

Subchapter 3025.2 Buy American—Construction Materials**3025.202 Exceptions.**

(a)

(1) *Impractical or inconsistent with public interest.* The determination may only be made by the Secretary. The determination request shall be concurred by the HCA and submitted for CPO review and concurrence. The contracting officer shall submit the request using the DHS Buy American Reporting Tool. The request shall include a discussion of whether a significant portion of the cost advantage of a foreign-sourced product is the result of the use of dumped steel, iron, or manufactured goods or the use of injuriously subsidized steel, iron, or manufactured goods, and shall integrate any findings as appropriate.

(2) *Nonavailability.* The determination shall be concurred by the HCA and approved by the CPO. The contracting officer shall submit the request for an approval using the DHS Buy American Reporting Tool.

(3) *Unreasonable cost.* The determination shall be concurred by the HCA and approved by the CPO. The contracting officer shall submit the request for an approval using the DHS Buy American Reporting Tool.

(b) *Determination and Findings.* For documentation requirements applicable when the exception at 3025.202(a)(2) results in a justification for other than full and open competition under FAR 6.302 or a sole source justification under FAR 13.501(a), see HSAM 3006.304(e) and 3013.501(a)(3). All other determinations required for the exceptions in HSAM 3025.202(a)(1) through (3) shall be documented using the Determination and Findings format in FAR 1.704.

3025.204 Evaluating offers of foreign construction material.

(b) The HCA is delegated the authority to determine that the use of a factor higher than 6% is more appropriate for an acquisition. Once approved by the HCA, the contracting officer shall transmit the determination to use the higher factor to the CPO using the DHS Buy American Reporting Tool. If a higher factor is used, the contracting officer shall note the use of the higher factor in the solicitation and contract by altering paragraph (b)(3)(i) of the clause at FAR 52.225-9, Buy American—Construction Materials, or paragraph (b)(4)(i) of the clause at FAR 52.225-11, Buy American—Construction Materials under Trade Agreements, to identify the factor that will be used (instead of 6%).

Subchapter 3025.4 Trade Agreements

3025.401 Exceptions.

(a)(6) When an exception to the Trade Agreements is applicable to the acquisition, the Buy American statute applies unless one of the exceptions at FAR 25.103 or 25.202 is also applicable to the acquisition.