

**3.6.4-8 Buy American Act - NAFTA Implementation Act - Balance of Payments Program**  
(February 2003)

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

(1) "Components" means those articles, materials, and supplies incorporated directly into the end products. Domestic end product means (i) an unmanufactured end product mined or produced in the United States, or (ii) 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. A component shall also be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind (i) determined by the Government, to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality, or (ii) to which the agency head concerned has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

(2) "End products" means those articles, materials, and supplies to be acquired under this contract for public use.

(3) "Foreign end product" means an end product other than a domestic end product.

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

(5) "NAFTA country end product" means an article that (i) is wholly the growth, product, or manufacture of a NAFTA country, or (ii) in the case of an article 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 article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself.

(b) This clause implements the Buy American Act (41 U.S.C. 10), the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), and the Balance of Payments Program by providing a preference for domestic end products over foreign end products, except for certain foreign end products which meet the requirements for classification as NAFTA country end products.

(c) The Contracting Officer has determined that the NAFTA applies to this acquisition. Unless otherwise specified, the Acts apply to all items in the schedule. The Contractor agrees to deliver under this contract only domestic end products unless in its offer, it specifies delivery of foreign end products in the provision "Buy American Act-North American Free Trade Agreement Implementation Act-Balance of Payments Program Certificate." An offer based on supplying a NAFTA country end product requires the Contractor to supply a NAFTA country end product or, at the Contractor's option, a domestic end product.

(d) The restrictions of the Buy American Act or the Balance of Payments Program will be applied to foreign offers, except as follows:

(1) Canadian end products under supply contracts with an estimated value above \$25,000 and Mexican end products under supply contracts with an estimated value above \$50,000.

(2) NAFTA country construction materials under construction contracts with an estimated acquisition value of \$6,500,000 or more.

**(End of clause)**

**PRESCRIPTION**

Shall be used in RFI/RFPs and contracts which the Contracting Officer determines are subject to NAFTA.