

**Buy American Act - Construction Materials under North American Free Trade Agreement**  
(August 2002)

(a) Definitions. As used in the clause--

(1) "Components" means those articles, materials, and supplies incorporated directly into construction materials.

(2) "Construction material" means an article, material, or supply brought to the construction site for incorporation into the building or work. Construction material also includes an item brought to the site pre-assembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, which are discrete systems incorporated into a public building or work and which are produced as a complete system, shall be evaluated as a single and distinct construction material regardless of when or how the individual parts or components of such systems are delivered to the construction site.

(3) "Domestic construction material" means (1) an unmanufactured construction material mined or produced in the United States, or (2) a construction material manufactured in the U.S., 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 as the construction materials determined to be unavailable shall be treated as domestic.

(4) "North American Free Trade Agreement (NAFTA) country" means Canada or Mexico.

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

(6) "Unavailable construction materials," as determined by the TSA, means those articles, materials, and supplies not mined produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality (upon request, the Contracting Officer will provide lists of articles, materials, and supplies excepted from the Buy American Act).

(b) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic material. In addition, the North American Free Trade Agreement (NAFTA), provides that NAFTA construction materials are exempted from application of the Buy American Act when:

(1) The acquisition value of the construction contract is \$6,500,000 or more; and

(2) NAFTA country construction material will be used.

(c) The Contractor agrees that only domestic construction materials, or NAFTA country construction materials will be used by the Contractor, subcontractors, material men and suppliers in the performance of this contract, except for other foreign construction materials, if any, listed in this contract.

**(End of clause)**

**PRESCRIPTION**

Shall be used in RFI/RFPs and contracts for construction with an estimated acquisition value of \$6,500,000 or more.