

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

FAR sections affected: 52.225-2, 52.225-4, 52.225-6, 52.225-8, 52.225-9, 52.225-10, 52.225-11, 52.225-12, 52.225-21, and 52.225-23

A. Justification.

1. Administrative requirements. This clearance covers the information that an offeror must submit in response to the requirements of the provisions and clauses in Federal Acquisition Regulation (FAR) part 25 that relate to the following:

- * The Buy American statute (41 U.S.C. chapter, and Executive Order 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 (HTSUS) (19 U.S.C. 1202).

a. 52.225-2, Buy American Certificate. This provision requires the offeror to identify in its proposal supplies that do not meet the definition of domestic end product.

b. 52.225-4, Buy American-Free Trade Agreements-Israeli Trade Act Certificate. This provision requires a separate list of foreign products that are eligible under a trade agreement, and a list of all other foreign end products.

c. 52.225-6, Trade Agreements Certificate. This provision 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. 52.225-8, Duty-Free Entry. This clause requires contractors to notify the contracting officer when they purchase foreign supplies, in order to determine whether the supplies should be duty-free. 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. In addition, all shipping documents and containers must specify certain information to assure the duty-free entry of the supplies.

e. 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 provide that an offeror or 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 that comply with the requirements of the Buy American statute and trade agreements and whether the supplies should be granted 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. We use improved information technology to the maximum extent practicable. 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. These requirements are issued under the FAR which has been developed to standardize Federal procurement practices and eliminate unnecessary duplication.

5. If the collection of information impacts small businesses or other entities, describe methods used to minimize burden. The burden applied to small businesses is 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. Collection of information on a basis other than solicitation-by-solicitation or contract-by-contract is not practical.

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. A 60-day notice was published in the *Federal Register* at 85 FR 63276, on October 7, 2020. No comments were received.
B. A 30-day notice was published in the *Federal Register* at 86 FR 8914, on February 10, 2021.

9. Explanation of any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees. Not applicable.

10. Describe assurance of confidentiality provided to respondents. This information is disclosed only to the extent consistent with prudent business practices, current regulations, and statutory requirements.

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).

Summary of estimated total annual public hour and cost burden

Estimated respondents/yr.....	8,771
Responses/respondent.....	<u>x 5</u>
Total annual responses.....	43,891
Estimated hrs/response.....	<u>x .93</u>
Estimated total burden hrs.....	40,738
Hourly rate*.....	<u>x \$57</u>
Estimated annual cost to the public.....	\$2,322,066

a. Buy American and Trade Agreements–Supplies. Time required to read and prepare information is estimated at 15 minutes per response. Only one of the following provisions is used in a solicitation: FAR 52.225-2, 52.225-4, or 52.225-6.

FAR 52.225-2 is used above the micro-purchase threshold (\$10,000) 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 \$182,000. FAR 52.225-6 is used in acquisitions of \$182,000 or more. Since the Buy American statute does not apply to acquisitions of supplies for overseas use, the FPDS data excludes items purchased overseas, which are most likely to be for overseas use. The Buy American statute does not apply to acquisitions of commercial information technology (IT). The Department of Defense (DoD) does not use these provisions because it has unique requirements.

In Fiscal Years (FY) 17-19, FPDS indicated the following annual average number of contracts for supplies other than commercial IT (excluding DoD):

- 44,002 contracts valued between \$10,000 and \$25,000
- 48,100 contracts between \$25,000 and \$182,000
- 10,608 contracts valued at \$182,000 or more

52.225-2, Buy American Certificate. A response to this provision 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:

44,002	contracts valued between \$10,000 and \$25,000
<u>4,400</u>	<u>For use outside the U.S. (10%)</u>
39,602	contracts for use in the U.S.
<u>X 10</u>	<u>offers per solicitation</u>
396,020	offers
<u>X .03</u>	<u>3% of offers of foreign end products</u>
11,881	Responses (offers of foreign products)
<u>/ 5</u>	<u>Average responses per respondent</u>
2,376	Respondents

52.225-4, Buy American-Free Trade Agreements-Israeli Trade Act Certificate. A response to this provision 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:

48,100	contracts between \$25,000 and \$182,000
<u>4,810</u>	<u>For use outside the U.S. (10%)</u>
43,290	contracts for use in the U.S.
<u>X 10</u>	<u>offers per solicitation</u>
432,900	offers
<u>X .03</u>	<u>3% of offers of foreign end products</u>
12,987	Responses (offers of foreign products)
<u>/ 5</u>	<u>Average responses per respondent</u>
2,597	Respondents

52.225-6, Trade Agreements Certificate. A response to this provision 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:

10,608	contracts valued at \$182,000 or more
<u>X 10</u>	<u>offers per solicitation</u>
106,080	offers
<u>X .002</u>	<u>0.2% of offers of non-designated country end products</u>
212	Responses (offers of non-designated country end products)

/ 2 Average responses per respondent
106 Respondents

	52.225-2	52.225-4	52.225-6	Total
Estimated respondents/yr	2,376	2,597	106	5,079
Responses/respondent	5.00	5.00	2.00	4.94
Total annual responses	11,881	12,987	212	25,080
Estimated hrs/response	0.25	0.25	0.25	0.25
Estimated total burden hrs	2970	3247	53	6270
Hourly rate*	\$57	\$57	\$57	\$57
Estimated annual cost to the public	\$169,304.25	\$185,064.75	\$3,021.00	\$357,390.00

b. Buy American and Trade Agreements–Construction. The standard construction provisions and clauses in FAR part 25 are: 52.225-9 and 52.225-10 (Buy American statute), 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.

A response to the provisions and clauses is only applicable if the offeror or contractor is proposing to utilize a foreign construction material based on the unreasonable cost of domestic construction material. Preaward requests for a determination of the inapplicability of the Buy American statute to a particular construction material are preferred. If the contractor submits the request after award, the contractor must explain why the request could not have been submitted prior to award. Time required to read and prepare information is estimated at 5 hours per response preaward and 6 hours per response postaward.

According to FPDS Governmentwide data for FYs 17-19, there were an annual average of 8,734 awards for construction valued at less than \$7,008,000 (3,170 unique awardees) and 335 awards valued at \$7,008,000 or more (200 unique awardees) performed in the United States.

According to Government subject matter experts, for contracts less than \$7,008,000, 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, the General Services Administration (GSA), and the National Aeronautics and Space

Administration (NASA) estimate 5 offers per solicitation, i.e., for 52.225-10, 43,670 (8,734 x 5) offers x .12 = 5,240 responses to the provision at 52.225-10; and 8,734 contracts x .03 = 262 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 \$7,008,000 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, 1,675 (335 x 5) offers x .005 = 8 responses to 52.225-12; and 335 offers x .001 = <1 response to 52.225-11.

	52.225-9	52.225-10	52.225-11	52.225-12	Total
Estimated respondents/yr	262	2,096	1	3	2,362
Responses/respondent	1.00	2.50	1.00	2.50	2.33
Total annual responses	262	5,240	1	8	5,511
Estimated hrs/response	6	5	6	5	5
Estimated total burden hrs	1572	26200	6	40	27818
Hourly rate*	\$57	\$57	\$57	\$57	\$57
Estimated annual cost to the public	\$89,604.00	\$1,493,400.00	\$342.00	\$2,280.00	\$1,585,626.00

c. 52.225-8, Duty-Free Entry. This clause 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 (SAT). It also may be used if the value of the contract does not exceed the SAT, 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.

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 to read and prepare information also remains unchanged.

Estimated respondents/yr.....	1,330
Responses/respondent.....	<u>x 10</u>
Total annual responses.....	13,300
Estimated hrs/response.....	<u>x .5</u>
Estimated total burden hrs.....	6,650
Hourly rate*.....	<u>x \$57</u>
Estimated annual cost to the public.....	\$ 379,050

* Based on the OPM GS-12/step 5 salary (\$41.66 an hour) plus 36.25% fringe and overhead burden rate, the one mandated by OMB memorandum M-08-13 for use in public-private competition, rounded to the nearest dollar, or \$57 an hour.

Reference Salary Table 2020-RUS, Effective January 2020, found at www.opm.gov.

14. Estimated cost to the Government.

Summary of estimated annual cost to the Government

Total annual responses..... 43,891
 Review time per response (hours)..... x .36
 Review time per year (hours)..... 15,923
 Hourly rate*..... x \$57
Estimated Government Cost\$ 907,611

a. Buy American and Trade Agreements-Supplies. Time required to review information is estimated at 9 minutes per response.

	52.225-2	52.225-4	52.225-6
Total annual responses	11,881	12,987	212
Review time per response (hours)	0.15	0.15	0.15
Review time per year (hours)	1782	1948	32
Hourly rate*	\$57	\$57	\$57
Estimated Government Cost	\$101,582.55	\$111,038.85	\$1,812.60

b. Buy American and Trade Agreements-Construction. Time required to review information is estimated at 1 hour per response.

Total annual responses..... 5,511
 Review time per response (hours)..... x 1
 Review time per year (hours)..... 5,511
 Hourly rate*..... x \$57
Estimated Government Cost\$ 314,127

c. Duty-Free Entry. Time required to review information is estimated at 30 minutes per response.

Total annual responses..... 13,300
 Review time per response (hours)..... x .5
 Review time per year (hours)..... 6,650
 Hourly rate*..... x \$57
Estimated Government Cost\$ 379,050

15. Explain reasons for program changes or adjustments reported in Items 12&13 or 14. The increase of responses from 42,497 to 43,891 and the associated increase in

estimated burden hours from 23,496 to 40,738 is an adjustment due to use of current data available.

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.