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Parent topic: General Services Administration Acquisition Manual

Subpart 525.1 - Buy American Act—Supplies

525.103 Exceptions

(a) *Public Interest.*

(1) Only the head of the agency may make the determination required by FAR 25.103(a). The head of the agency may not redelegate this authority.

(2) The determination must consider the cost advantages of any foreign sourced steel, iron, or manufactured goods.

(b) *Nonavailability.*

(1) *Class Determinations.* FAR 25.103(b)(1)(i) does not allow for class determinations to be made at the agency level

(2) *Class Determinations- Notice of Availability.* Regarding FAR 25.103(b)(1)(iii)(C), documentation supporting removal of an item from the list of Nonavailable Articles at FAR 25.104 should be submitted by the contracting officer to the Senior Procurement Executive (SPE) in the Office of the Chief Acquisition Officer. The SPE will determine whether the documentation should be forwarded to the Civilian Agency Acquisition Council (CAAC).

(3) *Individual Determinations*. Only the HCA may make the determination required by FAR 25.103(b)(2)(i). The HCA may not redelegate this authority.

(4) *Individual Determinations—Notice of Nonavailability*. Regarding when the contracting officer considers that non-availability of an item will affect future acquisitions (see FAR 25.103(b)(2)(ii)), documentation supporting the addition of articles to the list of Nonavailable Articles at FAR 25.104 should be submitted by the contracting officer to the SPE. The SPE will determine whether the documentation should be forwarded to the CAAC.

Subpart 525.2 - Buy American Act—Construction Materials

525.202 Exceptions.

(a) *Public Interest*.

(1) Only the head of the agency may make the determination required by FAR 25.202(a)(1). The head of the agency may not redelegate this authority.

(2) The determination described in FAR 25.202(b) must consider the cost advantages of any foreign sourced steel, iron, or manufactured goods.

(b) *Nonavailability*. Only the HCA may make the determination required by FAR 25.202(a)(2). The HCA may not redelegate this authority.

525.206 Noncompliance.

Regarding potentially fraudulent noncompliance under FAR 25.206(c)(4), refer the matter to the appropriate Office of Inspector General Office.

Subpart 525.5 - Evaluating Foreign Offers-Supply Contracts

525.502 Application.

The contracting officer's determination of nonavailability in accordance with FAR 25.502(b)(3) shall be made via a written determination and findings in accordance with FAR 1.704 and shall be submitted for HCA approval before the contracting officer may make an award for items that are not manufactured or substantially transformed in the U.S. or a country listed in FAR 25.003. A copy of the approved and signed D&F must be forwarded to the SPE via email to spe.request@gsa.gov.

Subpart 525.10 - Additional Foreign Acquisition Regulations

525.1070 Purchases Using Department of Defense (DoD) Appropriated Funds.

(a) The Berry Amendment, 10 U.S.C. 4862, applies domestic-source requirements to certain food, clothing, fabrics, specialty metals, and hand or measuring tools when purchased with DoD appropriated funds. The Berry Amendment, as applicable to purchases using DoD appropriated funds, is implemented at DFARS Subpart 225.70 and in clauses prescribed there.

(b) GSA acquisition personnel are responsible for reviewing requests for purchases using DoD appropriated funds to ensure that all special funding and procurement requirements, e.g., Berry Amendment applicability, have been disclosed to GSA.

Subpart 525.11 - Solicitation Provisions and Contract Clauses

525.1170 Applying foreign acquisition prescriptions to GSA-created contracts.

(a) In order to calculate the dollar value to determine which [FAR subpart 25.11](#) provisions and clauses for either the Buy American Act or the Trade Agreements Act, if any, apply to a contract created by a GSA contracting activity (but not pursuant to an interagency agreement):

(1) Aggregate the value of all options as though they were exercised; and

(2) Aggregate the value of all expected orders (*i.e.*, the expected total contract value) against the indefinite-delivery contract.

(3) To determine whether the Trade Agreements Act threshold has been met, do not include the dollar value of a contract that is excepted from the Trade Agreements Act by [FAR 25.401](#) (*e.g.*, do not include the dollar value of a contract set aside for small business).

(b) The foreign acquisition rules (*i.e.*, either the Buy American Act or the Trade Agreements Act, but never both) that apply at the indefinite-delivery contract level, also apply (*i.e.*, flow down) at the order level under that indefinite-delivery contract, meaning:

(1) If the Buy American Act applies to an indefinite-delivery contract, then the Buy American Act also applies to all orders against that indefinite-delivery contract regardless of the dollar value or other characteristics of the order itself; or instead

(2) If the Trade Agreements Act applies to an indefinite-delivery contract, then the Trade Agreements Act also applies to all orders against that indefinite-delivery contract, regardless of the dollar value or other characteristics of the order itself.