



VIA ELECTRONIC SUBMISSION

Oct. 28, 2021

Mahruba Uddowla  
Procurement Analyst  
U.S. General Services Administration  
1800 F St. NW  
Washington, DC 20405

**Re: RIN 9000-AO22, Notice of Proposed Rulemaking on Federal Acquisition Regulation: Amendments to the FAR Buy American Act Requirements**

Dear Ms. Uddowla:

Associated Builders and Contractors hereby submits the following comments to the U.S. Department of Defense, General Services Administration and National Aeronautical Space Administration in response to the above-referenced proposed rule published in the *Federal Register* on July 30, 2021, at 86 Fed. Reg. 40980.

**About Associated Builders and Contractors**

ABC is a national construction industry trade association representing more than 21,000 members. ABC and its 69 chapters help members develop people, win work and deliver that work safely, ethically and profitably for the betterment of the communities in which ABC and its members work. Our diverse membership is bound by a shared commitment to the merit shop philosophy in the construction industry. The philosophy is based on the principles of nondiscrimination due to labor affiliation and the awarding of construction contracts through open, competitive bidding based on safety, quality and value.

ABC's membership represents all specialties within the U.S. construction industry and is comprised primarily of firms that perform work in the industrial and commercial sectors. Moreover, most of our contractor members are classified as small businesses. This is consistent with the U.S. Census Bureau and Small Business Administration's Office of Advocacy's findings that the construction industry has one of the highest concentrations of small businesses (82% of all construction firms have fewer than 10 employees)<sup>1</sup> and

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<sup>1</sup> U.S. Census Bureau 2019 County Business Patterns:  
<https://data.census.gov/cedsci/table?q=CBP2019.CB1900CBP&n=23&tid=CBP2019.CB1900CBP&hidePreview=true>

industry workforce employment (more than 82% of the construction industry is employed by small businesses).<sup>2</sup>

In addition to small businesses that build public works projects, ABC also has large member companies that contract directly with federal, state and local governments to build large-scale projects subject to government acquisition regulations and subcontract work to qualified small businesses that meet federal, state and local government small business contracting goals. For example, ABC members won 57% of the \$118 billion in direct federal construction contracts exceeding \$25 million awarded during fiscal years 2009-2020.<sup>3</sup>

## **Background**

On Jan. 25, President Biden signed Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers,<sup>4</sup> which aims to amend the regulations implementing the Buy American Act and maximize the use of goods, products and materials produced in the United States, otherwise known as domestic content.<sup>5</sup>

On July 30, the DOD, GSA and NASA (the agencies) issued a notice of proposed rulemaking to implement EO 14005.<sup>6</sup> Specifically, the agencies propose increasing the domestic content threshold initially from 55% to 60%, then to 65% in 2024 and finally to 75% in 2029.<sup>7</sup> The agencies are seeking public feedback on the subsequent threshold increases, among other things.

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While ABC does not oppose the Buy American Act, the primary concern of these comments is the need for clarity on several aspects of the agencies' proposal. In addition, ABC urges the agencies to consider the following recommendations regarding reporting requirements, the waiver process and the newly established Made in America Office.

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<sup>2</sup> 2020 Small Business Profile, U.S. Small Business Administration Office of Advocacy (2020), at Page 3, <https://cdn.advocacy.sba.gov/wp-content/uploads/2020/06/04144224/2020-Small-Business->

**Keep the proposed fallback threshold policy in place on an as-needed basis.**

ABC federal contractor members and the construction industry at large have been greatly affected by the recent dramatic price increase of various materials and building supplies. Construction input prices have increased more than 20%

The proposed post-award reporting process requires contractors to provide the contract number, the amount of domestic content in each critical item and the amount of domestic content in each domestic construction material containing a critical component to the newly established Made in America Office within 15 days of award.<sup>11</sup> However, as the agencies have not yet established the list of critical items or critical components that must be reported,<sup>12</sup> and given the various contracts into which federal agencies enter, the proposed 15-day deadline may not be feasible in certain situations without further clarity or even at all.

Once the list of critical items and components is issued,

In addition, ABC urges the agencies to provide in explicit detail in its final rulemaking the overall duties and responsibilities of the Made in America director, as well as outline how this newly established position and office will streamline the federal procurement process and reduce administrative costs and burdens for federal contractors.

**Provide clear, concise guidance and educational resources for the federal contracting community and federal procurement officials.**

Given the proposed changes to the waiver process, the establishment of the Made in America Office and the multiple increases to the threshold for domestic materials over the

Contractors should be afforded consistency in their supply chain decisions and the process of acquiring materials throughout the contract terms. Such a policy would be consistent with those concerning wage rate determinations.

In determining wage rates on federal contracts, particularly for contractors within the construction industry, it is well settled that the Davis-Bacon Act wage determinations in effect at the time of contract award generally remain for the length of the contract, regardless of whether new wage determinations are issued while the contract is being performed. Having this consistency allows the contractor to set out a plan for the duration of the project without unnecessary burdens caused by changing wage determinations or rulemakings that would affect the agreed-upon rate.