

## Argonne National Laboratory Prime Contract

### Part II. Section I. Contract Clauses

Last revised: September 29, 1999

#### Clause I.33 - FAR 52.225-5 Buy American Act -- Construction Materials (Jun 1997)

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

"Components" means those articles, materials, and supplies incorporated directly into construction materials.

"Construction material" means an article, material, or supply brought to the construction site for incorporation into the building or work. Construction material also includes an item brought to the site pre-assembled from articles, materials or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, which are discrete systems incorporated into a public building or work and which are produced as a complete system, shall be evaluated as a single and distinct construction material regardless of when or how the individual parts or components of such systems are delivered to the construction site.

"Domestic construction material" means

- (1) an unmanufactured construction material mined or produced in the United States; or
  - (2) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the construction materials determined to be unavailable pursuant to subparagraph 25.202(a)(2) of the Federal Acquisition Regulation (FAR) shall be treated as domestic.
- (b)
- (1) The Buy American Act (41 U.S.C. 10a-10d) requires that only domestic construction material be used in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.
  - (2) This requirement does not apply to the excepted construction material or components listed by the Government as follows:
 

None
  - (3) Other foreign construction material may be added to the list in paragraph (b)(2) of this clause if the Government determines that --

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- (i) The cost would be unreasonable (the cost of a particular domestic construction material shall be determined to be unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent, unless the agency head determines a higher percentage to be appropriate);
  - (ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or
  - (iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.
- (4) The Contractor agrees that only domestic construction material will be used by the Contractor, subcontractors, material men, and suppliers in the performance of this contract, except for foreign construction materials, if any, listed in paragraph (b)(2) of this clause.
- (c) Request for determination.
- (1) Contractors requesting to use foreign construction material under paragraph (b)(3) of this clause shall provide adequate information for Government evaluation of the request for a determination regarding the inapplicability of the Buy American Act. Each submission shall include a description of the foreign and domestic construction materials, including unit of measure, quantity, price, time of delivery or availability, location of the construction project, name and address of the proposed contractor, and a detailed justification of the reason for use of foreign materials cited in accordance with paragraph (b)(3) of this clause. A submission based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause. The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).
  - (2) If the Government determines after contract award that an exception to the Buy American Act applies, the contract shall be modified to allow use of the foreign construction material, and adequate consideration shall be negotiated. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration shall not be less than the differential established in paragraph (b)(3)(i) of this clause.

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- (3) If the Government does not determine that an exception to the Buy American Act applies, the use of that particular foreign construction material will be a failure to comply with the Act.
- (d) For evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the following information and any applicable supporting data based on the survey of suppliers shall be included in the request:

**FOREIGN AND DOMESTIC CONSTRUCTION  
MATERIALS PRICE COMPARISON**

Construction Material Description	Unit of Measure	Quantity	Price Price (Dollars)*
Item 1: Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
Item 2: Foreign construction material	_____	_____	_____
Domestic construction 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 and any applicable duty (whether or not a duty-free entry certificate is issued).