DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2021–0051, Sequence No. 1]

Federal Acquisition Regulation; Federal Acquisition Circular 2021–04; Introduction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rule.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rule agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2021–04. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC.

DATES: For effective dates see the separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: Ms. Zenaida Delgado, Procurement Analyst, at 202–969–7207 or *zenaida.delgado@gsa.gov* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAC 2021–04, FAR Case 2019–016.

RULES LISTED IN FAC 2021–04

Subject	FAR case
Maximizing Use of American-Made Goods, Products and Materials	2019–016

ADDRESSES: The FAC, including the SECG, is available via the internet at *https://www.regulations.gov.*

SUPPLEMENTARY INFORMATION: A summary for the FAR rule follows. For the actual revisions and/or amendments by this FAR rule, refer to the specific item numbers and subjects set forth in the documents following this summary. FAC 2021–04 amends the FAR as follows:

Maximizing Use of American-Made Goods, Products, and Materials (FAR Case 2019–016)

This final rule strengthens domestic preferences under the Buy American statute by making adjustments to the required percentage of domestic content and the existing percentages for the price evaluation preferences in an effort to decrease the amount of foreign-sourced content in a U.S. manufactured product to promote economic and national security, help stimulate economic growth, and create jobs. The price evaluation preferences increase from 6 percent to 20 percent for large business and from 12 percent to 30 percent for small business; for DoD procurements there is no change to the DoD 50 percent amount. The domestic content requirement for iron and steel increases from 50 percent to 95 percent; for other end products and construction materials, the domestic content requirement increases from 50 percent to 55 percent. Foreign iron and steel is iron or steel products that are not produced in the United States. The rule implements E.O. 13881, Maximizing Use of American-Made Goods, Products, and Materials. This final rule will not have a significant economic impact on a substantial number of small entities.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Federal Acquisition Circular (FAC) 2021–04 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2021–04 is effective January 19, 2021.

John M. Tenaglia,

Principal Director, Defense Pricing and Contracting, Department of Defense.

Jeffrey A. Koses,

Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

William G. Roets, II,

Acting Assistant Administrator, Office of Procurement, National Aeronautics and Space Administration.

[FR Doc. 2021–00708 Filed 1–15–21; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12, 25, and 52

[FAC 2021–04; FAR Case 2019–016; Docket No. FAR–2019–0016, Sequence No. 1]

RIN 9000–AN99

Federal Acquisition Regulation: Maximizing Use of American-Made Goods, Products, and Materials

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement an Executive order (E.O.) addressing domestic preferences in Government procurement.

DATES: *Effective:* January 21, 2021.

Applicability: The changes in this rule apply to solicitations issued on or after February 22, 2021 and resultant contracts.

FOR FURTHER INFORMATION CONTACT: Ms. Zenaida Delgado, Procurement Analyst, at 202–969–7207 or *zenaida.delgado@gsa.gov* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAC 2021–04, FAR Case 2019–016.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule at 85 FR 56558 on September 14, 2020, to implement E.O. 13881, Maximizing Use of American-Made Goods, Products, and Materials (84 FR 34257, July 18, 2019). In order to implement the E.O., this final rule changes FAR clauses implementing the Buy American statute by increasing the—

1. Domestic content requirements; and

2. Price preference for domestic products.

Increased Domestic Content Requirements

Under E.O. 13881, and this final rule, in order to meet the definition of ''domestic construction material'' or ''domestic end product,'' the cost of

foreign iron and steel for iron and steel products must be less than 5 percent of the cost of all components in the product. For everything else, the domestic content requirement increases from 50 percent to more than 55 percent of the cost of all components. E.O. 13881 creates a new separate higher standard for iron and steel products. This distinction has existed for many years in domestic preference requirements governing certain Federal grant programs, such as the Federal Transit Administration's Buy America regulations applicable to grantees. Also, DoD procurements are affected by the increased domestic content requirements of E.O. 13881; the changes will be implemented in the Defense Federal Acquisition Regulation Supplement (DFARS) through DFARS Case 2019–D045, Maximizing Use of American-Made Goods.

Increased Price Preference for Domestic Offers

The Buy American statute does not prohibit the purchase of foreign end products or use of foreign construction material. Instead, it encourages the use of domestic end products and construction material by imposing a price preference for domestic end products and construction material. E.O. 13881 and this final rule increase the price preference from 6 percent to 20 percent for large businesses, and from 12 percent to 30 percent for small businesses. The E.O. does not impact the price preference for end products for DoD procurements, which is 50 percent for both large and small businesses, because the DoD percentage exceeds the requirements of the E.O.

Thirty-five respondents submitted comments on the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Summary of Significant Changes

This final rule makes the following significant changes from the proposed rule:

• *Definitions.* At FAR 25.003, the definitions of ''domestic construction material,'' ''domestic end product,'' and ''predominantly of iron or steel or a combination of both'' are revised; and a definition of ''foreign iron and steel'' is added.

○ The definitions of ''domestic construction material'' and ''domestic end product'' now specify that the cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of all foreign iron or steel components excluding commercially available off-the-shelf (COTS) fasteners. The definition specifies that the iron or steel components of unknown origin are treated as foreign. Also, the definition explains that if the construction material contains multiple components, the cost of all the materials used in the construction material is calculated in accordance with the definition of ''cost of components'' in FAR 25.003.

○ A definition of ''foreign iron and steel'' which includes language explaining ''produced in the United States'' is added to clarify the term as it is used in the revised definitions of ''domestic construction material'' and ''domestic end product''.

○ The definition of ''predominantly of iron or steel or a combination of both'' now clarifies what is meant by the phrase ''the cost of iron and steel.''

○ Conforming changes are made at FAR 25.101(a)(2)(ii) and 25.201(b)(2)(ii), as well as to FAR clauses 52.225–1, Buy American—Supplies; 52.225–3, Buy American—Free Trade Agreements—Israeli Trade Act; 52.225–9, Buy American—Construction Materials; and 52.225–11, Buy American—Construction Materials Under Trade Agreement.

• *COTS fasteners.* Revisions have been made throughout the FAR to clarify that the domestic content test does not apply to COTS fasteners. These revisions are made at FAR 25.001, 25.003, 25.101, 25.201, as well as in FAR clauses 52.225–1, Buy American-Supplies; 52.225–3, Buy American—Free Trade Agreements—Israeli Trade Act, and its alternates; 52.225–9, Buy American—Construction Materials; and 52.225–11, Buy American—Construction Materials Under Trade Agreement, and its alternate.

B. Analysis of Public Comments

1. Strong Support for the Rule

Comment: Most of the respondents strongly supported the proposed rule. One respondent noted positive factors regarding this rule as follows:

• Improves America's position from an economic standpoint.

• Helps increase jobs.

• Improves relationships with companies within our country.

• Interests other countries to do more trades and business with companies that have American-made products, goods, and materials.

• Improves our national image.

Response: Noted.

2. Domestic Content Test for COTS Items

2a. Remove the COTS Waiver for All Construction Materials

Comment: A few respondents stated that the rule should restore the domestic content test for all COTS construction material, not just for COTS construction iron and steel products. The respondents pointed out that there are instances where ''nonferrous'' construction materials compete with iron and steel products and in these instances, the rule provides an advantage to foreign nonferrous producers when they compete with U.S. producers of iron and steel products by not applying the domestic content test to the ''nonferrous'' construction material.

Response: This FAR change is required to implement E.O. 13881.

2b. Remove the COTS Waiver for Fasteners

Comment: Many respondents (using an essentially identical form letter) urged the Councils to remove the waiver of the domestic content test of the Buy American statute for the acquisition of COTS fasteners. These respondents stated that not doing so would not provide U.S. fastener manufacturers the same protection being offered to manufacturers of other iron and steel products.

Response: The Councils determined that requiring offerors to keep track of the origin of all fasteners could have a significant negative impact by creating an administrative burden on offerors that would outweigh any benefit to the American iron and steel industrial base. However, a clarification is made in FAR 25.001 to exclude only COTS fasteners.

2c. No Changes to Current COTS Waiver

Comment: A few respondents stated that the COTS waiver should remain as is and not subject iron and steel products to the additional rigor of the domestic content test. These respondents commented that contractors for COTS items have built their supply chains to comply with the existing COTS waiver and changing this paradigm will impede projects around the country, adversely impact these contractors, be administratively burdensome for them, and increase compliance costs that will eventually be borne by the Government. One of the

respondents stated that waiving some COTS items, but not others, would create a dissimilar application of the domestic content rule that is not in the public interest and should not be implemented in the FAR.

Response: As explained in the proposed rule, roll-back of the COTS waiver is necessary to give full effect to the E.O. 13881 requirement.

3. Definitions

Comment: One respondent stated that it was not clear why the longstanding practice of using cost of ''components'' has been replaced with ''content'' when determining whether an end product is a steel end product and the implications of this change. The respondent recommended defining the word ''content'' and providing examples of application of this new standard.

Response: The Councils note that the domestic content test is not applied to determine whether an item is wholly or predominantly of iron or steel or a combination of both, but to determine whether such a product is foreign or domestic. As explained in paragraph II.B.2.i of the proposed rule preamble, the term ''component test'' was replaced with ''domestic content test'' because of the wording of the E.O. regarding iron and steel. Per FAR 25.001(c)(1), this domestic content test is one of the two-part test elements used by the Buy American statute to define a ''domestic construction material'' or ''domestic end product.'' Regarding iron and steel end products, the E.O. states that the materials shall be considered to be of foreign origin if ''the cost of foreign iron and steel used in such iron and steel end products constitutes 5 percent or more of the cost of all the products used in such iron and steel end products.'' ''All the products used'' in an item would be the common meaning of ''content.'' The Councils do not consider it necessary to define ''content''.

However, the Councils added the explanation that the cost of all the materials used in a product is to be calculated consistent with the definition of ''cost of components'' at FAR 25.003, if the product contains multiple components. The Councils also specified that the cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of all foreign iron or steel components excluding COTS fasteners, both in the definitions of ''domestic construction material,'' and ''domestic end product.''

To determine whether a product that is wholly or predominantly of iron or steel or a combination of both is foreign or domestic, it is necessary to determine the following:

(i) Does the product consist wholly or ''predominantly of iron or steel or a combination of both'' (as defined in FAR 25.003)?

(ii) Is any of the iron or steel content not produced in the United States?

(iii) Is the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product, and a good faith estimate of the cost of all foreign iron or steel components (excluding COTS fasteners), less than 5 percent of the cost of all the components used in the end product (or construction material)? If the product contains multiple components, the cost is to be calculated consistent with the definition of ''cost of components'' at FAR 25.003.

See the following examples:

• *A steel beam.* For purposes of this example, this steel beam consists wholly of steel. The cost of all material in the beam, excluding final manufacture, overhead costs, and profit, is $50. If the steel beam is rolled from steel bloom, then the steel beam probably contains either all domestic steel, or all foreign steel. However, if the beam is welded or riveted from separate steel plates, then it is conceivable that some of the steel plates could have been formed from steel not produced in the United States. If the cost of the foreign steel plates used to make the beam equals or exceeds $2.50 (*i.e.,* 5 percent of the cost of all the components used in the product), then the entire beam is a foreign construction material.

• *A steel safe.* The steel safe may include other components such as a combination lock, a dehumidifier, or drawers. The safe costs $1,000 and the cost of all components in the safe is $500. If the cost of the steel plates or other steel mill products (excluding COTS fasteners) utilized in the manufacture of the safe exceeds $250 (*i.e.,* 50 percent of the total cost of all the components as defined in FAR 25.003), then the safe consists predominantly of steel. If the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the safe and a good faith estimate of the cost of all foreign iron or steel components (excluding COTS fasteners) is less than $25 (*i.e.,* 5 percent of the cost of all the components used in the product), then the safe is a domestic end product.

• *A refrigerator.* The refrigerator consists of many components and materials. The exterior cabinet and door and the inner cabinet of this refrigerator are steel. The refrigerator also includes insulation, cooling system, refrigerant, and fixtures. The refrigerator costs $2,000 and the cost of all components in the refrigerator is $1,000. If the cost of the steel plates or other steel mill products (excluding COTS fasteners) utilized in the manufacture of the refrigerator does not exceed $500 (*i.e.,* 50 percent of the total cost of all the components as defined in FAR 25.003), then the refrigerator does not consist predominantly of steel.

Comment: One respondent recommended clarifying the meaning of ''metallurgical processes'' and providing a list of representative metallurgical functions such as smelting, melting, pouring, rolling, casting, and other similar processes. The respondent based the recommendation on their interpretation of the existing guidance and the proposed rule, suggesting that raw steel and iron material for a steel end product may enter the United States and after undergoing all manufacturing processes for its intended final use, it would then be considered ''produced in the U.S.'' both for purposes of being a domestic component (if it is a component in an end product) or a domestic end product itself (if solely from one foreign material). The respondent's interpretation also suggested that if ''the steel came with any foreign manufacturing outside the original metallurgical process, the item would be considered foreign, even if all subsequent manufacturing occurred in the U.S.'' One respondent suggested defining ''manufactured in the United States'' under the Buy American statute's two-part test using a more stringent standard where all steelmaking processes, including the melting and pouring of the steel (*i.e.,* the actual steelmaking), occur in the United States. Other respondents requested the rule provide a clear, explicit definition of ''foreign iron and steel'' to prevent any adverse or unintended consequences.

Response: The exception relating to metallurgical processes involving refinement of steel additives does not apply to any of the metallurgical processes involved in the making of the steel itself. Steel is defined in FAR 25.003 as an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements. These other elements (*e.g.,* manganese, silicon, copper, aluminum, chromium, cobalt, molybdenum, nickel, niobium, titanium, tungsten, vanadium) are termed steel additives, and as such,

are added to the steel alloy to create steel with different properties (*e.g.,* stainless steel). Therefore, whatever metallurgical processes are used to separate and concentrate and reduce the ore to metal, then refine to increase the grade or purity of a steel additive (such as titanium or tungsten) can occur anywhere, prior to adding these other metals to produce the steel alloy in the United States. As stated in the proposed rule, in order to be domestic, all manufacturing processes of the iron or steel (other than the additives) must take place in the United States. In the final rule, language is added from the definition of ''produced in the United States'' from E.O. 13788, Buy American and Hire American (82 FR 18837) to better explain how the iron or steel is considered domestic. For clarity, the final rule moves the explanation of what it means to produce iron or steel in the United States from the definition of ''domestic construction material'' and ''domestic end product'' to a new, separate definition in FAR 25.003 for the term ''foreign iron and steel.'' The definition of ''foreign iron and steel'' is based on the existing description of ''iron or steel components'' at FAR 25.602–1(a)(1)(ii), consistent with the intent articulated in the proposed rule.

Comment: One respondent recommended that ''good faith'' be further defined to include a subjective and objective standard for a ''reasonable business person without legal knowledge or training''.

Response: The term ''good faith'' is used in many instances in the FAR and other agency regulations. The Councils concluded that ''a good faith estimate'' should be sufficient; and that adding the suggested language will not make the standard any clearer.

Comment: One respondent stated that requiring nothing more than a ''good faith assurance'' to calculate the cost of foreign components could lead to abuse or fraud in calculating the cost of foreign components, which would undermine the purpose of E.O. 13881. The respondent commented that because the origin of the iron and steel products should be readily discernible, the final rule should require suppliers to track the domestic content in iron and steel products and subject this accounting to periodic audit. Another respondent submitted a similar comment.

Response: The Councils agree that the origin of the iron and steel components should be readily discernible. As such, the final rule has been revised to clarify that contractors are to make a ''good faith estimate'' only for the cost of all foreign iron or steel components, other than the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product. It is highly likely that current procedures will yield the needed information for the offeror to make the required determinations in this rule. The cost of the iron and steel items are included in invoices and already used to determine whether an end product or construction material is foreign.

Comment: A few respondents stated that defining ''predominantly of iron or steel'' based on cost of the components, as opposed to weight, volume, and cost, opens a loophole that will allow manufacturers and contractors to evade the domestic content requirements through creative accounting practices.

Response: The Councils reiterate that basing the predominance on cost, rather than weight or volume, is consistent with the requirement of the E.O. that the ''cost'' of foreign iron and steel be limited to less than 5 percent of the ''cost'' of all components. Therefore, the final rule remains unchanged regarding the basis for determining whether an item is predominantly of iron or steel.

Comment: One respondent stated that the proposed rule's definition of ''fasteners'' was overly broad and by exempting fasteners from the domestic content requirements, the rule creates an opportunity for abuse of this ''loophole.'' The respondent requested the definition of ''fasteners'' be modified to reflect the qualifiers the Councils provided in the proposed rule, *i.e.,* that the fasteners being exempted were those that were ''small'' or ''inexpensive.''

Response: The Councils have clarified the text in the final rule to state that the fasteners being exempted from the domestic content requirement are those that are COTS items.

Comment: One respondent stated that requiring iron and steel products to contain 95 percent domestic content is too onerous and burdensome on manufacturers. The respondent commented that the 95 percent requirement should be reduced or phased in over time. Alternatively, the respondent also suggested that in determining whether a predominantly of iron or steel product is domestic, manufacturers should be allowed to use the cost of non-iron and non-steel components of the item; this way, manufacturers can mitigate the 95 percent requirement, while still incentivizing domestic purchase of non-steel components. Another respondent had a similar comment, pointing out that the Environmental Protection Agency allows for 5 percent of the total ''project'' cost to be foreign iron and steel products instead of 5 percent of the total cost of the individual product.

Response: This FAR change is required to implement E.O. 13881, which increased the domestic content requirement for iron and steel end products to 95 percent. However, the Councils note that the proposed rule presented the requirement as whether 5 percent of the cost of all the components was foreign iron or steel, not whether 5 percent of the cost of only the iron or steel components were foreign iron or steel; thereby, giving credit to the non-iron and non-steel components of the end item as requested by the respondent.

Comment: One respondent stated their interpretation that the proposed rule encompassed steel subcomponents, not just steel components. Due to lack of visibility into the cost of these steel subcomponents by manufacturers, the respondent requested the rule consider exempting the cost of subcomponents from the calculations. Another respondent had a similar comment, pointing out that the Federal Transit Administration's policy explicitly exempts subcomponents from country-of-origin consideration, including iron and steel components.

Response: The Councils confirm that the intent of the proposed rule was to include the cost of subcomponents in the domestic content calculations. However, the Councils did not add ''subcomponents'' in the FAR text because the definition of ''components'' at FAR 25.003 is written broadly enough to already cover subcomponents. In acknowledging the difficulty contractors may have to know, definitively, the cost of all subcomponents in iron or steel items, the Councils clarify in the final rule that contractors are to make a ''good faith estimate'' of the cost of all foreign iron or steel components, other than the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product.

4. Outside the Scope of This Rule

Comment: Two respondents provided comments regarding marketing their specific businesses, and two respondents provided comments of a political nature.

Response: These comments did not address the rule and, as such, are outside the scope of this rule.

Comment: One respondent recommended that if no domestic offers are received on an acquisition conducted using full and open competition, then the procurement officer should confirm with at least two

other manufacturers within the same NAICS code their non-interest in the procurement.

Response: The Councils concluded the recommendation would add a significant burden on contracting officers, and is not necessary for implementation of the E.O.

Comment: One respondent recommended defining ''manufactured'' and adopting a clear non-shift approach to the items specified in the procurement document for all purchases (aside from systems).

Response: This recommendation is not necessary for implementation of the E.O. The Councils note that definitions of ''manufacture'' have been considered in the past and rejected. Although the FAR does not define ''manufacture,'' it does define ''place of manufacture,'' at FAR 52.225–18, as ''the place where an end product is assembled out of components, or otherwise made or processed from raw materials into the finished product that is to be provided to the Government.''

Comment: One respondent recommended removing the Buy American statute's exception for ''Goods for Use Outside the United States'' and using an evaluation factor instead.

Response: The exception for articles, materials, or supplies for use outside the United States is included in the Buy American statute (41 U.S.C. 8302(a)(2)(A) and 8303(b)(1)(A)).

The Balance of Payments Program provided a preference for U.S. products and services for overseas use, and its restrictions were similar to the restrictions of the Buy American statute, which apply only within the United States. Purchases of supplies for use outside the United States, and construction materials for construction contracts performed outside the United States, were covered by the Balance of Payments Program in FAR subpart 25.3, as a matter of policy, until it was removed in 2002. Only a few civilian agencies make purchases for use outside the United States. Furthermore, even fewer civilian agencies award construction contracts that are performed outside the United States. The Balance of Payments Program applied to purchases valued at more than the simplified acquisition threshold and had little impact for civilian agency acquisitions of supplies in excess of the Trade Agreements Act threshold, because the civilian agencies do not apply the Balance of Payments Program when the Trade Agreements Act applies. Therefore, because there was no statutory requirement for the Balance of Payments Program, and because elimination of this Program for civilian agencies would reduce administrative burdens on both the Government and the public, without significant impact on the Government's international balance of payments, the Balance of Payments Program was eliminated for civilian agencies. The rationale for elimination of this Program for civilian agencies has not changed. Note that DoD has retained the Balance of Payments Program for acquisitions of supplies for use outside the United States or construction projects to be performed overseas.

5. Oppose the Rule

Comment: Some respondents urged the Councils not to increase the iron and steel content requirements beyond their current levels because of the limited availability of U.S. sources for components, which will result in increased costs and a decrease in competition. Some of these respondents also stated that Buying American should be an incentive, not a requirement.

Response: This FAR change implements the content requirements established in E.O. 13881.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

This final rule does not add any new provisions or clauses, nor change the applicability of existing provisions or clauses, to contracts at or below the SAT and contracts for the acquisition of commercial items, including COTS items.

However, this rule applies the domestic content test of the Buy American statute, as implemented by E.O. 13881, to COTS items that consist wholly or predominantly of iron or steel (excluding COTS fasteners). In accordance with 41 U.S.C. 1907, since 2008, the domestic content test of the Buy American statute has been waived for COTS items, in part due to the complexity and cost of keeping track of components in a world of global sourcing where the Government is not a market driver. But absent restoration of the domestic content test, the E.O. 13881 requirement regarding iron and steel construction material would have very little effect. As such, the Administrator for Federal Procurement Policy has determined that it would not be in the best interest of the Federal Government to exempt iron and steel products (excluding COTS fasteners) that are COTS items from the applicability of the content test for foreign iron and steel under the Buy American statute.

The domestic content waiver for COTS items would continue to apply to COTS iron and steel fasteners, such as nuts, bolts, pins, rivets, nails, clips, and screws, which are generally so small, inexpensive, and comingled that trying to keep track of the origin of all fasteners would create an administrative burden on offerors that would outweigh any benefit to the American iron and steel industrial base.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a significant regulatory action and, therefore, was not subject to the review of the Office of Information and Regulatory Affairs under section 6(b) of E.O. 12866. This rule is not a major rule under 5 U.S.C. 804.

V. Expected Impact of the Final Rule

The FAR clauses implementing the Buy American statute apply to a narrow set of procurements. Also, because the FAR Council is leaving the COTS items exception in place for most COTS items, the heightened domestic content requirements will not be applicable to those procurements.

With this rule's implementation, domestic industries supplying domestic end products are likely to benefit from a competitive advantage. Based on the E.O., it is unclear if the pool of qualified suppliers would be reduced, resulting in less competition (and a possible increase in prices that the Government will pay to procure these products).

At least three arguments point to the possibility that any increased burden, on contractors in particular, could be small if not *de minimis:* (1) Familiarization costs should be low; (2) some, if not many, contractors may already be able to meet the more stringent threshold; and (3) costs incurred by contractors that adjust their supply chains so that their end products qualify as domestic will enjoy a larger price preference that should help to offset these costs over time. Each of these arguments is explained below.

First, DoD, GSA, and NASA do not anticipate significant costs from contractors' familiarization with this

rule given the history of rulemaking and E.O.s in this area. The basic mechanics of the Buy American statute (*e.g.,* definitions, how and when the price preference is used to favor domestic end products, certifications required of offerors to demonstrate end products are domestic) remain unchanged and continue to reflect processes that are decades old.

Second, some, if not many, contractors may already be able to comply with the lower foreign content requirement needed to meet the definition of ''domestic end product'' under E.O. 13881 and this rule. Laws such as the SECURE Technology Act, Public Law 115–390, which requires a series of actions to strengthen the Federal infrastructure for managing supply chain risks, are placing a significantly increased emphasis on Federal agencies and Federal Government contractors to identify and reduce risk in their supply chains. One way to reduce supply chain risk is to increase domestic sourcing of content. In addition, in the context of iron and steel, many existing laws already require more stringent content. For example, the Recovery Act required that all construction material for a project for the construction, alteration, maintenance, or repair of a public building or a public work in the United States, consisting wholly or predominantly of iron or steel, had to be produced in the United States when using Recovery Act funds, to the extent consistent with trade agreements (see FAR 25.602–1, implementing section 1605 of the Recovery Act). In addition, Federal contractors who also work on subawards funded under Federal grants may, in some cases, find that the steel, iron, and manufactured goods used in the project be produced in the United States, as is the case for certain funding administrated by the Federal Transit Administration for public transportation projects (see 49 U.S.C. 5323(j)). Accordingly, it is possible that the Federal market for iron and steel has already done significant retooling and could meet the requirements of E.O. 13881 with minor additional effort.

Third, it is anticipated that some contractors' products and construction materials may not meet the definitions of ''domestic construction material,'' and ''domestic end product'' unless the contractors take steps to adjust their supply chains to increase the domestic content. Contractors that make a business decision not to modify their supply chains will still be able to propose in response to Federal contract solicitations but will no longer enjoy a price preference. Contractors that sell to civilian agencies and retool their supply sources to meet the more stringent threshold will have a more generous price preference applied to their products. These stronger preferences, which are designed as an incentive to encourage more domestic sourcing, may help to offset costs of meeting the new standards.

This rule has the potential to slightly increase the estimated percentage of foreign offers. It can only impact products that are made in the United States as follows: Iron or steel products where the cost of foreign iron and steel is 5 percent or more of the cost of all components in the product; or other products, other than COTS items, that have a content of 45 to 50 percent foreign components. Offerors of such products have an option to increase the domestic content and continue to offer domestic products, in which case they may benefit from the increased preference for domestic products, or they may continue to offer the same product, which will now be evaluated as foreign. The Councils do not have any data on how many currently domestic products would fall into this category. Nor do the Councils have any knowledge as to which option an offeror of such products would select since this is a business decision for each offeror to make. Regarding the increased price preference for domestic offers, the Councils note that robust competition among vendors offering domestic products will decrease the extent to which the Government could pay an additional 20 to 30 percent for domestic products above and beyond the cost of otherwise equivalent foreign products.

Therefore, based on public comments received, DoD, GSA, and NASA have concluded that the initial assessment is correct that the cost impact of this rule is not significant, and any impact is predominantly positive.

VI. Executive Order 13771

This rule is not subject to E.O. 13771, Reducing Regulation and Controlling Regulatory Costs, because this rule has a *de minimis* impact on the public (see section V. of this preamble).

VII. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This rule strengthens domestic preferences under the Buy American statute by making adjustments to the required percentage of domestic content and the existing percentages for the price evaluation preferences in an effort to decrease the amount of foreign-sourced content in a U.S. manufactured product to promote economic and national security, help stimulate economic growth, and create jobs. The objective of this rule is to implement E.O. 13881, Maximizing Use of American-Made Goods, Products, and Materials (84 FR 34257, July 18, 2019).

There were no significant issues raised by the public comments in response to the initial regulatory flexibility analysis.

DoD, GSA, and NASA examined data from the Federal Procurement Data System for fiscal years (FY) 2017, 2018, and 2019, for new awards with a foreign place of performance for construction valued over the micro-purchase threshold and awards for supplies to unique small businesses. This rule will apply to only the 8 percent of foreign construction awards that were made to small businesses, and only 14 percent of foreign supply awards were made to small businesses.

Buy american statute	FY 2017	FY 2018	FY 2019	Median
	SB/total	SB/total	SB/total	SB (%)
Construction	18/217 = 8%	13/223 = 6%	15/199 = 8%	8
Supplies	153/1,200 = 13%	164/1,161 = 14%	164/1,048 = 16%	14

This rule is covered under the existing information collection requirements associated with the Buy American statute. The rule will strengthen domestic preferences under the Buy American statute and provide small businesses the opportunity and incentive to deliver U.S. manufactured products from domestic suppliers. It is expected that this rule will benefit U.S. small business manufacturers, including those of iron or steel.

There are no available alternatives to the rule to accomplish the desired objective of the statute.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory

Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under the Office of Management and Budget Control Number 9000–0024, Buy American, Trade Agreements, and Duty-Free Entry.

List of Subjects in 48 CFR Parts 12, 25, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 12, 25, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 12, 25, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Amend section 12.505 by revising paragraph (a) to read as follows:

12.505 Applicability of certain laws to contracts for the acquisition of COTS items.

* * * * *

(a)(1) The portion of 41 U.S.C. 8302, American Materials Required for Public Use, paragraph (a)(1) that reads ''substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States,'' Buy American—Supplies, domestic content test, except as provided in 25.101(a)(2)(ii) (see 52.225–1 and 52.225–3).

(2) The portion of 41 U.S.C. 8303, Contracts for Public Works, paragraph (a)(2) that reads ''substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States,'' Buy American—Construction Materials, domestic content test, except as provided in 25.201(b)(2)(ii)(see 52.225–9 and 52.225–11).

* * * * *

PART 25—FOREIGN ACQUISITION

■ 3. Amend section 25.001 by revising paragraph (c)(1) to read as follows:

25.001 General.

* * * * *

(c) * * *

(1) The Buy American statute uses a two-part test to define a ''domestic end product'' or ''domestic construction material'' (manufactured in the United States and a domestic content test). The domestic content test has been waived for acquisition of commercially available off-the-shelf (COTS) items, except a product that consists wholly or predominantly of iron or steel or a combination of both (excluding COTS fasteners) (see 25.101(a) and 25.201(b)).

* * * * *

■ 4. Amend section 25.003 by—

■ a. Revising the definitions ''Domestic construction material'' and ''Domestic end product''; and

■ b. Adding in alphabetical order the definitions ''Fastener'', ''Foreign iron and steel'', ''Predominantly of iron or steel or a combination of both'', and ''Steel''.

The revisions and additions read as follows:

25.003 Definitions.

* * * * *

Domestic construction material means—

(1) For use in subparts other than 25.6—

(i) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both—

(A) An unmanufactured construction material mined or produced in the United States; or

(B) A construction material manufactured in the United States, if—

(*1*) The cost of the components mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

(*2*) The construction material is a commercially available off-the-shelf (COTS) item; or

(ii) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of foreign iron and steel constitutes less than 5 percent of the cost of all the components used in such construction material. The cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the construction material and a good faith estimate of the cost of all foreign iron or steel components excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of ''cost of components'' in this section; or

(2) For use in subpart 25.6, see the definition in 25.601.

Domestic end product means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured end product mined or produced in the United States;

(ii) An end product manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of foreign iron and steel constitutes less than 5 percent of the cost of all the components used in the end product. The cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the end product and a good faith estimate of the cost of all foreign iron or steel components excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the definition of ''cost of components'' in this section.

* * * * *

Fastener means a hardware device that mechanically joins or affixes two or more objects together. Examples of fasteners are nuts, bolts, pins, rivets, nails, clips, and screws.

* * * * *

Foreign iron and steel means iron or steel products not 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, from the initial melting stage through the application of coatings, except metallurgical processes involving refinement of steel additives. The origin of the elements of the iron or steel is not relevant to the determination of whether it is domestic or foreign.

* * * * *

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

* * * * *

■ 5. Amend section 25.100 by—
■ a. Removing from the end of paragraph (a)(2) ''and'';
■ b. Redesignating paragraph (a)(3) as paragraph (a)(4);
■ c. Adding a new paragraph (a)(3); and
■ d. Revising the newly redesignated paragraph (a)(4).

The addition and revision read as follows:

25.100 Scope of subpart.

(a) * * *

(3) Executive Order 13881, July 15, 2019; and

(4) Waiver of the domestic content test of the Buy American statute for acquisition of commercially available off-the-shelf (COTS) items in accordance with 41 U.S.C. 1907, but see 25.101(a)(2)(ii).

* * * * *

■ 6. Amend section 25.101 by—
■ a. Removing from paragraph (a) introductory text ''statute uses'' and adding ''statute and E.O. 13881 use'' in its place;
■ b. Revising paragraph (a)(2);
■ c. Removing from paragraph (b) ''component test'' and adding ''domestic content test'' in its place; and
■ d. Removing from paragraph (c) ''Subpart 25.5'' and adding ''subpart 25.5'' in its place.

The revision reads as follows:

25.101 General.

(a) * * *

(2)(i) Except for an end product that consists wholly or predominantly of iron or steel or a combination of both, the cost of domestic components must exceed 55 percent of the cost of all the components. In accordance with 41 U.S.C. 1907, this domestic content test of the Buy American statute has been waived for acquisitions of COTS items (see 12.505(a)) (but see paragraph (a)(2)(ii) of this section).

(ii) For an end product that consists wholly or predominantly of iron or steel or a combination of both, the cost of foreign iron and steel must constitute less than 5 percent of the cost of all the components used in the end product (see the definition of ''foreign iron and steel'' at 25.003). The cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the end product and a good faith estimate of the cost of all foreign iron or steel components excluding COTS fasteners. This domestic content test of the Buy American statute has not been waived for acquisitions of COTS items in this category, except for COTS fasteners.

* * * * *

25.105 [Amended]

■ 7. Amend section 25.105 by—
■ a. Removing from paragraph (b)(1) ''6 percent'' and adding ''20 percent'' in its place; and
■ b. Removing from paragraph (b)(2) ''12 percent'' and ''Subpart 19.5'' and adding ''30 percent'' and ''subpart 19.5'' in their places, respectively.

■ 8. Amend section 25.200 by—
■ a. Removing from the end of paragraph (a)(2) ''and'';
■ b. Redesignating paragraph (a)(3) as paragraph (a)(4);
■ c. Adding a new paragraph (a)(3); and
■ d. Revising the newly redesignated paragraph (a)(4).

The addition and revision read as follows:

25.200 Scope of subpart.

(a) * * *

(3) Executive Order 13881, July 15, 2019; and

(4) Waiver of the domestic content test of the Buy American statute for acquisitions of commercially available off-the-shelf (COTS) items in accordance with 41 U.S.C. 1907, but see 25.201(b)(2)(ii).

* * * * *

■ 9. Revise section 25.201 to read as follows:

25.201 Policy.

(a) Except as provided in 25.202, use only domestic construction materials in construction contracts performed in the United States.

(b) The Buy American statute restricts the purchase of construction materials that are not domestic construction materials. For manufactured construction materials, the Buy American statute and E.O. 13881 use a two-part test to define domestic construction materials.

(1) The article must be manufactured in the United States; and

(2)(i) Except for construction material that consists wholly or predominantly of iron or steel or a combination of both, the cost of domestic components must exceed 55 percent of the cost of all the components. In accordance with 41 U.S.C. 1907, this domestic content test of the Buy American statute has been waived for acquisitions of COTS items (see 12.505(a)).

(ii) For construction material that consists wholly or predominantly of iron or steel or a combination of both, the cost of foreign iron and steel must constitute less than 5 percent of the cost of all the components used in such construction material (see the definition of ''foreign iron and steel'' at 25.003). The cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the construction material and a good faith estimate of the cost of all foreign iron or steel components excluding COTS fasteners. This domestic content test of the Buy American statute has not been waived for acquisitions of COTS items in this category, except for COTS fasteners.

25.204 [Amended]

■ 10. Amend section 25.204 in paragraph (b) by removing ''6 percent'' and adding ''20 percent'' in its place.

■ 11. Amend section 25.504–1 by—
■ a. Revising the table in paragraph (a)(1);
■ b. Removing from paragraph (a)(2) ''12 percent'' and ''$11,200'' and adding ''30 percent'' and ''$13,000'' in their places, respectively; and
■ c. Removing from paragraph (b)(2) ''12 percent'' and ''$11,424'' and adding ''30 percent'' and ''$13,260'' in their places, respectively.

The revision reads as follows:

25.504–1 Buy American statute.

(a)(1) * * *

Offer A	$16,000	Domestic end product, small business.

Offer B	$15,700	Domestic end product, small business.
Offer C	$10,000	U.S.-made end product (not domestic), small business.

* * * * *

■ 12. Amend section 25.504–2 by revising the table to read as follows:

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

* * * * *

Offer A	$304,000	U.S.-made end product (not domestic).
Offer B	$303,000	U.S.-made end product (domestic), small business.
Offer C	$300,000	Eligible product.
Offer D	$295,000	Noneligible product (not U.S.-made).

* * * * *

■ 13. Amend section 25.504–3 by—

■ a. Revising the entry ''Offer B'' in the table in paragraph (a);

■ b. Revising the entry ''Offer B'' in the table in paragraph (b); and

■ c. Revising entries ''Offer B'' and ''Offer C'' in the table in paragraph (c).

The revisions read as follows:

25.504–3 FTA/Israeli Trade Act.

(a) * * *

*	*	* * *
Offer B	$100,000	Eligible product.

* * * * *

(b) * * *

*	*	* * *
Offer B	$103,000	Noneligible product.

* * * * *

(c) * * *

*	*	* * *
Offer B	$103,000	Eligible product.
Offer C	100,000	Noneligible product.

* * * * *

■ 14. Amend section 25.504–4 by—

■ a. In paragraph (a)—

■ i. Revising the table;

■ ii. In STEP 1, Items 3 and 5, removing ''6 percent'' and adding ''20 percent'' in their places, respectively; and

■ iii. Revising STEP 2 and 3.

■ b. Revising paragraph (b).

The revisions read as follows:

25.504–4 Group award basis.

(a) * * *

Item	Offers		
	A	B	C
1	DO = $55,000	EL = $56,000	NEL = $50,000
2	NEL = 13,000	EL = 10,000	EL = 13,000
3	NEL = 11,500	DO = 12,000	DO = 10,000
4	NEL = 24,000	EL = 28,000	NEL = 22,000
5	DO = 18,000	NEL = 10,000	DO = 14,000
Total	121,500	116,000	109,000

* * * * *

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

Item	Offers		
	Low offer	Tentative award pattern from A and B	C
1	A	DO = $55,000	*NEL = $60,000
2	B	EL = 10,000	EL = 13,000
3	B	DO = 12,000	DO = 10,000
4	A	NEL = 24,000	NEL = 22,000
5	B	*NEL = 12,000	DO = 14,000
Total		113,000	119,000

* Offer + 20 percent.

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 $60,000 ($50,000 plus 20 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 $12,000 ($10,000 plus 20 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 3 and 4, totaling an award of $32,000.

(b) *Example 2.*

Item	Offers		
	A	B	C
1	DO = $50,000	EL = $50,500	NEL = $50,000

Item	Offers		
	A	B	C
2	NEL = 10,300	NEL = 10,000	EL = 10,200
3	EL = 20,400	EL = 21,000	NEL = 20,200
4	DO = 10,500	DO = 10,300	DO = 10,400
Total	91,200	91,800	90,800

Problem: The solicitation specifies award on a group basis. Assume the Buy American statute 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)):

	Domestic (percent)	Determination
A	$50,000 (Offer A1) + $10,500 (Offer A4) = $60,500 $60,500/$91,200 (Offer A Total) = 66.3%	Domestic.
B	$10,300 (Offer B4)/$91,800 (Offer B Total) $ = 11.2%	Foreign.
C	$10,400 (Offer C4)/$90,800 (Offer C Total) = 11.5%	Foreign.

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

	Domestic + eligible (percent)	Determination
A	N/A (Both Domestic)	Domestic.
B	$50,500 (Offer B1) + $21,000 (Offer B3) + $10,300 (Offer B4) = $81,800 $81,800/$91,800 (Offer B Total) = 89.1%	Eligible.
C	$10,200 (Offer C2) + $10,400 (Offer C4) = $20,600 $20,600/$90,800 (Offer C Total) = 22.7%	Noneligible.

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 20 percent factor (use 30 percent if Offer A is a small business) to Offer C yields an evaluated price of $108,960 ($90,800 + 20 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)).

25.601 [Amended]

■ 15. Amend section 25.601 by removing the definition ''Steel''.

25.604 [Amended]

■ 16. Amend section 25.604 in paragraph (c)(2) by removing ''6 percent'' and adding ''20 percent'' in its place.

25.605 [Amended]

■ 17. Amend section 25.605 by—

■ a. Removing from paragraph (a)(2) ''6 percent'' and adding ''20 percent'' in its place; and

■ b. Removing from paragraph (a)(3) ''.06'' and adding ''.20'' in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 18. Amend section 52.212–3 by—

■ a. Revising the date of the provision; and

■ b. Revising paragraphs (f)(1), (g)(1)(i), the first sentence of (g)(1)(ii), and (g)(1)(iii) introductory text.

The revisions read as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (Jan 2021)

* * * * *

(f) * * *

(1)(i) The Offeror certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product.

(ii) The Offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

(iii) The terms ''domestic end product,'' ''end product,'' ''foreign end product,'' and ''United States'' are defined in the clause of this solicitation entitled ''Buy American-Supplies.''

* * * * *

(g)(1) * * *

(i)(A) The Offeror certifies that each end product, except those listed in paragraph (g)(1)(ii) or (iii) of this provision, is a domestic end product.

(B) The terms ''Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end product,'' ''domestic end product,'' ''end product,'' ''foreign end product,'' ''Free Trade Agreement country,'' ''Free Trade Agreement country end product,'' ''Israeli end product,'' and ''United States'' are defined in the clause of this solicitation entitled ''Buy American—Free Trade Agreements—Israeli Trade Act.''

(ii) The Offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end products) or Israeli end products as defined in the clause of this solicitation entitled ''Buy American—Free Trade Agreements—Israeli Trade Act.''

* * * * *

(iii) The Offeror shall list those supplies that are foreign end products (other than those listed in paragraph (g)(1)(ii) of this provision) as defined in the clause of this solicitation entitled ''Buy American—Free Trade Agreements—Israeli Trade Act.'' The Offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

* * * * *

■ 19. Amend section 52.212–5 by—

■ a. Revising the date of the clause; and
■ b. Removing from paragraphs (b)(48) and (b)(49)(i) through (iv) ''(MAY 2014)'' and adding ''(JAN 2021)'' in their places, respectively.

The revision reads as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (Jan 2021)

* * * * *

■ 20. Amend section 52.213–4 by—
■ a. Revising the date of the clause; and
■ b. Removing from paragraph (b)(1)(xvii) introductory text ''(MAY 2014)'' and adding ''(JAN 2021)'' in its place.

The revision reads as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (Jan 2021)

* * * * *

■ 21. Amend section 52.225–1 by—
■ a. Revising the date of the clause;
■ b. In paragraph (a):
■ i. Removing from paragraph (1)(i) in the definition ''Commercially available off-the-shelf (COTS) item'' ''FAR'' and adding ''Federal Acquisition Regulation (FAR)'' in its place;
■ ii. Revising the definition ''*Domestic end product*'';
■ iii. Adding in alphabetical order the definitions ''*Fastener*'' ''*Foreign iron and steel*'' ''*Predominantly of iron or steel or a combination of both*'' and ''*Steel*''; and
■ c. Revising paragraph (b).

The revisions and additions read as follows:

52.225–1 Buy American—Supplies.

* * * * *

Buy American—Supplies (Jan 2021)

(a) * * *

Domestic end product means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured end product mined or produced in the United States;

(ii) An end product manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of foreign iron and steel constitutes less than 5 percent of the cost of all the components used in the end product. The cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the end product and a good faith estimate of the cost of all foreign iron or steel components excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the definition of ''cost of components''.

* * * * *

Fastener means a hardware device that mechanically joins or affixes two or more objects together. Examples of fasteners are nuts, bolts, pins, rivets, nails, clips, and screws.

* * * * *

Foreign iron and steel means iron or steel products not 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, from the initial melting stage through the application of coatings, except metallurgical processes involving refinement of steel additives. The origin of the elements of the iron or steel is not relevant to the determination of whether it is domestic or foreign.

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

* * * * *

(b) 41 U.S.C. chapter 83, Buy American, provides a preference for domestic end products for supplies acquired for use in the United States. In accordance with 41 U.S.C. 1907, the domestic content test of the Buy American statute is waived for an end product that is a COTS item (see 12.505(a)(1)), except that for an end product that consists wholly or predominantly of iron or steel or a combination of both, the domestic content test is applied only to the iron and steel content of the end product, excluding COTS fasteners.

* * * * *

■ 22. Amend section 52.225–2 by—
■ a. Revising the date of the provision and paragraphs (a) and (b);
■ b. Removing from paragraph (c) ''Part'' and adding ''part'' in its place.

The revisions read as follows:

52.225–2 Buy American Certificate.

* * * * *

Buy American Certificate (Jan 2021)

(a)(1) The Offeror certifies that each end product, except those listed in paragraph (b) of this provision, is a domestic end product.

(2) The Offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

(3) The terms ''domestic end product,'' ''end product,'' and ''foreign end product'' are defined in the clause of this solicitation entitled ''Buy American—Supplies.''

(b) Foreign End Products:

Line item No.	Country of origin

[*List as necessary.*]

* * * * *

■ 23. Amend section 52.225–3 by—
■ a. Revising the date of the clause;
■ b. In paragraph (a):
■ i. Removing from paragraph (1)(i) in the definition ''Commercially available off-the-shelf (COTS) item'' ''FAR'' and adding ''Federal Acquisition Regulation (FAR)'' in its place;
■ ii. Revising the definition ''*Domestic end product*''; and
■ iii. Adding in alphabetical order the definitions ''*Fastener*'' ''*Foreign iron and* steel'' ''*Predominantly of iron or steel or a combination of both*'' and ''*Steel*'';
■ c. Revising the second sentence of paragraph (c);
■ d. Revising the date in the introductory text and the second sentence of paragraph (c) of Alternate I;
■ e. Revising the date in the introductory text and the second sentence of paragraph (c) of Alternate II and adding a period to the end of paragraph (c); and
■ f. Revising the date in the introductory text and the second sentence of paragraph (c) of Alternate III.

The revisions and additions read as follows:

52.225–3 Buy American—Free Trade Agreements—Israeli Trade Act.

* * * * *

Buy American—Free Trade Agreements—Israeli Trade Act (Jan 2021)

(a) * * *

Domestic end product means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured end product mined or produced in the United States;

(ii) An end product manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of foreign iron and steel constitutes less than 5 percent of the cost of all the components used in the end product. The cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the end product and a good faith estimate of the cost of all foreign iron or steel components excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the definition of ''cost of components''.

* * * * *

Fastener means a hardware device that mechanically joins or affixes two or more objects together. Examples of fasteners are nuts, bolts, pins, rivets, nails, clips, and screws.

* * * * *

Foreign iron and steel means iron or steel products not 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, from the initial melting stage through the application of coatings, except metallurgical processes involving refinement of steel additives. The origin of the elements of the iron or steel is not relevant to the determination of whether it is domestic or foreign.

* * * * *

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

* * * * *

(c) * * * In accordance with 41 U.S.C. 1907, the domestic content test of the Buy American statute is waived for an end product that is a COTS item (see 12.505(a)(1)), except that for an end product that consists wholly or predominantly of iron or steel or a combination of both, the domestic content test is applied only to the iron and steel content of the end product, excluding COTS fasteners. * * *

Alternate I (Jan 2021) * * *

(c) * * * In accordance with 41 U.S.C. 1907, the domestic content test of the Buy American statute is waived for an end product that is a COTS item (see 12.505(a)(1)), except that for an end product that consists wholly or predominantly of iron or steel or a combination of both, the domestic content test is applied only to the iron and steel content of the end product, excluding COTS fasteners. * * *

Alternate II (Jan 2021) * * *

(c) * * * In accordance with 41 U.S.C. 1907, the domestic content test of the Buy American statute is waived for an end product that is a COTS item (see 12.505(a)(1)), except that for an end product that consists wholly or predominantly of iron or steel or a combination of both, the domestic content test is applied only to the iron and steel content of the end product, excluding COTS fasteners. * * *

Alternate III (Jan 2021) * * *

(c) * * * In accordance with 41 U.S.C. 1907, the domestic content test of the Buy American statute is waived for an end product that is a COTS item (see 12.505(a)(1)), except that for an end product that consists wholly or predominantly of iron or steel or a combination of both, the domestic content test is applied only to the iron and steel content of the end product, excluding COTS fasteners. * * *

■ 24. Amend section 52.225–4 by—

■ a. Revising the date of the provision;

■ b. Revising paragraph (a);

■ c. In paragraph (b) introductory text removing ''offeror'' and adding ''Offeror'' in its place;

■ d. Revising the first and second sentences of paragraph (c);

■ e. Removing from paragraph (d) ''Part'' and adding ''part'' in its place;

■ f. In Alternate I by—

■ i. Revising the date of the Alternate; and

■ ii. Removing from paragraph (b) introductory text ''offeror'' and adding ''Offeror'' in its place;

■ g. In Alternate II by—

■ i. Revising the date of the Alternate; and

■ ii. Removing from paragraph (b) introductory text ''offeror'' and adding ''Offeror'' in its place; and

■ h. In Alternate III by—

■ i. Revising the date of the Alternate; and

■ ii. Removing from paragraph (b) introductory text ''offeror'' and adding ''Offeror'' in its place, and removing from the second paragraph of (b) ''Products (Other'' and adding ''Products (other'' in its place.

The revisions read as follows:

52.225–4 Buy American—Free Trade Agreements—Israeli Trade Act Certificate.

* * * * *

Buy American—Free Trade Agreements—Israeli Trade Act Certificate (Jan 2021)

(a)(1) The Offeror certifies that each end product, except those listed in paragraph (b) or (c) of this provision, is a domestic end product.

(2) The terms ''Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end product,'' ''domestic end product,'' ''end product,'' ''foreign end product,'' ''Free Trade Agreement country,'' ''Free Trade Agreement country end product,'' ''Israeli end product,'' and ''United States'' are defined in the clause of this solicitation entitled ''Buy American—Free Trade Agreements—Israeli Trade Act.''

* * * * *

(c) The Offeror shall list those supplies that are foreign end products (other than those listed in paragraph (b) of this provision) as defined in the clause of this solicitation entitled ''Buy American—Free Trade Agreements—Israeli Trade Act.'' The Offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

* * * * *

Alternate I (Jan 2021) * * *

Alternate II (Jan 2021) * * *

Alternate III (Jan 2021) * * *

■ 25. Amend section 52.225–9 by—

■ a. Revising the date of the clause;

■ b. In paragraph (a):

■ i. Removing from paragraph (1)(i) in the definition ''Commercially available off-the-shelf (COTS) item'' ''FAR'' and adding ''Federal Acquisition Regulation (FAR)'' in its place;

■ ii. Revising the definition ''*Domestic construction material*''; and

■ iii. Adding in alphabetical order the definitions ''*Fastener*'' ''*Foreign iron and steel*'' ''*Predominantly of iron or steel or a combination of both*'' and ''*Steel*'';

■ c. Revising paragraph (b)(1);

■ d. Removing from paragraph (b)(3)(i) ''6 percent'' and adding ''20 percent'' in its place; and

■ e. Revising paragraph (d).

The revisions and additions read as follows:

52.225–9 Buy American—Construction Materials.

* * * * *

Buy American—Construction Materials (Jan 2021)

(a) * * *

Domestic construction material means—

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of foreign iron and steel constitutes less than 5 percent of the cost of all components used in such construction material. The cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the construction material and a good faith estimate of the cost of all foreign iron or steel components excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of ''cost of components''.

Fastener means a hardware device that mechanically joins or affixes two or more objects together. Examples of fasteners are nuts, bolts, pins, rivets, nails, clips, and screws.

* * * * *

Foreign iron and steel means iron or steel products not 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, from the initial melting stage through the application of coatings, except metallurgical processes involving refinement of steel additives. The origin of the elements of the iron or steel is not relevant to the determination of whether it is domestic or foreign.

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

* * * * *

(b) * * * (1) This clause implements 41 U.S.C. chapter 83, Buy American, by providing a preference for domestic construction material. In accordance with 41 U.S.C. 1907, the domestic content test of the Buy American statute is waived for construction material that is a COTS item, except that for construction material that consists wholly or predominantly of iron or steel or a combination of both, the domestic content test is applied only to the iron and steel content of the construction materials, excluding COTS fasteners. (See FAR 12.505(a)(2)). The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

* * * * *

(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 PRICE COMPARISON

Construction material description	Unit of measure	Quantity	Price (dollars) *
Item 1:			
Foreign construction material.			
Domestic construction material.			
Item 2:			
Foreign construction material.			
Domestic construction material.			

[Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued)].*
[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]
[Include other applicable supporting information.]

(End of clause)

■ 26. Amend section 52.225–11 by—

■ a. Revising the date of the clause;

■ b. In paragraph (a):

■ i. Removing from paragraph (1)(i) in the definition ''Commercially available off-the-shelf (COTS) item'' ''FAR'' and adding ''Federal Acquisition Regulation (FAR)'' in its place;

■ ii. Revising the definition ''*Domestic construction material*'';

■ iii. Adding in alphabetical order the definitions ''*Fastener*'' ''*Foreign iron and* steel'' ''*Predominantly of iron or steel or a combination of both*'' and ''*Steel*'';

■ c. Revising paragraph (b)(1);

■ d. Removing from paragraph (b)(4)(i) ''6 percent'' and adding ''20 percent'' in its place;

■ e. Revising paragraph (d);

■ f. In Alternate I—

■ i. Revising the date of the Alternate; and

■ ii. Revising paragraph (b)(1).

The revisions and additions read as follows:

52.225–11 Buy American—Construction Materials Under Trade Agreements.

* * * * *

Buy American—Construction Materials Under Trade Agreements (Jan 2021)

(a) * * *

Domestic construction material means—

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of foreign iron and steel constitutes less than 5 percent of the cost of all components used in such construction material. The cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the construction material and a good faith estimate of the cost of all foreign iron or steel components excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the

construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of ''cost of components''.

Fastener means a hardware device that mechanically joins or affixes two or more objects together. Examples of fasteners are nuts, bolts, pins, rivets, nails, clips, and screws.

* * * * *

Foreign iron and steel means iron or steel products not 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, from the initial melting stage through the application of coatings, except metallurgical processes involving refinement of steel additives. The origin of the elements of the iron or steel is not relevant to the determination of whether it is domestic or foreign.

* * * * *

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

* * * * *

(b) * * * (1) This clause implements 41 U.S.C. chapter 83, Buy American, by providing a preference for domestic construction material. In accordance with 41 U.S.C. 1907, the domestic content test of the Buy American statute is waived for construction material that is a COTS item, except that for construction material that consists wholly or predominantly of iron or steel or a combination of both, the domestic content test is applied only to the iron and steel content of the construction material, excluding COTS fasteners. (See FAR 12.505(a)(2)). In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American restrictions are waived for designated country construction materials.

* * * * *

(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 PRICE COMPARISON

Construction material description	Unit of measure	Quantity	Price (dollars) *
Item 1:			
Foreign construction material.			
Domestic construction material.			
Item 2:			
Foreign construction material.			
Domestic construction material.			

[Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued)].*
[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]
[Include other applicable supporting information.]

(End of clause)

Alternate I (Jan 2021) * * *

(b) * * * (1) This clause implements 41 U.S.C. chapter 83, Buy American, by providing a preference for domestic construction material. In accordance with 41 U.S.C. 1907, the domestic content test of the Buy American statute is waived for construction material that is a COTS item, except that for construction material that consists wholly or predominantly of iron or steel or a combination of both, the domestic content test is applied only to the iron and steel content of the construction material, excluding COTS fasteners. (See FAR 12.505(a)(2)). In addition, the Contracting Officer has determined that the WTO GPA and all the Free Trade Agreements except the Bahrain FTA, NAFTA, and the Oman FTA apply to this acquisition. Therefore, the Buy American statute restrictions are waived for designated country construction materials other than Bahrainian, Mexican, or Omani construction materials.

* * * * *

■ 27. Amend section 52.225–21 by—

■ a. Revising the date of the clause;

■ b. In paragraph (a) in the definition ''Steel'' removing ''.02'' and adding ''0.02'' in its place;

■ c. Removing from paragraph (b)(4)(i)(B) ''6 percent'' and adding ''20 percent'' in its place;

■ d. Removing from paragraph (c) heading ''*Section*'' and adding ''*section*'' in its place; and

■ e. In paragraph (d):

■ i. Removing from the first undesignated paragraph following the table ''reponse'' and adding ''response'' in its place; and

■ ii Removing from the second undesignated paragraph following the table ''**Include*'' and adding ''*[*Include*'' in its place.

The revision reads as follows:

52.225–21 Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials.

* * * * *

Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials (Jan 2021)

* * * * *

■ 28. Amend section 52.225–22 by—

■ a. Revising the date of the provision;

■ b. Removing from paragraph (b) ''offeror'' and adding ''Offeror'' in its place wherever it appears;

■ c. Removing from paragraph (c)(1)(ii) ''6 percent'' and adding ''20 percent'' in its place;

■ d. Removing from paragraph (c)(3) ''offeror'' and adding ''Offeror'' in its place; and

■ e. Removing from paragraphs (d)(1), (2), and (3) introductory text ''offeror'' and adding ''Offeror'' in their places, respectively.

The revision reads as follows:

52.225–22 Notice of Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials.

* * * * *

Notice of Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials (Jan 2021)

* * * * *

■ 29. Amend section 52.225–23 by—

■ a. Revising the date of the clause;

■ b. In paragraph (a), in the definition ''*Steel*'' removing ''.02'' and adding ''0.02'' in its place; and

■ c. Removing from paragraph (b)(4)(i)(B) ''6 percent'' and adding ''20 percent'' in its place.

The revision reads as follows:

52.225–23 Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials Under Trade Agreements.

* * * * *

Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials Under Trade Agreements (Jan 2021)

* * * * *

■ 30. Amend section 52.225–24 by—

■ a. Revising the date of the provision;

■ b. Removing from paragraph (b) ''offeror'' and adding ''Offeror'' in its place wherever it appears;

■ c. Removing from paragraph (c)(1)(ii) ''6 percent'' and adding ''20 percent'' in its place;

■ d. Removing from paragraph (c)(3) ''offeror'' and adding ''Offeror'' in its place; and

■ e. Removing from paragraphs (d)(1), (2), and (3) introductory text ''offeror'' and adding ''Offeror'' in their places, respectively.

The revision reads as follows:

52.225–24 Notice of Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials Under Trade Agreements.

* * * * *

Notice of Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials Under Trade Agreements (Jan 2021)

* * * * *

[FR Doc. 2021–00710 Filed 1–15–21; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2021–0051, Sequence No. 1]

Federal Acquisition Regulation; Federal Acquisition Circular 2021–04; Small Entity Compliance Guide

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 2021–04, which amends the Federal Acquisition Regulation (FAR). Interested parties may obtain further information regarding this rule by referring to FAC 2021–04, which precedes this document.

DATES: January 19, 2021.

ADDRESSES: The FAC, including the SECG, is available via the internet at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Zenaida Delgado, Procurement Analyst, at 202–969–7207 or *zenaida.delgado@gsa.gov* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAC 2021–04, FAR Case 2019–016. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared.

RULES LISTED IN FAC 2021–04

Subject	FAR case
* Maximizing Use of American-Made Goods, Products and Materials	2019–016

ADDRESSES: The FAC, including the SECG, is available via the internet at *https://www.regulations.gov.*

SUPPLEMENTARY INFORMATION: A summary for the FAR rule follows. For the actual revisions and/or amendments made by this FAR rule, refer to the specific subject set forth in the document following this summary. FAC 2021–04 amends the FAR as follows:

Maximizing Use of American-Made Goods, Products, and Materials (FAR Case 2019–016)

This final rule strengthens domestic preferences under the Buy American statute by making adjustments to the required percentage of domestic content and the existing percentages for the price evaluation preferences in an effort to decrease the amount of foreign-sourced content in a U.S. manufactured product to promote economic and national security, help stimulate economic growth, and create jobs. The price evaluation preferences increase from 6 percent to 20 percent for large business and from 12 percent to 30 percent for small business; for DoD procurements there is no change to the DoD 50 percent amount. The domestic content requirement for iron and steel increases from 50 percent to 95 percent; for other end products and construction materials, the domestic content requirement increases from 50 percent to 55 percent. Foreign iron and steel is iron or steel products that are not produced in the United States. The rule implements E.O. 13881, Maximizing Use of American-Made Goods, Products, and Materials. This final rule will not have a significant economic impact on a substantial number of small entities.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2021–00711 Filed 1–15–21; 8:45 am]

BILLING CODE 6820–EP–P