

**SUBCHAPTER D—SOCIOECONOMIC PROGRAMS  
PART 825—FOREIGN ACQUISITION**

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AUTHORITY: 40 U.S.C. 121(c) and 48 CFR 1.301-1.304.

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## **SUBPART 825.1 – BUY AMERICAN ACT – SUPPLIES**

### **825.103 Exceptions.**

(a) Public Interest. When a contracting officer believes that a determination that domestic preference would be inconsistent with the public interest is necessary under FAR 25.103(a), the contracting officer must submit the request for determination to the DSPE for submission to the SPE, who will forward the request to the Secretary for approval. The request for determination must contain all the facts and other pertinent information upon which a determination may be made.

(b) Non-availability.

(1) For each determination of non-availability made in accordance with FAR 25.103(b)(2)(i), the HCA must do the following:

(i) Factually support the determination and include the supporting facts in the contract file.

(ii) Forward a copy of the determination, along with supporting documentation, to the DSPE.

(2) If the HCA believes that the non-availability of an article is likely to affect future acquisitions, include a recommendation that a copy of the determination and supporting documentation be forwarded to the Civilian Agency Acquisition Council (CAAC) for possible addition to the list of non-available articles in FAR 25.104. The DSPE will decide whether to submit the material to the CAAC.

### **825.104 Nonavailable articles.**

The following items are added to the list of nonavailable articles contained in FAR 25.104:

Glass, lead

Insulin, human

## **SUBPART 825.2 – BUY AMERICAN ACT – CONSTRUCTION MATERIALS**

### **825.202 Exceptions.**

(a) When a determination is required under FAR 25.202(a)(1), the contracting officer must submit the request for determination to the DSPE for

submission to the SPE, who will forward the request to the Secretary. The submission must contain all the facts and other pertinent information necessary for the Secretary to make a determination.

(b) For each determination of non-availability that the HCA makes in accordance with FAR 25.202(a)(2), the HCA must do the following:

(1) Factually support the determination in writing and include the determination in the contract file.

(2) Forward a copy of the determination, along with supporting documentation, to the Director, Office of Construction and Facilities Management, through the DSPE.

(3) If the HCA believes that the non-availability of an article is likely to affect future acquisitions, include a recommendation that a copy of the determination and supporting documentation be forwarded to the Civilian Agency Acquisition Council (CAAC) for possible addition to the list of non-available articles in FAR 25.104. The DSPE will decide whether to submit the material to the CAAC.

#### **825.205 Post-award determinations.**

A post-award determination that an exception to the Buy American Act applies, as provided in FAR 25.205(c), will be made in accordance with FAR 25.202 and 825.202.

### **SUBPART 825.6 – TRADE SANCTIONS**

#### **825.602 Exceptions.**

When the contracting officer determines it to be in the best interest of the Government, the contracting officer may request an exception to the requirements of FAR 25.601 from the Secretary through the DSPE and the SPE. Each such request must be fully justified and include all pertinent facts, as provided in FAR 25.602(b). The SPE is responsible for notifying the U.S. Trade Representative of approved requests, as required by FAR 25.602(b)(2).

### **SUBPART 825.8 – OTHER INTERNATIONAL AGREEMENTS AND COORDINATION**

#### **825.870 Technical assistance.**

Contracting officers may obtain technical information or guidance on international agreements and treaties for procurements outside of the United

States by contacting the Executive Director and Chief Operating Officer, VA National Acquisition Center.

### **SUBPART 825.9 – CUSTOMS AND DUTIES**

#### **825.902 Procedures.**

##### **825.902-70 Technical assistance.**

Should the regulations contained in FAR Subpart 25.9 be inadequate to meet the particular needs of the contracting officer in clearing items through customs and/or obtaining duty-free entry of goods, the contracting officer should contact the nearest U.S. Customs and Boarder Protection office for technical assistance. The location of the nearest office can be found at <http://www.customs.gov/xp/cgov/toolbox/contacts/cmcs/>.

### **SUBPART 825.10 – ADDITIONAL FOREIGN ACQUISITION REGULATIONS**

#### **825.1001 Waiver of right to examination of records.**

(a) The contracting officer must prepare proposed determinations and findings to use either of the following:

(1) Alternate I of the FAR clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders – Commercial Items.

(2) Alternate III of the FAR clause at 52.215-2, Audit and Records – Negotiation.

(b) The contracting officer must submit the determinations and findings to the DSPE for submission to the SPE, who will forward the request to the Secretary for the signature, as provided in FAR 25.1001(a)(2)(iii). The submission must include all appropriate documentation.

(c) The Secretary, upon concurring with the contracting officer's proposed determination and findings, will, if required by FAR 25.1001(a)(2)(iii), forward the document to the Comptroller General for concurrence.

(d) The completed determination and findings will be made part of the contract file.

**SUBPART 825.11 – SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**825.1102 Acquisition of construction.**

The Buy American Act (41 U.S.C. 10a-d), except as modified by various trade agreements (see FAR Part 25), requires that only domestic construction material be used in the performance of contracts for construction. For solicitations and contracts for construction that contain a FAR clause related to the Buy American Act, the contracting officer shall insert the applicable VAAR clause, with or without an alternate, as shown in Table 825.1102:

**Table 825.1102**

FAR Clause	VAAR Clause to be Used
FAR 52.225-9, Buy American Act – Construction Materials	852.236-89, Buy American Act
FAR clause 52.225-11, Buy American Act – Construction Materials under Trade Agreements, without its Alternate I (see FAR 25.1102(c))	852.236-89, Buy American Act, with its Alternate I
FAR clause 52.225-11, Buy American Act – Construction Materials under Trade Agreements, with its Alternate I (see FAR 25.1102(c)(3))	852.236-89, Buy American Act, with its Alternate II