

What “Buy American and Hire American” Means for Your Business

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In last week’s visit to Snap-On Tools in Kenosha, Wisconsin, President Trump signed an executive order titled “Buy American and Hire American.” What does this mean for your business?

Buy American Provisions

Many businesses that contract with the federal government are required to comply with various “Buy American” statutes. The Buy American Act was enacted in 1933 in the midst of the Great Depression and establishes domestic preferences in the procurement of goods to be used or consumed by the federal government. Similarly, the Surface Transportation Assistance Act of 1982 incorporated “Buy America” provisions requiring certain mass transit-related procurements to be American made. Finally, the 2009 American Recovery and Reinvestment stimulus legislation required manufactured goods and iron used in projects funded with stimulus monies to be produced in the United States. Failure to comply with Buy American provisions can result in penalties including substituting compliant products, recovering the difference in costs between domestic and foreign items and other sanctions.

President Trump’s April 18, 2017 Executive Order requires the heads of “all agencies” to: (1) assess monitoring and enforcement of compliance with Buy American Laws within their agencies; (2) assess the use of waivers and the impact of those waivers on domestic jobs and manufacturing; and (3) develop and propose policies to ensure that federal financial assistance awards and procurements maximize the use of materials produced in the United States. This assessment is to be completed in September 2017.

The executive order further requires the Secretary of Commerce by December 2017 to assess the impact of all free trade agreements and the World Trade Organization agreement on government procurements and the Buy American Laws and to make recommendations on strengthening implementation of Buy American laws.

Hire American Provisions

President Trump's Executive Order further asserts a desire for change in the H-1B visa program. Currently, 85,000 H-1B visas per year are awarded by lottery to qualified applicants for "specialty occupations" that require a minimum of a bachelor's degree. The Order asserts that "in order to create higher wages and employment rates for workers in the United States. . . it shall be the policy of the executive branch to rigorously enforce and administer the laws governing entry into the United States of workers from abroad. . ." including the H-1B visa program. The Order does not specify how to achieve that policy, and provides no guidance or requirements. The Order further directs the Secretaries of State, Labor, and Homeland Security and the Attorney General to propose new laws and guidance "to protect the interest of the United States workers in the administration of our immigration system, including through fraud and abuse." The term "fraud or abuse" is not defined, and so the Order does not address any particular fraud issue.

The Order further directs these offices to suggest reforms to "help ensure that H-1B visas are awarded to the most-skilled or highest-paid petition beneficiaries." Because the current H-1B law does not require that the H-1B visas be awarded to the most-skilled or highest-paid aliens, Congressional action in the form of new legislation would be required to effectuate the Order.

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