Policy evolution of domestic sourcing
Forensic & Integrity Services
Government Contract Services
August 2021
Policy evolution of domestic sourcing

Domestic preference requirements in US federal contracting have rapidly evolved since 2017 as a result of several executive orders and implementing regulations. These actions have accelerated the focus on domestic sourcing and particularly the Buy American Act (BAA), creating corresponding needs for organizations contracting with the US Government to evaluate their products for compliance and more broadly reassess their overall supply chain processes and risks as it relates to domestic sourcing requirements.
Domestic sourcing’s evolution 2017–present

2017–January 2021

The BAA was originally passed in 1933 and has served as the foundational public law for domestic sourcing preferences. Executive Order 13788, “Buy American and Hire American,” was issued in 2017 to assess compliance with, and enhance implementation of, the BAA.


The Federal Acquisition Regulatory (FAR) Council issued a BAA final rule on January 19, 2021, to enact the contents of these executive orders. Given the increases in these thresholds and factors as enacted in the BAA final rule, government contractors are expected to have more difficulty receiving exception waivers to BAA requirements based on origin component percentage or cost difference justifications, thereby exposing more contractors to BAA requirements and audit scrutiny.

January 2021–present

Executive Order 14005, “Ensuring the Future Is Made in All of America by All of America’s Workers,” issued on January 25, 2021, mandated additional requirements for BAA compliance. The executive order has four main components:

1. Component test methodology refresh
2. Increased price preferences for domestic goods
3. Establishment of a Director of Made in America at the Office of Management and Budget (OMB)
4. Cross-agency review of domestic preferences

An OMB memorandum was released on June 11, 2021, that detailed agency responsibility for waiver justifications. The memo particularly focused on non-availability waiver justifications and the need to perform agency-level transactional testing on waivers granted.

On July 30, 2021, a proposed FAR rule furthered the executive order and memorandum by intermediately increasing the origin threshold to 60%, with a phased increase to 75%, and augmenting domestic price preference rules for “critical products and components.”

Once the latest executive order and memorandum are incorporated in the FAR, government contractors can expect downstream impacts to their compliance environments. While it is still unclear how compliance will be evaluated, government contractors should anticipate further BAA scrutiny beyond what is required with the January 2021 final rule. Potential avenues for future increased scrutiny include OMB reviews, Office of Inspector General (OIG) audits and expanded Contractor Purchasing System Review (CPSR) procedures that include BAA scope. In addition, inaccurate representations related to a BAA compliance can also lead to allegations of False Claims Act violations.

Beyond the BAA and emphasis on domestic preference, the changing security environment related to foreign adversaries and the need for supply chain resiliency will require contractors to re-evaluate their supply chain relationships. Supply chain resiliency and risk identification are heavy focuses of Executive Order 14017, “Executive Order on America’s Supply Chains,” issued February 24, 2021.
### Now, next, beyond

#### Now: assess your current domestic sourcing and supply chain resilience practices:

- Do your domestic sourcing practices align with government expectations as detailed in the *DCMA CPSR Guidebook* Part 6.25, “Buy American Act”?
- Have you assessed and identified business and compliance risks within your federal contracting supply chain?

#### Next: enhance domestic sourcing compliance and supply chain control:

- Have you identified and addressed domestic sourcing process gaps to further compliance with government expectations?
- For risks identified in your federal contracting supply base, such as cyber threats, have you implemented monitoring procedures to verify that risks are sufficiently controlled?

#### Beyond: enhance process automation:

- Do you have system capabilities to include domestic content and manufacturing location information data?
- Have you considered technology that can automate the task of supply chain risk monitoring?

---

<table>
<thead>
<tr>
<th>Current component test</th>
<th>Future component test</th>
</tr>
</thead>
<tbody>
<tr>
<td>Iron and steel end products</td>
<td>&gt;50%</td>
</tr>
<tr>
<td>Other end products</td>
<td>&gt;50%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Current markup factor</th>
<th>Future markup factor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Large business offeror</td>
<td>6%</td>
</tr>
<tr>
<td>Small business offeror</td>
<td>12%</td>
</tr>
</tbody>
</table>

---

#### Three actions that organizations should take now:

1. Organizations should assess their compliance with the BAA control requirements considering recent changes (component test increases and current markup factors).

2. Organizations should implement a risk management process for their supply chains, including federal subcontractors, and determine whether it properly addresses concerns related to domestic sourcing.

3. Organizations should take a proactive approach to stay abreast of further developments and requirements related to domestic sourcing.
Contacts

Sajeev D. Malaveetil
Partner and Government
Contract Services Practice Leader
Ernst & Young LLP
sajeev.malaveetil@ey.com

Mustafa Zuwawa
Senior Manager
Government
Contract Services
Ernst & Young LLP
mustafa.zuwawa@ey.com
EY | Building a better working world

EY exists to build a better working world, helping to create long-term value for clients, people and society and build trust in the capital markets.

Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate.

Working across assurance, consulting, law, strategy, tax and transactions, EY teams ask better questions to find new answers for the complex issues facing our world today.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via ey.com/privacy. EY member firms do not practice law where prohibited by local laws. For more information about our organization, please visit ey.com.

Ernst & Young LLP is a client-serving member firm of Ernst & Young Global Limited operating in the US.

About EY Forensic & Integrity Services

Embedding integrity into an organization’s strategic vision and day-to-day operations is critical when managing complex issues of fraud, regulatory compliance, investigations and business disputes. Our international team of more than 4,000 forensic and technology professionals helps leaders balance business objectives and risks, build data-centric ethics and compliance programs, and ultimately develop a culture of integrity. We consider your distinct circumstances and needs to assemble the right multidisciplinary and culturally aligned team for you and your legal advisors. We strive to bring you the benefits of our leading technology, deep subject-matter knowledge and broad global sector experience.

© 2021 Ernst & Young LLP.
All Rights Reserved.

US SCORE no. 13551-211US
2106-3805595
ED None

This material has been prepared for general information purposes only and is not intended to be relied upon as accounting, tax or other professional advice. Please refer to your advisors for specific advice.

ey.com/forensics/governmentcontractservices