

CLIENT ALERT

Made of Steel – New Buy American Act Rules Change Analysis and Increase Barriers to Offers of Foreign Manufactured End Products and Construction Material, Particularly for Iron or Steel Products

September 14, 2020

Today, nearly 8 months after the deadline, the FAR Council has issued a [proposed rule](#) to implement E.O. 13881 (July 15, 2019) requiring consideration of increasing both the domestic content requirement under the Buy American Act and the associated price preference provided to domestic products. The proposed rule will do both *and* include new provisions applicable to end products or construction material “predominantly of iron or steel or a combination of both.” Most significantly, the proposed rule will:

- Require non-COTS domestic end products and construction material to include domestic components that exceed 55% of the cost of all components for the end product; COTS end products, with the notable exception of the new category of items “predominantly of iron or steel or a combination of both” will continue to need only be manufactured in the United States to qualify as domestic.
- Require domestic end products or construction material (including COTS items but except fasteners) consisting “predominately of iron or steel or a combination of both” to be manufactured in the U.S. *and* not incorporate foreign iron or steel that comprises 5% (on an estimated basis) or more of the costs of *all* components of the end product. To qualify as an item “predominately of iron or steel or combination of both” the total cost of iron and steel content in the item must exceed 50% of the cost of all components. Similar to rules applicable to Recovery Act procurements and DOT-funded programs, to qualify as domestic iron or steel “all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives.”
- Fasteners are considered COTS products and need only be manufactured in the U.S.; the source of components, including the iron or steel does not matter.
- The evaluation cost penalty for offers of end products or construction material that do not qualify as domestic is increased from 6% to 20%, and from 12% to 30% where the potential domestic awardee for the end product qualifies as a small business.

The comment period for the proposed rule extends through November 13, 2020.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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