

### Subpart 25.11—Solicitation Provisions and Contract Clauses

#### 25.1101 Acquisition of supplies.

The following provisions and clauses apply to the acquisition of supplies and the acquisition of services involving the furnishing of supplies.

(a)(1) Insert the clause at 52.225-1, Buy American Act—Supplies, in solicitations and contracts with a value exceeding \$2,500 (\$7,500 for acquisitions as described in 13.201(g)(1)(i) or \$15,000 for acquisitions as described in 13.201(g)(1)(ii)) but not exceeding \$25,000; and in solicitations and contracts with a value exceeding \$25,000, if none of the clauses prescribed in paragraphs (b) and (c) of this section apply, except if—

(i) The solicitation is restricted to domestic end products in accordance with Subpart 6.3;

(ii) The acquisition is for supplies for use within the United States and an exception to the Buy American Act applies (*e.g.*, nonavailability or public interest); or

(iii) The acquisition is for supplies for use outside the United States.

(2) Insert the provision at 52.225-2, Buy American Act Certificate, in solicitations containing the clause at 52.225-1.

(b)(1)(i) Insert the clause at 52.225-3, Buy American Act—North American Free Trade Agreement—Israeli Trade Act, in solicitations and contracts if—

(A) The acquisition is for supplies, or for services involving the furnishing of supplies, for use within the United States, and the acquisition value is \$25,000 or more, but is less than \$169,000; and

(B) No exception in 25.401 applies. For acquisitions of agencies not subject to the Israeli Trade Act (see 25.406), see agency regulations.

(ii) If the acquisition value is \$25,000 or more but is less than \$50,000, use the clause with its Alternate I.

(iii) If the acquisition value is \$50,000 or more but is less than \$56,190, use the clause with its Alternate II.

(2)(i) Insert the provision at 52.225-4, Buy American Act—North American Free Trade Agreement—Israeli Trade Act Certificate, in solicitations containing the clause at 52.225-3.

(ii) If the acquisition value is \$25,000 or more but is less than \$50,000, use the provision with its Alternate I.

(iii) If the acquisition value is \$50,000 or more but is less than \$56,190, use the provision with its Alternate II.

(c)(1) Insert the clause at 52.225-5, Trade Agreements, in solicitations and contracts valued at \$169,000 or more, if the Trade Agreements Act applies (see 25.401 and 25.403) and the agency has determined that the restrictions of the Buy American Act are not applicable to U.S.-made end products. If the agency has not made such a determination, the contracting officer must follow agency procedures.

(2) Insert the provision at 52.225-6, Trade Agreements Certificate, in solicitations containing the clause at 52.225-5.

(d) Insert the provision at 52.225-7, Waiver of Buy American Act for Civil Aircraft and Related Articles, in solicitations for civil aircraft and related articles (see 25.407), if the acquisition value is less than \$169,000.

(e) Insert the clause at 52.225-8, Duty-Free Entry, in solicitations and contracts for supplies that may be imported into the United States and for which duty-free entry may be obtained in accordance with 25.903(a), if the value of the acquisition—

(1) Exceeds \$100,000; or

(2) Is \$100,000 or less, but the savings from waiving the duty is anticipated to be more than the administrative cost of waiving the duty. When used for acquisitions valued at \$100,000 or less, the contracting officer may modify paragraphs (b)(1) and (i)(2) of the clause to reduce the dollar figure.

[64 FR 72419, Dec. 27, 1999, as amended at 65 FR 36026, June 6, 2000; 67 FR 21535, Apr. 30, 2002; 67 FR 56122, Aug. 30, 2002; 67 FR 56124, Aug. 30, 2002; 68 FR 4051, Jan. 27, 2003]

#### 25.1102 Acquisition of construction.

(a) Insert the clause at 52.225-9, Buy American Act—Construction Materials, in solicitations and contracts for construction that is performed in the United States valued at less than \$6,481,000.

(1) List in paragraph (b)(2) of the clause all foreign construction material excepted from the requirements of the Buy American Act.

(2) If the head of the agency determines that a higher percentage is appropriate, substitute the higher evaluation percentage in paragraph (b)(3)(i) of the clause.

(b)(1) Insert the provision at 52.225-10, Notice of Buy American Act Requirement—Construction Materials, in solicitations containing the clause at 52.225-9.

(2) If insufficient time is available to process a determination regarding the inapplicability of the Buy American Act before receipt of offers, use the provision with its Alternate I.

(c) Insert the clause at 52.225-11, Buy American Act—Construction Materials under Trade Agreements, in solicitations and contracts for construction that is performed in the United States valued at \$6,481,000 or more.

(1) List in paragraph (b)(3) of the clause all foreign construction material excepted from the requirements of the Buy American Act, other than designated country or NAFTA country construction material.

(2) If the head of the agency determines that a higher percentage is appropriate, substitute the higher evaluation percentage in paragraph (b)(4)(i) of the clause.

(3) For acquisitions valued at \$6,481,000 or more, but less than \$7,304,733, use the clause with its Alternate I.

(d)(1) Insert the provision at 52.225-12, Notice of Buy American Act Requirement—Construction Materials under Trade Agreements, in solicitations containing the clause at 52.225-11.

(2) If insufficient time is available to process a determination regarding the inapplicability of the Buy American Act before receipt of offers, use the provision with its Alternate I.

(3) For acquisitions valued at \$6,481,000 or more, but less than \$7,304,733, use the clause with its Alternate II.

[64 FR 72419, Dec. 27, 1999, as amended at 65 FR 36026, June 6, 2000; 67 FR 21536, Apr. 30, 2002; 67 FR 56124, Aug. 30, 2002]

#### 25.1103 Other provisions and clauses.

(a) *Restrictions on certain foreign purchases.* Insert the clause at 52.225-13, Restrictions on Certain Foreign Purchases, in solicitations and contracts

with a value exceeding \$2,500, \$7,500 for acquisitions as described in 13.201(g)(1)(i), or \$15,000 for acquisitions as described in 13.201(g)(1)(ii), unless an exception applies (*see* 25.701(a)(2)).

(b) *Translations.* Insert the clause at 52.225-14, Inconsistency Between English Version and Translation of Contract, in solicitations and contracts if anticipating translation into another language.

(c) *Sanctions.* (1) Except as provided in paragraph (c)(2) of this section, insert the clause at—

(i) 52.225-15, Sanctioned European Union Country End Products, in solicitations and contracts for supplies valued at less than \$169,000; or

(ii) 52.225-16, Sanctioned European Union Country Services, in solicitations and contracts for services—

(A) Listed in 25.601(a)(3)(i); or

(B) Valued at less than \$169,000.

(2) Do not insert the clauses in paragraph (c)(1) of this section in—

(i) Solicitations issued and contracts awarded by—

(A) A contracting activity located outside of the United States, provided the supplies will be used or the services will be performed outside of the United States; or

(B) The Department of Defense;

(ii) Purchases at or below the simplified acquisition threshold awarded using simplified acquisition procedures;

(iii) Total small business set-asides;

(iv) Contracts in support of U.S. national security interests;

(v) Contracts for essential spare, repair, or replacement parts available only from sanctioned EU member states; or

(vi) Contracts for which the head of the agency has made a determination in accordance with 25.602(b).

(d) *Foreign currency offers.* Insert the provision at 52.225-17, Evaluation of Foreign Currency Offers, in solicitations that permit the use of other than a specified currency. Insert in the provision the source of the rate to be used in the evaluation of offers.

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