

PART 825—FOREIGN ACQUISITION

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SUBPART 825.1 - BUY AMERICAN ACT - SUPPLIES

825.102 Policy.

825.102-70 Nonavailability in the United States.

(a) If articles, materials, and supplies required for a particular procurement are not excepted in FAR 25.108, or when only foreign bids or offers are received, the determination concerning nonavailability required by FAR 25.108(b) will be prepared by the contracting officer for foreign materials costing less than \$1 million. Each determination will be factually supported in writing and included in the contract file.

(b) Nonavailability determinations for foreign materials costing over \$1 million must be requested by field station contracting officers from the Deputy Assistant Secretary for Acquisition and Materiel Management (95). Each request for a determination must be fully justified with all pertinent facts.

(c) A copy of all determinations made in accordance with paragraph (a) of this section shall be forwarded to the Deputy Assistant Secretary for Acquisition and Materiel Management (95) concurrently with the submissions required by FAR 25.108(b) and (c).

825.105 Evaluating offers.

When a determination is required under FAR 25.105, the contracting officer will submit the proposed award to the Deputy Assistant Secretary for Acquisition and Materiel Management (95) for approval by the Secretary. The submission will contain all the facts, including a comparison of all the bids or offers received, and other pertinent information upon which a determination may be made. If approved, a report of the transaction will be prepared and submitted by the Deputy Assistant Secretary for Acquisition and Materiel Management in accordance with Executive Order 10582, dated December 17, 1954, as amended.

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825.108 Excepted articles, materials and supplies.

The following items are added to the list of exceptions contained in FAR 25.108(d):

Glass, Lead
Glass, Wire
Insulin, human

SUBPART 825.2 - BUY AMERICAN ACT - CONSTRUCTION MATERIALS

825.202 Policy.

825.202-70 Nonavailability in the United States.

(a) If articles, materials, and supplies required for a particular procurement are not excepted in FAR 25.108, or when only foreign bids or offers are received, the determination concerning nonavailability required by FAR 25.202(a)(3) will be made by the contracting officer for foreign construction material costing \$100,000 or less. Each determination will be factually supported in writing and included in the contract file.

(b) Field station contracting officers must request approval of nonavailability determinations from the Deputy Assistant Secretary for Acquisition and Materiel Management (95).

(c) A copy of all determinations made in accordance with paragraph (a) of this section shall be forwarded to the Chief Facilities Management Officer, Office of Facilities Management, through the Deputy Assistant Secretary for Acquisition and Materiel Management (95).

(d) Each solicitation will include the clause specified in 852.236-89. This provision reflects the general policy of not authorizing nondomestic materials on VA construction contracts.

825.203 Evaluating offers.

When a contracting officer believes that the requirement of the "Buy American Act" is impracticable as provided in FAR 25.202(a)(2), or that it would be advantageous to VA to deviate from the provisions of the Act as authorized by FAR 25.203, authority to consummate the contract will be requested. The request containing all the facts, including a comparison of all the bids or offers received

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and any other pertinent information upon which a determination may be made, will be submitted through the Deputy Assistant Secretary for Acquisition and Materiel Management (95), for approval by the Secretary. If approved, a report of the transaction will be prepared and transmitted by the Chief Facilities Management Officer, Office of Facilities Management, in accordance with Executive Order 10582, dated December 17, 1954, as amended.

SUBPART 825.3 – BALANCE OF PAYMENTS PROGRAM

825.302 Policy.

825.302-70 Deviations from the Balance of Payments Program.

When a contracting officer believes that the requirement of the "Balance of Payments Program" is not practicable as set forth in FAR 25.302(b)(2) or (b)(3), he/she will request authority to consummate the contract through the Deputy Assistant Secretary for Acquisition and Materiel Management (95) for approval. Each request must be fully justified, containing all pertinent facts.

825.304 Excess and near-excess foreign currencies.

825.304-70 Determination of feasibility to use excess or near-excess foreign currencies.

In accordance with FAR 25.304(c), contracting officers will submit requests for determination to utilize excess or near-excess foreign currencies to the Deputy Assistant Secretary for Acquisition and Materiel Management (95).

SUBPART 825.6 - CUSTOMS AND DUTIES

825.603 Procedures.

825.603-70 Technical assistance.

Should the regulations contained in FAR 25.6 be inadequate to meet particular needs of a contracting officer in clearing items through customs and/or obtaining Duty Free Entry of goods, the nearest Regional Office of the United States Customs Service should be contacted for technical assistance. These offices are located as follows:

Regional Commissioner U.S. Customs Service 100 Summer St. Boston, MA 02110	Regional Commissioner U.S. Customs Service 6 World Trade Center New York, NY 10048
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VAAC 97-9 August 29, 2002

Department of Veterans Affairs Acquisition Regulation

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Regional Commissioner U.S. Customs Service 99 SE Fifth St. Miami, FL 33131	Regional Commissioner U.S. Customs Service 423 Canal St. New Orleans, LA 70130
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Regional Commissioner U.S. Customs Service 585 Felipe St. Houston, TX 77057	Regional Commissioner U.S. Customs Service 300 North Los Angeles St. Los Angeles, CA 90053
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Regional Commissioner
U.S. Customs Service
55 East Monroe St.
Chicago, IL 60603

SUBPART 825.7 - RESTRICTIONS ON CERTAIN FOREIGN PURCHASES

825.703 Exceptions.

When felt to be in the best interest of the Government, the contracting officer may request exceptions to the requirements of FAR 25.7 for purchases in excess of \$10,000 from the Secretary through the Deputy Assistant Secretary for Acquisition and Materiel Management (95). Each such request must be fully justified, containing all pertinent facts.

SUBPART 825.8 - INTERNATIONAL AGREEMENTS AND COORDINATION

825.870 Technical assistance.

Contracting officers may obtain technical information or guidance on international agreements and treaties for procurements outside the United States by contacting the Executive Director and Chief Operating Officer, VA National Acquisition Center.

SUBPART 825.10 – ADDITIONAL FOREIGN ACQUISITION REGULATIONS

825.1001 Waiver of right to examination of records.

(a) If the contracting officer determines that the “Audit and Records – Negotiation” clause with Alternate III should be used after all efforts to

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include the basic clause have failed, provided that use of Alternate III of the clause is authorized in the instances cited in FAR 25.901, he/she may request, with appropriate documentation, a determination from the Secretary, through the Deputy Assistant Secretary for Acquisition and Materiel Management (95). The Secretary, should he/she concur in the contracting officers determination that the clause should be omitted, will then forward an agency request for omission of the clause to the Comptroller General for a final determination as required by FAR 25.903(c)(1).

(b) All determinations to omit the “Audit and Records – Negotiation” clause will be supported by a determination and findings prepared by the contracting officer containing the information set forth in FAR 25.901(b). The completed determination and findings will be made a part of the contract file. One copy of the determination and findings will be forwarded to the Deputy Assistant Secretary for Acquisition and Materiel Management (95).

SUBPART 825.11 – SOLICITATION PROVISIONS AND CONTRACT CLAUSES

825.1102 Solicitation provisions and contract clauses.

(a) The Buy American Act (41 U.S.C. 10a-d), except as modified by the Trade Agreements Act (TAA) and the North American Free Trade Agreement (NAFTA), requires that only domestic construction material shall be used in the performance of contracts for construction. To clarify VA’s position on foreign material, the contracting officer shall insert the clause at 852.236-89, Buy American Act, in solicitations and contracts for construction that contain the FAR clause at 52.225-9, Buy American Act – Balance of Payments Program – Construction Materials.

(b) For solicitations and contracts for construction that include the FAR clause at 52.225-11, Buy American Act—Balance of Payment Program—Construction Materials Under Trade Agreements, with its Alternate I (i.e., subject only to the TAA), insert the clause at 852.236-89, Buy American Act, with its Alternate I.

(c) For solicitations and contracts that include the FAR clause at 52.225-11 without its Alternate I (i.e., subject to both the TAA and NAFTA), insert the clause at 852.236-89, Buy American Act, with its Alternate II.

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