

## § 12.700

(1) Making an administrative offset against other requests for reimbursements,

(2) Withholding advance payments otherwise due to the grantee, or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch. II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

ENTITLEMENTS [RESERVED]

### Subpart D [Reserved]

### Subpart E—Buy American Requirements for Assistance Programs

SOURCE: 59 FR 36715, July 19, 1994, unless otherwise noted.

#### BUY AMERICAN ACT—SUPPLIES

#### § 12.700 Scope.

This subpart implements section 307 of the Omnibus Consolidated Appropriations Act of 1997 (Public Law 104-208, 110 Stat. 3009) and section 501 of the Energy and Water Development Appropriations Act, 1997 (Public Law 104-206, 110 Stat. 2984). For awards made under the authority of section 307(a) of Public Law 104-208, this subpart requires that no funds made available in the Act may be expended by an entity unless the entity agrees that in expending the funds the entity will comply with sections 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 10a-10c; popularly known as the “Buy American Act”). It applies to procurement contracts under grants and cooperative agreements which provide for the purchase of equipment and products. Section 501 of Public Law 104-206, 110 Stat. 2984, only applies to awards made by the Bureau of Reclamation. In addition, for these awards, there is only a requirement that in providing financial assistance to, or entering into any contract with, any entity using funds made available in this Act, the Secretary, to the greatest extent practicable, will provide to the entity a

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notice describing a statement within the Act made by Congress. This statement concerns the sense of the Congress that to the greatest extent practicable, all equipment and products purchased with funds made available in the Act, should be American-made. Therefore, for Fiscal Year 1997 awards, only the requirements in Section 12.700 and 12.710 will apply to awards made by the Bureau of Reclamation.

[61 FR 68667, Dec. 30, 1996]

#### § 12.705 Definitions.

*Components*, as used in this subpart, means those articles, materials, and supplies incorporated directly into the end products.

*Concern*, as used in this subpart, means any business entity organized for profit (even if its ownership is in the hands of a nonprofit entity) with a place of business located in the United States and which makes a significant contribution to the U.S. economy through payment of taxes and/or use of American products, to an individual, partnership, corporation, joint venture, association, or cooperative.

*Domestic end product*, as used in this subpart, means (a) an unmanufactured end product mined or produced in the United States; or (b) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. (In determining if an end product is domestic, only the end product and its components shall be considered.) The cost of each component includes transportation costs to the place of incorporation into the end product and any applicable duty (whether or not a duty-free entry certificate is issued). Components of foreign origin of the same class or kind for which determinations have been made in accordance with Section 12.710(d) (3) and (4) are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic. On acquisitions above \$25,000 in value, components of Canadian origin are treated as domestic.

*Domestic offer*, as used in this subpart, means an offered price for a domestic

end product, including transportation to destination.

*End product*, as used in this subpart, means those articles, materials, and supplies to be acquired for public use under the grant, cooperative agreement, or procurement contract awarded under the grant or cooperative agreement.

*Foreign end product*, as used in this subpart, means an end product other than a domestic end product.

*Foreign offer*, as used in this subpart, means an offered price for a foreign end product, including transportation to destination and duty (whether or not a duty-free entry certificate is issued).

*Instrumentality*, as used in this subpart, does not include an agency or division of the government of a country.

*Labor surplus area*, as used in this subpart, means a geographical area identified by the Department of Labor in accordance with 20 CFR part 654, subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.

*Labor surplus area concern*, as used in this subpart, means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.

*United States*, as used in this subpart, means the states thereof, the District of Columbia, and the territories and possessions of the United States.

[59 FR 36715, July 19, 1994, as amended at 61 FR 68668, Dec. 30, 1996]

#### § 12.710 Policy.

(a) In the case of any equipment or product that may be authorized to be purchased with financial assistance provided using funds made available under Public Law 104-208, it is the sense of Congress that entities receiving the assistance should, in expending the assistance, purchase only American-made equipment and products.

(b) In awarding financial assistance under Public Law 104-208, 110 Stat. 3009, bureaus and offices excluding the Bureau of Reclamation will provide to

each recipient of the assistance the following notice:

NOTICE: Pursuant to sec. 307 of the Omnibus Consolidated Appropriations Act of 1997, Public Law 104-208, 110 Stat. 3009, please be advised of the following:

In the case of any equipment or product that may be authorized to be purchased with financial assistance provided using funds made available in this act, it is the sense of the Congress that entities receiving the assistance should, in expending the assistance, purchase only American-made equipment and products.

(c) In awarding financial assistance using funds made available under Public Law 104-206, to the greatest extent practicable, the Bureau of Reclamation will provide to each recipient of the assistance the following notice:

NOTICE: Pursuant to sec. 501 of the Energy and Water Development Appropriations Act, 1997, Public Law 104-206, 110 Stat. 2984, please be advised of the following:

It is the sense of the Congress, that to the greatest extent practicable, all equipment and products purchased with funds made available in this act should be American-made.

(d) The Buy American Act requires that only domestic end products be acquired for public use, except articles, materials, and supplies—

(1) For use outside the United States;

(2) For which the cost would be unreasonable, as determined in accordance with § 12.715;

(3) For which the agency head determines that domestic preference would be inconsistent with the public interest; or

(4) That are not mined, produced, or manufactured in the United States in sufficient and reasonable available commercial quantities, of a satisfactory quality (see § 12.720).

(e) The grantee's contracting officer may make a nonavailability determination under § 12.710(d)(4) for a procurement contract awarded under the grant or cooperative agreement if—

(1) The procurement action was conducted by full and open competition;

(2) The procurement action was publicly advertised; and

(3) No offer for a domestic end product was received; or

(f) The head of the grantee's contracting activity or designee may make a nonavailability determination