

New Executive Order Promotes Federal Procurement of US-Origin Products

April 26, 2017

On April 18, 2017, the president [issued an executive order](#) announcing a policy of maximizing the federal government's procurement of goods, products and materials produced in the United States, as well as "rigorously" enforcing laws pertaining to the entry of foreign workers. The executive order also requires federal agencies to evaluate their existing Buy American compliance programs and undertake additional efforts consistent with this policy. Companies interested in selling products to the federal government should be aware of this increased focus on enforcing domestic preference laws and regulations, and of the importance of accurately representing to the government the country of origin of their products.

The executive order establishes a general policy within the executive branch to "maximize" the use of US-origin goods, products and materials in federal procurement efforts. It also requires all agencies to "scrupulously monitor, enforce and comply with" domestic preference laws and regulations pertaining to federal procurement, including the Buy American Act (BAA) and the Trade Agreements Act (TAA). In the next 150 days, agencies must (1) assess their internal compliance with these Buy American laws and regulations, (2) assess their use of waivers or exemptions from these laws and regulations and the resulting impact on domestic jobs and manufacturing, and (3) develop policies to maximize the procurement of US-origin products in the future.

The Secretary of Commerce and United States Trade Representative must also assess the impact of US free trade agreements on domestic preferences in government procurement. The policy also places additional restrictions on agencies' use of public interest waivers of domestic preference requirements, including a requirement for agencies to consider whether the cost advantage of a foreign-sourced product is the result of unfair trade practices such as dumping of raw materials or manufactured goods.

This new policy may lead in the short term to stricter agency interpretation of existing country-of-origin regulations, which already limit the ability of contractors to incorporate foreign-sourced components into products sold to US government end users. Longer-term changes to trade agreements may also impact the extent to which products or components made in designated countries can comply with applicable domestic preferences.

Contractors at all tiers of the US government supply chain should examine their BAA and TAA compliance, and be prepared for the enhanced scrutiny that likely will follow the Buy American executive order.

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