

25.603 Exceptions.

(a)

(1) When one of the following exceptions applies, the *contracting officer* may allow the contractor to incorporate foreign *manufactured construction materials* without regard to the restrictions of section 1605 of the Recovery Act or foreign *unmanufactured construction material* without regard to the restrictions of the Buy American statute:

(i) *Nonavailability*. The *head of the contracting activity* may determine that a particular *construction material* is not mined, produced, or manufactured in the *United States* in sufficient and reasonably available commercial quantities of a satisfactory quality. The determinations of nonavailability of the articles listed at [25.104\(a\)](#) and the procedures at [25.103\(b\)\(1\)](#) also apply if any of those articles are acquired as *construction materials*.

(ii) *Unreasonable cost*. The *contracting officer* concludes that the cost of *domestic construction material* is unreasonable in accordance with [25.605](#).

(iii) *Inconsistent with public interest*. The *head of the agency* may determine that application of the restrictions of section 1605 of the Recovery Act to a particular *manufactured construction material*, or the restrictions of the Buy American statute to a particular *unmanufactured construction material* would be inconsistent with the public interest.

(2) In addition, the *head of the agency* may determine that application of the Buy American statute to a particular *unmanufactured construction material* would be impracticable.

(b) *Determinations*. When a determination is made, for any of the reasons stated in this section, that certain *foreign construction materials* may be used-

(1) The *contracting officer* shall list the excepted materials in the contract; and

(2) For determinations with regard to the inapplicability of section 1605 of the Recovery Act, unless the *construction material* has already been determined to be domestically nonavailable (see list at [25.104](#)), the *head of the agency* shall provide a notice to the Federal Register within three business days after the determination is made, with a copy to the Administrator for Federal *Procurement Policy* and to the Recovery Accountability and Transparency Board. The notice shall include-

(i) The title "Buy American Exception under the American Recovery and Reinvestment Act of 2009";

(ii) The dollar value and brief description of the project; and

(iii) A detailed justification as to why the restriction is being waived.

(c) *Acquisitions under trade agreements*.

(1) For *construction* contracts with an estimated *acquisition* value of \$6,708,000 or more, also see subpart [25.4](#). *Offers* proposing the use of *construction material* from a *designated country* shall receive equal consideration with *offers* proposing the use of *domestic construction material*.

(2) For purposes of applying section 1605 of the Recovery Act to evaluation of *manufactured*

construction material, designated countries do not include the Caribbean Basin Countries.

Parent topic: Subpart 25.6 - American Recovery and Reinvestment Act-Buy American statute-
Construction Materials