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25.903 Exempted supplies.

Subpart 25.10—Additional Foreign Acquisition Regulations

25.1001 Waiver of right to examination of records.

25.1002 Use of foreign currency.

Subpart 25.11—Solicitation Provisions and Contract Clauses

25.1101 Acquisition of supplies.

25.1102 Acquisition of construction.

25.1103 Other provisions and clauses.

AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

EFFECTIVE DATE NOTE: At 68 FR 56686, Oct. 1, 2003, the authority citation for Part 25 was revised, effective Oct. 31, 2003. For the convenience of the user, the revised text is set forth below:

AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

SOURCE: 64 FR 72419, Dec. 27, 1999, unless otherwise noted.

25.000 Scope of part.

This part provides policies and procedures for acquiring foreign supplies, services, and construction materials. It implements the Buy American Act, trade agreements, and other laws and regulations.

[64 FR 72419, Dec. 27, 1999, as amended at 67 FR 21534, Apr. 30, 2002]

25.001 General.

(a) The Buy American Act—

(1) Restricts the purchase of supplies, that are not domestic end products, for use within the United States. A foreign end product may be purchased if the contracting officer determines that the price of the lowest domestic offer is unreasonable or if another exception applies (see Subpart 25.1); and

(2) Requires, with some exceptions, the use of only domestic construction

materials in contracts for construction in the United States (see Subpart 25.2).

(b) The restrictions in the Buy American Act are not applicable in acquisitions subject to certain trade agreements (see Subpart 25.4). In these acquisitions, end products and construction materials from certain countries receive nondiscriminatory treatment in evaluation with domestic offers. Generally, the dollar value of the acquisition determines which of the trade agreements applies. Exceptions to the applicability of the trade agreements are described in Subpart 25.4.

(c) The test to determine the country of origin for an end product under the trade agreements is different from the test to determine the country of origin for an end product under the Buy American Act (see the various country “end product” definitions in 25.003). The Buy American Act uses a two-part test to define a “domestic end product” (manufacture in the United States and a formula based on cost of domestic components). Under the trade agreements, the test to determine country of origin is “substantial transformation” (*i.e.*, transforming an article into a new and different article of commerce, with a name, character, or use distinct from the original article).

(d) On April 22, 1992, the President made a determination under section 305 of the Trade Agreements Act to impose sanctions against some European Union countries for discriminating against U.S. products and services (see Subpart 25.6).

[64 FR 72419, Dec. 27, 1999, as amended at 67 FR 21535, Apr. 30, 2002]

25.002 Applicability of subparts.

The following table shows the applicability of the subparts. Subpart 25.5 provides comprehensive procedures for offer evaluation and examples.

	Subpart	Supplies for use		Construction		Services performed	
		Inside U.S.	Outside U.S.	Inside U.S.	Outside U.S.	Inside U.S.	Outside U.S.
25.1	Buy American Act—Supplies	X					
25.2	Buy American Act—Construction Materials			X			
25.3	[Reserved]						
25.4	Trade Agreements	X	X	X	X	X	X
25.5	Evaluating Foreign Offers—Supply Contracts	X	X				
25.6	Trade Sanctions	X	X	X	X	X	X

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25.003

	Subpart	Supplies for use		Construction		Services performed	
		Inside U.S.	Out-side U.S.	Inside U.S.	Out-side U.S.	Inside U.S.	Out-side U.S.
		25.7	Prohibited Sources	X	X	X	X
25.8	Other International Agreements and Coordination	X	X	X	X
25.9	Customs and Duties	X
25.10	Additional Foreign Acquisition Regulations	X	X	X	X	X	X
25.11	Solicitation Provisions and Contract Clauses	X	X	X	X	X	X

[64 FR 72419, Dec. 27, 1999, as amended at 67 FR 21535, Apr. 30, 2002]

25.003 Definitions.

As used in this part—

Canadian end product means an article that—

(1) Is wholly the growth, product, or manufacture of Canada; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

Caribbean Basin country means any of the following countries: Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Montserrat, Netherlands Antilles, Nicaragua, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago.

Caribbean Basin country end product—

(1) Means an article that—

(i)(A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(B) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the

article or articles from which it was transformed; and

(ii) Is not excluded from duty-free treatment for Caribbean countries under 19 U.S.C. 2703(b).

(A) For this reason, the following articles are not Caribbean Basin country end products:

(1) Tuna, prepared or preserved in any manner in airtight containers.

(2) Petroleum, or any product derived from petroleum.

(3) Watches and watch parts (including cases, bracelets, and straps) of whatever type including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Harmonized Tariff Schedule of the United States (HTSUS) column 2 rates of duty apply (*i.e.*, Afghanistan, Cuba, Laos, North Korea, and Vietnam).

(4) Certain of the following: textiles and apparel articles; footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel; or handloomed, handmade, and folklore articles.

(B) Access to the HTSUS to determine duty-free status of articles of the types listed in paragraph (1)(ii)(A)(4) of this definition is available via the Internet at <http://www.customs.ustreas.gov/impoexpo/impoexpo.htm>. In particular, see the following:

(1) General Note 3(c), Products Eligible for Special Tariff treatment.

(2) General Note 17, Products of Countries Designated as Beneficiary Countries under the United States—Caribbean Basin Trade Partnership Act of 2000.

(3) Section XXII, Chapter 98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note 7(b).