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 determinations of nonavailability 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(b)(1)(ii) and 25.204(b)(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 (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.

Parent topic: Subpart 25.2 - Buy American-Construction Materials