(q) Subcontracts. The Contractor shall incorporate the substance of this clause, including this paragraph (q), in all subcontracts that require subcontractor personnel to perform outside the United States—

(1) In a designated operational area during—

(i) Contingency operations;

(ii) Humanitarian or peacekeeping operations; or

(iii) Other military operations; or military exercises, when designated by the Combatant Commander; or

(2) When supporting a diplomatic or consular mission—

(i) That has been designated by the Department of State as a danger pay post (see http://aoprals.state.gov/Web920/danger_pay_all.asp) or

(ii) That the Contracting Officer has indicated is subject to this clause.

(End of clause)

[73 FR 10958, Feb. 28, 2008]


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(c) of the Darfur Peace and Accountability Act (Pub. L. 109-344) (50 U.S.C. 1701 note); 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 construction material.


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

(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 States.
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 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) 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")

(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 6 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;

(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 noncompli-
ant with section 1605 of the American Recov-
ery and Reinvestment Act or the Buy Amer-
ican Act.

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

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS COST COMPARISON

| Construction material description | Unit of measure | Quantity | Cost (dollars) *
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<td>Domestic construction material</td>
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[Include other applicable supporting information.]

*Include all delivery costs to the construction site.]

(End of clause)

(74 FR 14628, Mar. 31, 2009, as amended at 75
FR 53167, Aug. 30, 2010)

52.225-22 Notice of Required Use of
American Iron, Steel, and Manufac-
tured Goods—Buy American Act—
Construction Materials.

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 con-
struction material,” “steel,” and “unmanu-
factured construction material,” as used in
this provision, are defined in the clause of
this solicitation entitled “Required Use of
Iron, Steel, and Manufactured Goods—Buy
American Act—Construction Materials”
(Federal Acquisition Regulation (FAR)
clause 52.225-21).

(b) Requests for determinations of inap-
licability. An offeror requesting a determina-
tion 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 re-
quest to the Contracting Officer in time to
allow a determination before submission of
offers. The offeror shall include the informa-
tion 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 pre-
vious request, the offeror shall include the
information and supporting data in the offer.

(c) Evaluation of offers. (1) If the Govern-
ment 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 construc-
tion material is incorporated in the offer
based on an exception for unreasonable cost
of comparable manufactured domestic con-
struction material; and

(ii) 6 percent of the cost of foreign un-
manufactured construction material in-
cluded in the offer based on an exception for
the unreasonable cost of comparable domes-
tic 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 eval-
uation 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 pref-
ence to an offer that does not include for-
ign construction material excepted at the
request of the offeror on the basis of unrea-
sonable cost of comparable domestic con-
struction material.

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