

## § 12.715

under § 12.710(d)(4) for any circumstance other than specified in paragraph (e) of this section.

[59 FR 36715, July 19, 1994, as amended at 59 FR 65500, Dec. 20, 1994; 61 FR 39084, July 26, 1996; 61 FR 68668, Dec. 30, 1996]

### § 12.715 Evaluating offers.

(a) Unless the head of the grantee organization or a designee at a level no lower than the grantee's designated awarding official determines otherwise, the offered price of a domestic end product is unreasonable when the lowest acceptable domestic offer exceeds the lowest acceptable foreign offer (see § 12.705), inclusive of duty, by—

(1) More than 6 percent, if the domestic offer is from a large business that is not a labor surplus area concern; or

(2) More than 12 percent, if the domestic offer is from a small business concern or any labor surplus area concern.

(b) The evaluation in paragraph (a) of this section shall be applied on an item-by-item basis or to any group of items on which award may be made as specifically provided by the solicitation.

(c) If an award of more than \$250,000 would be made to a domestic concern if the 12-percent factor were applied, but not if the 6-percent factor were applied, the head of the grantee organization or a designee at a level no lower than the grantee's designated awarding official shall decide whether award to the domestic concern would involve unreasonable cost.

### § 12.720 Excepted articles, materials, and supplies.

(a) As indicated in the Federal Acquisition Regulation (FAR), one or more agencies have determined that the articles, materials, and supplies on the list referred to in paragraph (b) of this section are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. This referenced list in paragraph (b) of this section is furnished for information only; an article, material or supply listed therein may be treated as domestic only when the head of the grantee organization or a designee at a level no lower than the grantee's des-

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ignated awarding official has made a determination that it is not mined, produced, or manufactured in the United States in sufficient and reasonably available quantities of a satisfactory quality.

(b) Refer to the current list of excepted articles, materials, and supplies in FAR 25.108 (48 CFR 25.108).

### § 12.725 Solicitation provisions and contract clause.

(a) When quotations are obtained orally, vendors shall be informed that only domestic end products, other than end products excepted on a blanket or individual basis (see § 12.720), shall be acceptable, unless the price for an offered domestic end product is unreasonable (see § 12.715).

(b) The grantee awarding officer shall insert the clause at § 12.730, Buy American Act—Supplies, in solicitations for procurement contracts awarded under the grant or cooperative agreement for the purchase of supplies, or for services involving the furnishing of supplies, for use within the United States.

### § 12.730 Buy American Act—Supplies.

As prescribed in § 12.725, insert the following clause:

#### BUY AMERICAN ACT—SUPPLIES

(a) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic end products.

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

*Domestic end product*, as used in this clause, means an unmanufactured end product mined or produced 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. Components of foreign origin of the same class or kind as the products referred to in paragraphs (b)(2) or (3) of this clause shall be treated as domestic.

*End products*, as used in this clause, means those articles, materials, and supplies to be acquired for public use under this contract.

(b) The contractor shall deliver only domestic end products, except those—

(1) For use outside the United States;

(2) That the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;