

BEFORE THE PUBLIC AUDITOR  
PROCUREMENT APPEALS  
TERRITORY OF GUAM

In the Appeal of

Guam Pacific Ent Inc.

Appellant

v.

University of Guam

Appeal No. OPA-PA-21-011

Admission of Facts

List of Issues

Witness Lists

1/10/2022

RECEIVED  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS  
TIME: 4:02  AM  PM BY: *MM*

FILE NO OPA-PA: 21-011

I am respectfully requesting admission of facts in the subject Appeal.

- 1) The purifier chosen by UOG did not conform or comply with the intention and background of the bid.
- 2) The purifier chosen is not specifically for classrooms, offices, auditorium and other indoor use at the Liberal Arts Building.
- 3) The purifier is not Made in America, it is Made in Israel. Therefore it is a violation of Buy American Act.

List of Issues

- 1) Conformance or Compliance of the chosen


purifier with the Intention and background of the bid.

2. Compliance with the Buy American Act.
3. Author of the Bid not qualified
4. Pro Se's representation
5. Ill or hazardous effects or negative effects of not choosing the right purifier for the intention and background.
6. Role of President in the Bid Evaluation, and Administration.

### Witness Lists (Prospective)

- 1) Dr. Thomas Krise (President of VOG)
- 2) Emily Gumataota (Supply Administrator)
- 3) Vic Wang (Wang Bros. One of the Bidder)

Dated: January 10, 2022

Respectfully Submitted,  
  
Pro Se  
Guan Pacific Ent. Inc.

10. MODIFICATIONS PRIOR TO DATE SET FOR OPENING BIDS: The University reserves the right to revise or amend the specifications prior to the date set for opening bids. Such revisions and amendments, if any, will be announced by an amendment or amendments to this Invitation for Bids and shall be identified as such. It is required that the bidders acknowledge in writing receipt of all amendments issued and such acknowledgment must be included in the bid. The amendment shall refer to the portions of the Invitation for Bids it amends. Amendments shall be sent to all prospective Bidders known to have received an Invitation for Bids. Amendments shall be distributed within a reasonable time to allow prospective Bidders to consider the amendment in preparing their Bids. If the time and date set for receipt of bids will not permit such preparation, such time shall be increased to the extent possible in the amendment or, if necessary, by email or telephone and confirmed in the amendment.

11. CANCELLATION OF SOLICITATION: Prior to the date set for opening bids, a solicitation may be cancelled in whole or in part when the President or his designee determines in writing that the cancellation of the solicitation is in the University's best interest, in accordance with the University's Procurement Rules and Regulations.

12. METHOD OF AWARD: Bid shall be awarded to the  lowest,  highest, responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids. A responsible bidder is one who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance. A responsive bidder is one who has submitted a bid which conforms in all material respects to the Invitation for Bids. The University reserves the right to waive any minor information of irregularity in Bids received. The President shall have the authority to award or reject Bids, in whole or in part for any one or more items if he determines it is in the public interest.

Award issued to the  lowest,  highest, responsible and responsive bidder within the specified time for acceptance as indicated in the Bid, results in a binding contract without further action by either party provided the successful bidder executes a formal contract with the University. In case of any error in the extension of prices, unit price will govern. It is the policy of the Government of Guam to award Bids to qualified local vendors.

### 13. SUBMISSION OF BIDS:

- a. Bids and modifications thereof shall be submitted through electronic submission to the Share folder that UOG procurement office provides and addressed to the office specified in the Solicitation. The electronic file submission will show the hour and date of submission as specified in the Solicitation for receipt. The file should identify the Solicitation number, and the name of the bidder.
- b. Bids may be modified or withdrawn by written or telegraphic notice, provided such notice is received prior to the hour and date specified for receipt (see paragraph 9 of these instructions).
- c. Samples of items, when required, must be submitted within the time specified, unless otherwise specified by the University, at no expense to the University. If not destroyed by testing, samples will be returned at bidder's request and expense, unless otherwise specified by the Solicitation.
- d. Samples or descriptive literature should not be submitted unless it is required on this Solicitation. Regardless of any attempt by a bidder to condition the bid, unsolicited samples or descriptive

EXH 1

## ATTACHMENT A

### GENERAL TERMS AND CONDITIONS FOR THE INVITATION FOR BIDS

1. COMPLIANCE WITH SPECIFICATIONS: Bidder should comply with specifications outlined.
2. LATE BIDS, LATE WITHDRAWALS, AND LATE MODIFICATIONS:

Any bid received after the time and date set for receipt of bids is late. Any withdrawal or modification of a bid received after the time and date set for opening of bids at the place designated for opening is late. (Section 3.9.11.1, University of Guam Procurement Manual).

3. DETERMINATION OF LOWEST RESPONSIBLE BIDDERS: In determining lowest responsible bidder, the University shall be guided by the following:

- (a) Price of bid items. ✓
- (b) The ability, capacity, and skill of the bidder to perform. ✓
- (c) Whether the bidder can perform promptly or within the specified time. ✓
- (d) The character, integrity, reputation, judgment, experience, and efficiency of the bidder. ✓
- (e) The quality of performance of the bidder with regards to awards previously made to him. ✓
- (f) The previous and existing compliance by the bidder with laws and regulations relative to procurement.
- (g) The sufficiency of the financial resources and ability of the bidder to perform. ✓
- (h) The quality, availability, and adaptability of the supplies for the use of the subject of the award.
- (i) The ability of the bidder to provide future maintenance and services for the use of the subject of the award.
- (j) The number and scope of the conditions attached to the bid.

4. LOW TIE BIDS: Low tie bids are low responsive bids from responsible bidders that are identical in price and which meet all the requirements and criteria set forth in the Invitation for Bids. Award shall not be made by drawing lots, except as set forth UOG Procurement Regulations Section 3.9.15, or by dividing business among identical bidders.

## EXHIBIT A

University of Guam

BID SPECIFICATIONS OR EQUIVALENT

BID NO. B21-10

This bid pertains to the following:

### 1. **University of Guam, Air Purifier System and Replacement Filters**

#### I. BACKGROUND

The University of Guam (UOG) is requesting proposals from vendors to provide Air Purifier System and Replacement Filters to detect, disinfect, and purify contaminated air in various classrooms, offices, auditoriums, and other indoor spaces located in the College of Liberal Arts and Social Sciences (CLASS) buildings.

#### II. PRODUCT SPECIFICATIONS:

- 1) Physical
  - a. Wall/Ceiling-Mountable
  - b. Maximum Noise Level: 64dB
  - c. Wi-Fi Capable
  - d. Power: 110 – 240V
  - e. Replaceable Filters
- 2) Detection:
  - a. Smoke
  - b. CO
  - c. CO2
  - d. VOC
  - e. PM 2.5
  - f. PM 10
  - g. Temperature
  - h. Humidity
- 3) Disinfection:
  - a. Bacteria
  - b. Fungus
  - c. Mold
  - d. Spores
  - e. Viruses
- 4) Communications and Management:
  - a. Management App must be included to allow for remote control of units as well as data gathering and reporting.



OFFICE OF THE PRESIDENT

October 18, 2021

Sedfrey Linsangan  
President, Guam Pacific Enterprises, Inc.  
Email: guampacific@gmail.com

**RE: Protest Decision for September 7, 2021 Protest regarding UOG-IFB-21-10 (Air Purifier System and Replacement Filters)**

Dear Mr. Linsangan:

In accordance with Section 9.2.1, University of Guam's Procurement Regulations (UOGPR), I have reviewed your Protest dated September 7, 2021 regarding UOG-IFB-21-10 (Air Purifier System and Replacement Filters) (IFB) and the Notice of Appeal you filed on September 16, 2021 for *In the Matter of Guam Pacific Enterprises, Inc.*, OPA-PA-21-006 (Office of Public Accountability) which was subsequently dismissed without prejudice by Public Auditor on October 4, 2021. In your notice of appeal, you raised the following issues concerning the IFB: (1) The specs of Docomo's offer does not comply with the intention and background as provided in Exhibit A of the bid (page 20) because the offer was specifically for home and not classrooms; (2) The offer that was favored was made in Israel not USA and UOG should be buying American made for federal funding projects to comply with the Buy American Act; (3) UOG violates the provisions in Instruction 12, Method of Award because the product they approved does not conform for classrooms use but only for homes, and it is not in the public interest that UOG will buy or award the bid that does not serve its purpose, see page 5 of the bid document Method of Award; and (4) UOG is the only one charging \$25 for Bid Documents in PDF file and all agencies do not charge \$25 if bidders download the file. The following constitutes UOG's decision for each of these issues.

1. There is no merit to Guam Pacific Enterprises, Inc.'s (GPE) allegation that the specs of Docomo's offer does not comply with the intention and background Exhibit A on page 20 of the IFB. The background portion of Exhibit A on page 20 of the IFB states: "The University of Guam (UOG) is requesting proposals from vendors to provide Air Purifier System and Replacement Filters to detect, disinfect, and purify contaminated air in various classrooms, offices, auditoriums, and other indoor spaces located in the College of Liberal Arts and Social Sciences (CLASS) buildings." It appears that GPE is interpreting this language to mean that the Air Purifier Systems and Replacement Filters must be made specifically for use in classrooms. However, this interpretation is not supported by the IFB. Paragraph 1 of the IFB's General Terms and Conditions on page 7 of the IFB states: "Bidder should comply with specifications outlined." Hence, the bidders were required to comply with the IFB's specifications for the Air Purifier System and Replacement Filters. Those specifications were outlined in Exhibit A on page 20 of the IFB and the specifications do not contain a requirement that the Air Purifier System and Replacement Filters

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Mailing Address: 303 University Drive UOG Station Mangilao, Guam 96913

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EXH. 5

must be made specifically for classrooms. In fact, the background language of Exhibit A of the IFB, quoted above, specifically states that the Air Purifier System and Replacement Filters would be for offices, auditoriums, and other indoor spaces located in the College of Liberal Arts and Social Sciences (CLASS) buildings. Hence, there was no intention that the Air Purifier System and Replacement Filters would be used solely in classrooms, nor was there a specification that the Air Purifier System and Replacement Filters being solicited must be specifically designed for classrooms. Therefore, based on the foregoing, there is no merit to GPE's allegation that the specs of Docomo's offer does not comply with the intention and background Exhibit A on page 20 of the IFB.

2. There is no merit to GPE's allegation that UOG violated the Buy American Act by awarding the IFB Contract to Docomo. Generally, The Buy American Act of 1933 is a federal law that requires **Federal agencies** to procure domestic materials and products (Bold Emphasis added) if the procurement is intended for public use within the United States, and the items to be procured or the materials from which they are manufactured must be present in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. 41 U.S.C. §8301 and §8302(a)(1). Here, UOG is a public corporation of the Government of Guam and not a Federal agency. 17 G.C.A. §16101. Hence, contracts awarded by UOG under Federal grant programs, such as the contract awarded by the IFB, are not covered by the Buy American Act unless authorizing statutes explicitly provide for application of the act.

The federal grant funding UOG's purchase of air purifier systems and replacement filters from Docomo does not explicitly provide for the application of the Buy American Act of 1933. The Coronavirus Aid, Relief, and Economic Security Act or CARES Act, was enacted by the U.S. Government on March 27th, 2020 and allotted \$2.2 trillion to provide fast and direct economic aid to the American people negatively impacted by the COVID-19 pandemic. Of that money, approximately \$14 billion was given to the U.S. Department of Education's Office of Postsecondary Education as the Higher Education Emergency Relief Fund, or HEERF. On December 27, 2020 the Coronavirus Response and Relief Supplemental Appropriations Act was enacted by the U.S. Government and made an additional \$21.2 billion available to higher education institutions to ensure learning continues for students during the COVID-19 pandemic as HEERF II. The American Rescue Plan Act was enacted by the U.S. Government on March 11, 2021, awarding an additional \$40 billion which will be available through September 30, 2023 as HEERF III. UOG received portions of HEERF, HEERF II, and HEERF III and these federal grants were used to fund the IFB Contract UOG awarded to Docomo. To obtain the federal funds, UOG had to sign a Recipient's Certification and Agreement for an Award for each of the federal grant awards from HEERF thru HEERF III and copies of said agreements are attached herein as Exhibits A, B, and C. These agreements define UOG's obligations and requirements to receive the federal funds and a review of these agreements show that none of them make the Buy American Act of 1933 applicable to the HEERF funds or to UOG's IFB Contract to Docomo. Therefore, based on the foregoing, there is no merit to GPE's allegation that UOG violated the Buy American Act by awarding the IFB Contract to Docomo.

3. There is no merit to GPE's allegation that UOG violated Instruction 12 on page 5 of the IFB because Docomo bid products that do not conform for classrooms use but only for homes. Instruction 12 on page 5 of the IFB states:

EXH 5

"12. METHOD OF AWARD: Bid shall be awarded to the [x] lowest, [ ] highest, responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids. A responsible bidder is one who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance. A responsive bidder is one who has submitted a bid which conforms in all material respects to the Invitation for Bids. The University reserves the right to waive any minor information of irregularity in Bids received. The President shall have the authority to award or reject Bids, in whole or in part for any one or more items if he determines it is in the public interest. ←

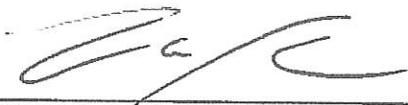
Award issued to the [x] lowest, [ ] highest, responsible and responsive bidder within the specified time for acceptance as indicated in the Bid, results in a binding contract without further action by either party provided the successful bidder executes a formal contract with the University. In case of any error in the extension of prices, unit price will govern. It is the policy of the Government of Guam to award Bids to qualified local vendors."

As stated in paragraph 1 above, UOG had no intention that the Air Purifier System and Replacement Filters that the IFB solicited for, would be used solely in classrooms, nor was there a specification in the IFB that the Air Purifier System and Replacement Filters being solicited must be specifically designed for classrooms. Further, as stated above, Instruction 12 on page 5 of the IFB requires UOG to award the bid to the lowest, responsible and responsive bidder whose bid meets the requirements and criteria set forth in the IFB. Here, UOG complied with this instruction by awarding the IFB contract to Docomo because Docomo submitted the lowest bid, because it is a responsible and responsive bidder, and because its bid meets the requirements and criteria set forth in the IFB for the Air Purifier System and Replacement Filters. Therefore, based on the foregoing, there is no merit to GPE's allegation that UOG violated Instruction 12 on page 5 of the IFB because Docomo bid products that do not conform for classrooms use but only for homes.

4. GPE's allegation that UOG is charging \$25 is untimely and shall not be considered. Generally, a protest shall be made in writing to the University's President and shall be filed in duplicate within fourteen (14) working days after the protestor knows or should have known of the facts giving rise thereto and a protest is considered filed when received by the University's President. Section 9.2.3.1, University of Guam's Procurement Regulations ("UOGPR"). Protests filed after the fourteen (14) working day period shall not be considered. Id. Here, the IFB was issued on April 26, 2021, and a true and correct copy of UOG's invoice for GPE's \$25 payment for the IFB package is attached herein as Exhibit D. Said invoice states that GPE paid \$25 for a digital copy of the IFB's bid packet on May 11, 2021. GPE did not file its protest until September 7, 2021 which is more than fourteen (14) working days after GPE knew or should have known that it paid \$25 for the IFB package. Therefore, due to GPE's protest concerning the allegation that UOG charged \$25 for the IFB's bid packet being untimely, it shall not be considered.

Accordingly, GPE's September 7, 2021 Protest concerning the IFB is hereby DENIED. In accordance with Section 9.2.7.2, UOGPR, GPE is hereby informed of its right to administrative and judicial review of this Protest Decision.

DATED this 18<sup>th</sup> day of October, 2021 by:

  
\_\_\_\_\_  
THOMAS W. KRISE, Ph.D.  
President

EXH 5



5 GCA GOVERNMENT OPERATIONS  
CH. 5 GUAM PROCUREMENT LAW

(c) Except as to cases the court considers of greater importance, proceedings as authorized by this Section, and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(d) The court may assess against the government or governmental body reasonable attorney fees and other litigation costs reasonably incurred in any case under this Section in which the complainant has substantially prevailed.

(e) Whenever the court orders the production of any procurement data improperly withheld from the complainant and assesses against the government or governmental body reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether government personnel acted arbitrarily or capriciously with respect to the withholding, apart from such other actions as the Court may take, the Civil Service Commission shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Commission, after investigation and consideration of the evidence submitted, shall submit its findings to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer of employee or his representative. The administrative authority shall take the corrective action that the Commission recommends. No right or power granted to the Civil Service Commission shall bar or preclude the Court from issuing such orders, imposing such sanctions or providing such remedy or relief as it deems proper.

(f) In the event of noncompliance with the order of the Court, the Superior Court may punish for contempt, the responsible employees or officer.

SOURCE: GC § 6978.2 added by P.L. 18-044:27 (Nov. 14, 1986).

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ARTICLE 10  
COMPLIANCE WITH FEDERAL REQUIREMENTS

5 GCA GOVERNMENT OPERATIONS  
CH. 5 GUAM PROCUREMENT LAW

§ 5501. Federal Funds.

§ 5501. Federal Funds.

Where a procurement involves the expenditure of federal assistance or contract funds, or other federal funds as defined by Section 20 of the Organic Act of Guam, all persons within the government of Guam shall comply with such federal law and regulations which are applicable and which may be in conflict with or may not be reflected in this Chapter.

**SOURCE:** GC § 6979. MPC § 11-301 modified.

**COMMENT:** The only modification is to reflect the limitation on the power of the Legislature to appropriate contained in Section 20 of the Organic Act which reads:

"Appropriations, ..., and except such appropriations as shall be made from time to time by the Congress of the United States, shall be by the Legislature."

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**ARTICLE 11**  
**ETHICS IN PUBLIC CONTRACTING**

- Subarticle A. Definitions.
- Subarticle B. Standards of Conduct.
- Subarticle C. Remedies.
- Subarticle D. Ethics Enforcement.

**SUBARTICLE A**  
**DEFINITIONS**

§ 5601. Definitions.

§ 5601. Definitions.

As used in this Chapter:

(a) Blind Trust means an independently managed trust in which the employee- beneficiary has no management rights and in which the employee-beneficiary is not given

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**"Chapter 19**  
**PUBLIC AUDITOR**

**§1900. Office of Public Auditor.** There is an instrumentality of the government of Guam, independent of the executive, legislative and judicial branches, known as the Office of the Public Auditor.

**§1901. Commission to Recommend Nominees; Persons Qualified to be Nominees to Office of Public Auditor.**

(a) When a vacancy occurs in the Office of Public Auditor, a commission is established to recommend individuals to the Governor for appointment to the vacant office. The commission shall be composed of:

- (1) The Speaker of the Legislature;
- (2) The Minority Leader of the Legislature;
- (3) A member of the Guam Society of Certified Public Accountants, chosen by the Society;
- (4) A member of the Territorial Board of Accountancy, chosen by the Board; and
- (5) A member of the Guam Bar Association, chosen by the Association.

(b) The commission established in Subsection (a) of this Section shall recommend at least three (3) individuals. The Governor may ask the commission to recommend additional individuals.

EXH 7

**Recipient's Funding Certification and Agreement  
for the Institutional Portion of the Higher Education Emergency Relief Fund  
Formula Grants Authorized by Section 18004(a)(1) of the Coronavirus Aid, Relief, and  
Economic Security (CARES) Act**

Sections 18004(a)(1) and 18004(c) of the CARES Act, Pub. L. No. 116-136 (March 27, 2020), authorizes the Secretary of Education ("Secretary") to allocate a maximum institutional portion of the formula grant funds in the amount of \$ \$ 2,282,349.00 (up to 50 percent of the amount authorized under Section 18004(a)(1) of the CARES Act) to University of Guam ("Recipient").

Section 18004(c) of the CARES Act allows Recipient to use up to 50 percent of the funds received to cover any costs associated with significant changes to the delivery of instruction due to the coronavirus so long as such costs do not include payment to contractors for the provision of pre-enrollment recruitment activities, including marketing and advertising; endowments; or capital outlays associated with facilities related to athletics, sectarian instruction, or religious worship (collectively referred to as "Recipient's Institutional Costs"). Section 18004(c) also requires Recipient to use no less than fifty percent of the funds received to provide emergency financial aid grants to students for expenses related to the disruption of campus operations due to the coronavirus (including eligible expenses under a student's cost of attendance such as food, housing, course materials, technology, health care, and child care). This Certification and Agreement solely concerns Recipient's Institutional Costs, as defined above.

To address Recipient's Institutional Costs, and pursuant to the Secretary's authority under the CARES Act and associated with the coronavirus emergency, as stated in Proclamation 9994 of March 13, 2020, "Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak," *Federal Register* Vol. 85, No. 53 at 15337-38 (hereinafter "Proclamation of National Emergency"), the Secretary and Recipient agree as follows:

1. The Secretary will provide Recipient funds for Recipient's Institutional Costs as authorized under Sections 18004(a)(1) and 18004(c) of the CARES Act.
2. As a condition for receiving funds for Recipient's Institutional Costs, Recipient must have entered into the Funding Certification and Agreement for Emergency Financial Aid Grants to Students under the CARES Act. Recipient may, but is not required to, use funds designated for Recipient's Institutional Costs to provide additional emergency financial aid grants to students for expenses related to the disruption of campus operations due to coronavirus. If Recipient chooses to use funds designated for Recipient's Institutional Costs to provide such emergency financial aid grants to students, then the funds are subject to the requirements in the Funding Certification and Agreement for the Emergency Financial Aid Grants to Students under the CARES Act, entered into between Recipient and the Secretary.
3. The Secretary urges Recipient to devote the maximum amount of funds possible to emergency financial aid grants to students, including some or all of the funds earmarked for Recipient's Institutional Costs, especially if Recipient has significant endowment or other resources

4. In consideration for the award and as conditions for its receipt, Recipient warrants, acknowledges, and agrees that:

(a) The funds shall be used solely for the purposes authorized in Section 18004(a)(2) of the CARES Act.

(b) Recipient must submit this Certification and Agreement on or before August 1, 2020 through the website, grants.gov (<https://www.grants.gov>).

(c) Consistent with Section 18006 of the CARES Act, Recipient agrees that to the greatest extent practicable, Recipient will pay all of its employees and contractors during the period of any disruptions or closures related to the coronavirus. The Department would not consider the following to constitute Recipient's Expenses and, therefore, would not view them as allowable expenditures: senior administrator and/or executive salaries, benefits, bonuses, contracts, incentives; stock buybacks, shareholder dividends, capital distributions, and stock options; and any other cash or other benefit for a senior administrator or executive.

(d) Recipient's Expenses must have been first incurred on or after March 13, 2020, the date of the Proclamation of National Emergency.

(e) If Recipient is a Historically Black College and University or a Minority Serving Institution, then consistent with Section 18004(d)(2) of the CARES Act, Recipient may use prior awards provided under Titles III, V, and VII of the HEA to prevent, prepare for, and respond to coronavirus. Should Recipient avail itself of this flexibility, it must maintain appropriate records and cost documentation as required by 2 CFR 200.302 and 2 CFR 200.333 to separately account for prior award funds used to prevent, prepare for, and respond to coronavirus.

(f) Recipient will comply with all reporting requirements including those in Section 15011(b)(2) of Division B of the CARES Act and submit required quarterly reports to the Secretary, at such time and in such manner and containing such information as the Secretary may reasonably require (See also 2 CFR 200.327-200.329). The Secretary may require additional reporting in the future under Sections 15011(b)(2) and Section 18004(e), including but not limited to reporting on the use of the award for Recipient's Expenses, demonstrating such use was in accordance with Section 18004(a)(2), accounting for the amount of reimbursements to Recipient for costs related to refunds made to students for housing, food, or other components of the student's cost of attendance that Recipient could no longer provide, and describing any internal controls Recipient has in place to ensure that funds were used for allowable purposes and in accordance with cash management principles. For grants made to students, the Recipient should maintain records on how grants were distributed to students, how the amount of each grant was calculated, and any instructions or directions given to students about the grants. Recipient also should maintain records on the amount of each grant awarded to each student for production only upon the request of a federal agency.

(g) Recipient shall comply with all requirements in Attachment A to this Certification and Agreement.

## Attachment A to Recipient's CARES Funding Certification and Agreement

*Recipient assures and certifies the following:*

- Recipient will comply with all applicable assurances in OMB Standard Forms 424B and D (Assurances for Non-Construction and Construction Programs), including the assurances relating to the legal authority to apply for assistance; access to records; conflict of interest; nondiscrimination; Hatch Act provisions; labor standards; Single Audit Act; and the general agreement to comply with all applicable Federal laws, executive orders and regulations.
- With respect to the certification regarding lobbying in Department Form 80-0013, no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making or renewal of Federal grants under this program; Recipient will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," when required (34 C.F.R. Part 82, Appendix B); and Recipient will require the full certification, as set forth in 34 C.F.R. Part 82, Appendix A, in the award documents for all subawards at all tiers.
- Recipient will comply with the provisions of all applicable acts, regulations and assurances; the following provisions of Education Department General Administrative Regulations (EDGAR) 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99; the OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485; and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

### Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1840-0842. The time required to complete this information collection is estimated to be 2,853 total burden hours. If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: Hilary Malawer, 400 Maryland Avenue, SW. Washington, D.C. 20202.

(h) Recipient shall promptly and to the greatest extent practicable use the award for Recipient's Expenses and Student Grants by one year from the date of this Certification and Agreement, and document its efforts to do so as part of the report specified in subsection (e) above.

(i) Recipient shall cooperate with any examination of records with respect to the award for Recipient's Expenses and Student Grants by making records and authorized individuals available when requested, whether by (i) the U.S. Department of Education and/or its Inspector General; or (ii) any other federal agency, commission, or department in the lawful exercise of its jurisdiction and authority.

(j) Recipient's failure to comply with this Certification and Agreement, its terms and conditions, and/or all relevant provisions and requirements of the CARES Act or any other applicable law may result in Recipient's liability under the False Claims Act, 31 U.S.C. § 3729, et seq.; OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485; 18 USC § 1001, as appropriate; and all of the laws and regulations referenced in Attachment A, which is incorporated by reference hereto.

RECIPIENT or Authorized Representative of Recipient

Thomas W. Krise  
2020.05.01 12:29:25 +10'00'

OPEID Number

[REDACTED]

DATE

\_\_\_\_\_  
\_\_\_\_\_

EXH 8

**Recipient's Certification and Agreement  
for an Award under Section 18004(a)(2) of the Higher Education Emergency Relief Fund,  
Coronavirus Aid, Relief, and Economic Security (CARES) Act**

Section 18004(a)(2) of the CARES Act, Pub. L. No. 116-136 (March 27, 2020), authorizes the Secretary of Education ("Secretary") to make an award in the amount provided in the column labeled "Total Allocation" on the Table "Allocations for Section 18004(a)(2) of the CARES Act," which is hereby incorporated by reference, to University of Guam ("Recipient").

Section 18004(a)(2) of the CARES Act authorizes the Secretary to make additional awards under parts A and B of title III, parts A and B of title V, and subpart 4 of part A of title VII of the Higher Education Act of 1965, as amended ("HEA"), to address needs directly related to the coronavirus. These awards are in addition to awards made in Section 18004(a)(1) of the CARES Act and have been allocated by the Secretary proportionally to such programs based on the relative share of funding appropriated to such programs in the Further Consolidated Appropriations Act, 2020 (Public Law 116-94).

Pursuant to Section 18004(a)(2) of the CARES Act, Recipient may use this award to defray expenses incurred by Recipient, including lost revenue, reimbursement for expenses already incurred, technology costs associated with a transition to distance education, faculty and staff trainings, and payroll ("Recipient's Expenses"). Recipient also may use this award for grants to students for any component of the student's cost of attendance, as defined under Section 472 of the HEA, including food, housing, course materials, technology, health care, and child care ("Student Grants" or "Student Grant").

Pursuant to the Secretary's authority under the CARES Act and associated with the coronavirus emergency, as stated in Proclamation 9994 of March 13, 2020, "Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak," *Federal Register* Vol. 85, No. 53 at 15337-38 (hereinafter "Proclamation of National Emergency"), the Secretary and Recipient agree as follows:

1. The Secretary will provide Recipient an award for Recipient's Expenses and Student Grants under Section 18004(a)(2) of the CARES Act.
2. Recipient agrees that the amount of the award is the full amount that Recipient may receive under Section 18004(a)(2) of the CARES Act.
3. Although the CARES Act does not require Recipient to use at least 50% of this award for grants to students (as is required under funds received under Section 18004(a)(1) and Section 18004(c) of the CARES Act), the Secretary urges Recipient to devote the maximum possible amount of the award to Student Grants, including some or all of the award that a Recipient may use for Recipient's Expenses, especially if Recipient has a significant endowment or other resources at its disposal. The Secretary urges Recipient to take strong measures to ensure that Student Grants are made to the maximum extent possible.



at its disposal. The Secretary urges Recipient to take strong measures to ensure that emergency financial aid grants to students are made to the maximum extent possible.

4. In consideration for the funds and as conditions for their receipt, Recipient warrants, acknowledges, and agrees that:

(a) The funds shall be used solely for the purposes authorized in Section 18004(c) of the CARES Act. In accordance with Section 18004(c) of the CARES Act, Recipient shall not use funds for payment to contractors for the provision of pre-enrollment recruitment activities, which include marketing and advertising; endowments; or capital outlays associated with facilities related to athletics, sectarian instruction, or religious worship.

(b) Recipient retains discretion in determining how to allocate and use the funds provided hereunder, provided that funds will be spent only on those costs for which Recipient has a reasoned basis for concluding such costs have a clear nexus to significant changes to the delivery of instruction due to the coronavirus. It is permissible for Recipient to use the funds for Recipient's Institutional Costs to reimburse itself for costs related to refunds made to students for housing, food, or other services that Recipient could no longer provide, or for hardware, software, or internet connectivity that Recipient may have purchased on behalf of students or provided to students.

(c) Consistent with Section 18006 of the CARES Act, Recipient agrees that to the greatest extent practicable, Recipient will pay all of its employees and contractors during the period of any disruptions or closures related to the coronavirus. The Department would not consider the following Recipient's Institutional Costs to be related to significant changes to the delivery of instruction due to the coronavirus, and therefore would not view them as allowable expenditures: senior administrator and/or executive salaries, benefits, bonuses, contracts, incentives; stock buybacks, shareholder dividends, capital distributions, and stock options; and any other cash or other benefit for a senior administrator or executive.

(d) Recipient's Institutional Costs must have been first incurred on or after March 13, 2020, the date of the Proclamation of National Emergency.

(e) Recipient will comply with all reporting requirements including those in Section 15011(b)(2) of Division B of the CARES Act and submit required quarterly reports to the Secretary, at such time and in such manner and containing such information as the Secretary may reasonably require (See also 2 CFR 200.327-200.329). The Secretary may require additional reporting in the future, including but not limited to reporting on the use of the funds for Recipient's Institutional Costs, demonstrating such use was in accordance with Section 18004(c), accounting for the amount of reimbursements to the Recipient for costs related to refunds made to students for housing, food, or other services that Recipient could no longer provide, and describing any internal controls Recipient has in place to ensure that funds were used for allowable purposes and in accordance with cash management principles.

(f) Recipient shall comply with all requirements in Attachment A to this Certification and Agreement.

(g) Recipient shall promptly and to the greatest extent practicable use the funds for Recipient's Institutional Costs by one year from the date of this Certification and Agreement, and document its efforts to do so as part of the reports specified in subsection (e) above.

(h) Recipient shall cooperate with any examination of records with respect to the funds for Recipient's Institutional Costs by making records and authorized individuals available when requested, whether by (i) the U.S. Department of Education and/or its Inspector General; or (ii) any other federal agency, commission, or department in the lawful exercise of its jurisdiction and authority.

(i) Recipient's failure to comply with this Certification and Agreement, its terms and conditions, and/or all relevant provisions and requirements of the CARES Act or any other applicable law may result in Recipient's liability under the False Claims Act, 31 U.S.C. § 3729, *et seq.*; OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485; 18 USC § 1001, as appropriate; and all of the laws and regulations referenced in Attachment A, which is incorporated by reference hereto.

Digitally signed by Thomas W Krise  
Date: 2020.04.24 00:08:42 +10'00'

RECIPIENT or Authorized Representative of Recipient

OPEID Number

DATE



## BRIEFING ROOM

# Executive Order on Ensuring the Future Is Made in All of America by All of America's Workers

JANUARY 25, 2021 • PRESIDENTIAL ACTIONS

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy. It is the policy of my Administration that the United States Government should, consistent with applicable law, use terms and conditions of Federal financial assistance awards and Federal procurements to maximize the use of goods, products, and materials produced in, and services offered in, the United States. The United States Government should, whenever possible, procure goods, products, materials, and services from sources that will help American businesses compete in strategic industries and help America's workers thrive. Additionally, to promote an accountable and transparent procurement policy, each agency should vest waiver issuance authority in senior agency leadership, where appropriate and consistent with applicable law.

Sec. 2. Definitions. (a) "Agency" means any authority of the United States that is an "agency" under section 3502(1) of title 44, United States Code, other than those considered to be independent regulatory agencies, as defined in section 3502(5) of title 44, United States Code.

(b) "Made in America Laws" means all statutes, regulations, rules, and Executive Orders relating to Federal financial assistance awards or Federal procurement, including those that refer to "Buy America" or "Buy American," that require, or provide a preference for, the purchase or acquisition of goods, products, or materials produced in the United States, including iron, steel, and manufactured goods offered in the United States. Made in America Laws include laws requiring domestic preference for maritime transport, including the Merchant Marine Act of 1920 (Public Law 66-261), also known as the Jones Act.

(c) "Waiver" means an exception from or waiver of Made in America Laws, or the procedures and conditions used by an agency in granting an exception from or waiver of Made in America Laws.

EXH 10

**41 USC Ch. 83: BUY AMERICAN**  
**From Title 41—PUBLIC CONTRACTS**  
 Subtitle IV—Miscellaneous

**CHAPTER 83—BUY AMERICAN**

- Sec.  
 8301. Definitions.  
 8302. American materials required for public use.  
 8303. Contracts for public works.  
 8304. Waiver rescission.  
 8305. Annual report.

**§8301. Definitions**

In this chapter:

(1) **PUBLIC BUILDING, PUBLIC USE, AND PUBLIC WORK.**—The terms "public building", "public use", and "public work" mean a public building of, use by, and a public work of, the Federal Government, the District of Columbia, Puerto Rico, American Samoa, and the Virgin Islands.

(2) **UNITED STATES.**—The term "United States" includes any place subject to the jurisdiction of the United States. (Pub. L. 111–350, §3, Jan. 4, 2011, 124 Stat. 3830.)

**HISTORICAL AND REVISION NOTES**

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8301	41:10c.	Mar. 3, 1933, ch. 212, title III, §1, 47 Stat. 1520; Pub. L. 86–70, §43, June 25, 1959, 73 Stat. 151; Pub. L. 86–624, §28, July 12, 1960, 74 Stat. 419; Pub. L. 100–418, title VII, §7005(a), Aug. 23, 1988, 102 Stat. 1552.

In paragraph (1), the words "the Philippine Islands" are omitted because of Proclamation No. 2695 (22 U.S.C. 1394 note). The words "the Canal Zone" are omitted because of the Panama Canal Treaty of 1977. In paragraph (2), the words "when used in a geographical sense" are omitted as unnecessary.

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**IMPLEMENTATION OF BUY AMERICAN ACT WITH RESPECT TO CERTAIN WATER RESOURCE PROJECTS**

Pub. L. 100–371, title V, §508, July 19, 1988, 102 Stat. 875, provided that:

"(a) **GENERAL RULE.**—For purposes of title III of the Act of March 3, 1933 (47 Stat. 1520; [former] 41 U.S.C. 10a–10c) [see 41 U.S.C. 8301 et seq.], commonly known as the Buy American Act, a cofferdam or any other temporary structure to be constructed by the Secretary of the Army, acting through the Chief of Engineers, shall be treated in the same manner as a permanent dam constructed by the Secretary of the Army.

"(b) **APPLICABILITY.**—Subsection (a) shall only apply to contracts entered into after the date of the enactment of this Act [July 19, 1988]."

**EXECUTIVE DOCUMENTS**

**Ex. ORD. No. 13788. BUY AMERICAN AND HIRE AMERICAN**

Ex. Ord. No. 13788, Apr. 18, 2017, 82 F.R. 18837, as amended by Ex. Ord. No. 13858, §5, Jan. 31, 2019, 84 F.R. 2040, provided:

*Exhibit II*

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to ensure the faithful execution of the laws, it is hereby ordered as follows:

SECTION 1. *Definitions.* As used in this order:

(a) "Buy American Laws" means all statutes, regulations, rules, and Executive Orders relating to Federal procurement or Federal financial assistance—including those that refer to "Buy America" or "Buy American"—that require, or provide a preference for, the purchase or acquisition of goods, products, or materials produced in the United States, including iron, steel, and manufactured goods.

(b) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(c) "Petition beneficiaries" means aliens petitioned for by employers to become nonimmigrant visa holders with temporary work authorization under the H-1B visa program.

(d) "Waivers" means exemptions from or waivers of Buy American Laws, or the procedures and conditions used by an executive department or agency (agency) in granting exemptions from or waivers of Buy American Laws.

(e) "Workers in the United States" and "United States workers" shall both be defined as provided at section 212(n)(4)(E) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(4)(E)).

SEC. 2. *Policy.* It shall be the policy of the executive branch to buy American and hire American.

(a) *Buy American Laws.* In order to promote economic and national security and to help stimulate economic growth, create good jobs at decent wages, strengthen our middle class, and support the American manufacturing and defense industrial bases, it shall be the policy of the executive branch to maximize, consistent with law, through terms and conditions of Federal financial assistance awards and Federal procurements, the use of goods, products, and materials produced in the United States.

(b) *Hire American.* In order to create higher wages and employment rates for workers in the United States, and to protect their economic interests, 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 section 212(a)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(5)).

SEC. 3. *Immediate Enforcement and Assessment of Domestic Preferences According to Buy American Laws.* (a) Every agency shall scrupulously monitor, enforce, and comply with Buy American Laws, to the extent they apply, and minimize the use of waivers, consistent with applicable law.

(b) Within 150 days of the date of this order, the heads of all agencies shall:

(i) assess the monitoring of, enforcement of, implementation of, and compliance with Buy American Laws within their agencies;

(ii) assess the use of waivers within their agencies by type and impact on domestic jobs and manufacturing; and

(iii) develop and propose policies for their agencies to ensure that, to the extent permitted by law, Federal financial assistance awards and Federal procurements maximize the use of materials produced in the United States, including manufactured products; components of manufactured products; and materials such as steel, iron, aluminum, and cement.

(c) Within 60 days of the date of this order, the Secretary of Commerce and the Director of the Office of Management and Budget, in consultation with the Secretary of State, the Secretary of Labor, the United States Trade Representative, and the Federal Acquisition Regulatory Council, shall issue guidance to agencies about how to make the assessments and to develop the policies required by subsection (b) of this section.

(d) Within 150 days of the date of this order, the heads of all agencies shall submit findings made pursuant to the assessments required by subsection (b) of this section to the Secretary of Commerce and the Director of the Office of Management and Budget.

(e) Within 150 days of the date of this order, the Secretary of Commerce and the United States Trade Representative shall assess the impacts of all United States free trade agreements and the World Trade Organization Agreement on Government Procurement on the operation of Buy American Laws, including their impacts on the implementation of domestic procurement preferences.

(f) The Secretary of Commerce, in consultation with the Secretary of State, the Director of the Office of Management and Budget, and the United States Trade Representative, shall submit to the President a report on Buy American that includes findings from subsections (b), (d), and (e) of this section. This report shall be submitted within 220 days of the date of this order and shall include specific recommendations to strengthen implementation of Buy American Laws, including domestic procurement preference policies and programs. Subsequent reports on implementation of Buy American Laws shall be submitted by each agency head annually to the Secretary of Commerce and the Director of the Office of Management and Budget, on November 15, 2018, 2019, and 2020, and in subsequent years as directed by the Secretary of Commerce and the Director of the Office of Management and Budget. The Secretary

Exh II

of Commerce shall submit to the President an annual report based on these submissions beginning January 15, 2019.

→ SEC. 4. *Judicious Use of Waivers.* (a) To the extent permitted by law, public interest waivers from Buy American Laws should be construed to ensure the maximum utilization of goods, products, and materials produced in the United States.

→ (b) To the extent permitted by law, determination of public interest waivers shall be made by the head of the agency with the authority over the Federal financial assistance award or Federal procurement under consideration.

(c) To the extent permitted by law, before granting a public interest waiver, the relevant agency shall take appropriate account of whether a significant portion of the cost advantage of a foreign-sourced product is the result of the use of dumped steel, iron, or manufactured goods or the use of injuriously subsidized steel, iron, or manufactured goods, and it shall integrate any findings into its waiver determination as appropriate.

SEC. 5. *Ensuring the Integrity of the Immigration System in Order to "Hire American."* (a) In order to advance the policy outlined in section 2(b) of this order, the Secretary of State, the Attorney General, the Secretary of Labor, and the Secretary of Homeland Security shall, as soon as practicable, and consistent with applicable law, propose new rules and issue new guidance, to supersede or revise previous rules and guidance if appropriate, to protect the interests of United States workers in the administration of our immigration system, including through the prevention of fraud or abuse.

(b) In order to promote the proper functioning of the H-1B visa program, the Secretary of State, the Attorney General, the Secretary of Labor, and the Secretary of Homeland Security shall, as soon as practicable, suggest reforms to help ensure that H-1B visas are awarded to the most-skilled or highest-paid petition beneficiaries.

SEC. 6. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:  
(i) the authority granted by law to an executive department or agency, or the head thereof;  
(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals; or  
(iii) existing rights or obligations under international agreements.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP. ←

→ **EX. ORD. NO. 13858. STRENGTHENING BUY-AMERICAN PREFERENCES FOR INFRASTRUCTURE PROJECTS**

Ex. Ord. No. 13858, Jan. 31, 2019, 84 F.R. 2039, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to strengthen Buy-American principles in Federal financial assistance programs, it is hereby ordered as follows:

SECTION 1. *Policy.* As expressed in Executive Order 13788 of April 18, 2017 (Buy American and Hire American) [set out above], it is the policy of the executive branch to maximize, consistent with law, the use of goods, products, and materials produced in the United States, in Federal procurements and through the terms and conditions of Federal financial assistance awards. ←

SEC. 2. *Definitions.* As used in this order:

(a) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(b) "Federal financial assistance" shall have the meaning and shall be interpreted consistent with the definition provided by the Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, found at section 200.40 of title 2, Code of Federal Regulations.

(c) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(d) "Infrastructure project" means a project to develop public or private physical assets that are designed to provide or support services to the general public in the following sectors: surface transportation, including roadways, bridges, railroads, and transit; aviation; ports, including navigational channels; water resources projects; energy production, generation, and storage, including from fossil-

Exh !!

fuels, renewable, nuclear, and hydroelectric sources; electricity transmission; gas, oil, and propane storage and transmission; electric, oil, natural gas, and propane distribution systems; broadband internet; pipelines; stormwater and sewer infrastructure; drinking water infrastructure; cybersecurity; and any other sector designated through a notice published in the Federal Register by the Federal Permitting Improvement Steering Council.

(e) "Covered program" means any program for which a focus of the statutory authorities under which it is administered is the award of Federal financial assistance for the alteration, construction, conversion, demolition, extension, improvement, maintenance, reconstruction, rehabilitation, or repair of an infrastructure project in the United States, except that this term shall not include:

- (i) programs for which providing a domestic preference is inconsistent with law; or
- (ii) programs providing Federal financial assistance that are subject to comparable domestic preferences.

(f) "Domestic Preference" means a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States, including iron and aluminum as well as steel, cement, and other manufactured products.

SEC. 3. *Application of Buy-American Principles to Covered Programs.* (a) Within 90 days of the date of this order [Jan. 31, 2019], the head of each executive department and agency (agency) administering a covered program shall, as appropriate and to the extent consistent with law, encourage recipients of new Federal financial assistance awards pursuant to a covered program to use, to the greatest extent practicable, iron and aluminum as well as steel, cement, and other manufactured products produced in the United States in every contract, subcontract, purchase order, or sub-award that is chargeable against such Federal financial assistance award.

(b) The head of each agency administering a covered program shall include in the report required by section 4 of this order a detailed explanation of the strategy, plan, or program developed to satisfy the requirement of subsection (a) of this section.

SEC. 4. *Identification of Opportunities to Maximize the Use of Buy-American Principles.* Within 120 days of the date of this order, the head of each agency administering a covered program shall identify in a report to the President, through the Assistant to the President for Trade and Manufacturing Policy, any tools, techniques, terms, or conditions that have been used or could be used, consistent with law and in furtherance of the policy set forth in section 1 of this order, to maximize the use of iron and aluminum as well as steel, cement, and other manufactured products produced in the United States in contracts, sub-contracts, purchase orders, or sub-awards that are chargeable against Federal financial assistance awards for infrastructure projects. In preparing this report, the agency head shall take care to analyze whether covered programs within the agency head's jurisdiction would support, through terms and conditions on new Federal financial assistance awards under such covered programs, the imposition of a requirement to use iron and aluminum as well as steel, cement, and other manufactured products produced in the United States in contracts, sub-contracts, purchase orders, or sub-awards that are chargeable against such Federal financial assistance awards.

SEC. 5. [Amended Ex. Ord. No. 13788, set out above.]

SEC. 6. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof;
- (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals; or
- (iii) existing rights or obligations under international agreements.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP.



### EX. ORD. NO. 13881. MAXIMIZING USE OF AMERICAN-MADE GOODS, PRODUCTS, AND MATERIALS

Ex. Ord. No. 13881, July 15, 2019, 84 F.R. 34257, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to promote the principles underlying the Buy American Act of 1933 (41 U.S.C. 8301-8305), it is hereby ordered as follows:

SECTION 1. *Policy.* (a) As expressed in Executive Order 13788 of April 18, 2017 (Buy American and Hire American) [set out above], and in Executive Order 13858 of January 31, 2019 (Strengthening Buy-American Preferences for Infrastructure Projects) [set out above], it is the policy of the United States to

EXH

buy American and to maximize, consistent with law, the use of goods, products, and materials produced in the United States. To those ends, my Administration shall enforce the Buy American Act to the greatest extent permitted by law.

(b) In Executive Order 10582 of December 17, 1954 (Prescribing Uniform Procedures for Certain Determinations Under the Buy-American Act) [41 U.S.C. 8303 note], President Eisenhower established that materials shall be, for purposes of the Buy American Act, considered of foreign origin if the cost of the foreign products used in such materials constitutes 50 percent or more of the cost of all the products used in such materials. He also established that, in determining whether the bid or offered price of materials of domestic origin is unreasonable or inconsistent with the public interest, the executive agencies shall either (1) add 6 percent to the total bid or offered price of materials of foreign origin, or (2) add 10 percent to the total bid or offered price of materials of foreign origin less certain specified costs as follows. Where the foreign bid or offer is less than \$25,000, applicable duty is excluded from the calculation. Where the foreign bid or offer is more than \$25,000, both applicable duty, and all costs incurred after arrival in the United States, are excluded from the calculation.

(c) The policies described in section 1(b) of this order were adopted by the Federal Acquisition Regulatory Council (FAR Council) in the Federal Acquisition Regulation (FAR), title 48, Code of Federal Regulations. The FAR should be reviewed and revised, as appropriate, to most effectively carry out the goals of the Buy American Act and my Administration's policy of enforcing the Buy American Act to its maximum lawful extent. I therefore direct the members of the FAR Council to consider measures that may better effectuate this policy.

**SEC. 2. Proposed Rules.** (a) Within 180 days of the date of this order [July 15, 2019], the FAR Council shall consider proposing for notice and public comment:

(i) an amendment to the applicable provisions in the FAR that would provide that materials shall be considered to be of foreign origin if:

(A) for iron and steel end products, the cost of foreign iron and steel used in such iron and steel end products constitutes 5 percent or more of the cost of all the products used in such iron and steel end products; or

(B) for all other end products, the cost of the foreign products used in such end products constitutes 45 percent or more of the cost of all the products used in such end products; and

(ii) an amendment to the applicable provisions in the FAR that would provide that the executive agency concerned shall in each instance conduct the reasonableness and public interest determination referred to in sections 8302 and 8303 of title 41, United States Code, on the basis of the following-described differential formula, subject to the terms thereof: the sum determined by computing 20 percent (for other than small businesses), or 30 percent (for small businesses), of the offer or offered price of materials of foreign origin.

(b) The FAR Council shall consider and evaluate public comments on any regulations proposed pursuant to section 2(a) of this order and shall promptly issue a final rule, if appropriate and consistent with applicable law and the national security interests of the United States. The head of each executive agency shall issue such regulations as may be necessary to ensure that agency procurement practices conform to the provisions of any final rule issued pursuant to this order.

**SEC. 3. Effect on Executive Order 10582.** Executive Order 10582 is superseded to the extent that it is inconsistent with this order. Upon the issuance of a final rule pursuant to section 2 of this order, subsections 2(a) and 2(c) of Executive Order 10582 are revoked.

**SEC. 4. Additional Actions.** Within 180 days of the date of this order, the Secretary of Commerce and the Director of the Office of Management and Budget shall, in consultation with the FAR Council, the Chairman of the Council of Economic Advisers, the Assistant to the President for Economic Policy, and the Assistant to the President for Trade and Manufacturing Policy, submit to the President a report on any other changes to the FAR that the FAR Council should consider in order to better enforce the Buy American Act and to otherwise act consistent with the policy described in section 1 of this order, including whether and when to further decrease, including incrementally, the threshold percentage in subsection 2(a)(i)(B) of this order from the proposed 45 percent to 25 percent. The report shall include recommendations based on the feasibility and desirability of any decreases, including the timing of such decreases.

**SEC. 5. General Provisions.** (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof, including, for example, the authority to utilize non-availability and public interest exceptions as delineated in section 8303 of title 41, United States Code, and 48 CFR 25.103; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

EXH 11



(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP.



**§8302. American materials required for public use**

(a) IN GENERAL.—

(1) ALLOWABLE MATERIALS.—Only unmanufactured articles, materials, and supplies that have been mined or produced in the United States, and only manufactured articles, materials, and supplies that have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States, shall be acquired for public use unless the head of the department or independent establishment concerned determines their acquisition to be inconsistent with the public interest or their cost to be unreasonable.

(2) EXCEPTIONS.—This section does not apply—

(A) to articles, materials, or supplies for use outside the United States;

(B) if articles, materials, or supplies of the class or kind to be used, or the articles, materials, or supplies from which they are manufactured, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and are not of a satisfactory quality; and

(C) to manufactured articles, materials, or supplies procured under any contract with an award value that is not more than the micro-purchase threshold under section 1902 of this title.

(b) REPORTS.—

(1) IN GENERAL.—Not later than 180 days after the end of each of fiscal years 2009 through 2011, the head of each Federal agency shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives a report on the amount of the acquisitions made by the agency in that fiscal year of articles, materials, or supplies purchased from entities that manufacture the articles, materials, or supplies outside of the United States.

(2) CONTENTS OF REPORT.—The report required by paragraph (1) shall separately include, for the fiscal year covered by the report—

(A) the dollar value of any articles, materials, or supplies that were manufactured outside the United States;

(B) an itemized list of all waivers granted with respect to the articles, materials, or supplies under this chapter, and a citation to the treaty, international agreement, or other law under which each waiver was granted;

(C) if any articles, materials, or supplies were acquired from entities that manufacture articles, materials, or supplies outside the United States, the specific exception under this section that was used to purchase the articles, materials, or supplies; and

(D) a summary of—

(i) the total procurement funds expended on articles, materials, and supplies manufactured inside the United States; and

(ii) the total procurement funds expended on articles, materials, and supplies manufactured outside the United States.

(3) PUBLIC AVAILABILITY.—The head of each Federal agency submitting a report under paragraph (1) shall make the report publicly available to the maximum extent practicable.

(4) EXCEPTION FOR INTELLIGENCE COMMUNITY.—This subsection shall not apply to acquisitions made by an agency, or component of an agency, that is an element of the intelligence community as specified in, or designated under, section 3 of the National Security Act of 1947 (50 U.S.C. 401a).<sup>1</sup>

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3831.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8302	41:10a.	Mar. 3, 1933, ch. 212, title III, §2, 47 Stat. 1520; Pub. L. 100-418, title VII, §7005(b), Aug. 23, 1988, 102 Stat. 1553; Pub. L. 103-355, title IV, §4301(b), Oct. 13, 1994, 108 Stat. 3347; Pub. L. 110-28 title VIII, §8306, May 25, 2007, 121 Stat. 211.

In subsection (a), the words "Notwithstanding any other provision of law" are omitted as unnecessary. In subsection (b)(1), reference to fiscal years 2007 and 2008 is omitted as obsolete.

Exh 12