Federal Acquisition Regulation

52.225–20

Prohibition on Conducting Restricted Business Operations in Sudan—Certification

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 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;

(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;
(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; or
(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 provision)

[73 FR 33640, June 12, 2008, as amended at 74 FR 40466, Aug. 11, 2009]


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

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

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. (The Buy American statute 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.
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) 41 U.S.C. chapter 83, Buy American, 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;

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