

To whom it may concern:

The “Buy American Act” is designed to help encourage American purchasing agents to support domestic manufacturers when given the choice of comparable domestic and foreign products. It is not intended to stop consumers from acquiring new products and technology simply because such materials are not manufactured in the United States.

In regards to whether or not it is acceptable to purchase Aquatherm pipe instead of a domestic product, the answer is simply yes, due to the fact that no comparable products are produced in the United States. Aquatherm’s products are unique in their technology and performance, placing them outside the normal restrictions of this act. The exemption is drawn from parts two and three of section 25.103 B of the Buy American act, due to non-availability in the domestic market.

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:

(b) Nonavailability. The Buy American Act does not apply with respect to articles, materials, or supplies if articles, materials, or supplies of the class or kind to be acquired, either as end items or components, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

The first ground for exemption requires written determination from the head of the contracting activity. It is based on the fact that no other piping material produced in the United States matches the quality of the PP-R (polypropylene random) material for physical durability and chemical stability. Currently, no US manufactured polypropylene systems meets the ASTM F2389 standard regarding PP-R. If an engineer specifies that he wants PP-R pipe that meets ASTM F2389, insufficient quantities of this material are produced in the United States and the contractor is free to purchase and use Aquatherm piping systems.

(2) Individual determinations.

(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.

The second and somewhat simpler exemption bypasses the written determination by requiring a PP-R piping material with integrated expansion control. If no offers for an acceptable domestic product are received, the head of the contracting activity is free to purchase Aquatherm piping systems for the job. Currently, no offers will be received because no domestic company uses integrated expansion control technology.

(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 synopsisized in accordance with 5.201.

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

If an acceptable domestic product becomes available, it must also be priced competitively with the Aquatherm pipe or it can be rejected on the grounds of unreasonable cost.

(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.

It is certainly not favoring the Aquatherm brand to require polypropylene random over other polypropylene varieties, as PP-R has much higher pressure, temperature, and performance ratings than other variations of polypropylene. Nor is it unfair to require a system with integrated expansion control. Rather, this specification is needed to ensure lasting performance. The benefits of PP-R as a piping material are unmatched, and it is simply good engineering to request it over metals or other plastics. The integrated expansion is also a good judgment call from the engineer. Polypropylene random without integrated expansion control has a reduced performance and does not hold up nearly as well to external abuse as it would otherwise.

In summary, whenever an engineer specifies polypropylene random that meets ASTM F2389 or has integrated expansion control, unrestricted quantities of the Aquatherm piping systems may be used if no equivalent and acceptable domestic product is reasonably available.