

PUBLIC SUBMISSION

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Federal Acquisition Regulation (FAR) Information Collections - 2019

Comment On: FAR-2019-0003-0070

Agency Information Collection Activities; Proposals, Submissions, and Approvals: Reporting Purchases from Sources outside the United States

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Comment on FR Doc # 2019-26998

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General Comment

See attached file(s)

Attachments

AAM Comments_Information Collection 9000 0161_Reporting Purchases from Sources Outside the United States

February 14, 2020

Ms. Lois Mandell / IC 9000-0161
General Services Administration
Regulatory Secretariat Division (MVCB)
1800 F Street NW, Washington, DC 20405

RE: Comments Regarding Information Collection 9000-0161, Reporting Purchases from Sources Outside the United States

Dear Ms. Mandell:

The Alliance for American Manufacturing (AAM) appreciates the opportunity to submit these comments in response to the December 16, 2019 published notice and request for comments on a revision and renewal concerning reporting purchases from sources outside the United States (Docket No. 2019-0003; OMB Control No. 9000-0161).

AAM is a non-profit, non-partisan partnership formed in 2007 by some of America's leading manufacturers and the United Steelworkers. Our mission is to strengthen American manufacturing and create new private-sector jobs through smart public policies. We believe that an innovative and growing manufacturing base is vital to America's economic and national security, as well as to providing good jobs for future generations.

The collection of data concerning purchases from outside the United States should be maintained and enhanced given its essential role in informing policy decisions surrounding procurement and trade policy.

Understanding the Effectiveness of U.S. Domestic Content Procurement Preference Policies

Domestic content procurement preference policies, including the Buy American Act of 1933, are a valuable tool for maintaining and strengthening U.S. economic and national security. The availability of updated data on purchases from sources outside the United States helps to inform the effectiveness of such policies and whether government agencies, contractors, and recipients of federal assistance are following the law. There is substantial room for improvement in the accuracy and depth of the data on purchases from sources outside the United States.

A 2018 Government Accountability Office (GAO) report examined the quality of Buy American waiver and exception data collection and the extent to which the federal government uses these waivers and exceptions. The GAO found that in the contracts it reviewed, nearly one in six had inaccurate waiver or exception information. It also found that system limitations further impaired the accuracy of data collection and recommended the Office of Management and Budget (OMB) take measures to improve the reliability of Buy American Act data.

A 2018 Department of Defense (DOD) Inspector General (IG) report found a litany of cases of Berry Amendment and Buy American Act non-compliance. In a review of 109 contracts, the IG

found that in 40 of these contracts, totaling \$211.6 million in spending, contracting personnel did not comply with the Berry Amendment.

Not only does the leakage of federal dollars overseas undermine the resilience of our industrial base, it represents a significant loss of economic activity for thousands of manufacturing workers and communities across the country. Without the data collected on foreign-source purchases, this type of analysis would not be possible, and critical vulnerabilities would go unnoticed.

In *Remaking American Security*, a study published by AAM, Brigadier General John Adams (U.S. Army, Ret.) found that increasing dependence on foreign suppliers for defense-critical natural resources, inputs and components makes our country less secure and puts American military personnel at greater risk. The report found an alarming amount of equipment and components that go into weapons systems, aircraft, Navy vessels, and other tactical vehicles are imported from overseas.

Meanwhile, a report compiled by an interagency task force in response to President Trump's Executive Order 13806, *Assessing and Strengthening the Manufacturing and Defense Industrial Base and Supply Chain Resiliency of the United States*, found that our security continues to rest on a precarious industrial base with persistent concerns about single, sole and fragile source suppliers, material shortages, foreign dependencies, and the erosion of both human capital and U.S.-based infrastructure.

At a time of increasing global uncertainty, we must safeguard our military from supply chain disruptions that would impair American defense and emergency response capabilities. Further, we must also be prepared for deliberate efforts to cripple our capacities by exposing weaknesses in our defense industrial base or using them as leverage that compromises our ability to defend our interests.

Ongoing and robust data collection of foreign purchases is necessary to inform policy makers about potential U.S. industrial base weaknesses that could be exploited by hostile nations. Such data also allows Congress to shape domestic content procurement preference policies to bolster our nation's security and economic welfare.

Congress and Voters Demand Transparency on Foreign Purchases of Goods

There is overwhelming bipartisan support – both in Congress and among American voters – for being notified of instances when federal dollars are being used to make purchases from sources outside the United States. Federal dollars spent on goods produced outside of the United States bypass American works and U.S. manufacturers, weakening our economic and national security.

U.S. Senator Chris Murphy of Connecticut issued a report entitled, “Not Made in the U.S.A.,” documenting 307,123 waivers and exceptions to the Buy American Act granted between fiscal years 2007 and 2014. This translated to over \$176 billion dollars awarded to foreign manufacturers by the Department of Defense (DOD).

U.S. Senator Debbie Stabenow of Michigan issued a report entitled, “Make It In America,” identifying key sectors where domestic content preference waivers and agency exceptions

resulted in DOD spending \$6.4 billion on foreign-made aerospace products, \$6.3 billion on foreign-made automotive products, and \$1.5 billion on foreign-made electronics products between 2008 and 2016. The report also found that the Department of Homeland Security spent nearly \$1.6 billion on foreign-sourced purchases during this period.

In 2019, the bipartisan *BuyAmerican.gov Act*, was introduced by Senators Chris Murphy, Rob Portman, Sherrod Brown and Lindsey Graham in the Senate and by Representatives Dan Lipinski, Mike Bost and Brian Fitzpatrick in the House. This legislation would create an online database of domestic preference program waivers to increase transparency and address concerns around the excessive granting of Buy American waivers. Further, this Congressional effort has received support from the Trump Administration. In April 2019, the administration registered the URL for BuyAmerican.gov and began including information about contract opportunities and Buy American waivers.

Americans strongly support domestic content preference policies and demand more transparency in the way their hard-earned tax dollars are spent. According to polling of likely general election voters, 76 percent of voters support the creation of a public website to fully disclose instances when government agencies or contractors were able to avoid domestic content preference laws and purchase foreign goods. More broadly, 80 percent of voters support Buy America policies that require all taxpayer-funded infrastructure projects use American-made goods and materials.¹

Data Collection is Necessary for Understanding Reciprocal Procurement Market Access

The collection of data on purchases from sources outside the United States is necessary for determining the impact of trade agreements that open government procurement markets to trading partners. Specifically, this information allows policymakers to compare U.S. access to foreign procurement markets with the amount of goods purchased from foreign sources. According to a 2017 GAO report:²

“...U.S. data for 2010—the most recent available—show that the United States reported \$837 billion in [Agreement on Government Procurement] GPA-covered procurement. This amount is about twice as large as the approximately \$381 billion reported by the next five largest GPA parties—the European Union, Japan, South Korea, Norway, and Canada—combined, even though total U.S. procurement is less than that of the other five parties combined.”

At the time this report was released, U.S. Senators Tammy Baldwin (WI) and Jeff Merkley (OR) called on the Trump administration to suspend Buy American waivers for foreign firms until the underlying agreements on government procurement are renegotiated.

¹ “Findings from a National Survey on Infrastructure and Buy America Policies,” Prepared for the Alliance for American Manufacturing by The Mellman Group and Public Opinion Strategies. Conducted March 20-28, 2019.

² “Government Procurement: United States Reported Opening More Opportunities to Foreign Firms Than Other Countries, but Better Data Are Needed (GAO-17-168),” Government Accountability Office. 13 March 2017.

The United States is a signatory to a litany of international trade agreements that open government procurement markets. Specifically, the United States and other countries have made commitments under the World Trade Organization's (WTO) Agreement on Government Procurement and under U.S. free trade agreements that open government procurement to foreign suppliers. These trade agreements require each party's goods and services to be given treatment comparable to domestic goods and services in certain government procurements (known as "national treatment"). Altogether, these trade agreements result in the waiver of the Buy American Act and unfettered access to U.S. government procurement markets for certain products from more than 60 countries.

The U.S. has free trade agreements with twenty countries, most of which include market access obligations with regard to government procurement. Under the WTO GPA, the U.S. grants procurement market access to 46 WTO members, including the 28 countries that comprise the European Union.

According to the Office of the United States Trade Representative these agreements have, since the 1981 Tokyo Round Code on Government Procurement (part of the General Agreement on Tariffs and Trade) very likely opened billions of dollars of procurement to foreign producers.³

Conclusion

We support the use of new technology and collection techniques to make data collection easier and more accurate. However, any proposed changes should not be done in a manner that adversely impacts U.S. domestic content procurement preference policies or limits information made available to Congress or the American public. It is essential that DOD and other government agencies continue to collect data on purchases from outside the United States.

Thank you for the opportunity to provide our views on this important matter.

Sincerely,



Scott N. Paul
President

³ See Government Accountability Office *International Trade; Government Procurement Agreements Contain Similar Provisions, but Market Access Commitments Vary*, GAO-16-727 (Sept. 2016).