
As prescribed at 25.1103(d), insert the following provision:

PROHIBITION ON CONDUCTING RESTRICTED BUSINESS OPERATIONS IN SUDAN—CERTIFICATION (AUG 2009)

(a) Definitions. As used in this provision—

Business operations means engaging in commerce in any form, including by acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

Marginalized populations of Sudan means—

1. Adversely affected groups in regions authorized to receive assistance under section 8 of the Darfur Peace and Accountability Act (Pub. L. 109–344); and

2. Marginalized areas in Northern Sudan described in section 4(9) of such Act.

Restricted business operations means business operations in Sudan that include power production activities, mineral extraction activities, oil-related activities, or the production of military equipment, as those terms are defined in the Sudan Accountability and Divestment Act of 2007 (Pub. L. 110–174). Restricted business operations do not include business operations that the person (as that term is defined in Section 2 of the Sudan Accountability and Divestment Act of 2007) conducting the business can demonstrate—

1. Are conducted under contract directly and exclusively with the regional government of southern Sudan; and

2. Are conducted pursuant to specific authorization from the Office of Foreign Assets Control in the Department of the Treasury, or are expressly exempted under Federal law from the requirement to be conducted under such authorization; and

3. Consist of providing goods or services to marginalized populations of Sudan;

4. Consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;

5. Consist of providing goods or services that are used only to promote health or education; and

6. Have been voluntarily suspended.

(b) Certification. By submission of its offer, the offeror certifies that the offeror does not conduct any restricted business operations in Sudan.

(End of clause)

[73 FR 10958, Feb. 28, 2008]


As prescribed in 25.1103(e), insert the following clause:

REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS—BUY AMERICAN ACT—CONSTRUCTION MATERIALS.

(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.

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
Federal Acquisition Regulation

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 .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 must be produced in the United States (produced in the United States means that all manufacturing processes involving refinement of steel additives), and

(ii) The Buy American Act (41 U.S.C. 10a–10d) 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"]

(A) The cost of domestic 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 5 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 impracticable or inconsistent with the public interest; or

(iv) Any Contractor request for a determination would be inconsistent with the public interest.

(c) Request for determination of inapplicability of Section 1605 of the Recovery Act or the Buy American Act. (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 Act 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 Act applies, use of foreign construction material is noncompliant with section 1605 of the American Recovery and Reinvestment Act or the Buy American Act.

(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**

<table>
<thead>
<tr>
<th>Construction material</th>
<th>Unit of measure</th>
<th>Quantity</th>
<th>Cost (dollars)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Domestic construction material</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Foreign construction material</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Domestic construction material</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*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)


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

**NOTICE OF REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS—BUY AMERICAN ACT—CONSTRUCTION MATERIALS**

(Oct 2010)

(a) Definitions. “Construction material,” “domestic construction material,” “foreign construction material,” “manufactured construction material,” “steel,” and “unmanufactured construction material,” as used in this provision, are defined in the clause of the contract—

(b) Requests for determinations of inapplicability. An offeror requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) or the Buy American Act should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR 52.225–21 in the request. If an offeror has not requested a determination regarding the inapplicability of 1605 of the Recovery Act or the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) Evaluation of offers. (1) If the Government determines that an exception based on unreasonable cost of domestic construction material applies in accordance with FAR 25.604, the Government will evaluate an offer requesting exception to the requirements of section 1605 of the Recovery Act or the Buy American Act by adding to the offered price of the contract—

(i) 25 percent of the offered price of the contract, if foreign manufactured construction material is incorporated in the offer based on an exception for unreasonable cost of comparable manufactured domestic construction material; and

(ii) 6 percent of the cost of foreign unmanufactured construction material included in the offer based on an exception for the unreasonable cost of comparable domestic unmanufactured construction material.

(2) If the solicitation specifies award on the basis of factors in addition to cost or price, the Contracting Officer will apply the evaluation factors as specified in paragraph (c)(1) of this provision and use the evaluated price in determining the offer that represents the best value to the Government.

(3) Unless paragraph (c)(2) of this provision applies, if two or more offers are equal in price, the Contracting Officer will give preference to an offer that does not include foreign construction material excepted at the request of the offeror on the basis of unreasonable cost of comparable domestic construction material.

(d) Alternate offers. (1) When an offer includes foreign construction material not listed by the Government in this solicitation in paragraph (b)(3) of the clause at FAR