

**3.6.4-14 Balance of Payments Program--Construction Materials--NAFTA** (August 2002)

(a) This clause applies to construction contracts outside of the United States.

(b) Definitions. As used in this clause:

(1) "Construction material," as used in this clause, 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.

(2) "Domestic construction material," as used in this clause, means (i) an un-manufactured construction material mined or produced in the United States, or (ii) 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 as the construction materials determined to be unavailable shall be treated as domestic.

(3) "NAFTA country construction material" means a construction material that (a) is wholly the growth, product, or manufacture of a NAFTA country 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 designated country into a new and different construction material distinct from the materials from which it was transformed.

(4) "North American Free Trade Agreement (NAFTA) country" means Canada, or Mexico, and the U.S.A.

(5) "Unavailable construction materials," as determined by the TSA, are 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).

(c) The Balance of Payments Program provides that the TSA give preference to domestic construction material.

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

**(End of clause)**

**PRESCRIPTION**

Shall be used in RFI/RFP's and contracts for construction contracts outside of the U.S. that the Contracting Officer determines is subject to NAFTA.