

Purpose of Modification:

The purpose of this modification is to update Section I, *Contract Clauses*.

Description of Modification:

1. Update Section I, Contract Clause I.55, FAR 52.225-11, *Buy American Act-Construction Materials Under Trade Agreements (August 2009)*, paragraph (b)(3).

FROM:

(b) *Construction materials.*

- (3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows: none [Contracting Officer to list applicable excepted materials or indicate "none"] (M152)

TO:

(b) *Construction materials.*

- (3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows:

Purchases under \$100,000 for construction material – replacement parts that must be acquired from the original foreign manufacturer or supplier, either directly or indirectly, because such parts are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality, or use of domestic parts would invalidate manufacturer/supplier warranties, or adversely affects the system safety or performance function. The Contractor must use good faith efforts to acquire construction material that complies with the Buy American Act, and document justification and determination of inapplicability for use of foreign materials in accordance with FAR 25.205(a); and paragraph (c)(1) of this clause. DEAR 925.202 states that if the cost of the materials is expected to exceed \$100,000, the Head of the Contracting Activity (HCA) shall approve the determination. The Contractor shall not split acquisitions to avoid exceeding the acquisition threshold stated herein. Acquisition of foreign construction material that exceeds the \$100,000 threshold, must be submitted to the Contracting Officer to obtain HCA approval. BNI must submit an annual report to the Contracting Officer for all foreign construction materials purchased under this paragraph. The report shall state the materials, acquisition price, vendor, and country of origin. The Contracting Officer reserves the right to re-negotiate consideration in accordance with FAR 25.205(c) if determined in the Government's best interest (M184).

Contractor's Statement of Release: In consideration of the Modification agreed to herein as complete equitable adjustment, the Contractor hereby releases the Government from any and all liability under this contract for further equitable adjustments attributable to such facts or circumstances giving rise to the changes as noted in this modification.

All other terms and conditions remain unchanged.

(End of Modification)