

EXECUTIVE ORDER NO. 10582

Dec. 17, 1954, 19 F.R. 8723, as amended by Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239; Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617

PRESCRIBING UNIFORM PROCEDURES FOR CERTAIN DETERMINATIONS UNDER THE BUY-AMERICAN ACT

WHEREAS in the administration of the act of March 3, 1933, 47 Stat. 1520 41 U.S.C. 10a-10c; 41 U.S.C. 10d, commonly known as Buy-American Act, and other law regarding the application of the Buy-American Act, the head of executive agencies are required to determine, as a condition precedent to the purchase by their agencies of materials of foreign origin for public uses within the United States, (a) that the price of like materials of domestic origin is unreasonable, or (b) that the purchase of like materials of domestic origin is inconsistent with the public interest; and

WHEREAS it is desirable and in the public interest that such determinations be made on as uniform a basis as possible;

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, it is hereby ordered as follows:

Section 1. As used in this order, (a) the term "materials" includes articles and supplies, (b) the term "executive agency" includes executive department, independent establishment, and other instrumentality of the executive branch of the Government, and (c) the term "bid or offered price of materials of foreign origin" means the bid or offered price of such materials delivered at the place specified in the invitation to bid including applicable duty and all costs incurred after arrival in the United States.

Sec. 2. (a) For the purposes of this order materials shall be considered to be of foreign origin if the cost of the foreign products used in such materials constitutes fifty per centum or more of the cost of all the products used in such materials.

(b) For the purposes of the said act of March 3, 1933, and the other laws referred to in the first paragraph of the preamble of this order, the bid or offered price of materials of domestic origin shall be deemed to be unreasonable, or the purchase of such materials shall be deemed to be inconsistent with the public interest, if the bid or offered price thereof exceeds the sum of the bid or offered price of like materials of foreign origin and a differential computed as provided in subsection (c) of this section.

(c) The executive agency concerned shall in each instance determine the amount of the differential referred to in subsection (b) of this section on the basis of one of the following-described formulas, subject to the terms thereof:

(1) The sum determined by computing six per centum of the bid or offered price of materials of foreign origin.

(2) The sum determined by computing ten per centum of the bid or offered price of materials of foreign origin exclusive of applicable duty and all costs incurred after arrival in the United States: provided that when the bid or offered price of materials of foreign origin amounts to less than \$25,000, the sum shall be determined by computing ten per centum of such price exclusive only of applicable duty.

Sec. 3. Nothing in this order shall affect the authority or responsibility of an executive agency:

(a) To reject any bid or offer for reasons of the national interest not described or referred to in this order; or

(b) To place a fair proportion of the total purchases with small business concerns in accordance with section 302(b) of the Federal Property and Administrative Services Act of 1949^{*1}, as amended, section 2(b) of the Armed Services Procurement Act of 1947^{*2}, as amended, and section 202 of the Small Business Act of 1953^{*3}; or

(c) To reject a bid or offer to furnish materials of foreign origin in any situation in which the domestic supplier offering the lowest price for furnishing the desired materials undertakes to produce substantially all of such materials in areas of substantial unemployment, as determined by the Secretary of Labor in accordance with such appropriate regulations as he may establish and during such period as the President may determine that it is in the national interest to provide to such areas preference in the award of Government contracts: Provided, that nothing in this section shall prevent the rejection of a bid or offered price which is excessive; or

(d) To reject any bid or offer for materials of foreign origin if such rejection is necessary to protect essential national-security interests after receiving advice with respect thereto from the President or from the Director of the Federal Emergency Management Agency. In providing this advice the Director shall be governed by the principle that exceptions under this section shall be made only upon a clear showing that the payment of a greater differential than the procedures of this section generally prescribe is justified by consideration of national security.

Sec. 4. The head of each executive agency shall issue such regulations as may be necessary to insure that procurement practices under his jurisdiction conform to the provisions of this order.

^{*1} 41 U.S.C. 252(b)

^{*2} former section 41 U.S.C. 151(b); now covered by 10 U.S.C. 2301, 2303-2305

^{*3} 15 U.S.C. 631

Sec. 5. This order shall apply only to contracts entered into after the date hereof. In any case in which the head of an executive agency proposing to purchase domestic materials determines that a greater differential than that provided in this order between the cost of such materials of domestic origin and materials of foreign origin is not unreasonable or that the purchase of materials of domestic origin is not inconsistent with the public interest, this order shall not apply. A written report of the facts of each case in which such a determination is made shall be submitted to the President through the Director of the Office of Management and Budget by the official making the determination within 30 days thereafter.

DWIGHT D. EISENHOWER