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52.225-21 Required Use of American Iron, Steel, and Manufactured Goods-Buy American Statute-Construction Materials.

As prescribed in 25.1102(e), insert the following clause:

Required Use of American Iron, *Steel*, and Manufactured Goods-Buy American Statute-*Construction Materials* (Jan 2021)

(a) *Definitions*. As used in this clause-

Component means an article, material, or supply incorporated directly into a *construction material*.

Construction material means an article, material, or supply brought to the *construction site* by the Contractor or a subcontractor for incorporation into the *building or work*. The term also includes an item brought to the site preassembled from articles, materials, or *supplies*. However, *emergency* life safety systems, such as *emergency* lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct *construction material* regardless of when or how the individual parts or *components* of those systems are delivered to the *construction site*.

Domestic construction material means the following-

(1) An unmanufactured *construction material* mined or produced in the United States. (The Buy American statute applies.)

(2) A manufactured *construction material* that is manufactured in the *United States* and, if the *construction material* consists wholly or predominantly of iron or *steel*, the iron or *steel* was produced in the *United States*. (Section 1605 of the Recovery Act applies.)

Foreign construction material means a *construction material* other than a domestic *construction material*.

Manufactured construction material means any *construction material* that is not unmanufactured *construction material*.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

United States means the 50 States, the District of Columbia, and *outlying areas*.

Unmanufactured construction material means raw material brought to the *construction site* for incorporation into the *building or work* that has not been-

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the

properties of the individual raw materials.

(b) Domestic preference.

(1) This clause implements-

(i) Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111-5), by requiring, unless an exception applies, that all manufactured *construction material* in the project is manufactured in the *United States* and, if the *construction material* consists wholly or predominantly of iron or *steel*, the iron or *steel* was produced in the *United States* (produced in the *United States* means that all manufacturing processes of the iron or *steel* must take place in the *United States*, except metallurgical processes involving refinement of *steel* additives); and

(ii) 41 U.S.C chapter 83, Buy American, by providing a preference for unmanufactured *construction material* mined or produced in the *United States* over unmanufactured *construction material* mined or produced in a foreign country.

(2) The Contractor *shall* use only *domestic construction material* in performing this contract, except as provided in paragraph (b)(3) and (b)(4) of this clause.

(3) This requirement does not apply to the *construction material* or *components* listed by the Government as follows:

_____ [Contracting Officer to list applicable excepted materials or indicate "none"]

(4) The *Contracting Officer* may add other *foreign construction material* to the list in paragraph (b)(3) of this clause if the Government determines that-

(i) The cost of domestic *construction material* would be unreasonable;

(A) The cost of domestic manufactured *construction material*, when compared to the cost of comparable foreign manufactured *construction material*, is unreasonable when the cumulative cost of such material will increase the cost of the contract by more than 25 percent;

(B) The cost of domestic unmanufactured *construction material* is unreasonable when the cost of such material exceeds the cost of comparable foreign unmanufactured *construction material* by more than 20 percent;

(ii) The *construction material* is not mined, produced, or manufactured in the *United States* in sufficient and reasonably available quantities and of a satisfactory quality;

(iii) The application of the restriction of section 1605 of the Recovery Act to a particular manufactured *construction material* would be inconsistent with the public interest or the application of the Buy American statute to a particular unmanufactured *construction material* would be impracticable or inconsistent with the public interest.

(c) *Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American statute.*

(1)

(i) Any Contractor request to use *foreign construction material* in accordance with paragraph (b)(4) of this clause *shall* include adequate information for Government evaluation of the request, including-

(A) A description of the foreign and domestic *construction materials*;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the *construction* project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of *foreign construction materials* cited in accordance with paragraph (b)(4) of this clause.

(ii) A request based on unreasonable cost *shall* include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this clause.

(iii) The cost of *construction material shall* include all delivery costs to the *construction* site and any applicable duty.

(iv) Any Contractor request for a determination submitted after contract award *shall* explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the *Contracting Officer* need not make a determination.

(2) If the Government determines after contract award that an exception to section 1605 of the Recovery Act or the Buy American statute applies and the *Contracting Officer* and the Contractor negotiate adequate consideration, the *Contracting Officer* will modify the contract to allow use of the *foreign construction material*. However, when the basis for the exception is the unreasonable cost of a *domestic construction material*, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to section 1605 of the Recovery Act or the Buy American statute applies, use of *foreign construction material* is noncompliant with section 1605 of the American Recovery and Reinvestment Act or the Buy American statute.

(d) *Data*. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor *shall* include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic *Construction Materials* Cost Comparison

| <i>Construction Material
Description</i> | Unit of
Measure | Quantity | Cost (Dollars)* |
|---|----------------------------|-----------------|------------------------|
| <i>Item 1:</i> | | | |
| Foreign <i>construction</i>
material | _____ | _____ | _____ |
| Domestic <i>construction</i>
material | _____ | _____ | _____ |
|
<i>Item 2:</i> | | | |
| Foreign <i>construction</i>
material | _____ | _____ | _____ |
| Domestic <i>construction</i>
material | _____ | _____ | _____ |

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[Include all delivery costs to the construction site.]*

(End of clause)

Parent topic: 52.225 [Reserved]