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White House Builds Upon “Buy American and Hire American” Executive Order

New Executive Order Would Expand Domestic Preferences In Federal Procurement For Infrastructure Projects

On January 31, 2019, President Trump signed an Executive Order (“EO”) entitled “Strengthening Buy-American Preferences for Infrastructure Projects.”

This new EO is designed “to strengthen Buy-American principles in Federal financial assistance programs” and reconfirms an April 2017 policy statement previously set forth in EO 13788 (Buy American and Hire American) that the U.S. federal agencies “maximize, consistent with law, the use of goods, products, and materials produced in the United States, in Federal procurements and through the terms and conditions of Federal financial assistance awards.” For additional context, our Client Alert on the April 2017 Buy American and Hire American EO is available here.

The newly issued EO specifically enumerates “a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States, including iron and aluminum, as well as steel, cement, and other manufactured products,” including “plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.”

When announcing further executive action, President Trump explained that the Buy American and Hire American EO resulted in “an additional \$24 billion” in spending by Federal agencies “on American-made products instead of going to other countries or foreign-made products.” President Trump expressed a desire “to build on this tremendous success by strengthening the Buy American principle for Federal infrastructure and Federal spending.”



President Trump was joined at the signing ceremony by members of Congress, Secretary of Labor Alexander Acosta, Small Business Administrator Linda McMahon, and White House Director of Trade and Industrial Policy Peter Navarro. Mr. Navarro indicated that the Buy American Hire American policy has added almost 50,000 new jobs in the manufacturing sector.

The Strengthening Buy-American Preferences for Infrastructure Projects EO makes several proclamations:

- **It instructs relevant Federal agencies within 90 days to “encourage recipients of new Federal financial assistance awards pursuant to a covered program to use, to the greatest extent practicable, iron and aluminum as well as steel, cement, and other manufactured products produced in the United States** in every contract, subcontract, purchase order, or sub-award that is chargeable against such Federal financial assistance award.”
- The EO also instructs relevant Federal agencies within 120 days to report to the President on “any tools, techniques, terms, or conditions that have been used or could be used” to effectuate this policy.
- It provides a **new definition of “Manufactured products” as “items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.”**
- The EO further provides a **new definition of “Infrastructure project” as “a project to develop public or private physical assets that are designed to provide or support services to the general public in the following sectors: surface transportation, including roadways, bridges, railroads, and transit; aviation; ports, including navigational channels; water resources projects; energy production, generation, and storage, including from fossil-fuels, renewable, nuclear, and hydroelectric sources; electricity transmission; gas, oil, and propane storage and transmission; electric, oil, natural gas, and propane distribution systems; broadband internet; pipelines; stormwater and sewer infrastructure; drinking water infrastructure; cybersecurity; and any other sector designated through a notice published in the Federal Register by the Federal Permitting Improvement Steering Council.”**

Importantly, the Strengthening Buy-American Preferences for Infrastructure Projects EO modifies the scope of the Trump Administration’s Buy American policy **by extending coverage to “Federal financial assistance” instead of only to “Federal Grants”, as in the original Buy American and Hire American EO.** This means that the Trump Administration’s Buy American policy now extends to cover more than direct Federal grant funding. The EO explains, moreover, that the newly amended policy does not replace other “programs providing Federal financial assistance that are subject to comparable domestic preferences.” Thus, as with any Federal government procurement scenario, interested parties need to confirm which rules apply in order to maximize business opportunities and to ensure compliance.

In sum, the Strengthening Buy-American Preferences for Infrastructure Projects EO has the potential to expand the reach of domestic preferences for iron, steel, and other manufactured products that are used in future (now more broadly defined) Federal infrastructure projects.



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