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 <u>subpart 25.1</u>); and
- (2) Requires, with some exceptions, the use of only *domestic construction materials* in contracts for *construction* in the *United States* (see <u>subpart 25.2</u>).
- (b) The restrictions in the Buy American statute are not applicable in *acquisitions* subject to certain trade agreements (see <u>subpart 25.4</u>). 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 <u>subpart 25.4</u>.
- (c) The test to determine the country of origin for an *end product* under the Buy American statute (see the various country "*end product*" definitions in 25.003) is different from the test to determine the country of origin for an *end product* under the trade agreements, 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*.
- (4) When using funds appropriated under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), the definition of "domestic manufactured construction material" requires manufacture in the *United States* but does not include a requirement with regard to the origin of the components. If the construction material consists wholly or predominantly of iron or steel, the iron or steel must be produced in the *United States*.

Parent topic: Part 25 - Foreign Acquisition