

Department of Defense

252.225-7045

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Cost of components” means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

“Domestic construction material” means—

(1) An unmanufactured construction material mined or produced in the United States; or

(2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.

“United States” means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

(b) *Domestic preference.* This clause implements the Balance of Payments Program by providing a preference for domestic construction material. The Contractor shall use only domestic construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation; or

(2) The construction material or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate “none”]

(End of clause)

[67 FR 20695, Apr. 26, 2002]

**252.225-7045 Balance of Payments Program—Construction Material Under Trade Agreements.**

As prescribed in 225.7503(b), use the following clause:

BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL UNDER TRADE AGREEMENTS (APR 2002)

(a) *Definitions.* As used in this clause—

“Component” means any article, material, or supply incorporated directly into construction material.

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Cost of components” means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

“Designated country” means any of the following countries:

- Aruba
- Austria
- Bangladesh
- Belgium
- Benin
- Bhutan
- Botswana

Burkina Faso  
 Burundi  
 Canada  
 Cape Verde  
 Central African Republic  
 Chad  
 Comoros  
 Denmark  
 Djibouti  
 Equatorial Guinea  
 Finland  
 France  
 Gambia  
 Germany  
 Greece  
 Guinea  
 Guinea-Bissau  
 Haiti  
 Hong Kong  
 Iceland  
 Ireland  
 Israel  
 Italy  
 Japan  
 Kiribati  
 Korea, Republic of  
 Lesotho  
 Liechtenstein  
 Luxembourg  
 Malawi  
 Maldives  
 Mali  
 Mozambique  
 Nepal  
 Netherlands  
 Niger  
 Norway  
 Portugal  
 Rwanda  
 Sao Tome and Principe  
 Sierra Leone  
 Singapore  
 Somalia  
 Spain  
 Sweden  
 Switzerland  
 Tanzania U.R.  
 Togo  
 Tuvalu  
 Uganda  
 United Kingdom  
 Vanuatu  
 Western Samoa  
 Yemen

“Designated country construction material” means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a designated country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different construction material distinct from the material from which it was transformed.

“Domestic construction material” means—

(1) An unmanufactured construction material mined or produced in the United States; or

(2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.

“North American Free Trade Agreement (NAFTA) country” means Canada or Mexico.

“North American Free Trade Agreement (NAFTA) country construction material” means a construction material that—

(1) Is wholly the growth, product, or manufacture of a NAFTA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a NAFTA country into a new and different construction material distinct from the material from which it was transformed.

“United States” means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the Trade Agreements Act and the North American Free Trade Agreement (NAFTA) apply to this acquisition. Therefore, the Buy American Act and Balance of Payments Program restrictions are waived for designated country and NAFTA country construction materials.

(c) The Contractor shall use only domestic, designated country, or NAFTA country construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation; or

(2) The construction material or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate “none”.]

(End of clause)

*Alternate 1 (APR 2002).* As prescribed in 225.7503(b), 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) and (c) for paragraphs (b) and (c) of the basic clause:

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(b) This clause implements the Balance of Payments Program 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 Balance of Payments Program restrictions are waived for designated country construction material.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 59 FR 22131, Apr. 29, 1994]

252.226-7001 Utilization of Indian Organizations and Indian-Owned Economic Enterprises-DoD Contracts.

As prescribed in 226.104, use the following clause:

UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES-DoD CONTRACTS (SEP 2001)

(a) Definitions. As used in this clause—

“Indian” means any person who is a member of any Indian tribe, band, group, pueblo, or community that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C. 1452(c) and any “Native” as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601).

“Indian organization” means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C. Chapter 17.

“Indian-owned economic enterprise” means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership constitutes not less than 51 percent of the enterprise.

“Indian tribe” means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, that is recognized by the Federal Government as eligible for services from BIA in accordance with 25 U.S.C. 1452 (c).

“Interested party” means a contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

(b) The Contractor shall use its best efforts to give Indian organizations and Indian-owned economic enterprises the maximum practicable opportunity to participate in the subcontracts it awards, to the fullest extent consistent with efficient performance of the contract.

(c) The Contracting Officer and the Contractor, acting in good faith, may rely on the representation of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status.

(c) The Contractor shall use only domestic or designated country construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation; or

(2) The construction material or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate “none”.]

[67 FR 20695, Apr. 26, 2002]

252.226-7000 Notice of historically black college or university and minority institution set-aside.

As prescribed in 226.7008(a), use the following clause:

NOTICE OF HISTORICALLY BLACK COLLEGE OR UNIVERSITY AND MINORITY INSTITUTION SET-ASIDE (APR 1994)

(a) Definitions. Historically black colleges and universities, as used in this clause, means institutions determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. The term also means any non-profit research institution that was an integral part of such a college or university before November 14, 1986.

Minority institutions, as used in this clause, means institutions meeting the requirements of section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3)). The term also includes Hispanic-serving institutions as defined in section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1)).

(b) General. (1) Offers are solicited only from historically black colleges or universities and minority institutions.

(2) Any award resulting from this solicitation will be made only to an offeror which is a historically black college or university or a minority institution at the time of submission of its initial offer including price.

(c) Agreements. The offeror will—

(1) Perform at least 50 percent of the cost of contract performance incurred for personnel with its own employees; and

(2) Upon request by the Contracting Officer, provide evidence prior to award that the Secretary of Education has determined the offeror to be a historically black college or university or minority institution.