award, the contracting officer may deny the request.

(b) The contracting officer must base evaluation of any request for a determination regarding the inapplicability of the Buy American statute made after contract award on information required by paragraphs (c) and (d) of the applicable clause at 52.225-9 or 52.225-11 and/or other readily available information.

(c) If a determination, under 25.202(a), is made after contract award that an exception to the Buy American statute applies, the contracting officer must negotiate adequate consideration and modify the contract to allow use of the foreign construction material. When the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is at least the differential established in 25.202(a) or in accordance with agency procedures.


25.206 Noncompliance.

The contracting officer must—

(a) Review allegations of Buy American statute violations;

(b) Unless fraud is suspected, notify the contractor of the apparent unauthorized use of foreign construction material and request a reply, to include proposed corrective action; and

(c) If the review reveals that a contractor or subcontractor has used foreign construction material without authorization, take appropriate action, including one or more of the following:

(1) Process a determination concerning the inapplicability of the Buy American statute in accordance with 25.205.

(2) Consider requiring the removal and replacement of the unauthorized foreign construction material.

(3) If removal and replacement of foreign construction material incorporated in a building or work would be impracticable, cause undue delay, or otherwise be detrimental to the interests of the Government, the contracting officer may determine in writing that the foreign construction material need not be removed and replaced. A determination to retain foreign construction material does not constitute a determination that an exception to the Buy American statute applies, and this should be stated in the determination. Further, a determination to retain foreign construction material does not affect the Government’s right to suspend or debar a contractor, subcontractor, or supplier for violation of the Buy American statute, or to exercise other contractual rights and remedies, such as reducing the contract price or terminating the contract for default.

(4) If the noncompliance is sufficiently serious, consider exercising appropriate contractual remedies, such as terminating the contract for default. Also consider preparing and forwarding a report to the agency suspending or debarring official in accordance with Subpart 9.4. If the noncompliance appears to be fraudulent, refer the matter to other appropriate agency officials, such as the officer responsible for criminal investigation.


Subpart 25.3—Contracts Performed Outside the United States

SOURCE: 73 FR 10957, Feb. 28, 2008, unless otherwise noted.

25.301 Contractor personnel in a designated operational area or supporting a diplomatic or consular mission outside the United States.

25.301–1 Scope.

(a) This section applies to contracts requiring contractor 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 determines is a post at which application
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of the clause at FAR 52.225–19. Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission outside the United States, is appropriate.

(b) Any of the types of operations listed in paragraph (a)(1) of this section may include stability operations such as—

(1) Establishment or maintenance of a safe and secure environment; or

(2) Provision of emergency infrastructure reconstruction, humanitarian relief, or essential governmental services (until feasible to transition to local government).

(c) This section does not apply to personal services contracts (see FAR 37.104), unless specified otherwise in agency procedures.

25.301–2 Government support.

(a) Generally, contractors are responsible for providing their own logistical and security support, including logistical and security support for their employees. The agency shall provide logistical or security support only when the appropriate agency official, in accordance with agency guidance, determines that—

(1) Such Government support is available and is needed to ensure continuation of essential contractor services; and

(2) The contractor cannot obtain adequate support from other sources at a reasonable cost.

(b) The contracting officer shall specify in the contract, and in the solicitation if possible, the exact support to be provided, and whether this support is provided on a reimbursable basis, citing the authority for the reimbursement.

25.301–3 Weapons.

The contracting officer shall follow agency procedures and the weapons policy established by the combatant commander or the chief of mission when authorizing contractor personnel to carry weapons (see paragraph (i) of the clause at 52.225–19, Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission outside the United States).

25.301–4 Contract clause.

Insert the clause at 52.225–19, Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission outside the United States, in solicitations and contracts, other than personal service contracts with individuals, that will require contractor personnel to perform outside the United States—

(a) In a designated operational area during—

(1) Contingency operations;

(2) Humanitarian or peacekeeping operations; or

(3) Other military operations or military exercises, when designated by the combatant commander; or

(b) When supporting a diplomatic or consular mission—

(1) 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

(2) That the contracting officer determines is a post at which application of the clause FAR 52.225–19, Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission outside the United States, is appropriate.

25.302 Contractors performing private security functions outside the United States.

[78 FR 37672, June 21, 2013]

25.302–1 Scope.


[78 FR 37672, June 21, 2013]

25.302–2 Definitions.

As used in this section—

Area of combat operations means an area of operations designated as such by the Secretary of Defense when enhanced coordination of contractors performing private security functions working for Government agencies is required.