

# 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.

**Parent topic:** 52.225 [Reserved]