

President Trump's "Buy American, Hire American" Executive Order Signals Future Change to Federal Procurement Laws

On April 18, 2017, at the headquarters of Wisconsin tool manufacturer Snap-On, Inc., President Donald Trump signed his "Buy American, Hire American" executive order, which directs federal agencies to develop policy proposals to reform the United States' guest worker visa program and prioritize the use and acquisition of American-made goods and materials in federal contracts. Specifically, the "Buy American" portion of President Trump's executive order implores procuring agencies to limit the use of "public interest" waivers to avoid purchasing more expensive American-made goods and materials. Although President Trump has left the actual implementation of his 'America-First' agenda to his cabinet secretaries, the "Buy American, Hire American" executive order marks the beginning of President Trump's path to fulfilling key campaign promises and signals future changes to federal procurement laws are on the horizon.

Federal contractors have been subject to rules that prioritize the acquisition of domestic end products and construction materials since the Great Depression. Specifically, the provisions of the Federal Acquisition Regulation implementing the Buy American Act of 1933 ("BAA") require procuring agencies to mark up the cost of foreign products and materials before determining whether a foreign or domestic product or material is the "best value" for the government. If the foreign offer remains the lowest price after the application of this price preference, the procuring agency is allowed to purchase the foreign goods if it determines that the procurement of domestic goods or materials would be "inconsistent with public interest." The head of a procuring agency has considerable discretion in determining whether to invoke this "public interest" waiver.

Part of President Trump's "Buy American, Hire American" executive order directs federal agencies to assess the use of the BAA's "public interest" waiver, and propose policies to maximize the use of domestic materials in federal contracts. The executive order also instructs federal agencies to "take appropriate account of whether a significant portion of the cost advantage of a foreign-sourced product is the result of the use of dumped steel, iron, or manufactured goods or the use of injuriously subsidized steel, iron, or manufactured goods" before

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granting a "public interest" waiver.

President Trump's "Buy American, Hire American" executive order indicates the Trump administration is committed to securing greater economic independence at the expense of cost savings that result from foreign predatory pricing practices. While these policies do not yet carry concrete consequences for federal contractors and agencies, they suggest the rules governing the process by which the federal government acquires products and materials are sure to change over the next four years.

Reinhart is monitoring the matter closely and will publish future e-alerts as federal agencies begin to shape the rules and regulations governing federal procurement. If you have any questions about the executive order, please contact your Reinhart attorney.

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