

**REQUEST FOR BLANKET WAIVER
FAA BUY AMERICAN ACT
FAA LOGISTICS CENTER**

Background:

In September 2013, the FAA Acquisition Executive waived the FAA Buy American Act for "all contractual actions in support of the NAS that are single source based on proprietary data or configuration standardization, as well as items valued at \$3,000.00 or less." The waiver, which is attached was effective for three years (through September 2016).

Facts:

In the three years since the waiver was issued, the circumstances surrounding its approval have remained unchanged. Most recently, in FY16, Aeronautical Acquisition Services issued 6,807 contractual actions valued at approximately \$102 million for the FAA's Logistics Center in support of the National Airspace System (NAS) equipment maintenance, overhaul, and repair activities. The supplies and parts that were ordered consisted of a high volume of commercial items, mostly under \$100,000, as well as single source items based on proprietary data or configuration standardization. There are still many systems and test equipment supported on a single source basis by foreign sources as set forth in the attached September 2013 waiver.

Recommendation and Waiver Request:

In light of the continuing nature of the FAA Logistics Center requirements, request a waiver in accordance with AMS Procurement Guidance T3.6.4.A.4b (1) and (2) on all contractual actions in support of the NAS that are single source based on proprietary data or configuration standardization (The FAA Acquisition Executive waived the FAA Buy American Act for all purchases of manufactured goods priced less than or equal to \$3,000 in a separate waiver dated November 21, 2013). This waiver will be effective until expressly rescinded.

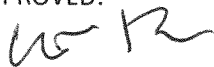
MICHAEL E YORT

Michael Yort
Division Manager, AAQ-700

Digitally signed by MICHAEL E YORT
Date: 2017.01.12 16:26:47 -06'00'

Date

APPROVED:



Nathan Tash
Deputy Assistant Administrator, Acquisitions & Business Services
FAA Acquisition Executive, ACQ-1



Date

Attachment:

September 2013 Waiver of FAA Buy American Act for FAA Logistics Center



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.

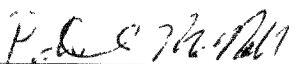
(6) Compliance with the certification requirements has been a problem with some vendors who are distributors rather than the manufacturer of the goods. As a distributor they do not always have knowledge of, nor could be reasonably expected to know whether the goods were manufactured in the United States. 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

**REQUEST FOR BLANKET WAIVER
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FAA LOGISTICS CENTER**

Background:

In FY12, the Office of Acquisition Services issued 9,803 contractual actions valued at approximately \$148 million for the FAA's Logistics Center in support of the National Airspace System (NAS) equipment maintenance, overhaul and repair activities. The supplies and parts that are ordered consist of a high volume of items, mostly under \$100K as well as single source items based on proprietary data or configuration standardization. Of the 9,803 contractual actions 6,663 were less than \$3,000.00.

These requirements are governed by the FAA Buy American – Steel and Manufactured Products. In accordance with AMS T3.6.4A.4b, a waiver of the FAA Buy American - Steel and Manufactured Products is required prior to award if purchasing from a source outside the United States.

Facts:

The guidance at AMS T3.6.4A, Foreign Acquisition, paragraph 4, FAA Buy American – Steel and Manufactured Products applies. Under this guidance at paragraph 4b(1), the Administrator delegated authority to make findings waiving the provisions of the FAA Buy American to the FAA Acquisition Executive (FAE) when requiring domestically produced steel and manufactured products is inconsistent with the public interest, and at paragraph 4b(2), when steel and manufactured products are not produced in the United States in sufficient and reasonably available quantities or of satisfactory quality. Paragraph c states the FAE retains authority for waivers based on public interest and non-availability.

The Office of Acquisition Services requests a **blanket waiver** to the FAA Buy American – Steel and Manufactured Products based on Public Interest and Non-Availability to allow the issuance of contractual actions for manufactured products in support of the NAS. The rationale is presented as follows:

Due to the volume of contractual actions placed each year that would require either certification or a waiver request for each individual item would be inefficient in terms of cost and time. Any delays in time lengthen the repair and supply chain supportability to the NAS with the potential of jeopardizing air safety for the flying public. This is inconsistent with the Public Interest.

In addition to the Public Interest, the following systems are manufactured by foreign companies which require the purchase of parts that are also manufactured by foreign companies. It is noted that most of these are single source acquisitions due to proprietary data or configuration standardization and are not available or manufactured in the U.S.

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The list below highlights some of the impacted systems supported by a foreign source, but is not all inclusive:

- Uninterruptible Power Systems (UPS) – Mitsubishi UPS - Japan
- Standard Terminal Automation Replacement System (STARS) – Minolta Photometers - Japan
- Flight Data Input / Output System (FDIO) – Thermal Paper - France
- Digital Audio Legal Recorder (DALR) – Voice Recording Unit - Israel
- Air Route Surveillance Radar - Local Display Control (ARSR4LDC) – United Kingdom
- Airport Surface Detection Equipment (ASDE3) – United Kingdom and France
- Airport Surface Detection Equipment (ASDEX) – United Kingdom
- Airport Surveillance Radar (ASR11) - Canada
- Air Traffic Control Beacon Interrogator (ATCBI6) / ATCBI6M4 – United Kingdom
- MR-16 Lamps - Germany
- Monopulse Secondary Surveillance Radar (MSSR) United Kingdom
- Terminal Doppler Weather Radar (TDWR) – KVM Display Unit - Taiwan
- Automated Weather Observing System (AWOS) – Sensors by Vaisala - Finland
- Stand-alone Weather Sensors (SAWS) – Sensors by Vaisala - Finland
- Low Level Windshear Alert System (LLWAS) – Sensors by Vaisala - Finland
- Runway Visual Range (RVR) – Sensors by Vaisala in Finland
- Precision Approach Path Indicator (PAPI) – Germany
- Mode S – United Kingdom

In addition, the following is a list of Test Equipment manufacturers outside the U.S. that are used to support the NAS:

- Agilent – Europe and Asia
- Fluke – Europe
- Tektronix – Europe, Asia, South America, Africa, and the Middle East
- Anritsu – Japan
- Wayne Kerr – British
- Aeroflex – U.S. and Europe

Another example is the German manufactured MR-16 lamps which are used throughout airfield runway systems. Airports could potentially operate without the system, but at an increased level of risk. These lamps are components in the Light Beacon Kits.

Due to the number of systems supported where parts are only available from foreign companies, and the volume of resulting requirements to sustain the NAS, it would not be feasible to obtain either a certification or a waiver prior to each contractual actions.

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Additionally, while FAA is exempt from the Federal Acquisition Regulation (FAR), the FAR does exempt the Buy American Act (FAR 25.100 and 25.1101) for requirements under the \$3,000.00 micro-purchase threshold. This threshold is also consistent with AMS Guidance at T3.6.4.A.2, Buy American Act – Supplies, under Exceptions b (1). There are several reasons for this exemption – (1) the maximum single purchase limit for purchase card holders in other Federal agencies is \$3,000.00. The exemption addresses the virtual impossibility of monitoring compliance with the BAA for all purchase card holders; (2) it is recognized that complying with the BAA and monitoring that compliance on micro-purchases is not cost effective and therefore not in the public interest.

Options for Consideration:

1. Waive the requirement in total due to Public Interest and Non-Availability (single source) based on supportability of the NAS in a timely manner to ensure the safety of the flying public.
2. Waive all acquisitions due to public interest.
3. Waive all single source acquisitions, regardless of dollar value, due to non-availability.
4. Waive all items valued at \$3,000.00 or less, consistent with AMS T3.6.4.A2b(1).

Recommendation and Waiver Request:

Based on the above, blanket waiver consideration is requested in accordance with AMS T3.6.4.A.4b (1) and (2), on all contractual actions in support of the NAS that are single source based on proprietary data or configuration standardization, as well as items valued at \$3,000.00 or less. This blanket waiver would remain in effect for three years from the date of signature or the length of any particular contract, to include option years.

Susan L. Whittington
Susan L. Whittington
Program Director, AMQ-1

8-20-13
Date

APPROVED:

Pat McNall
Pat McNall
FAA Acquisition Executive, ACQ-1

9-13-13
Date

From: Scott, Eugene A (FAA)
Sent: Wednesday, January 11, 2017 7:42 AM
To: Yort, Michael (FAA)
Cc: Belton, Genesta (FAA); Langweil, Irene (FAA); Baker, Jeffrey (FAA)
Subject: FW: Logistics Center waiver request

Michael, here's a revised request to extend the waiver for the 2013 BAA waiver. Because the 2013 waiver expired we should execute a new waiver not try to extend an expired waiver. Attached is the waiver and an attachment for review. If this looks good it can be sent to Cindy then Nathan next week.

Eugene A. Scott
Acting Director, Small Business Development, ACQ-20
Federal Aviation Administration
800 Independence Ave, SW Room 438
Washington, DC 20591
(202) 267-3207 (office)

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Rooney, Cindy (FAA)

From: Yort, Michael (FAA)
Sent: Thursday, January 12, 2017 5:29 PM
To: Rooney, Cindy (FAA)
Cc: Scott, Eugene A (FAA); Belton, Genesta (FAA); Langweil, Irene (FAA); Baker, Jeffrey (FAA)
Subject: FW: Logistics Center waiver request
Attachments: FAA LC BAA Waiver Jan 2017 .pdf; FAA BA waiver AML.pdf; Approved Waiver purchases less than or equal to 3K.pdf

Corrected copy of the request is attached with the "Draft" language removed.

Michael Yort, Manager
Franchise Acquisition Services Division (AAQ-700)
Office: 405-954-7700
Blackberry: 405-822-7468

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From: Yort, Michael (FAA)
Sent: Thursday, January 12, 2017 8:30 AM
To: Rooney, Cindy (FAA)
Cc: Scott, Eugene A (FAA); Belton, Genesta (FAA); Langweil, Irene (FAA); Baker, Jeffrey (FAA)
Subject: RE: Logistics Center waiver request

Attached is the updated FAA BAA waiver request for AML proprietary requirements for your review and subsequent submission to Nathan. Also attached for reference are the preceding waiver signed in 2013 and the comprehensive waiver for all purchases less than \$3000 signed in 2013

Michael Yort, Manager
Franchise Acquisition Services Division (AAQ-700)
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From: Yort, Michael (FAA)
Sent: Wednesday, January 11, 2017 8:06 AM
To: Rooney, Cindy (FAA)
Cc: Scott, Eugene A (FAA)
Subject: FW: Logistics Center waiver request

Attached is the updated FAA BAA waiver request for your review and subsequent submission to Nathan.

Michael Yort, Manager
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