

**SUPPORTING STATEMENT
FOR PAPERWORK REDUCTION ACT SUBMISSION
9000-0024, Buy American Act and Trade Agreements
Certificates**

A. Justification.

1. **Administrative requirements.** This justification supports an extension and revision of the expiration date of the following four information collection requirements. This request also merges four previously approved information collections into one (OMB Control No. 9000-0024).

<u>OMB Control#</u>	<u>Title</u>	<u>Expiration</u>
9000-0024	Buy American Certificate	10/31/2014
9000-0025	Trade Agreements Certificate	10/31/2014
9000-0130	Buy American Act-Free Trade Agreements-Israeli Trade Act Certificate	4/30/2016
9000-0141	Buy American-Construction	11/30/2014

This information collection requirement pertains to information that an offeror must submit in response to the requirements of the provisions and clauses in FAR 52.225-2 that relate to the following:

* The Buy American statute (41 U.S.C. chapter 83 and E.O. 10582).

* The Trade Agreements Act (19 U.S.C. 2501-2515), including the World Trade Organization Government Procurement Agreement and various free trade agreements.

* The American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act).

This clearance covers the following requirements in 48 CFR Chapter 1 (FAR, available via the Internet at <https://acquisition.gov/far/index.htm>).

a. 52.225-2, Buy American Certificate (formerly OMB Control No. 9000-0024), as prescribed in FAR 25.1101(2), requires the offeror to identify in its proposal supplies that do not meet the definition of domestic end product.

The Buy American Act no longer applies to acquisitions of commercial information technology.

b. 52.225-4, Buy American-Free Trade Agreements-Israeli Trade Act Certificate(formerly OMB Control No. 9000-0130), as prescribed in FAR 25.1101(b)(2)(i), requires separate listing of foreign products that are eligible under a trade agreement, and listing of all other foreign end products.

c. 52.225-6, Trade Agreements Certificate(formerly OMB Control No. 9000-0025), as prescribed in FAR 25.1101(c)(2), requires the offeror to certify that all end products are either U.S.-made or designated country end products, except as listed in paragraph (b) of the provision. Offerors are not allowed to provide other than a U.S.-made or designated country end product, unless the requirement is waived.

d. Construction provisions and clauses (formerly OMB Control No. 9000-0141):

- 52.225-9, Buy American Act Construction Materials
- 52.225-10, Notice of Buy American Act Requirement-Construction Materials
- 52.225-11, Buy American Act Construction Materials-Trade Agreements
- 52.225-12, Notice of Buy American Act Requirement-Construction Materials under Trade Agreements
- 52.225-21, Required Use of American Iron, Steel and Manufactured Goods-Buy American Act-Construction Materials
- 52.225-23, Required Use of American Iron, Steel and Manufactured Goods-Buy American Act-Construction Materials Under Trade Agreements

The listed provisions and clauses, as prescribed in FAR 25.1102(a) through (e), provide that an offeror/contractor requesting to use foreign construction material due to unreasonable cost of domestic construction material shall provide adequate information to permit evaluation of the request.

2. Uses of information. For acquisition of supplies, the contracting officer uses some of the information to identify the offered items which comply with the requirements of the Buy American statute and trade agreements. For acquisition of construction, the contracting officer uses the information to evaluate requests for a determination of

inapplicability of the Buy American statute or the Recovery Act.

3. Consideration of information technology. Use of information technology is allowed to the maximum extent possible. Where contractors have automated systems that contain the information needed to report these requirements, contractors may submit the information or report in formats that are compatible with the automated systems.

4. Efforts to identify duplication. This requirement is being issued under the Federal Acquisition Regulation (FAR) which has been developed to standardize Federal procurement practices and eliminate unnecessary duplication. This information is not readily available from other sources.

5. If the collection of information impacts small businesses or other entities, describe methods used to minimize burden. The information collections applied to small businesses are the minimum consistent with applicable laws, Executive orders, regulations, and prudent business practices.

6. Describe consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently. This information is collected with the offer or for the FAR clauses 52.225-10 and 52.225-12, after contract award. Collection of information on a basis other than solicitation-by-solicitation/contract-by-contract is not practical and would not allow the contracting officer to evaluate each offer or request for determination after award.

7. Special circumstances for collection. Collection is consistent with guidelines in 5 CFR 1320.6.

8. Efforts to consult with persons outside the agency. Under the procedures established for development of the FAR, agency and public comments were solicited and each comment addressed before finalization of the text. A 60 day notice with regard to this request for extension was published in the *Federal Register* at 79 FR 32957, on June 9, 2014. No comments were received. A 30 day notice was published in the *Federal Register*, on August 27, 2014.

9. Explanation of any decision to provide any payment or gift to respondents, other than reenumeration of contractors

or guarantees. No payment or gift will be provided to respondents to this information collection requirement.

10. Describe assurance of confidentiality provided to respondents. This information is disclosed only to the extent consistent with prudent business practices, current regulations, and in accordance with the Freedom of Information Act. No assurance of confidentiality is provided to respondents.

11. Additional justification for questions of a sensitive nature. No sensitive questions are involved

12 & 13. Estimated total annual public hour and cost burden. Subject matter experts were consulted in preparing the estimated burden hours along with the data from the Federal Procurement Data System (FPDS). See matrix at end of supporting statement, for summary.

a. Supplies. FAR 52.225-2, Buy American Certificate; FAR 52.225-4, Buy American-Free Trade Agreements-Israeli Trade Act Certificate; and FAR 52.225-6, Trade Agreements Certificate.

Only one of these provisions is used in a solicitation. FAR 52.225-2 is used above the micro-purchase threshold up to \$25,000, unless an exemption to the Buy American statute applies. If a Buy American exception does not apply, then FAR 52.225-4 is used in acquisitions from \$25,000 to less than \$204,000. FAR 52.225-6 is used in acquisitions of \$204,000 or more. The Buy American Act is no longer applied to acquisitions of commercial information technology. Further, commercial off-the-shelf (COTS) items manufactured in the United States are considered domestic, regardless of component content. The Department of Defense does not use these provisions, because it has unique requirements.

In FY 2013 FPDS indicated the following number of contract awards for supplies (excluding DoD):

- 175,723 awards valued between \$3,000 and \$25,000.
- 51,579 awards between \$25,000 and \$204,000. 19,197 awards valued at \$203,000 or more.

52.225-2. A response to Waiver of Buy American Act for Civil Aircraft and Related Articles is not required if the offeror is proposing a domestic end product. An evaluation factor is applied to any offer of a foreign end product.

The estimated number of respondents and responses offering foreign end products is estimated as follows:

175,723 solicitations
- 1,757 solicitations exempt from Buy American (1%)
173,966 solicitations including 52.225-2
X 10 offers per solicitation
1,739,660 offers
x .02 % of offers of foreign end products
34,793 Responses (offers of foreign products)
/ 10 Average responses per respondent
3,480 Respondents

52.225-4. A response to Evaluation of Foreign Currency Offers is not required if the offeror is proposing a domestic end product. Offers of eligible products from Free Trade Agreement countries are accepted without discrimination. The estimated number of respondents and responses offering foreign products is estimated as follows:

51,579 solicitations
- 516 solicitations exempt from Buy American (1%)
51,063 solicitations including 52.225-4
X 10 offers per solicitation
510,630 offers
x .05 % of offers of foreign end products
25,531 Responses (offers of foreign products)
/ 10 Average responses per respondent
2,550 Respondents

52.225-6. A response to Trade Agreements Certificate is required only if the offeror is not proposing not U.S.-made or a designated country end product. Such response should be rare, because the offeror of such products is unlikely to receive an award, unless no offers of U.S.-made or designated country end products are received. The estimated number of respondents and responses offering nondesignated country end products is estimated as follows:

19,197 solicitations including 52.225-6
X 10 offers per solicitation
191,970 offers
X .005 % of offers of nondesignated country end products
959 Responses (offers of nondesignated country end products)

/ 3 Average responses per respondent
320 Respondents

	52.225-2	52.225-4	52.225-6
Respondents	3,480	2,550	320
Responses/respondent	<u>x 10</u>	<u>x 10</u>	<u>x 3</u>
Responses	34,800	25,500	960
Hours per response*	<u>x .25</u>	<u>x .25</u>	<u>x .25</u>
Total hours	8,700	6,375	240
Cost per hour**	<u>x \$42</u>	<u>\$42</u>	<u>\$42</u>
Total annual cost to public	\$365,400	\$267,750	\$10,080

*Time required to read and prepare information is estimated at 15 minutes per response.

** We used a rate equivalent to a GS-12, Step 3 or \$30.81/hour (from the 2012 OPM GS Salary Table), added overhead at 36.25 percent (the OMB-mandated burden rate for A-76 public-private competitions, rounded to 36 percent), and rounded the average wage to the nearest whole dollar, or \$42/hour.

b. Construction.

There are 6 provisions and clauses for use in solicitations and contracts for construction that involve an information collection. This information collection is only applicable if the offeror is proposing to utilize a foreign construction material, based on the unreasonable cost of domestic construction material. The offeror must then provide sufficient information for the contracting officer to evaluate the request.

The current clearance 9000-0141 only addresses the clauses 52.225-9 (Buy American) and 52.225-11 (Trade Agreements). One of the two comparable Recovery Act clauses 52.225-321 or 52.225-23 would be used in lieu of the corresponding standard construction clause, when funded by the Recovery Act. However, the clearance does not address the two FAR provisions 52.225-10 and 52.225-12, which can be used pre-award to request a determination of the inapplicability of the Buy American statute to a particular construction material. In fact, pre-award requests are preferred. Therefore, the previously estimated number of respondents that will request the use of foreign

construction material has been doubled from 500 to 1000, to cover pre-award requests as well as post-award requests. The estimated hours per response remain at 2.5 hours.

Respondents	1,000
Responses/respondent	<u>x 2</u>
Responses	2,000
Hours per response*	<u>x 2.5</u>
Total hours	5,000
Cost per hour**	<u>x\$42</u>
Total annual cost to public	\$210,000

14. Estimated cost to the Government.

a. Supplies. 52.225-2 52.225-4 52.225-6

Responses	34,800	25,500	560
Hours per response*	<u>x .15</u>	<u>x .15</u>	<u>x .15</u>
Total hours	5,220	3,825	84
Cost per hour**	<u>x\$42</u>	<u>\$42</u>	<u>\$42</u>
Total annual cost to Government	\$219,240	\$160,650	\$3,528

*Time required to review information is estimated at 9 minutes per response.

** We used a rate equivalent to a GS-12, Step 3 or \$30.81/hour (from the 2012 OPM GS Salary Table), added overhead at 36.25 percent (the OMB-mandated burden rate for A-76 public-private competitions, rounded to 36 percent), and rounded the average wage to the nearest whole dollar, or \$42/hour.

b. Construction.

Responses	2,000
Hours per response*	<u>x 1</u>
Total hours	2,000
Cost per hour**	<u>x\$42</u>
Total annual cost to Government	\$2,000

15. Explain reasons for program changes or adjustments reported in Items 12/13 or 14. This submission requests an extension of OMB approval of 4 currently approved

information collection requirements in the FAR (see matrix summary at end of justification). There are no program changes.

a. **Supplies.** The burdens associated with application of Buy American statute and trade agreements to acquisition of supplies have been re-evaluated, based primarily on FPDS data. In the process of combining the three related information collection requirements, a more standard approach has been taken to all three requirements.

Buy American Act - Increase from 5,109 hours to 8,700 hours, due to an increase in the estimated number of respondents from 3,125 to 3,480 and an increase in the estimated hours per response from .109 to .25, partially offset by a decrease in the estimated number of responses per respondent from 15 to 10.

Buy American-Free Trade Agreements-Israeli Trade Act - Decrease in estimated burden hours from 162,000 to 6,375, due to a substantial reduction in the estimated number of respondents from 162,000 to 2,550 and a decrease in the estimated hours per response from .5 to .25, partially offset by an increase in the estimated number of responses per respondent from 2 to 10.

Trade Agreements - Decrease in estimated burden hours from 1,243 to 240, based on a decrease in the estimate of respondents from 1,140 to 320, a decrease in the estimated responses per respondent from 10 to 3, partially offset by an increase in the estimated response time from .109 to .25.

b. Construction.

The increase in estimated burden hours from 2,500 hours to 5,000 hours is due to the increase of estimated number of respondents, based on the inclusion of the burdens associated with two additional solicitation provisions.

16. **Outline plans for published results of information collections.** Results will not be tabulated or published.

17. **Approval not to display expiration date.** Not applicable.

18. **Explanation of exception to certification statement.** Not applicable.

B. Collections of Information Employing Statistical Methods.

Statistical methods are not used in this information collection.

ESTIMATE OF PUBLIC BURDEN HOURS

<u>Respond</u>	<u>ANNUAL REPORTING BURDEN</u>				<u>RECORDKEEPING BURDEN</u>			
	<u>Res/Resd</u>	<u>Tot. Resp.</u>	<u>Hrs/Res</u>	<u>RES Hrs</u>	<u>RK</u>	<u>Hrs/RK</u>	<u>REC Hrs</u>	<u>Tot. Hrs.</u>
3,480	10	34,800	0.25	8,700				8,700
2,550	10	25,500	0.25	6,375				6,375
320	3	960	0.25	240				240
1,000	2	2,000	2.50	5,000				5,000
								20,315
7,350	8.61	63,260	0.32	20,315				20,315
3,125	15	46,875	0.109	5,109				5,109
162,000	2	324,000	0.500	162,000				162,000
1,140	10	11,400	0.109	1,243				1,243
500	2	1,000	2.50	2,500				2,500
								170,852
166,765	2.30	383,275	0.45	170,852				170,852

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ESTIMATED COST

Req.	COST TO GOVERNMENT			COST TO PUBLIC				
	Resp.	Hr/Resp.	Govt. hr	\$/hr	Govt. \$	Publ. Hr	\$/hr	PUBL \$
52.225-2	34,800	0.15	5,220	\$42.00	\$219,240	8,700	\$42.00	\$365,400
52.225-4	25,500	0.15	3,825	\$42.00	\$160,650	6375	\$42.00	\$267,750
52.225-6	960	0.15	144	\$42.00	\$6,048	240	\$42.00	\$10,080
52.225-9/11/21/23	2,000	1	2,000	\$42.00	\$84,000	5,000	\$42.00	\$210,000
TOTAL	63,260	0.18	11,189	\$42.00	\$469,938	20,315	\$42.00	\$853,230
52.225-2	46,875	0.1	4,688	\$55.95	\$262,279	5,109	\$56.00	\$286,104
52.225-4	707,996	0.117	82,836	\$31.00	\$2,567,885	162,000	\$42.00	\$6,804,000
52.225-6	11,400	0.167	1,904	\$40.00	\$76,160	1,243	\$42.00	\$52,189
52.225-9/11/21/23	1,000	1	1,000	\$27.65	\$27,650	2,500	\$27.65	\$69,125
TOTAL	383,275	0.24	90,427	\$32.45	\$2,933,974	170,852	\$42.21	\$7,211,418