place of Manufacture.

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

PLACE OF MANUFACTURE (AUG 2018)

(a) *Definitions.* As used in this provision—

Manufactured end product means any end product in product and service codes (PSCs) 1000-9999, except-

- (1) FPSC 5510, Lumber and Related Basic Wood Materials;
- (2) Product or Service Group (PSG) 87, Agricultural Supplies;
- (3) PSG 88, Live Animals;
- (4) PSG 89, Subsistence;
- (5) PSC 9410, Crude Grades of Plant Materials;
- (6) PSC 9430, Miscellaneous Crude Animal Products, Inedible;
- (7) PSC 9440, Miscellaneous Crude Agricultural and Forestry Products;
- (8) PSC 9610, Ores;
- (9) PSC 9620, Minerals, Natural and Synthetic; and
- (10) PSC 9630, Additive Metal Materials.

Place of manufacture means the place where an end product is assembled out of components, or otherwise made or processed from raw materials into the finished product that is to be provided to the Government. If a product is disassembled and reassembled, the place of reassembly is not the place of manufacture.

(b) For statistical purposes only, the offeror shall indicate whether the place of manufacture of the end products it expects to provide in response to this solicitation is predominantly-

- (1) ☐ In the United States (Check this box if the total anticipated price of offered end products manufactured in the United States exceeds the total anticipated price of offered end products manufactured outside the United States); or
- (2) ☐ Outside the United States.

(End of provision)

52.225-19 Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States.

As prescribed in 25.301-4, insert the following clause:

CONTRACTOR PERSONNEL IN A DESIGNATED OPERATIONAL AREA OR SUPPORTING A
DIPLOMATIC OR CONSULAR MISSION OUTSIDE THE UNITED STATES (MAY 2020)

(a) *Definitions*. As used in this clause-

Chief of mission means the principal officer in charge of a diplomatic mission of the United States or of a United States office abroad which is designated by the Secretary of State as diplomatic in nature, including any individual assigned under section 502(c) of the Foreign Service Act of 1980 (Public Law 96-465) to be temporarily in charge of such a mission or office.

Combatant commander means the commander of a unified or specified combatant command established in accordance with [10 U.S.C. 161](#).

Designated operational area means a geographic area designated by the combatant commander or subordinate joint force commander for the conduct or support of specified military operations.

“Supporting a diplomatic or consular mission” means performing outside the United States under a contract administered by Federal agency personnel who are subject to the direction of a chief of mission.

(b) *General*.

(1) This clause applies when Contractor personnel are required to perform outside the United States-

(i) In a designated operational area during-

(A) Contingency operations;

(B) Humanitarian or peacekeeping operations; or

(C) Other military operations; or military exercises, when designated by the Combatant Commander; or

(ii) When supporting a diplomatic or consular mission-

(A) That has been designated by the Department of State as a danger pay post (see <https://aoprals.state.gov/>); or

(B) That the Contracting Officer has indicated is subject to this clause.

(2) Contract performance may require work in dangerous or austere conditions. Except as otherwise provided in the contract, the Contractor accepts the risks associated with required contract performance in such operations.

(3) Contractor personnel are civilians.

(i) Except as provided in paragraph (b)(3)(ii) of this clause, and in accordance with paragraph (i)(3) of this clause, Contractor personnel are only authorized to use deadly force in self-defense.

(ii) Contractor personnel performing security functions are also authorized to use deadly force when use of such force reasonably appears necessary to execute their security mission to protect assets/persons, consistent with the terms and conditions contained in the contract or with their job description and terms of employment.

(4) Service performed by Contractor personnel subject to this clause is not active duty or service under [38 U.S.C. 106](#) note.

(c) *Support.* Unless specified elsewhere in the contract, the Contractor is responsible for all logistical and security support required for Contractor personnel engaged in this contract.

(d) *Compliance with laws and regulations.* The Contractor shall comply with, and shall ensure that its personnel in the designated operational area or supporting the diplomatic or consular mission are familiar with and comply with, all applicable-

(1) United States, host country, and third country national laws;

(2) Treaties and international agreements;

(3) United States regulations, directives, instructions, policies, and procedures; and

(4) Force protection, security, health, or safety orders, directives, and instructions issued by the Chief of Mission or the Combatant Commander; however, only the Contracting Officer is authorized to modify the terms and conditions of the contract.

(e) *Preliminary personnel requirements.*

(1) Specific requirements for paragraphs (e)(2)(i) through (e)(2)(vi) of this clause will be set forth in the statement of work, or elsewhere in the contract.

(2) Before Contractor personnel depart from the United States or a third country, and before Contractor personnel residing in the host country begin contract performance in the designated operational area or supporting the diplomatic or consular mission, the Contractor shall ensure the following:

(i) All required security and background checks are complete and acceptable.

(ii) All personnel are medically and physically fit and have received all required vaccinations.

(iii) All personnel have all necessary passports, visas, entry permits, and other documents required for Contractor personnel to enter and exit the foreign country, including those required for in-transit countries.

(iv) All personnel have received-

(A) A country clearance or special area clearance, if required by the chief of mission; and

(B) Theater clearance, if required by the Combatant Commander.

(v) All personnel have received personal security training. The training must at a minimum-

(A) Cover safety and security issues facing employees overseas;

(B) Identify safety and security contingency planning activities; and

(C) Identify ways to utilize safety and security personnel and other resources appropriately.

(vi) All personnel have received isolated personnel training, if specified in the contract. Isolated personnel are military or civilian personnel separated from their unit or organization in an environment requiring them to survive, evade, or escape while awaiting rescue or recovery.

(vii) All personnel who are U.S. citizens are registered with the U.S. Embassy or Consulate with jurisdiction over the area of operations on-line at <http://www.travel.state.gov>.

(3) The Contractor shall notify all personnel who are not a host country national or ordinarily resident in the host country that-

(i) If this contract is with the Department of Defense, or the contract relates to supporting the mission of the Department of Defense outside the United States, such employees, and dependents residing with such employees, who engage in conduct outside the United States that would constitute an offense punishable by imprisonment for more than one year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States, may potentially be subject to the criminal jurisdiction of the United States (see the Military Extraterritorial Jurisdiction Act of 2000 (18 U.S.C. 3261 *et seq.*);

(ii) Pursuant to the War Crimes Act, [18 U.S.C. 2441](#), Federal criminal jurisdiction also extends to conduct that is determined to constitute a war crime when committed by a civilian national of the United States; and

(iii) Other laws may provide for prosecution of U.S. nationals who commit offenses on the premises of United States diplomatic, consular, military or other United States Government missions outside the United States ([18 U.S.C. 7\(9\)](#)).

(f) *Processing and departure points.* The Contractor shall require its personnel who are arriving from outside the area of performance to perform in the designated operational area or supporting the diplomatic or consular mission to-

(1) Process through the departure center designated in the contract or complete another process as directed by the Contracting Officer;

(2) Use a specific point of departure and transportation mode as directed by the Contracting Officer; and

(3) Process through a reception center as designated by the Contracting Officer upon arrival at the place of performance.

(g) *Personnel data.*

(1) Unless personnel data requirements are otherwise specified in the contract, the Contractor shall establish and maintain with the designated Government official a current list of all Contractor personnel in the areas of performance. The Contracting Officer will inform the Contractor of the Government official designated to receive this data and the appropriate system to use for this effort.

(2) The Contractor shall ensure that all employees on this list have a current record of emergency data, for notification of next of kin, on file with both the Contractor and the designated Government official.

(h) *Contractor personnel.* The Contracting Officer may direct the Contractor, at its own expense, to remove and replace any Contractor personnel who fail to comply with or violate applicable requirements of this contract. Such action may be taken at the Government's discretion without prejudice to its rights under any other provision of this contract, including termination for default or cause.

(i) *Weapons.*

(1) If the Contracting Officer, subject to the approval of the Combatant Commander or the Chief of Mission, authorizes the carrying of weapons-

(i) The Contracting Officer may authorize an approved Contractor to issue Contractor-owned weapons and ammunition to specified employees; or

(ii) The_____ [*Contracting Officer to specify individual, e.g., Contracting Officer Representative, Regional Security Officer, etc.,*] may issue Government-furnished weapons and ammunition to the Contractor for issuance to specified Contractor employees.

(2) The Contractor shall provide to the Contracting Officer a specific list of personnel for whom authorization to carry a weapon is requested.

(3) The Contractor shall ensure that its personnel who are authorized to carry weapons-

(i) Are adequately trained to carry and use them-

(A) Safely;

(B) With full understanding of, and adherence to, the rules of the use of force issued by the Combatant Commander or the Chief of Mission; and

(C) In compliance with applicable agency policies, agreements, rules, regulations, and other applicable law;

(ii) Are not barred from possession of a firearm by 18 U.S.C. 922; and

(iii) Adhere to all guidance and orders issued by the Combatant Commander or the Chief of Mission regarding possession, use, safety, and accountability of weapons and ammunition.

(4) Upon revocation by the Contracting Officer of the Contractor's authorization to possess weapons, the Contractor shall ensure that all Government-furnished weapons and unexpended ammunition are returned as directed by the Contracting Officer.

(5) Whether or not weapons are Government-furnished, all liability for the use of any weapon by Contractor personnel rests solely with the Contractor and the Contractor employee using such weapon.

(j) *Vehicle or equipment licenses.* Contractor personnel shall possess the required licenses to operate all vehicles or equipment necessary to perform the contract in the area of performance.

(k) *Military clothing and protective equipment.*

(1) Contractor personnel are prohibited from wearing military clothing unless specifically authorized by the Combatant Commander. If authorized to wear military clothing, Contractor personnel must wear distinctive patches, armbands, nametags, or headgear, in order to be distinguishable from military personnel, consistent with force protection measures.

(2) Contractor personnel may wear specific items required for safety and security, such as ballistic, nuclear, biological, or chemical protective equipment.

(l) *Evacuation.*

(1) If the Chief of Mission or Combatant Commander orders a mandatory evacuation of some or all personnel, the Government will provide to United States and third country national Contractor personnel the level of assistance provided to private United States citizens.

(2) In the event of a non-mandatory evacuation order, the Contractor shall maintain personnel on location sufficient to meet contractual obligations unless instructed to evacuate by the Contracting Officer.

(m) *Personnel recovery.*

(1) In the case of isolated, missing, detained, captured or abducted Contractor personnel, the Government will assist in personnel recovery actions.

(2) Personnel recovery may occur through military action, action by non-governmental organizations, other Government-approved action, diplomatic initiatives, or through any combination of these options.

(3) The Department of Defense has primary responsibility for recovering DoD contract service employees and, when requested, will provide personnel recovery support to other agencies in accordance with DoD Directive 2310.2, Personnel Recovery.

(n) *Notification and return of personal effects.*

(1) The Contractor shall be responsible for notification of the employee-designated next of kin, and notification as soon as possible to the U.S. Consul responsible for the area in which the event occurred, if the employee-

(i) Dies;

(ii) Requires evacuation due to an injury; or

(iii) Is isolated, missing, detained, captured, or abducted.

(2) The Contractor shall also be responsible for the return of all personal effects of deceased or missing Contractor personnel, if appropriate, to next of kin.

(o) *Mortuary affairs.* Mortuary affairs for Contractor personnel who die in the area of performance will be handled as follows:

(1) If this contract was awarded by DoD, the remains of Contractor personnel will be handled in accordance with DoD Directive 1300.22, Mortuary Affairs Policy.

(2) (i) If this contract was awarded by an agency other than DoD, the Contractor is responsible for the return of the remains of Contractor personnel from the point of identification of the remains to the location specified by the employee or next of kin, as applicable, except as provided in paragraph (o)(2)(ii) of this clause.

(ii) In accordance with [10 U.S.C. 1486](#), the Department of Defense may provide, on a reimbursable basis, mortuary support for the disposition of remains and personal effects of all U.S. citizens upon the request of the Department of State.

(p) *Changes.* In addition to the changes otherwise authorized by the Changes clause of this contract, the Contracting Officer may, at any time, by written order identified as a change order, make changes in place of performance or Government-furnished facilities, equipment, material, services, or site. Any change order issued in accordance with this paragraph shall be subject to the provisions of the Changes clause of this contract.

(q) *Subcontracts.* The Contractor shall incorporate the substance of this clause, including this paragraph (q), in all subcontracts that require subcontractor personnel to perform outside the United States-

(1) In a designated operational area during-

(i) Contingency operations;

(ii) Humanitarian or peacekeeping operations; or

(iii) Other military operations; or military exercises, when designated by the Combatant Commander; or

(2) When supporting a diplomatic or consular mission-

(i) That has been designated by the Department of State as a danger pay post (see <https://aoprals.state.gov/>); or

(ii) That the Contracting Officer has indicated is subject to this clause.

(End of clause)

52.225-20 [Reserved]

52.225-21 [Reserved]

52.225-22 [Reserved]

52.225-23 [Reserved]

52.225-24 [Reserved]

52.225-25 [Reserved]

52.225-26 Contractors Performing Private Security Functions Outside the United States.

As prescribed in 25.302-6 insert the following clause:

CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS OUTSIDE THE UNITED STATES (OCT 2016)

(a) *Definition.* As used in this clause-

Area of combat operations means an area of operations designated as such by the Secretary of Defense when enhanced coordination of contractors performing private security functions working for Government agencies is required

Full cooperation-

(1) Means disclosure to the Government of the information sufficient to identify the nature and extent of the incident and the individuals responsible for the conduct. It includes providing timely and complete responses to Government auditors' and investigators' requests for documents and access to employees with information;

(2) Does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not require-

(i) The Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine; or

(ii) Any officer, director, owner, or employee of the Contractor, including a sole proprietor, to waive his or her attorney-client privilege or Fifth Amendment rights; and

(3) Does not restrict the Contractor from-

- (i) Conducting an internal investigation; or
- (ii) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

Other significant military operations means activities, other than combat operations, as part of a contingency operation outside the United States that is carried out by United States Armed Forces in an uncontrolled or unpredictable high-threat environment where personnel performing security functions may be called upon to use deadly force.

Private security functions means activities engaged in by a Contractor, as follows:

- (1) Guarding of personnel, facilities, designated sites, or property of a Federal agency, the Contractor or subcontractor, or a third party.
- (2) Any other activity for which personnel are required to carry weapons in the performance of their duties in accordance with the terms of this contract.

(b) *Applicability.* If this contract is performed both in a designated area and in an area that is not designated, the clause only applies to performance in the following designated areas-

- (1) Combat operations, as designated by the Secretary of Defense; or
- (2) Other significant military operations, as designated by the Secretary of Defense, and only upon agreement of the Secretary of Defense and the Secretary of State.

(c) *Requirements.* The Contractor is required to-

- (1) Ensure that all employees of the Contractor who are responsible for performing private security functions under this contract comply with 32 CFR part 159, and with any orders, directives, and instructions to Contractors performing private security functions that are identified in the contract for--
 - (i) Registering, processing, accounting for, managing, overseeing, and keeping appropriate records of personnel performing private security functions;
 - (ii) Authorizing and accounting for weapons to be carried by or available to be used by personnel performing private security functions;
 - (iii) Registering and identifying armored vehicles, helicopters, and other military vehicles operated by Contractors performing private security functions; and
 - (iv) Reporting incidents in which-

(A) A weapon is discharged by personnel performing private security functions;

(B) Personnel performing private security functions are attacked, killed, or injured;

(C) Persons are killed or injured or property is destroyed as a result of conduct by Contractor personnel;

(D) A weapon is discharged against personnel performing private security functions or personnel performing such functions believe a weapon was so discharged; or

(E) Active, non-lethal countermeasures (other than the discharge of a weapon) are employed by personnel performing private security functions in response to a perceived immediate threat;

(2) Ensure that the Contractor and all employees of the Contractor who are responsible for performing private security functions under this contract are briefed on and understand their obligation to comply with-

(i) Qualification, training, screening (including, if applicable, thorough background checks), and security requirements established by 32 CFR part 159, Private Security Contractors Operating in Contingency Operations;

(ii) Applicable laws and regulations of the United States and the host country and applicable treaties and international agreements regarding performance of private security functions;

(iii) Orders, directives, and instructions issued by the applicable commander of a combatant command or relevant Chief of Mission relating to weapons, equipment, force protection, security, health, safety, or relations and interaction with locals; and

(iv) Rules on the use of force issued by the applicable commander of a combatant command or relevant Chief of Mission for personnel performing private security functions; and

(3) Provide full cooperation with any Government-authorized investigation of incidents reported pursuant to paragraph (c)(1)(iv) of this clause and incidents of alleged misconduct by personnel performing private security functions under this contract by providing-

(i) Access to employees performing private security functions; and

(ii) Relevant information in the possession of the Contractor regarding the incident concerned.

(d) Remedies. In addition to other remedies available to the Government-

(1) The Contracting Officer may direct the Contractor, at its own expense, to remove and replace any Contractor or subcontractor personnel performing private security functions who fail to comply with or violate applicable requirements of this clause or 32 CFR part 159. Such action may be taken at the Government's discretion without prejudice to its rights under any other provision of this contract.

(2) The Contractor's failure to comply with the requirements of this clause will be included in appropriate databases of past performance and considered in any responsibility determination or evaluation of past performance; and

(3) If this is an award-fee contract, the Contractor's failure to comply with the requirements of this clause shall be considered in the evaluation of the Contractor's performance during the relevant evaluation period, and the Contracting Officer may treat such failure to comply as a basis for reducing or denying award fees for such period or for recovering all or part of award fees previously paid for such period.

(e) Rule of construction. The duty of the Contractor to comply with the requirements of this clause shall not be reduced or diminished by the failure of a higher- or lower-tier Contractor or subcontractor to comply with the clause requirements or by a failure of the contracting activity to provide required oversight.

(f) *Subcontracts*. The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts that will be performed outside the United States in areas of-

(1) Combat operations, as designated by the Secretary of Defense; or

(2) Other significant military operations, upon agreement of the Secretaries of Defense and State that the clause applies in that area.

(End of clause)