Date: September 22, 2017

From: Acting Deputy Senior Procurement Executive

Subj: VA Procurement Policy Memorandum (PPM) 2017-12, Department of Veterans Affairs’ (VA) Implementation of the Buy American Laws to Maximize the Use of Goods, Products and Materials Produced in the United States (VAIQ 7812573)

To: VA Heads of Contracting Activities (HCAs)


2. **Background.** Executive Order (E.O.) 13788 - *Buy American and Hire American* was signed by the President on April 18, 2017. On June 30, 2017, OMB and the Department of Commerce (DOC) jointly issued implementation guidance, OMB Memorandum M-17-27 - *Assessment and Enforcement of Domestic Preferences in Accordance with Buy American Laws*. E.O. 13788 along with OMB Memorandum M-17-27 reinforce the existing regulatory requirements in Federal Acquisition Regulation (FAR) part 25, provide emphasis for strengthening compliance with existing Buy American laws, and demonstrate the need for accurate reporting of the use of waivers and exceptions under the Buy American statute.

3. **Applicability.** This PPM applies to all VA contracting activities.

4. **Effective Date.** Immediately.

5. **Expiration Date:** This PPM will remain in effect until incorporated into the Veterans Affairs Acquisition Regulation (VAAR) or the Veterans Affairs Acquisition Manual (VAAM) or is otherwise rescinded.

6. **Action Required.** It is the policy of the VA to comply fully with the requirements of Executive Order 13788 - *Buy American and Hire American*; OMB Memorandum M-17-27 - *Assessment and Enforcement of Domestic Preferences in Accordance with Buy American Laws*; and FAR part 25, Foreign Acquisition. The key requirements of FAR subpart 25.1, Buy American—Supplies; subpart 25.2, Buy American—Construction Materials; and subpart 25.4, Trade Agreements are outlined below as the regulatory guidance that VA Contracting Officers (CO) should apply to comply with the Buy American Act. HCAs are encouraged to institute...
reviews in accordance with PPM 2017-01, Integrated Oversight Process (IOP)/Technical Reviews (TRs), dated October 6, 2016 to ensure COs are complying with the BAA.

    a. **Buy American Act – Supplies (FAR subpart 25.1).** FAR 25.102 establishes that except for the exceptions cited at 25.103, COs should acquire only domestic end products for public use inside the United States. **FAR 25.103 Exceptions** provides five exceptions and waivers for acquisitions of supplies.

    b. **Buy American Act – Construction Materials (FAR subpart 25.2).** FAR subpart 25.2 defines specific requirements for construction materials and contains four (4) exceptions and waivers. The levels of authority and requisite analysis for each of these exceptions are found at **FAR 25.202, Exceptions.**

    c. **Trade Agreements (FAR subpart 25.4).** Trade agreements with ‘designated countries’ establish specific exceptions to the Buy American statute. FAR 25.003 defines ‘designated country’ as those included in the World Trade Organization Government Procurement Agreement (WTO-GPA), U.S. Free Trade Agreements (FTA), certain least developed countries or a Caribbean Basin country. Contracting officers shall confirm the current status prior to each award that contemplates use of the Buy American statutes and ensure that any required documentation for awards based on trade agreements is contained in the contract file.

7. **Reporting in eCMS/FPDS.** E.O. 13788 and OMB Memorandum M-17-27 require ongoing monitoring of VA’s ability to maximize the use of goods and materials produced in the United States. As with all contract award data, the data elements that provide information on VA’s use of goods and materials produced in or outside the United States must be accurate. Formal quarterly FPDS audits are conducted in accordance with OMB Memorandum ‘Improving Federal Procurement Data Quality – Guidance for Annual Verification and Validation’ dated May 31, 2011, which currently includes Buy American data. VA’s Risk Management and Compliance Service (RMCS) will conduct periodic reviews to ensure compliance.

8. **Approval Levels for Exercise of Exemptions and Waivers.**

    a. For a determination under FAR 25.103(a), the contracting officer shall submit the request, containing all supporting facts and other pertinent information to the Deputy Senior Procurement Executive (DSPE) for submission to the Senior Procurement Executive (SPE), who will upon approval, forward the request to the Secretary for approval.

    b. In accordance with FAR 25.103(b)(2)(i), the authority to make individual non-availability determinations has been formally delegated to VA Heads of Contracting Activities by delegation memorandum and is not re-delegable.
c. If the contracting officer considers that the non-availability of an article is likely to affect future acquisitions, the contracting officer shall forward the determination with supporting documentation to the DSPE, through the HCA, for approval along with a recommendation to the Civilian Agency Acquisition Council (CAAC) Chair to add the item(s) to the list of non-available articles in FAR 25.104. The application and approval processes for these exceptions shall be carefully conducted and documented in order to ensure that VA meets its goals of maximizing the use of domestic goods and materials and fully documenting any exceptions.

d. In accordance with FAR 25.202(a)(2), the authority to determine if domestic construction materials are not available in sufficient quantity and quality has been formally delegated to VA Heads of Contracting Activities by delegation memorandum and is not re-delegable.

9. Training on Buy American Laws. The VA Acquisition Academy (VAAA) offers twelve (12) courses that include discussion of the Buy American statutes, seven (7) of which also include discussion of Trade Agreement laws.

There are also two online courses available through the Federal Acquisition Institute Training Application System (FAITAS). Acquisition professionals obligating funds on behalf of VA shall complete one of the courses below or others that cover implementation of the Buy American statute. Other acquisition professionals are encouraged to complete courses identified herein.

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<tr>
<th>Training Provider</th>
<th>Course Number</th>
<th>Course Title</th>
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<tbody>
<tr>
<td>Defense Acquisition University</td>
<td>CLC 027</td>
<td>Buy American Statute</td>
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<tr>
<td>Federal Acquisition Institute</td>
<td>FAC 063</td>
<td>Buy American Statute</td>
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(Please note that the Buy American Statute course names and numbers are subject to change.)

10. Questions or Concerns. Please direct questions regarding this PPM to the Procurement Policy and Warrant Management Service (003A2A), via email at: VA.Procurement.Policy@va.gov

/s/
Thomas A. Burgess