



A&M FEDERAL

# Build America, Buy America Act

## Final Guidance to Bolster American-made Goods in Federal Infrastructure Projects

OMB recently released final [guidance](#) implementing the [Build America, Buy America Act](#), which requires the majority of materials on federally funded infrastructure programs to be American made. This transformational new requirement will benefit American companies and workers, drive domestic growth and create more American jobs. It is also likely to decrease emissions via reduced transportation distances, and potentially revitalize locations decimated by the loss of manufacturing jobs over the past few decades. Despite these benefits, the new law and guidance are not without their challenges and risks, both to federal contractors and government procurement officials.

Critics debate whether or not American industry can even supply materials at demanded quantities, question what this means for North American trading partners and are concerned about cost implications associated with the plan.

### Actions for Federal Contractors

For federal contractors, the new law and guidance will require interpretation and additional oversight to certify compliance with the new requirements. Compliance requirements are not new, but the order adds another level of complexity to executing federally funded infrastructure programs. A&M recommends contractors take the following steps to remain compliant with the new order:

1. Conduct a comprehensive supply chain assessment. Contractors need to assess current suppliers to identify those that will need to be replaced to ensure compliance. This effort should include all levels of the supply chain as even a single component being made elsewhere will run afoul of this rule.
2. Identify and vet replacement suppliers before signing new agreements. Contractors will need their suppliers to change sources to American made if they are currently not compliant and replace any supplier who cannot meet the American made requirement. Vetting prior to signing new agreements reduces sourcing rework later to remain compliant.
3. Implement continuous monitoring. Compliance will require continual assessment of primary, secondary and even tertiary suppliers. Contractors need repeatable and efficient processes to perform this function and ensure that applicable raw materials are sourced from US-based suppliers.
4. Continually assess the market. America has long been the world's leading innovator and continues to develop new materials and technology. Contractors should monitor market developments to identify better and more economical materials for federally funded infrastructure programs. Doing so will help government contractors gain a competitive advantage through compliance and position as a leading provider in partnership with government and its infrastructure programs.

### Actions for Government Agencies

The new law and guidance will increase costs and shrink the pool of compliant suppliers for federal organizations; however, they also present a platform by which new entrants can more quickly assume prime or subcontractor roles previously held by non-American-made incumbents. Federal agencies such as the Department of Defense (DoD) want to grow an innovative industrial base with a competitive pool of qualified vendors. The new requirements will help federal organizations accelerate those goals if managed correctly.

A&M recommends agencies take these actions to positively impact their mission:

1. Build flexibility into requirements to make room for innovation. Crafting requirements with flexibility will allow contractors to propose innovative building techniques that still achieve infrastructure outcomes. Engaging with both traditional and non-traditional businesses will create a more robust understanding of the market and available materials.
2. Ensure close coordination with OMB's [Made in America Office](#). Created early in the Administration by Executive Order, the Build America, Buy America Act enshrined the office in statute and required it to "[m]aximize and enforce compliance with domestic preference statutes." This office can marshal the immense buying power of the federal government to strategically source materials under the new law. Doing so would blunt the impact of increased prices.
3. Employ decreased shipping and intermediary costs as leverage. Agencies should require price transparency and use that information to negotiate better terms with regards to costs and lead time. While raw material and manufacturing costs will likely increase, sourcing closer to home should offset some portion of the increases. Procurement officials should use that knowledge in negotiations.
4. Ensure the infrastructure is in place to monitor and report progress implementing the new law and guidance. There are extensive reporting requirements associated with Build America, Buy America. Agencies should work closely with their Chief Data Officers to put in place the systems and sources of data required to meet current and emerging reporting and performance management practices.

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## KEY CONTACTS



### Sean Laffere

Managing Director

+1 713 320 6057

[slaffere@alvarezandmarsal.com](mailto:slaffere@alvarezandmarsal.com)



### Aaron Umberger

Senior Director

+1 571 926 4679

[aumberger@alvarezandmarsal.com](mailto:aumberger@alvarezandmarsal.com)

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