

**SUPPORTING STATEMENT
FOR PAPERWORK REDUCTION ACT SUBMISSION
9000-0024, Buy American, Trade Agreements, and Duty-Free
Entry**

A. Justification.

1. Administrative requirements. This justification supports revision and extension of the expiration date of OMB Control No. 9000-0024 and combines it with the previously approved information collection OMB Control No. 9000-0022), with the new title "Buy American, Trade Agreements, and Duty-Free Entry."

<u>OMB Control#</u>	<u>Title</u>	<u>Expiration</u>
9000-0024	Buy American Act and Trade Agreements Certificates	10/31/2017
9000-0022	Customs and Duties	09/30/2017

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 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).

* Subchapters VIII and X of Chapter 98 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

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, as prescribed in FAR 25.1101(a)(2), requires the offeror to identify in its proposal supplies that do not meet the definition of domestic end product. The Buy American statute does not apply to acquisitions of commercial information technology.

b. 52.225-4, Buy American–Free Trade Agreements–Israeli Trade Act Certificate, 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, 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:

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

e. 52.225-8, Duty-Free Entry (formerly OMB clearance 9000-0022), as prescribed in FAR 25.1101(e), requires the contractor to notify the contracting officer when it purchases foreign supplies, in order to determine whether the supplies should be duty-free. In addition, all shipping documents and containers must specify certain information to assure the duty-free entry of the supplies.

2. Uses of information. For acquisition of supplies, the contracting officer uses some of the information to identify the offered items that comply with the requirements of the

Buy American statute and trade agreements and whether the supplies should be accorded duty-free entry. 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 both the Government agency and contractors are capable of electronic interchange, the contractors may submit this information collection requirement electronically. 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. A 60 day notice with regard to this request for extension was published in the *Federal Register* at 82 FR 35528, on July

31, 2017. No comments were received. A 30-day notice was published in the *Federal Register* at 82 48811 FR on October 20, 2017.

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

Summary of estimated total annual public hour and cost burden

Respondents	7,863
Responses/respondent	5.40
Responses	42,499
Hours per response*	.55
Total hours	23,497
Cost per hour**	x <u>\$46</u>
Total annual cost to public	\$1,080,897

a. Buy American and Trade Agreements–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 \$191,000. FAR 252.225-6 is used in acquisitions of \$191,000 or more. Since the Buy American statute does not apply to acquisitions of supplies for use overseas, the FPDS data excludes items purchased overseas, which are most likely to be for use overseas. The Buy American statute 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 2016 FPDS indicated the following number of contract awards for supplies other than commercial it (excluding DoD):

- 51,021 awards valued between \$3,000 and \$25,000
- 36,501 awards between \$25,000 and \$191,000
- 39,705 awards valued at \$191,000 or more

52.225-2. A response to Buy American Certificate 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:

51,021	contracts between \$3,000 and \$25,000
<u>5,102</u>	For use outside the U.S. (10%)
45,919	contracts for use in the U.S.
<u>X 10</u>	offers per solicitation
459,190	offers
<u>x .03</u>	% of offers of foreign end products
16,530	Responses (offers of foreign products)
<u>5</u>	Average responses per respondent
3,306	Respondents

52.225-4. A response to Buy American–Free Trade Agreements–Israeli Trade Act Certification 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, but must still be listed. The estimated number of respondents and responses offering foreign products is estimated as follows:

36,501	contracts between \$3,000 and \$25,000
<u>3,650</u>	For use outside the U.S. (10%)

32,951 contracts for use in the U.S.
X 10 offers per solicitation
329,510 offers
x .03 % of offers of foreign end products
9,885 Responses (offers of foreign products)
/ 5 Average responses per respondent
1,977 Respondents

52.225-6. A response to Trade Agreements Certificate is required only if the offeror is not proposing a 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 non-designated country end products is estimated as follows:

39,705 solicitations including 52.225-6
X 10 offers per solicitation
397,050 offers
X .002 % of offers of non-designated country end products
794 Responses (offers of non-designated country end products)
/ 2 Average responses per respondent
397 Respondents

	52.225-2	52.225-4	52.225-6	Total
Respondents	3,306	1,977	397	5680
Responses/respondent	<u>x 5</u>	<u>x 5</u>	<u>x 2</u>	4.79
Responses	16,530	9,885	794	27,207
Hours per response*	<u>x .25</u>	<u>x .25</u>	<u>x .25</u>	.25
Total hours	4,133	2,471	199	6,803
Cost per hour**	<u>x \$46</u>	<u>x \$46</u>	<u>x \$46</u>	46
Total annual cost to public	\$190,095	113,678	\$9,154	312,927

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

** We used a rate equivalent to a GS-12, Step 5 or \$34.06/hour (from the 2017 OPM GS Salary Table), added overhead at 36.25 percent (the OMB-mandated burden rate for A-76 public-private competitions), and rounded the average wage to the nearest whole dollar, or \$46/hour. The estimated

cost per response is \$11.50.

b. Buy American–Trade Agreements–Construction.

There are 6 provisions and clauses for use in solicitations and contracts for construction performed in the United States that involve an information collection. This information collection is only applicable if the offeror/contractor 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. If the contractor submits the request after award, the contractor must explain why the request could not have been submitted prior to award.

The standard construction provisions and clauses in FAR 52.225 are 52.225-9 and 52.229-10 (Buy American) and 52.225-11 and 52.225-12 (Trade Agreements). One of the two comparable Recovery Act clauses 52.225-21 or 52.225-23 would be used in lieu of the corresponding standard construction clause, when funded by the Recovery Act. At this point, we do not anticipate further construction awards using Recovery Act funds. Pre-award requests for a determination of the inapplicability of the Buy American statute to a particular construction material are preferred.

According to FPDS Governmentwide data for FY 2016, there were 3,150 awards for construction valued at less than \$7,358,000 (1,831 unique awardees) and 210 awards valued at \$7,358,000 or more (181 unique awardees).

According to Government subject matter experts, for contracts less than \$7,358,000, the estimate is that 12 percent of offerors may request the use of a foreign construction material not already allowed in the solicitation, and 3 percent of contractors may make such request after award. DoD, NASA, and GSA estimate 5 offers per solicitation, i.e., for 52.225-10, $15,750 \text{ offers} \times .12 = 1,890$ responses to the provision at 52.225-10; and $3,150 \text{ contracts} \times .03 = 94$ responses to the clause at 52.225-9.

According to a subject matter expert, offerors are less likely to request the use of foreign material in contracts subject to trade agreements, because use of designated country construction material is already allowed. For contracts \$7,358,000 or more, the estimate is that 0.5

percent of offerors may request the use of a foreign construction material not already allowed in the solicitation, and .1 percent of contractors may make such request after award. DoD, GSA, and NASA estimate 5 offers per solicitation, i.e., for 52.225-12, 1,050 offers x .005 = 5 responses to 52.225-12; and 210 offers x .001 = <1 response to 52.225-11.

	52.225-9	-10	-11	-12	Total
Respondents	94	756	1	2	853
Responses/respondent	<u>x 1</u>	<u>x 2.5</u>	<u>x 1</u>	<u>x 2.5</u>	2.333
Responses	94	1,890	1	5	1,990
Hours per response*	<u>x 6</u>	<u>x 5</u>	<u>x 6</u>	<u>x 5</u>	x 5
Total hours	564	9,450	6	25	10,045
Cost per hour**	<u>x \$46</u>	<u>x \$46</u>	<u>x \$46</u>	<u>x \$46</u>	\$46
Total annual cost to public	\$25,944	\$434,700	\$276	\$1,150	\$462,070

*Time required to read and prepare information is estimated at 5 hours per response preaward and 6 hours per response postaward (due to the need to justify the reason for submission postaward).

** DoD, GSA, and NASA used a rate equivalent to a GS-12, Step 5 or \$34.06/hour (from the 2017 OPM GS Salary Table), added overhead at 36.25 percent (the OMB-mandated burden rate for A-76 public-private competitions), and rounded the average wage to the nearest whole dollar, or \$46/hour. The estimated cost per response is \$232.19.

c. Duty-Free Entry (currently approved under OMB-clearance 9000-0022).

Unless the agency obtains an exemption, all shipments of imported supplies purchased under Government contracts are subject to duty, except as provided in the Harmonized Tariff Schedule of the United States (HTSUS)(19 U.S.C. 1202). FAR clause 52.225-8, Duty-Free Entry, as prescribed at FAR 25.1101(e) is required 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 FAR 25.8903(a), if the value of the acquisition exceeds the simplified acquisition threshold. It also may be used if the value of the contract does not exceed the simplified acquisition threshold, but the savings from waiving the duty

is anticipated to exceed the administrative cost of waiving the duty.

The clause requires the contractor to notify the contracting officer of any purchase of foreign supplies (including, without limitation, raw materials, components, and intermediate assemblies) in excess of \$15,000 that are to be imported into the customs territory of the United States for delivery to the Government, either as end products or for incorporation into end products. The notice shall identify the foreign supplies, estimate the amount of duty, and the country of origin. The contractor is not required to identify foreign supplies that are identical in nature to items purchased by the contractor or any subcontractor in connection with its commercial business, and segregation of these supplies to ensure use only on Government contracts containing duty-free entry provisions is not economical or feasible.

There are only limited supplies for which civilian agencies can request duty-free entry. Subchapters VIII and X of Chapter 98 of the HTSUS list supplies for which exemption from duty may be obtained when imported into the customs territory of the United States. The HTSUS lists the following articles for the use of any agency of the United States: engravings, etchings, photographic prints, recorded video tapes and exposed photographic films, official government publications in the form of microfilm or microfiche, or similar film media. This constitutes quite a small segment of overall Government purchases. Then there are some very limited exemptions particular to specific agencies (purchases of some sound recordings and recorded video tapes by the Department of State, purchases of strategic and critical materials by GSA or the Commodity Credit Corporation, purchases of source materials in the interest of common defense and security by the Nuclear Regulatory Agency, purchases of plants and seeds by the Department of Agriculture, and purchases of articles to implement international programs, including launch service agreements, by NASA), and some specified importations by religious, educational, or scientific and other institutions. There is a broad exemption for military departments for "emergency war materials purchased abroad," but DoD does not use the FAR clause.

There is no Governmentwide data collection process or system which identifies the number of duty-free transactions

by civilian agencies. At the prime contract level, according to FPDS data for FY 2016 based on the predominance of items on the contract, civilian agencies awarded only 3,652 contracts for items not manufactured in the United States for use in the United States. Other contracts may include non-predominant foreign manufactured items or items imported at the subcontract level.

There is no basis for changing the currently approved estimate of 1,330 respondents and 10 responses per respondent, although it may be on the high side. The estimate of .5 hours per response also remains unchanged.

Respondents	1,330
Responses/respondent	<u>x 10</u>
Responses	13,300
Hours per response*	<u>x .5</u>
Total hours	6,650
Cost per hour**	x <u>\$46</u>
Total annual cost to public	\$305,900

*Time required to read and prepare information is estimated at .5 per response.

** We used a rate equivalent to a GS-12, Step 5 or \$34.06/hour (from the 2017 OPM GS Salary Table), added overhead at 36.25 percent (the OMB-mandated burden rate for A-76 public-private competitions), and rounded the average wage to the nearest whole dollar, or \$46/hour. The cost per response is approximately \$23.

14. Estimated cost to the Government.

Summary of total cost to the Government

Responses.....	42,499
Hours per response*.....	<u>x .30</u>
Total hours.....	12,721
Cost per hour**.....	x <u>\$46</u>
Total annual cost to government.....	\$585,182

a. Buy American–Trade Agreements--Supplies.

	52.225-2	52.225-4	52.225-6
Responses	16,530	9,885	794
Hours per response*	<u>x .15</u>	<u>x .15</u>	<u>x .15</u>
Total hours	2,480	1,483	119
Cost per hour**	<u>x\$46</u>	<u>\$46</u>	<u>\$46</u>
Total annual cost to Government	\$114,057	\$68,207	\$5,479

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

**DoD, GSA, and NASA used a rate equivalent to a GS-12, Step 5 or \$34.06/hour (from the 2017 OPM GS Salary Table), added overhead at 36.25 percent (the OMB-mandated burden rate for A-76 public-private competitions), and rounded the average wage to the nearest whole dollar, or \$46/hour.

b. Buy American–Trade Agreements-Construction.

Responses	1,990
Hours per response*	x 1
Total hours	1,990
Cost per hour**	<u>x\$46</u>
Total annual cost to Government	\$91,540

*Time required to review information is estimated at 1 hour per response.

**DOD, GSA, and NASA used a rate equivalent to a GS-12, Step 5 or \$34.06/hour (from the 2017 OPM GS Salary Table), added overhead at 36.25 percent (the OMB-mandated burden rate for A-76 public-private competitions), and rounded the average wage to the nearest whole dollar, or \$46/hour.

c. Duty-Free Entry

Responses	13,300
Hours per response*	<u>x .5</u>
Total hours	6,650
Cost per hour**	<u>x\$46</u>
Total annual cost to Government	\$305,900

*Time required to review information is estimated at 30 minutes per response.

**DoD, GSA, and NASA used a rate equivalent to a GS-12, Step 5 or \$34.06/hour (from the 2017 OPM GS Salary Table), added overhead at 36.25 percent (the OMB-mandated burden rate for A-76 public-private competitions), and rounded the average wage to the nearest whole dollar, or \$46/hour.

15. Explain reasons for program changes or adjustments reported in Items 12/13 or 14. This submission requests an extension of OMB approval of a currently approved information collection requirements in the FAR and incorporates another OMB clearance (9000-0022) (see matrix summary at end of justification). The net result is cancellation of 6,650 burden hours approved under OMB clearance 9000-0022, and a net increase of only 3,182 burden hours under OMB clearance 9000-0024. There are no program changes.

The adjustments in estimates, based on FY 2016 FPDS data and some refinements in estimating techniques (including the use of data on items manufactured inside and outside the United States, and the rationale for such purchases, including data on foreign items purchased for use outside the United States) are summarized as follows:

a.i. 52.225-2, Buy American Certificate. The decrease in estimated burden hours from 8,700 hours to 4,133 hours is due to a decrease in the estimated number of solicitations containing the provision from 173,966 to 45,919, partially offset by an increase in the estimated percentage of foreign offers from two percent to three percent, resulting in a decrease of the estimated number of responses from 34,793 to 16,530.

ii. 52.225-4, Buy American-Free Trade Agreements-Israeli Trade Act Certificate. The decrease in estimated burden hours from 6,375 hours to 2,471 hours is due to a decrease in the estimated number of solicitations containing the provision from 51,063 to 32,951, and a decrease in the estimated percentage of foreign offers from five percent to three percent, resulting in a decrease of the estimated number of responses from 25,531 to 9,885.

iii. 52.225-6, Trade Agreements Certificate. The decrease in estimated burden hours from 240 hours to 199

hours is due to an increase in the estimated number of solicitations containing the provision from 19,197 to 32,951, offset by a decrease in the estimated percentage of offers of nondesignated country end products from 0.5 percent to 0.2 percent, resulting in a decrease of the estimated number of responses from 960 to 794.

b. Buy American—Trade Agreements— Construction provisions and clauses. The increase in estimated burden hours from 5,000 hours to 10,045 hours is due predominantly to an increase in the estimated burden hours per response from 2.5 hours to approximately 5 hours.

c. Duty-Free Entry (previously approved under OMB clearance 9000-0022). No change in estimated burden hours or respondents. Total burden hours of 6,650 hours removed from OMB control no. 9000-0022 to OMB control no. 9000-0024.

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.

Matrix Summary:

9000-0024

ESTIMATE OF PUBLIC BURDEN HOURS

	ANNUAL REPORTING BURDEN					RECORDKEEPING BURDEN			
	Respond	Res/Resd	TOT RES	Hrs/Res	RES Hrs	RK	Hrs/RK	REC Hrs	TOT hrs
52.225-2	3,306	5	16,530	0.25	4,133				4,133
52.225-4	1,977	5	9,885	0.25	2,471				2,471
52.225-6	397	2	794	0.25	199				199
52.225-9/10/11/12/21/23	853	2.33	1,990	5.05	10,045				10,045
52.225-8	1,330	10	13,300	0.50	6,650				6,650
TOTAL	7,863	5.40	42,499	0.55	23,497				23,497

Current Approved Burdens

9000-0022	13,300	6,650
9000-0024	63,260	20,315

9000-0024

ESTIMATED COST

Req.	ESTIMATED COST COST TO GOVERNMENT				COST TO PUBLIC			
	Resp	Hr/Resp	Govt hr	\$/hr	Govt \$	Publ Hr	\$/hr	PUBL \$
52.225-2	16,530	0.15	2,480	\$46.00	\$114,057	4,133	\$46.00	\$190,095
52.225-4	9,885	0.15	1,483	\$46.00	\$68,207	2471	\$46.00	\$113,678
52.225-6	794	0.15	119	\$46.00	\$5,479	199	\$46.00	\$9,154
52.225-9/10/11/12/21/23	1,990	1	1,990	\$46.00	\$91,540	10,045	\$46.00	\$462,070
52.225-8	13,300	0.50	6,650	\$46.00	\$305,900	6,650	\$46.00	\$305,900
TOTAL	42,499	0.30	12,721	\$46.00	\$585,182	23,497	\$46.00	\$1,080,897