

25.206 Noncompliance.

The *contracting officer* must-

(a) Review allegations of Buy American statute violations;

(b) Unless fraud is suspected, notify the contractor of the apparent unauthorized use of *foreign construction material* and request a reply, to include proposed corrective action; and

(c) If the review reveals that a contractor or subcontractor has used *foreign construction material* without authorization, take appropriate action, including one or more of the following:

(1) Process a determination concerning the inapplicability of the Buy American statute in accordance with [25.205](#).

(2) Consider requiring the removal and replacement of the unauthorized *foreign construction material*.

(3) If removal and replacement of *foreign construction material* incorporated in a *building or work* would be impracticable, cause undue delay, or otherwise be detrimental to the interests of the Government, the *contracting officer* may determine *in writing* that the *foreign construction material* need not be removed and replaced. A determination to retain *foreign construction material* does not constitute a determination that an exception to the Buy American statute applies, and this *should* be stated in the determination. Further, a determination to retain *foreign construction material* does not affect the Government's right to suspend or debar a contractor, subcontractor, or supplier for violation of the Buy American statute, or to exercise other contractual rights and remedies, such as reducing the contract price or terminating the contract for default.

(4) If the noncompliance is sufficiently serious, consider exercising appropriate contractual remedies, such as terminating the contract for default. Also consider preparing and forwarding a report to the agency suspending or debarring official in accordance with [subpart 9.4](#). If the noncompliance appears to be fraudulent, refer the matter to other appropriate agency officials, such as the officer responsible for criminal investigation.

Parent topic: [Subpart 25.2 - Buy American-Construction Materials](#)