



Federal Aviation Administration

Finding and Waiver

49 USC 50101

Public Interest Exception - Purchases Less Than \$3,000

Under 49 U.S.C. §50101 ("FAA Buy American"), the Federal Aviation Administration (FAA) may obligate appropriated funds for a project only if steel and manufactured goods used in the project are produced in the United States. The "FAA Buy American" permits waiving the requirement for United States-made manufactured goods when finding that requiring domestically produced steel and manufactured products is inconsistent with the public interest. The FAA Administrator delegated to the FAA Acquisition Executive authority to make findings waiving the provisions of the FAA Buy American.

The goal of this public interest waiver is to eliminate some of the procurement delays and unnecessary administrative costs from the FAA procurement process when purchasing steel and manufactured goods priced less than or equal to \$3,000.

Findings

(1) In accordance with section 3.1.1 of the Acquisition Management System (AMS) "the goal of the Federal Aviation Administration procurement system is to obtain high quality products, services, and real property in a *timely, cost-effective manner*, at prices that are fair and reasonable." Further, in accordance with section 3.1.3 Fundamental Principles, the FAA's procurement system will "provide *streamlined methods* and initiate innovative processes to *conduct timely and cost-effective procurements*;"

(2) Acquisition laws, such as the Federal Acquisition Streamlining Act of 1994 (FASA), applicable to other Federal agencies, established an exemption to the Buy American Act of 1933, 41 U.S.C 8301 *et seq.*, for purchases valued below the Federal micro-purchase threshold. The exemption was created to further streamline the federal acquisition process.

(3) In 1994 the Department of Defense, the General Services Administration and the National Aeronautics and Space Administration issued an interim rule implementing FASA including the exemption from the Buy American Act of 1933 (59 FR 64786, December 15, 1994).

(4) The FAA has implemented the exception to Buy American Act applicable to the Federal government generally for purchases of goods of \$3,000 or less in Acquisition Management System, Procurement Guidance section T3.6.4.

(5) In fiscal year 2012, FAA had more than 220,000 purchase transactions between \$0 and \$3,000 dollars and in fiscal year 2013 through August 2013, FAA had more than 177,000 transactions between \$0 and \$3,000 dollars. To require that the FAA purchasing official obtain a certification for each item purchased that the item was manufactured in the United States, or to require that the FAA make a determination that the applicability of the FAA Buy American should be waived, would be contrary to the AMS' Fundamental Principle that procurements should be conducted in a timely and cost-effective manner.

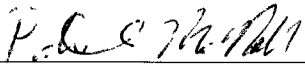
(6) Compliance with the certification requirements has been a problem with some vendors who are distributors rather than the manufacturer of the goods. As a distributor they do not always have knowledge of, nor could be reasonably expected to know whether the goods were manufactured in the United States. To require the distributor to certify would possibly lead to the distributors requesting certifications from the manufacturers which would only increase time it takes to conduct procurements and increase the administrative costs for small dollar procurements.

Waiver

Based on the above findings, and consistent with the public interest, I hereby waive the requirements of 49 U.S.C. §50101 to purchase United States-made manufactured goods when those manufactured goods are priced less than or equal to \$3,000.

I do so with the authority granted to the Secretary by 49 U.S.C. §50101(b) and delegated to me by the FAA Administrator through memorandum dated April 3, 2012.

This waiver is valid until expressly rescinded.



Patricia A. McNall
Deputy Assistant Administrator for Acquisition & Business and
FAA Acquisition Executive

10/21/13
Date