

Significant Buy American amendments are here

(February 04, 2021) - Aron Beezley of Bradley Arant Boult Cummings LLP enumerates the key impacts of the Federal Acquisition Regulation Council's final rule adopting mandates of the executive order Maximizing Use of American-Made Goods, Products, and Materials.

The Federal Acquisition Regulation (FAR) Council recently issued a final rule¹ that implements the requirements of the Maximizing Use of American-Made Goods, Products, and Materials Executive Order.²

As discussed below, the final rule – which largely adopts the proposed revisions set forth in the FAR Council's September 14, 2020, proposed rule³ — contains important amendments concerning domestic component thresholds and domestic pricing preferences, as well as reintroduces the domestic content test for commercially available off-the-shelf (COTS) items as it relates to certain steel and iron products.

Domestic content cost threshold changes

The rule increases the domestic content requirement for iron and steel end products from 50% to 95%, meaning that at least 95% of the content (determined by the cost of the components) for end products or construction materials that consist wholly or predominantly of iron or steel (or a combination of both) must be mined, produced, or manufactured in the United States.

However, for everything else, the rule increases the domestic content requirement from 50% to 55% "of the cost of all components."

Domestic pricing preference changes

The final rule additionally expands pricing preferences for domestic end products and construction materials as follows:

- Increases the current 6% price preference that large businesses receive to 20%
- Increases the current 12% price preference that small businesses receive to 30%

The rule does not, however, impact the 50% price preference that both large and small businesses receive for using domestic end products on Department of Defense procurements.

Revival of domestic content test for certain COTS

The final rule partially restores the domestic content test for COTS items as it pertains to iron and steel products. The rule, however, continues to waive the domestic content test for iron and steel "fasteners," which is defined as "a hardware device that mechanically joins or affixes two or more objects" and includes "nuts, bolts, pins, rivets, nails, clips, and screws."

Conclusion

The final rule is effective on January 21, 2021, and applies to solicitations issued on or after February 22, 2021, and resultant contracts.

Notes

1 <https://bit.ly/2YBaieV>

2 <https://bit.ly/3tdlIj>

3 <https://bit.ly/3pspK8B>

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