

52.225-24 Notice of Required Use of American Iron, Steel, and Manufactured Goods-Buy American Statute-Construction Materials Under Trade Agreements.

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

Notice of Required Use of American Iron, Steel, and Manufactured Goods-Buy American Statute-Construction Materials Under Trade Agreements (Jan 2021)

(a) *Definitions.* "Construction material," "domestic construction material," "foreign construction material," "manufactured construction material," "Recovery Act designated country construction material," "steel," and "unmanufactured construction material," as used in this provision, are defined in the clause of this *solicitation* entitled "Required Use of Iron, Steel, and Manufactured Goods-Buy American Statute-Construction Materials Under Trade Agreements" (Federal Acquisition Regulation (FAR) clause 52.225-23).

(b) *Requests for determination of inapplicability.* An *Offeror* requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) or 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 52.225-23 in the request. If an *Offeror* has not requested a determination regarding the inapplicability of section 1605 of the Recovery Act or 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) If the Government determines that an exception based on unreasonable cost of domestic *construction* material applies in accordance with FAR 25.604, the Government will evaluate an *offer* requesting exception to the requirements of section 1605 of the Recovery Act or the Buy American statute by adding to the offered price of the contract-

(i) 25 percent of the offered price of the contract, if foreign manufactured *construction* material is included in the *offer* based on an exception for the unreasonable cost of comparable manufactured domestic *construction* material; and

(ii) 20 percent of the cost of foreign unmanufactured *construction* material included in the *offer* based on an exception for the unreasonable cost of comparable domestic unmanufactured *construction* material.

(2) If the *solicitation* specifies award on the basis of factors in addition to cost or price, the *Contracting Officer* will apply the evaluation factors as specified in paragraph (c)(1) of this provision and use the evaluated cost or price in determining the *offer* that represents the *best value* to the Government.

(3) Unless paragraph (c)(2) of this provision applies, if two or more *offers* are equal in price, the *Contracting Officer* will 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.

(d) *Alternate offers.*

(1) When an *offer* includes foreign *construction* material, other than Recovery Act designated country *construction* material, that is not listed by the Government in this *solicitation* in paragraph (b)(3) of FAR clause 52.225-23, the *Offeror* also *may* submit an *alternate offer* based on use of equivalent domestic or Recovery Act 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 cost comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225-23 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 52.225-23 does not apply, the Government will evaluate only those *offers* based on use of the equivalent domestic or Recovery Act designated country *construction* material, and the *Offeror shall* be required to furnish such domestic or Recovery Act 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 (e), 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 section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) or 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 52.225-23.

Alternate II (Nov 2023) . As prescribed in 25.1102 (e), 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 Recovery Act 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 52.225-23, the *offeror* also *may* submit an *alternate offer* based on use of equivalent domestic or Recovery Act 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 cost comparison table prepared in accordance with paragraphs (c)

and (d) of FAR clause 52.225-23 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 52.225-23 does not apply, the Government will evaluate only those *offers* based on use of the equivalent domestic or Recovery Act 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.

Parent topic: 52.225 [Reserved]