

When NAFTA does not apply, the rules and restrictions of the Buy American Act (BAA) apply to Canadian firms. The BAA does not strictly prohibit the use of Canadian products and services.

The BAA now governs construction contracts valued at less than US\$6.5 million and national security procurements. Canadian firms must understand the BAA. In essence, the BAA states that the USACE must give U.S. suppliers preferential treatment. The BAA does not prohibit the use of Canadian contractors, but U.S. suppliers get a price advantage. A price differential, applied to the Canadian or other foreign offer, essentially raises the price of the Canadian bid.

Canadian firms should remember that the price differential does not ensure that the U.S. firm will have the lowest bid. The USACE still may select a Canadian firm if it is the lowest bid or if it offers the Corps the best value for the price.

When U.S. and Canadian firms compete under the BAA, the contracting officer evaluates the Canadian firm's bid according to the following price differential:

- add 6 percent to the bid if the offer is from a large business; and
- add 12 percent to the bid if the offer is from a small business

One Canadian Trade Commissioner advises Canadian firms this way. If you aren't sure if a USACE acquisition falls under NAFTA or the BAA, approach the contracting officer. The contracting officer can make the determination, and tell you if the acquisition is a service contract under NAFTA or a construction contract under the BAA. Canadian firms also may receive assistance from the Canadian Trade Commissioner Service (613) 944-9440, the Canadian Commercial Corporation (613) 995-8046, or the Canadian Embassy in Washington, D.C. (202) 682-7746.

BUY AMERICAN ACT

If the Buy America Act applies to a procurement by the USACE, this section tells you how it works. NAFTA lifted restrictions on purchases by most agencies of Canadian goods and services valued at US\$25,000 or more. The BAA still applies to Canadian goods on some contracts, and to purchases by certain agencies. Canadian products have an advantage over *other* foreign-made products, but some restrictions remain.