25.504–2 WTO GPA/Caribbean Basin Trade Initiative/FTAs.

Example 1.

Offer A .......................................... $11,000 Domestic end product, small business
Offer B .......................................... $10,700 Domestic end product, small business
Offer C .......................................... $10,200 U.S.-made end product (not domestic), small business

(2) Analysis: This acquisition is for end products for use in the United States and is set aside for small business concerns. The Buy American Act applies. Perform the steps in 25.502(a). Offer C is evaluated as a foreign end product because it is the product of a small business but is not a domestic end product (see 25.502(c)(4)). After applying the 12 percent factor, the evaluated price of Offer C is $11,424. Award on Offer B at $10,700 (see 25.502(c)(4)(ii)).


25.504–3 FTA/Israeli Trade Act.

(a) Example 1.

Offer A ..... $105,000 Domestic end product, small business.
Offer B ..... 103,000 Eligible product.

Analysis: Since the low offer is an eligible offer, award on the low offer (see 25.502(c)(1)).

(b) Example 2.

Offer A ..... $105,000 Eligible product.
Offer B ..... 103,000 Noneligible product.

Analysis: Since the acquisition is not covered by the WTO GPA, the contracting officer can consider the noneligible offer. Since no domestic offer was received, make a nonavailability determination and award on Offer B (see 25.502(c)(2)).

(c) Example 3.

Offer A ..... $105,000 Domestic end product, large business.
Offer B ..... 103,000 Eligible product.
Offer C ..... 100,000 Noneligible product.

Analysis: Since the acquisition is not covered by the WTO GPA, the contracting officer can consider the noneligible offer. Because the eligible offer (Offer B) is lower than the domestic offer (Offer A), no evaluation factor applies to the low offer (Offer C). Award on the low offer (see 25.502(c)(3)).

[69 FR 77875, Dec. 28, 2004]

25.504–4 Group award basis.

(a) Example 1.

<table>
<thead>
<tr>
<th>Item</th>
<th>A</th>
<th>B</th>
<th>C</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>DO = $55,000</td>
<td>EL = $50,000</td>
<td>NEL = $50,000</td>
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<tr>
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<tr>
<td>3</td>
<td>NEL = 11,500</td>
<td>DO = 12,000</td>
<td>DO = 10,000</td>
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</table>
Federal Acquisition Regulation 25.504–4

<table>
<thead>
<tr>
<th>Item</th>
<th>Offers</th>
<th>Low offer</th>
<th>Tentative award pattern from A and B</th>
<th>C</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>A</td>
<td>DO=$55,000</td>
<td>*NEL=$53,000</td>
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<tr>
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<td>4</td>
<td>A</td>
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<td>NEL=22,000</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>B</td>
<td>NEL=10,600</td>
<td>DO=14,000</td>
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<td>111,600</td>
<td>112,000</td>
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</tbody>
</table>

*Offer + 6 percent.

**Problem:** Offeror C specifies all-or-none award. Assume all offerors are large businesses. The acquisition is not covered by the WTO GPA.

**Analysis:** (see 25.503)

**STEP 1:** Evaluate Offers A & B before considering Offer C and determine which offer has the lowest evaluated cost for each line item (the tentative award pattern):

- **Item 1:** Low offer A is domestic; select A.
- **Item 2:** Low offer B is eligible; do not apply factor; select B.
- **Item 3:** Low offer A is noneligible and Offer B is a domestic offer. Apply a 6 percent factor to Offer A. The evaluated price of Offer A is higher than Offer B; select B.
- **Item 4:** Low offer A is noneligible. Since neither offer is a domestic offer, no evaluation factor applies; select A.
- **Item 5:** Low offer B is noneligible; apply a 6 percent factor to Offer B. Offer A is still higher than Offer B; select B.

**STEP 2:** Evaluate Offer C against the tentative award pattern for Offers A and B:

On a line item basis, apply a factor to any noneligible offer if the other offer for that line item is domestic.

For Item 1, apply a factor to Offer C because Offer A is domestic and the acquisition was not covered by the WTO GPA. The evaluated price of Offer C, Item 1, becomes $55,000 ($50,000 plus 6 percent). Apply a factor to Offer B. Item 5, because it is a noneligible product and Offer C is domestic. The evaluated price of Offer B is $10,600 ($10,000 plus 6 percent). Evaluate the remaining items without applying a factor.

**STEP 3:** The tentative unrestricted award pattern from Offers A and B is lower than the evaluated price of Offer C. Award the combination of Offers A and B. Note that if Offer C had not specified all-or-none award, award would be made on Offer C for line items 1, 3, and 4, totaling an award of $82,000.

(b) **Example 2.**

**Problem:** The solicitation specifies award on a group basis. Assume the Buy American Act applies and the acquisition cannot be set aside for small business concerns. All offerors are large businesses.

**Analysis:** (see 25.503(c))

**STEP 1:** Determine which of the offers are domestic (see 25.503(c)(1)):
### 25.600

<table>
<thead>
<tr>
<th></th>
<th>Domestic [percent]</th>
<th>Determination</th>
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<tbody>
<tr>
<td>A</td>
<td>60,500/91,200=66.3%</td>
<td>Domestic</td>
</tr>
<tr>
<td>B</td>
<td>10,300/91,800=11.2%</td>
<td>Foreign</td>
</tr>
<tr>
<td>C</td>
<td>10,400/90,800=11.5%</td>
<td>Foreign</td>
</tr>
</tbody>
</table>

**STEP 2:** Determine whether foreign offers are eligible or noneligible offers (see 25.503(c)(2)).

<table>
<thead>
<tr>
<th></th>
<th>Domestic + eligible [percent]</th>
<th>Determination</th>
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<tbody>
<tr>
<td>A</td>
<td>N/A</td>
<td>Domestic</td>
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<tr>
<td>B</td>
<td>81,800/91,800=89.1%</td>
<td>Eligible</td>
</tr>
<tr>
<td>C</td>
<td>20,600/90,800=22.7%</td>
<td>Noneligible</td>
</tr>
</tbody>
</table>

**STEP 3:** Determine whether to apply an evaluation factor (see 25.503(c)(3)). The low offer (Offer C) is a foreign offer. There is no eligible offer lower than the domestic offer. Therefore, apply the factor to the low offer. Addition of the 6 percent factor (use 12 percent if Offer A is a small business) to Offer C yields an evaluated price of $96,248 ($90,800 + 6 percent). Award on Offer A (see 25.502(c)(4)(ii)). Note that, if Offer A were greater than Offer B, an evaluation factor would not be applied and award would be on Offer C (see 25.502(c)(3)).


### Subpart 25.6—American Recovery and Reinvestment Act—Buy American Act—Construction Materials

**Source:** 74 FR 14626, Mar. 31, 2009, unless otherwise noted.

#### 25.600 Scope of subpart.

This subpart implements section 1605 in Division A of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) with regard to manufactured construction material and the Buy American Act with regard to unmanufactured construction material. It applies to construction projects that use funds appropriated or otherwise provided by the Recovery Act.

[75 FR 53165, Aug. 30, 2010]

#### 25.601 Definitions.

As used in this subpart—

Domestic construction material means the following:

1. An unmanufactured construction material mined or produced in the United States. (The Buy American Act 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.

Public building or public work means a building or work, the construction, prosecution, completion, or repair of which is carried on directly or indirectly by authority of, or with funds of, a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency (see 22.401). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

Recovery Act designated country means a World Trade Organization Government Procurement Agreement country, a Free Trade Agreement country, or a least developed country.

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

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 from the properties of the individual raw materials.