BUY AMERICAN III: HOW DOES THE LATEST “BUY AMERICAN” EXECUTIVE ORDER AFFECT GOVERNMENT CONTRACTORS AND THEIR SUPPLY CHAINS?

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On July 15, 2019, President Trump issued an Executive Order, "Maximizing Use of American-Made Goods, Products, and Materials." The Executive Order builds on two prior "Buy American" Executive Orders and recommends two changes to current regulations implementing the Buy American Act of 1933. This alert summarizes the changes proposed in the Executive Order (known as "Buy American III") and how they may affect a government contractor's supply chain. Here are our quick takeaways. Click the link below for an in-depth analysis.

- For manufactured products other than steel or iron products, the Executive Order does not present a drastic change: it requires manufacturers to increase a product's domestic content from 51% to 55% in order to qualify as a "domestic end product."
- For steel and iron manufactured products, the Executive Order does propose a significant change, increasing domestic content from 51% to 95% in order to qualify as a "domestic end product." It is unclear whether the Executive Order extends its proposed changes to "domestic construction materials." If so, this change could be particularly significant for construction contractors on civilian agency construction sites.
- The Executive Order's proposed change to domestic content requirements will not affect manufactured products that qualify as commercially available off-the-shelf ("COTS") items, as the FAR exempts COTS items from domestic content requirements.
- The Executive Order increases the "price penalty" against foreign end products from 6% to 20% (or from 12% to 30% for small business competition) which will reduce federal agency use of the "unreasonable cost" waiver and thereby increase procurement of domestic products.
- The change to the "unreasonable cost" exception does not affect DoD acquisitions, as DoD previously implemented a separate—and more severe—price penalty for foreign products.
- The proposed changes must be considered by the FAR Council within 180 days, but the Executive Order does not mandate subsequent rulemaking until (1) notice and comment, and (2) the FAR council determines that any proposed changes are appropriate and consistent with the law and the national security interests of the United States.

Please click here to read the full alert.

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