

111TH CONGRESS
2D SESSION

H. R. 4553

To amend the Buy American Act with respect to certain waivers under that Act, to provide greater transparency regarding exceptions to domestic sourcing requirements, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 2, 2010

Mr. MURPHY of Connecticut (for himself, Ms. SUTTON, Mr. SCHAUER, and Mr. LIPINSKI) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

A BILL

To amend the Buy American Act with respect to certain waivers under that Act, to provide greater transparency regarding exceptions to domestic sourcing requirements, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “21st Century Buy
5 American Act”.

6 **SEC. 2. GRANTS TO DOMESTIC MANUFACTURERS.**

7 (a) PROGRAM AUTHORIZED.—The Secretary of Com-
8 merce is authorized to establish and carry out a program

1 to award grants to eligible entities in accordance with this
2 section.

3 (b) ELIGIBILITY REQUIREMENTS.—The Secretary of
4 Commerce shall establish eligibility requirements for pur-
5 poses of the grants under this section in order to provide
6 assistance to any entity that—

7 (1) is a manufacturer in the United States;

8 (2) is a firm certified as eligible to apply for ad-
9 justment assistance under section 251(c) of the
10 Trade Act of 1974 (19 U.S.C. 2341(c)); and

11 (3) meets one of the following criteria:

12 (A) The entity mines, produces, or manu-
13 factures a nonavailable item.

14 (B) The entity is the last remaining manu-
15 facturer of an item in the United States, as de-
16 termined by the Secretary of Commerce, and
17 can prove hardship because of foreign competi-
18 tion.

19 (C) The entity is the last remaining manu-
20 facturer of an item in the United States and
21 that item is considered to be vital for national
22 security purposes by the Department of De-
23 fense or another department or agency of the
24 United States.

1 (c) AMOUNT OF GRANT.—The amount of any grant
2 under this section may not exceed \$5,000,000 per entity.

3 (d) USE OF FUNDS.—

4 (1) IN GENERAL.—Each eligible entity receiving
5 a grant under this section shall use the grant funds
6 for any of the following purposes:

7 (A) Increasing its ability to compete for a
8 Government contract for a nonavailable item.

9 (B) Increasing its ability to produce a non-
10 available item.

11 (C) Increasing its capacity to produce
12 items that are vital to national security.

13 (D) Increasing its capacity to create addi-
14 tional or retain existing jobs.

15 (E) Modernizing or renovating existing
16 manufacturing facilities using domestically
17 made equipment.

18 (F) Covering costs associated with obtain-
19 ing access to adjustment assistance under chap-
20 ter 3 of title II of the Trade Act of 1974 (19
21 U.S.C. 2341 et seq.).

22 (2) LIMITATION.—No funds in a grant awarded
23 under this section may be used for profits of an eli-
24 gible entity.

1 (e) APPLICATION REQUIREMENTS.—To receive a
2 grant under this section, an eligible entity shall submit
3 an application to the Secretary of Commerce at such time,
4 in such manner, and containing such information as the
5 Secretary may require. At a minimum, the application
6 shall include a statement regarding the number of direct
7 full-time domestic jobs expected to be created or retained
8 as a result of the grant, but such statement shall not be
9 the sole factor used in determining the award of the grant.

10 (f) ANNUAL EVALUATION OF GRANT RECIPIENTS BY
11 DEPARTMENT OF COMMERCE.—The Secretary of Com-
12 merce each year shall evaluate recipients of grants under
13 this section to determine the proper allocation of grant
14 funds.

15 (g) DEFINITION OF NONAVAILABLE ITEM.—In this
16 section, the term “nonavailable item” means an article,
17 material, or supply—

18 (1) that has been determined by a Federal
19 agency, pursuant to the Buy American Act (41
20 U.S.C. 10a et seq.), to not be mined, produced, or
21 manufactured in the United States in sufficient and
22 reasonably available commercial quantities of a sat-
23 isfactory quality;

24 (2) that has been subject to a waiver under sec-
25 tion 1605 of the American Recovery and Reinvest-

1 ment Act of 2009 (Public Law 111–5; 123 Stat.
2 303); or

3 (3) that is listed on the list of nonavailable arti-
4 cles under subpart 25.104 of the Federal Acquisition
5 Regulation.

6 **SEC. 3. REQUIREMENTS RELATING TO CERTAIN WAIVERS**
7 **OF BUY AMERICAN ACT.**

8 (a) SPECIAL RULES RELATING TO CERTAIN WAIV-
9 ERS.—Section 2 of the Buy American Act (41 U.S.C. 10a)
10 is amended by adding at the end the following new sub-
11 section:

12 “(c) SPECIAL RULES.—The following rules apply in
13 carrying out the provisions of subsection (a):

14 “(1) USE OUTSIDE THE UNITED STATES.—

15 “(A) IN GENERAL.—Subsection (a) shall
16 apply without regard to whether the articles,
17 materials, or supplies to be acquired are for use
18 outside the United States if the articles, mate-
19 rials, or supplies are not needed on an urgent
20 basis or if they are acquired on a regular basis.

21 “(B) COST ANALYSIS.—In any case in
22 which the articles, materials, or supplies are to
23 be acquired for use outside the United States
24 and are not needed on an urgent basis, before
25 entering into a contract an analysis shall be

1 made of the difference in the cost of acquiring
2 the articles, materials, or supplies from a com-
3 pany manufacturing the articles, materials, or
4 supplies in the United States (including the
5 cost of shipping) and the cost of acquiring the
6 articles, materials, or supplies from a company
7 manufacturing the articles, materials, or sup-
8 plies outside the United States (including the
9 cost of shipping).

10 “(2) EFFECT ON DOMESTIC EMPLOYMENT.—In
11 determining whether a public interest waiver, or
12 waiver for use outside the United States, shall be
13 granted under subsection (a), the head of a Federal
14 agency shall—

15 “(A) consider the short-term and long-
16 term effects of granting such a waiver on em-
17 ployment within the United States, taking into
18 account information provided by entities that
19 manufacture the articles, materials, or supplies
20 concerned in the United States; and

21 “(B) determine that preserving or increas-
22 ing employment within the United States is
23 consistent with the public interest.”.

1 (b) DEFINITION.—Section 1 of the Buy American
2 Act (41 U.S.C. 10c) is amended by adding at the end the
3 following new subsection:

4 “(c) SUBSTANTIALLY ALL.—Articles, materials, or
5 supplies shall be treated as made substantially all from
6 articles, materials, or supplies mined, produced, or manu-
7 factured in the United States, if the cost of the domestic
8 components of such articles, materials, or supplies exceeds
9 60 percent of the total cost of all components of such arti-
10 cles, materials, or supplies.”.

11 **SEC. 4. TRANSPARENCY REQUIREMENTS.**

12 (a) REQUIREMENT FOR AGENCIES TO NOTIFY
13 OMB.—Each agency that applies an exception to the Buy
14 American Act (41 U.S.C. 10a et seq.) shall submit to the
15 Director of the Office of Management and Budget a notifi-
16 cation of the application of the exception and a statement
17 describing the procurement and the exception being ap-
18 plied.

19 (b) REQUIREMENT FOR DIRECTOR OF OMB TO POST
20 ON WEB SITE.—Within 7 days after receipt of any notifi-
21 cation under subsection (a), the Director of the Office of
22 Management and Budget shall post the notification on a
23 central, publicly accessible Web site of the Office.

1 (c) DEFINITION OF AGENCY.—In this section, the
2 term “agency” has the meaning given under section 551
3 of title 5, United States Code.

4 **SEC. 5. REQUIREMENT FOR ANNUAL REPORT BY COMP-**
5 **TROLLER GENERAL ON EXCEPTIONS TO BUY**
6 **AMERICAN ACT AND OTHER DOMESTIC**
7 **SOURCE REQUIREMENTS.**

8 (a) REPORT REQUIREMENT.—

9 (1) IN GENERAL.—Not later than 60 days after
10 the end of a fiscal year, the Comptroller General of
11 the United States shall submit to Congress a report
12 on the amount of the acquisitions made by each
13 agency in that fiscal year of articles, materials, or
14 supplies purchased from entities that manufacture
15 the articles, materials, or supplies outside of the
16 United States.

17 (2) CONTENTS OF REPORT.—The report re-
18 quired by paragraph (1) shall separately include, for
19 the fiscal year covered by such report—

20 (A) the dollar value of any articles, mate-
21 rials, or supplies that were manufactured out-
22 side the United States;

23 (B) an itemized list of all waivers granted
24 with respect to such articles, materials, or sup-
25 plies under the Buy American Act (41 U.S.C.

1 10a et seq.), section 1605(a) of the American
2 Recovery and Reinvestment Act of 2009 (123
3 Stat. 303), or any other law that requires pro-
4 curement of goods or services from a domestic
5 source, and a citation to the treaty, inter-
6 national agreement, or other law under which
7 each waiver was granted;

8 (C) if any articles, materials, or supplies
9 were acquired from entities that manufacture
10 articles, materials, or supplies outside the
11 United States, the specific exception under sec-
12 tion 2 of the Buy American Act (41 U.S.C.
13 10a), section 1605(a) of the American Recovery
14 and Reinvestment Act of 2009 (123 Stat. 303),
15 or any other law that requires procurement of
16 goods or services from a domestic source, that
17 was used to purchase such articles, materials,
18 or supplies; and

19 (D) a summary of—

20 (i) the total procurement funds ex-
21 pended on articles, materials, and supplies
22 manufactured inside the United States;
23 and

1 (ii) the total procurement funds ex-
2 pended on articles, materials, and supplies
3 manufactured outside the United States.

4 (b) PUBLIC AVAILABILITY.—The Comptroller Gen-
5 eral shall make the report publicly available to the max-
6 imum extent practicable.

7 (c) EXCEPTION FOR INTELLIGENCE COMMUNITY.—
8 The report required under this section shall not cover ac-
9 quisitions made by an agency, or component thereof, that
10 is an element of the intelligence community as specified
11 in, or designated under section 3(4) of the National Secu-
12 rity Act of 1947 (50 U.S.C. 401a(4)).

13 (d) DEFINITION OF AGENCY.—In this section, the
14 term “agency” has the meaning given under section 551
15 of title 5, United States Code.

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