

**25.103 Exceptions.**

When one of the following exceptions applies, the contracting officer may acquire a foreign end product without regard to the restrictions of the Buy American Act:

(a) *Public interest.* The head of the agency may make a determination that domestic preference would be inconsistent with the public interest. This exception applies when an agency has an agreement with a foreign government that provides a blanket exception to the Buy American Act.

(b) *Nonavailability.* (1) A nonavailability determination has been made for the articles listed in 25.104.

(2)(i) The head of the contracting activity may make a determination that an article, material, or supply is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(ii) If the contracting officer considers that the nonavailability of an article is likely to affect future acquisitions, the contracting officer may submit a copy of the determination and supporting documentation to the appropriate council identified in 1.201-1 in accordance with agency procedures, for possible addition to the list in 25.104.

(3) A written determination is not required if all of the following conditions are present:

(i) The acquisition was conducted through use of full and open competition.

(ii) The acquisition was synopsized in accordance with 5.201.

(iii) No offer for a domestic end product was received.

(c) *Unreasonable cost.* The contracting officer may determine that the cost of a domestic end product would be unreasonable, in accordance with 25.105 and Subpart 25.5.

(d) *Resale.* The contracting officer may purchase foreign end products specifically for commissary resale.

**25.104 Nonavailable articles.**

(a) The following articles have been determined to be nonavailable in accordance with 25.103(b):

Acetylene, black.  
Agar, bulk.  
Anise.

Antimony, as metal or oxide.  
Asbestos, amosite, chrysotile, and crocidolite.  
Bamboo shoots.  
Bananas.  
Bauxite.  
Beef, corned, canned.  
Beef extract.  
Bephenium hydroxynapthoate.  
Bismuth.  
Books, trade, text, technical, or scientific; newspapers; pamphlets; magazines; periodicals; printed briefs and films; not printed in the United States and for which domestic editions are not available.  
Brazil nuts, unroasted.  
Cadmium, ores and flue dust.  
Calcium cyanamide.  
Capers.  
Cashew nuts.  
Castor beans and castor oil.  
Chalk, English.  
Chestnuts.  
Chicle.  
Chrome ore or chromite.  
Cinchona bark.  
Cobalt, in cathodes, rondelles, or other primary ore and metal forms.  
Cocoa beans.  
Coconut and coconut meat, unsweetened, in shredded, desiccated, or similarly prepared form.  
Coffee, raw or green bean.  
Colchicine alkaloid, raw.  
Copra.  
Cork, wood or bark and waste.  
Cover glass, microscope slide.  
Crane rail (85-pound per foot).  
Cryolite, natural.  
Dammar gum.  
Diamonds, industrial, stones and abrasives.  
Emetine, bulk.  
Ergot, crude.  
Erythrityl tetranitrate.  
Fair linen, altar.  
Fibers of the following types: abaca, abace, agave, coir, flax, jute, jute burlaps, palmyra, and sisal.  
Goat hair canvas.  
Goat and kidskins.  
Grapefruit sections, canned.  
Graphite, natural, crystalline, crucible grade.  
Hand file sets (Swiss pattern).  
Handsewing needles.  
Hemp yarn.  
Hog bristles for brushes.  
Hyoscine, bulk.  
Ipecac, root.  
Iodine, crude.  
Kaurigum.  
Lac.  
Leather, sheepskin, hair type.  
Lavender oil.  
Manganese.  
Menthol, natural bulk.  
Mica.

**25.105**

Microprocessor chips (brought onto a Government construction site as separate units for incorporation into building systems during construction or repair and alteration of real property).

Nickel, primary, in ingots, pigs, shots, cathodes, or similar forms; nickel oxide and nickel salts.

Modacrylic fur ruff.

Nitroguanidine (also known as picrite).

Nux vomica, crude.

Oiticica oil.

Olive oil.

Olives (green), pitted or unpitted, or stuffed, in bulk.

Opium, crude.

Oranges, mandarin, canned.

Petroleum, crude oil, unfinished oils, and finished products.

Pine needle oil.

Platinum and related group metals, refined, as sponge, powder, ingots, or cast bars.

Pyrethrum flowers.

Quartz crystals.

Quebracho.

Quinidine.

Quinine.

Rabbit fur felt.

Radium salts, source and special nuclear materials.

Rosettes.

Rubber, crude and latex.

Rutile.

Santonin, crude.

Secretin.

Shellac.

Silk, raw and unmanufactured.

Spare and replacement parts for equipment of foreign manufacture, and for which domestic parts are not available.

Spices and herbs, in bulk.

Sugars, raw.

Swords and scabbards.

Talc, block, steatite.

Tantalum.

Tapioca flour and cassava.

Tartar, crude; tartaric acid and cream of tartar in bulk.

Tea in bulk.

Thread, metallic (gold).

Thyme oil.

Tin in bars, blocks, and pigs.

Triprolidine hydrochloride.

Tungsten.

Vanilla beans.

Venom, cobra.

Water chestnuts.

Wax, carnauba.

Wire glass.

Woods; logs, veneer, and lumber of the following species: Alaskan yellow cedar, angelique, balsa, ekki, greenheart, lignum vitae, mahogany, and teak.

Yarn, 50 Denier rayon.

(b) The determination in paragraph (a) of this section does not apply if the

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contracting officer learns before the time designated for receipt of bids in sealed bidding or final offers in negotiation that an article on the list is available domestically in sufficient and reasonably available quantities of a satisfactory quality. The contracting officer must amend the solicitation if purchasing the article, or if purchasing an end product that could contain such an article as a component, and must specify in all new solicitations that the article is available domestically and that offerors and contractors may not treat foreign components of the same class or kind as domestic components. In addition, the contracting officer must submit a copy of supporting documentation to the appropriate council identified in 1.201-1 in accordance with agency procedures, for possible removal of the article from the list.

[64 FR 72419, Dec. 27, 1999, as amended at 69 FR 34241, June 18, 2004]

**25.105 Determining reasonableness of cost.**

(a) The contracting officer—

(1) Must use the evaluation factors in paragraph (b) of this section unless the head of the agency makes a written determination that the use of higher factors is more appropriate. If the determination applies to all agency acquisitions, the agency evaluation factors must be published in agency regulations; and

(2) Must not apply evaluation factors to offers of eligible products if the acquisition is subject to a trade agreement under Subpart 25.4.

(b) If there is a domestic offer that is not the low offer, and the restrictions of the Buy American Act apply to the low offer, the contracting officer must determine the reasonableness of the cost of the domestic offer by adding to the price of the low offer, inclusive of duty—

(1) 6 percent, if the lowest domestic offer is from a large business concern; or

(2) 12 percent, if the lowest domestic offer is from a small business concern. The contracting officer must use this factor, or another factor established in agency regulations, in small business set-asides if the low offer is from a small business concern offering the