



MADE IN AMERICA
COMMERCIAL & INDUSTRIAL
STANDARD & CUSTOM FIXTURES

“BUY AMERICA”, “BUY AMERICAN ACT” AND “BUY AMERICAN” PROVISIONS IN CONTRACTS-CLARIFYING THE CONFUSION

(Impact of American Recovery and Reinvestment Act on government projects)

With the passage of the American Recovery and Reinvestment Act (ARRA), commonly referred to as the Obama ‘Stimulus Plan’, there will be a substantial increase of federal funds distributed to federal, state and local governments in the next several months and years ahead. With the funding of these projects by the ARRA, a number of requirements will likely be imposed upon contractors and their suppliers concerning the origin and composition of the products or materials that will be utilized in connection with the construction or completion of these projects.

Two commonly referenced clauses often times utilized with government projects are known as the “Buy America” and “Buy American Act”. These clauses can be referenced or incorporated within Purchase Orders or contract documents that are issued in connection with federal, state or local projects that our customers are serving as a contractor or sub-contractor. With projects funded by the ARRA, a third clause has been created which will likely be referred to as “Buy American” or Section 1604 of AARA.

These clauses contain specific requirements relative to the final product containing a certain percentage of domestic or USA manufactured goods or components. Also, these clauses contain provisions which permit products that do not satisfy the domestic requirement, provided a ‘cost premium’ is added to or included in the price that is offered to the contractor or purchaser of item to be utilized for the covered project. The following will provide you with a general overview of the principles surrounding these provisions.

BUY AMERICAN ACT:

Application: Typically applies when the federal government is directly purchasing products or materials or a federal building or facility is being constructed (such as US highways, federal prisons, etc.) Domestic Requirement: Requires 51% of the components of the final product to be made in the US. Cost-Based Waiver: Cost of domestic materials must be 6% (12% for small business) than foreign materials. A price premium of 6% will be added for pricing evaluation by the contracting officer, if the domestic requirement is not satisfied.

BUY AMERICA:

Application: Generally applicable to state and local government projects, typically when these projects are funded by the Federal Transit Authority (FTA). Domestic Requirement: Requires 100% of the components of supplies or construction materials to be made in the US Cost-Based Waiver: Cost of domestic materials must be 25% more expensive than foreign materials. A price premium of 25% will be added for pricing evaluation by the contracting officer, if the domestic requirement is not satisfied.

BUY AMERICAN or SECTION 1604 of AARA

Application: Applies to all ARRA funded public buildings and works projects, which will include federal, state and local projects, if these projects receive funds from ARRA. Domestic Requirement: Requires 100% of the components of the final product to be made in the US. Cost-Based Waiver: Cost of domestic materials must be 25% more expensive than foreign materials. A price premium of 25% will be added for pricing evaluation, if the domestic requirement is not satisfied.

While the three provisions above may be applicable to a various federal or state projects or projects funded by ARRA, many states have their own 'domestic content' laws that may be even more expansive than these federal provisions provide; however, with most of the projects funded by ARRA (which will likely be federal small business or public works projects of less than \$7.4 million), these more expansive state laws should not be applicable.