

# Subpart 25.11 - Solicitation Provisions and Contract Clauses

**Parent topic:** [Part 25 - Foreign Acquisition](#)

## 25.1101 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 [subpart 6.3](#);
      - (B) The *acquisition* is for *supplies* for use within the *United States* and an exception to the Buy American statute applies (e.g., nonavailability, public interest, or *information technology* that is a *commercial product*); or
      - (C) The *acquisition* is for *supplies* for use outside the *United States*.
    - (ii) The *contracting officer shall* 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 shall* 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 shall* insert “65”. For contracts that the *contracting officer* estimates will be awarded after calendar year 2028 the *contracting officer shall* 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* shall 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* shall 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* shall insert "65". For contracts that the *contracting officer* estimates will be awarded after calendar year 2028 the *contracting officer* shall 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) 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-*

(1) Exceeds the *simplified acquisition threshold*; or

(2) 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.

(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)*.

## **25.1102 Acquisition of construction.**

When using funds other than those appropriated under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act), follow the prescriptions in paragraphs (a) through (d) of this section. Otherwise, follow the prescription in paragraph (e).

(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 shall* 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 shall* 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 shall* insert "65". For contracts that the *contracting officer* estimates will be awarded after calendar year 2028 the *contracting officer shall* 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 shall* 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 shall* 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 shall* insert "65". For contracts that the *contracting officer* estimates will be awarded after calendar year 2028 the *contracting officer shall* 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*.

(e)

(1) When using funds appropriated under the Recovery Act for *construction*, use provisions and clauses 52.225-21, 52.225-22, 52.225-23, or 52.225-24 (with appropriate *Alternates*) in lieu of the provisions and clauses 52.225-9, 52.225-10, 52.225-11, or 52.225-12 (with appropriate *Alternates*), respectively, that would be applicable as prescribed in paragraphs (a) through (d) of this section if Recovery Act funds were not used.

(2) If these Recovery Act provisions and clauses are only applicable to a project consisting of certain *line items* in the contract, identify in the schedule the *line items* to which the provisions and clauses apply.

(3) When using clause 52.225-23, list *foreign construction material* in paragraph (b)(3) of the clause as follows:

(i) *Basic clause*. List all *foreign construction materials* excepted from the Buy American statute or section 1605 of the Recovery Act, other than manufactured *construction material* from a Recovery Act *designated country* or unmanufactured *construction material* from a *designated country*.

(ii) *Alternate I*. List in paragraph (b)(3) of the clause all *foreign construction material* excepted from the Buy American statute or section 1605 of the Recovery Act, other than-

(A) Manufactured *construction material* from a Recovery Act *designated country* other than Bahrain, Mexico, or Oman; or

(B) Unmanufactured *construction material* from a *designated country* other than Bahrain, Mexico, or Oman.

## **25.1103 Other provisions and clauses.**

(a) *Restrictions on certain foreign purchases*. Insert the clause at 52.225-13, *Restrictions on Certain Foreign Purchases*, in *solicitations* and contracts, unless an exception applies.

(b) *Translations*. 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.

(c) *Foreign currency offers*. 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*.

(d) The *contracting officer shall* include in each *solicitation* for the *acquisition* of other than *commercial products* or *commercial services* the provision at 52.225-20, *Prohibition on Conducting Restricted Business Operations in Sudan—Certification*.

(e) The *contracting officer shall* include in all *solicitations* the provision at 52.225-25, *Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran-Representation and Certifications*.