

revising the first sentence of paragraph (1)(ii)(A);

- d. Revising paragraph (b)(4)(i); and
- e. Adding Alternate II.

The revisions and additions read as follows:

52.225-11 Buy American—Construction Materials Under Trade Agreements.

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Buy American—Construction Materials Under Trade Agreements (OCT 2022)

(a) * * *

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means a domestic construction material or domestic end product that is deemed critical to U.S. supply chain resiliency. The list of critical items is at FAR 25.105.

* * * * *

Domestic construction material * * *

(1) * * *

(ii) * * *

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029. * * *

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(b) * * *

(4) * * *

(i) The cost of domestic construction material would be unreasonable.

(A) *For domestic construction material that is not a critical item or does not contain critical components.* (1) The cost of a particular domestic construction material subject to the restrictions of the Buy American statute is unreasonable when the cost of such material exceeds the cost of foreign material by more than 20 percent;

(2) For construction material that is not a COTS item and does not consist wholly or predominantly of iron or steel or a combination of both, if the cost of a particular domestic construction material is determined to be unreasonable or there is no domestic offer received, and the low offer is for foreign construction material that does not exceed 55 percent domestic content, the Contracting Officer will treat the lowest offer of foreign construction material that is manufactured in the United States and exceeds 55 percent domestic content as a domestic offer and determine whether the cost of that offer is unreasonable by applying the evaluation factor listed in paragraph (b)(4)(i)(A)(1) of this clause.

(3) The procedures in paragraph (b)(4)(i)(A)(2) of this clause will no longer apply as of January 1, 2030.

(B) *For domestic construction material that is a critical item or contains critical components.* (1) The cost of a particular domestic construction material that is a critical item or contains critical components,

subject to the requirements of the Buy American statute, is unreasonable when the cost of such material exceeds the cost of foreign material by more than 20 percent plus the additional preference factor identified for the critical item or construction material containing critical components listed at FAR 25.105.

(2) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both, if the cost of a particular domestic construction material is determined to be unreasonable or there is no domestic offer received, and the low offer is for foreign construction material that does not exceed 55 percent domestic content, the Contracting Officer will treat the lowest offer of foreign construction material that is manufactured in the United States and exceeds 55 percent domestic content as a domestic offer, and determine whether the cost of that offer is unreasonable by applying the evaluation factor listed in paragraph (b)(4)(i)(B)(1) of this clause.

(3) The procedures in paragraph (b)(4)(i)(B)(2) of this clause will no longer apply as of January 1, 2030.

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Alternate II (OCT 2022). As prescribed in 25.1102(c)(4) substitute the following sentence for the first sentence of paragraph (1)(ii)(A) of the definition of *domestic construction material* in paragraph (a):

(A) The cost of its components mined, produced, or manufactured in the United States exceeds ___ percent of the cost of all its components. [*Contracting officer to insert the percentage.*]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR-2022-0051, Sequence No. 2]

Federal Acquisition Regulation; Federal Acquisition Circular 2022-05; Small Entity Compliance Guide

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide (SECG).

SUMMARY: This document is issued under the joint authority of DoD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement

Fairness Act of 1996. It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 2022-05, which amends the Federal Acquisition Regulation (FAR).

Interested parties may obtain further information regarding this rule by referring to FAC 2022-05, which precedes this document.

DATES: March 7, 2022.

ADDRESSES: The FAC, including the SECG, is available at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Ms. Mahruba Uddowla, Procurement Analyst, at 703-605-2868 or by email at mahruba.uddowla@gsa.gov, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755 or GSARegSec@gsa.gov. Please cite FAC 2022-05, FAR Case 2021-008.

RULE LISTED IN FAC 2022-05

Subject	FAR case
Amendments to the FAR Buy American Act—Requirements	2021-008

SUPPLEMENTARY INFORMATION: A summary for the FAR rule follows. For the actual revisions and/or amendments made by this FAR rule, refer to the specific subject set forth in the document following this summary. FAC 2022-05 amends the FAR as follows:

Amendments to the FAR Buy American Act Requirements (FAR Case 2021-008)

This final rule amends the Federal Acquisition Regulation (FAR) to implement section 8 of E.O. 14005, Ensuring the Future Is Made in All of America by All of America’s Workers. Upon the October 25, 2022, effective date, this final FAR rule changes the domestic content threshold to 60 percent immediately, then to 65 percent for items delivered starting in calendar year 2024, and then to 75 percent for items delivered starting in calendar year 2029. While a supplier that is awarded a contract with a period of performance that spans this schedule of domestic content threshold increases will be required to comply with each increased threshold for the items in the year of delivery, this rule allows for the agency senior procurement executive to apply an alternate domestic content test under which the contractor would be required to comply with the domestic content threshold in place at time of award for the entire life of the contract.

This final rule also creates a fallback threshold that would allow for products

and construction material meeting a 55 percent domestic content threshold to qualify as “domestic” under certain circumstances.

In addition, the final rule creates a framework for application of an enhanced price preference for a

domestic product/domestic construction material that is considered a critical item or made up of critical components. The list of critical items and critical components, along with the associated enhanced price preference, will be

incorporated in the FAR through separate rulemaking.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

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