

## 25.204 Evaluating offers of foreign construction material.

(a) *Offerors* proposing to use *foreign construction material* other than that listed by the Government in the applicable clause at [52.225-9](#), paragraph (b)(2), or [52.225-11](#), paragraph (b)(3), or covered by the *WTO GPA* or a Free Trade Agreement (paragraph (b)(2) of [52.225-11](#)), *must* provide the information required by paragraphs (c) and (d) of the respective clauses.

(b)

(1) *For construction material that is not a critical item and does not contain critical components.*

(i) Unless the *head of the agency* specifies a higher percentage, the *contracting officer* shall add to the offered price 20 percent of the cost of any *foreign construction material* proposed for exception from the requirements of the Buy American statute based on the unreasonable cost of *domestic construction materials*. In the case of a tie, the *contracting officer* shall give preference to an *offer* that does not include *foreign construction material* excepted at the request of the *offeror* on the basis of unreasonable cost.

(ii) For *construction material* that is not a COTS item and does not consist wholly or predominantly of iron or *steel* or a combination of both, if the procedures in paragraph (b)(1)(i) of this section result in an unreasonable cost determination for the *domestic construction material offer* or there is no *domestic construction material offer* received, and the low *offer* is for *foreign construction material* that does not exceed 55 percent domestic content, the *contracting officer* shall—

(A) Treat the lowest *offer* of *foreign construction material* that is manufactured in the *United States* and exceeds 55 percent domestic content as a *domestic offer*; and

(B) Determine the reasonableness of the cost of this *offer* by applying the evaluation factor listed in paragraph (b)(1)(i) to the low *offer*.

(iii) The procedures in paragraph (b)(1)(ii) of this section will no longer apply as of January 1, 2030.

(2) *For construction material that is a critical item or contains critical components.*

(i) The *contracting officer* shall add to the offered price 20 percent, plus the additional preference factor identified for the *critical item* or *construction material* containing *critical components* listed at section [25.105](#), of the cost of any *foreign construction material* proposed for exception from the requirements of the Buy American statute based on the unreasonable cost of *domestic construction materials*. In the case of a tie, the *contracting officer* shall give preference to an *offer* that does not include *foreign construction material* excepted at the request of the *offeror* on the basis of unreasonable cost. See [25.105](#) for the list of *critical components* and *critical items*.

(ii) For *construction material* that is not a COTS item and does not consist wholly or predominantly of iron or *steel* or a combination of both, if the procedures in paragraph (b)(2)(i) of this section result in an unreasonable cost determination for the *domestic construction material offer* or there is no *domestic construction material offer* received, and the low *offer* is for *foreign construction material* that does not exceed 55 percent domestic content, the *contracting officer* shall—

(A) Treat the lowest *offer* of *foreign construction material* that is manufactured in the *United States*

and exceeds 55 percent domestic content as a *domestic offer*; and

(B) Determine the reasonableness of the cost of this *offer* by applying the evaluation factors listed in this paragraph (b)(2) to the low *offer*.

(iii) The procedures in paragraph (b)(2)(ii) of this section will no longer apply as of January 1, 2030.

(c) *Offerors* also may submit *alternate offers* based on use of equivalent *domestic construction material* to avoid possible rejection of the entire *offer* if the Government determines that an exception permitting use of a particular *foreign construction material* does not apply.

(d) If the *contracting officer* awards a contract to an *offeror* that proposed *foreign construction material* not listed in the applicable clause in the *solicitation* (paragraph (b)(2) of [52.225-9](#), or paragraph (b)(3) of [52.225-11](#)), the *contracting officer* must add the excepted materials to the list in the *contract clause*.

**Parent topic:** [Subpart 25.2 - Buy American-Construction Materials](#)