

3.6.4-2 Buy American Act - Supplies (February 2003)

(a) The Buy American Act (41 U.S.C. 10) and Executive Order No. 10582, dated December 17, 1954, as amended, provide that the Government give preference to domestic end products.

(b) Definitions:

(1) "Components," as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

(2) "Domestic end product," as used in this clause, means (1) an unmanufactured end product mined or produced in the United States, or (2) an end product 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 as the products referred to in subparagraphs (c)(2) or (3) of this clause shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

(3) "End products," as used in this clause, means those articles, materials, and supplies to be acquired for public use under this contract.

(4) "Foreign offer," as used in this clause, means an offered price for a foreign end product, including transportation to destination and duty (whether or not a duty free entry certificate is issued).

(c) The Contractor shall deliver only domestic end products, except those--

(1) For use outside the United States;

(2) That the TSA determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;

(3) For which the TSA determines that domestic preference would be inconsistent with the public interest; or

(4) For which the TSA determines the cost to be unreasonable.

(i) Unless the TSA determines otherwise, the offered price of a domestic end product is unreasonable when the lowest acceptable domestic offer exceeds the lowest acceptable foreign offer, inclusive of duty, by:

(A) More than 6 percent, if a domestic offer is from a large business that is not a labor surplus area concern; or

(B) More than 12 percent, if a domestic offer is from a small business concern or any labor surplus area concern.

(ii) The evaluation in subparagraph (i) above shall be applied on an item by item basis or to any group of items on which award

may be made, as specifically provided by the screening information request.

(iii) If an award of more than \$250,000 would be made to a domestic concern if the 12 percent factor were applied, but not if the 6 percent factor were applied, the TSA will decide whether award to the domestic concern would involve unreasonable cost.

(End of clause)

PRESCRIPTION

Shall be used in RFI/RFPs and contracts (in accordance with 49 U.S.C. 10) for the acquisition of supplies, or for services involving the furnishing of supplies for use within the United States.