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### LAW TIPS

#### TRUMP “STRENGTHENS” BUY-AMERICAN ACT:

Authored by attorney Gretchen M. Ostroff, [gostroff@vanblacklaw.com](mailto:gostroff@vanblacklaw.com); 757.446.8530

On January 31, 2019, the President signed another Executive Order which purportedly “strengthen[s] Buy-American principles” for federally-funded infrastructure projects. This Executive Order was not President Trump’s first effort at creating a preference for American-made goods. Just four days into office, he signed a Presidential Memorandum aimed at requiring “materials and equipment produced in the United States” to be used “to the maximum extent possible” for domestic pipeline projects. Then, in April 2017, he signed his first “Buy American, Hire American” Executive Order, purportedly to bolster procurement policies promoting domestic preferences for construction materials and labor used on public projects. Among other things, the April 2017 Executive Order told federal agencies to “scrupulously monitor, enforce, and comply with Buy American laws” and limit the use of Buy American waivers. Despite its title, the April 2017 Executive Order also applied to laws created under the Buy America Act.<sup>1</sup> Next, came the notorious 2018 Steel Tariffs.

*So, what is different about the January 2019 Executive Order?* First of all, the latest Executive Order does not change existing Buy American and Buy America laws—it tells agencies to *encourage* federal financial aid recipients to use U.S. manufactured products such as iron, aluminum, steel, and cement on “covered programs.” It also expands the definition of “covered programs” to include a broad range of infrastructure projects, including various forms of transportation, energy, water resources, and technology. This Executive Order also requires agencies to submit reports to the President outlining their intended strategies for maximizing the use of manufactured products

produced in the United States and stating whether or not future agency contracts should *require*, rather than just encourage, the use of U.S.-made products. Unlike the April 2017 Executive Order, the January 2019 Executive Order does not mention “Buy America”—it only references “Buy American principles.”

*What, if anything, does the January 2019 mean for contractors?* While the January 2019 Executive Order does not change the Buy America and Buy American Acts or require contractors to do anything more than they are already doing, it further signals the Trump Administration’s focus on requiring the use of domestically-produced products when the Federal government even partially funds a project. Although this new Executive Order does not require contractors to take any specific action, anyone who performs work which is at least in part funded by a federal agency should expect more scrutiny over where materials used on the project are produced. It also means that getting a Buy American or Buy America waiver will likely be even more difficult than it already has become in the past two years. Additionally, if Trump has his way, more Buy American and Buy America mandates are likely in our future. For additional information, please contact the authoring attorney.

<sup>1</sup> The Buy America Act and the Buy American Act are not the same thing: the Buy America Act, which was enacted in the 1980s, says that steel, iron, and other manufactured products used on U.S. Department of Transportation projects must be produced in the United States. The Buy American Act, enacted in the 1930s, requires the federal government to use domestic end products for public use, unless the offeror meets a price evaluation penalty.

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