

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON—Continued

Construction material description	Unit of measure	Quantity	Price (dollars) ¹
Domestic construction material

¹Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).
List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary. Include other applicable supporting information.

(End of clause)

Alternate I (June 2000). As prescribed in 25.1102(c)(3), delete the definitions of “North American Free Trade Agreement country” and “North American Free Trade Agreement country construction material” from the definitions in paragraph (a) of the basic clause and substitute the following paragraphs (b)(1) and (b)(2) for paragraphs (b)(1) and (b)(2) of the basic clause:

(b) *Construction materials.* (1) This clause implements the Buy American Act (41 U.S.C. 10a-10d) by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the Trade Agreements Act applies to this acquisition. Therefore, the Buy American Act restrictions are waived for designated country construction materials.

(2) The Contractor shall use only domestic or designated country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

[64 FR 72438, Dec. 27, 1999; 65 FR 4633, Jan. 31, 2000, as amended at 65 FR 36026, June 6, 2000; 66 FR 65351, 65371, Dec. 18, 2001; 67 FR 21537, Apr. 30, 2002; 67 FR 43520, June 27, 2002]

52.225-12 Notice of Buy American Act Requirement— Construction Materials under Trade Agreements.

As prescribed in 25.1102(d)(1), insert the following provision:

NOTICE OF BUY AMERICAN ACT REQUIREMENT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (MAY 2002)

(a) *Definitions.* *Construction material, designated country construction material, domestic construction material, foreign construction material, and NAFTA country construction material,* as used in this provision, are defined in the clause of this solicitation entitled “Buy American Act—Construction Materials under Trade Agreements” (Federal Acquisition Regulation (FAR) clause 52.225-11).

(b) *Requests for determination of inapplicability.* An offeror requesting a determination regarding the inapplicability of the Buy

American Act 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 52.225-11 in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American Act 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 Act, based on claimed unreasonable cost of domestic construction materials, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(4)(i) of FAR clause 52.225-11.

(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, other than designated country or NAFTA country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225-11, the offeror also may submit an alternate offer based on use of equivalent domestic, designated country, or NAFTA 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 price comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225-11 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 52.225-11 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic, designated country, or NAFTA country construction material, and

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the offeror shall be required to furnish such domestic, designated country, or NAFTA 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 2002). As prescribed in 25.1102(d)(2), 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 the Buy American Act shall submit the request with its offer, including the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225-11.

Alternate II (May 2002). As prescribed in 25.1102(d)(3), substitute the following paragraphs (a) and (d) for paragraphs (a) and (d) of the basic provision:

(a) *Definitions.* “Construction material,” “designated country 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 Act— Construction Materials under Trade Agreements” (Federal Acquisition Regulation (FAR) clause 52.225-11).

(d) *Alternate offers.* (1) When an offer includes foreign construction material, other than designated country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225-11, the offeror also may submit an alternate offer based on use of equivalent domestic or 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 price comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225-11 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 52.225-11 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or designated country construction material, and the offeror shall be required to furnish such domestic or designated country construction material. An

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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.

[64 FR 72440, Dec. 27, 1999, as amended at 65 FR 36027, June 6, 2000; 67 FR 21537, Apr. 30, 2002]

52.225-13 Restrictions on Certain Foreign Purchases.

As prescribed in 25.1103(a), insert the following clause:

RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUL 2000)

(a) The Contractor shall not acquire, for use in the performance of this contract, any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United States under regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries are Cuba, Iran, Iraq, Libya, North Korea, Sudan, the territory of Afghanistan controlled by the Taliban, and Serbia (excluding the territory of Kosovo).

(b) The Contractor shall not acquire for use in the performance of this contract any supplies or services from entities controlled by the government of Iraq.

(c) The Contractor shall insert this clause, including this paragraph (c), in all sub-contracts.

(End of clause)

[64 FR 72440, Dec. 27, 1999, as amended at 65 FR 36028, June 6, 2000]

52.225-14 Inconsistency between English Version and Translation of Contract.

As prescribed in 25.1103(b), insert the following clause:

INCONSISTENCY BETWEEN ENGLISH VERSION AND TRANSLATION OF CONTRACT (FEB 2000)

In the event of inconsistency between any terms of this contract and any translation into another language, the English language meaning shall control.

(End of clause)

[64 FR 72440, Dec. 27, 1999]