



October 27, 2021

Matthew C. Blum
Acting Administrator
FAR Council Chair
Office of Federal Procurement Policy
Office of Management and Budget
Washington, DC 20503

Submitted Electronically

RE: FAR-2021-008, Federal Acquisition Regulation: Amendments to the FAR Buy American Act Regulations

Dear Acting Administrator Blum:

The Security Industry Association (SIA) is pleased to submit comments in response to the FAR Council's proposed rule. SIA is a U.S. trade association representing more than 1,200 security solutions providers, ranging from large global firms to locally owned and operated small businesses. Our membership includes manufacturers as well as integrators that install and maintain security and life safety system hardware, equipment and technologies for end users in both the government, commercial and residential sectors.

The proposed rule would significantly alter implementation of the Buy American Act (BAA) in order to address section 8 of President Biden's [Executive Order 14005](#), and further requests feedback on several critically important areas of related policy.

We support the aim of the executive order and proposed policies to maximize use by the federal government of available products and materials produced in the United States. However, we believe aspects of the changes made and contemplated under the rule will harm, versus strengthen U.S. manufacturing of key products used in our industry. Our comments first address the changes proposed in the rule, followed by feedback on the additional questions outside the scope of these changes that were requested by the FAR Council.

Summary

The proposed rule responds to directives in section 8 of the executive order, specifically to *"increase the numerical threshold for domestic content requirements for end products and construction materials;"* and *"increase the price preferences for domestic end products and domestic construction materials."* The proposed rule would amend the Federal Acquisition Regulation (FAR) to accomplish these directives primarily by (1) phasing in an increase to the domestic content threshold (the domestic content percentage required for a product or construction material to be considered "domestic") from the current 55% to 75% within 7 years, (2) applying an enhanced price preference specifically for domestic products considered a "critical" or made up of "critical components" (to be defined in a future rulemaking), and (3) creating a post award domestic content reporting requirement for these items.

Impact of Significant Changes to Buy American Act Rules

Supply chains required to meet the needs of the federal government are necessarily complex and global. U.S. firms directly benefit from diverse sources of supply by lowering costs, increasing efficiency, and importantly, being able to access the top human talent, highest quality materials and latest technologies available worldwide. This is especially

important for products designed to protect life and safety, where manufacturer component purchasing decisions are driven primarily by reliability and performance versus country of origin. The process of product testing, production planning, negotiating contracts with suppliers, and aligning supply chain elements can take years for companies to establish. Any significant change to BAA implementation should consider the resulting disruption to the BAA-compliant supplier base and their ability to adjust, especially considering the current supply chain crises globally. Dramatically increasing the domestic content threshold as proposed in the rule is likely to reduce the competitiveness of offerings from suppliers that manufacture their products in the U. S. to meet both BAA and Trade Agreements Act (TAA) requirements.

Additionally, the higher the initial cost to comply with the proposed increase in domestic content requirements, the fewer firms will participate in the federal market. Those that do participate will tend to be larger firms that have more resources. Already, many U.S. small businesses in our industry simply do not sell to the federal government due to these complexities and costs. But for those complexities and costs, the government could be benefiting from the innovative products and services these companies provide. Increasing these burdens will only further discourage this participation and undermine federal small and disadvantaged business contract award goals.

Limit Applicability Regarding Current and Multi-Year Contracts

Under the proposed rule, whether an item is considered domestic or not could depend on the time it is delivered or installed, based on shifting content thresholds. This is problematic for indefinite delivery/indefinite quantity (IDIQ) contracts, and other similar types of multi-year contracts. An offeror may have a contract awarded under one content percentage and be required to deliver under a different one, presenting an extensive administrative burden to track compliance through lower tiers, considering subcontractors and suppliers, particularly under construction type contracts. Clearer policy and reduced burden for both for offerors and contracting offices would result from applying the same content percentage in effect at the time of a contract being signed throughout the entire life of that contract. This is also consistent with the phased-in approach to content thresholds in the rule.

Defining “Critical” Products and Materials

Providing increased price preferences for “critical” products and materials would be appropriate only if it is accurately aligned with both domestic availability and specific government needs and objectives. Beyond this, it is impossible to comment on the expected impact of the implementation provisions and the related reporting requirements in the proposed rule without understanding how and what products and materials will be listed as critical, which we understand will be the subject of a subsequent rulemaking. In any case, post-award reporting of domestic content of products procured *pursuant to trade obligations*, including in critical supply chains, should be voluntary (responding to Question 4, subpart 3 under additional questions). Additional reporting requirements will place an additional and unnecessary cost and burden on federal contractors already managing other significant reporting requirements.

Comingled, Ancillary Items

The most recent change to BAA rules (FAR Case 2019-016) eliminated the exemption for commercially available off-the shelf (COTS) manufactured products with significant iron and steel content. However, the exemption was retained for iron and steel “fasteners” due to concerns about comingling of components, domestic availability, and administrative tracking burden. The same concerns cited in that rule to justify the fastener exemption would also apply to other similar products, as well as other products that do not meet the 50% iron and steel content threshold. Steel hinges, clasps and springs, for example are small, inexpensive and comingled, similar to fasteners. Others should be considered as well. Due in part to similar concerns, the State of Pennsylvania maintains a list of “[Exempt Machinery and Equipment Steel Products](#)” despite having one of the most stringent state domestic preference laws for steel products. For 2020 the exemptions included 160 product categories, including lock cylinders, locksets, closers, lighting fixtures, CCTV power supplies, camera housings, speakers, smoke detector wire, DVR and monitor mounts, tamper proof screws and nuts, and many others. In order to avoid counterproductive cost increases and negative effects on U.S. employment, we believe

the BAA COTS exemption should apply to such commodity items commonly used in security projects, both for “predominately iron and steel” items and for items that would be subject to the higher domestic content thresholds applied in the proposed rule.

Additional Questions

In addition to feedback on the changes to the FAR in the proposed rule, the FAR Council requested public feedback on additional questions based on other provisions of E.O. 14005 calling for a review of related policies. The following addresses the additional questions relevant to our members.

The Current Commercial IT Exception from BAA is Even More Relevant Today (Question 1)

The exception from the BAA for commercially available off-the-shelf information technology (COTS IT) was established by statute more than 15 years ago and ensures that federal procurement accesses the best available commercial IT offerings. The global supply chain for electronics means that suppliers of information technology to the government cannot avoid sourcing at least some system components from outside the U.S. As is the case in many technology-based industries, innovative security products are often initially tailored to the commercial market, as it is far larger than the government sector. The government sector, in turn, benefits from these innovations. So, companies can offer the most effective and affordable products if they can provide solutions to the government in the same way they do in the commercial world.

Additionally, there are many IT inputs that are not the most advanced technology aspect of a product offering. Making changes to the exception could increase costs of goods offered to the federal government by forcing offerors to focus on onshoring the production of lower-level components in the U.S, rather than focusing on the complete high-tech offering where there is a comparative advantage. This is particularly critical to the security of federal installations, which will be adversely affected if contractors cannot offer the latest, state of the art solutions to federal purchasers.

U.S. Manufacturers Depend on Current COTS Waiver for Domestic Preference Where BAA Applies (Question 2)

All COTS items outside of iron and steel products currently qualify as domestic under BAA rules if they are manufactured in the U.S. Unlike non-COTS items, there is no qualifying domestic content threshold. The COTS waiver is an important aspect of the Buy American Act, as it allows the federal government access to products offered generally in commercial markets. Sourcing components and materials from vendors globally, while still manufacturing products domestically, has ensured that the best available commercial products are available to federal purchasers.

Our members employ thousands of Americans in U.S. factories working on BAA-compliant product lines supported by the COTS waiver, ensuring American workers manufacture, assemble, design, test and sell many commercial products that U.S. taxpayer dollars buy. For these companies, narrowing or eliminating the COTS waiver will have a negative U.S. jobs impact. For example, following the elimination of the COTS waiver for products with significant iron and steel content early this year, one member reported that every affected product line became significantly more expensive to source, making the each of the products more costly to the government, and thus a less competitive offering. For such companies, this is resulting in a loss of federal business and unfortunately, layoffs of American workers. For these reasons, we believe any proposal to further narrow of the COTS waiver should consider the domestic labor force and use of U.S. facilities in content considerations.

Over many years, manufacturers that supply the federal government with COTS items have built their supply chains, plant infrastructure and U.S. workforce to meet BAA requirements for these items. Any new requirements for COTS would adversely impact U.S. suppliers by either requiring massive supply chain changes or making them suddenly unable to provide qualifying products given currently available component sources. The existing requirement for domestic production of BAA-compliant COTS products continues to be a driver for U.S. job growth and investment among our members.

Retain Current Treatment of Procurement Subject to the Trade Agreements Act (Question 4)

We note that E.O. 14005 does not direct any review of, or change to, the current inapplicability of BAA rules to procurements subject to the Trade Agreements Act (TAA). Any change would be contrary to longstanding federal procurement policy and the clear position expressed by the Executive Branch not to put forth policies that violate our nation's trade agreements. Importantly, it would also be inconsistent with the stated goal of the Administration to modernize federal information technology and shift away from legacy systems, as it could potentially erect a major barrier to any significant procurement of information technology systems.

TAA provides U.S. companies with nondiscriminatory access to government markets around the world, which, combined at more than \$4 trillion, is eight times the size of the U.S. market. TAA countries include key allies in Europe, Asia and elsewhere with companies that provide products and technology critical to our national and homeland security, which often have significant U.S. facilities and employees. Close linkage of procurement policies with our allies also provides a continuing opportunity to strengthen global supply chain security.

Security manufactures compete globally to offer the most cost-effective solutions that utilize the latest technology. Manufacturers may both import and export certain components depending on the type of total solution offered and where it is to be deployed. U.S. manufacturers are dependent on this global value chain, as well as complex dealer networks, to bring their most competitive products to customers in the world's most significant security markets. Without TAA, the U.S. government could have significant difficulty in identifying and utilizing sources of supply for modern security and life safety technologies that incorporate the most appropriate and effective components available for fire alarm, fire suppression, access control, intrusion detection, video surveillance, emergency communications and other functions.

Conclusion

When it comes to safety and security products, the Administration and Congress should consider working to make it easier, not more difficult, for qualified suppliers to participate in the federal marketplace. This not only helps meet the unique needs of each agency, it also helps sustain robust competition in the federal marketplace, benefiting both agencies and U.S. taxpayers through lower costs. The security industry has enjoyed steady growth in the U.S. over the past decade. The result has been increased international investment in the U.S. and the creation of more job opportunities for Americans engineers, researchers, technicians, installers, business development and support personnel. The growing market for these products does more than create jobs here at home, it continually improves critical safety measures that protect the public.

Respectfully Submitted,



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