

Implementation of “Buy American” for Infrastructure Projects Begins May 1st

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In 2017, President Trump issued an executive order entitled [“Buy American and Hire American”](#) which stated a commitment to do just that. Earlier this year, expanding on this policy, President Trump issued an executive order entitled [“Strengthening Buy-American Preferences for Infrastructure Projects.”](#) This order requires federal agencies to encourage contractors working on infrastructure projects that receive federal grants or loans to purchase domestically produced materials. Pursuant to the order, agencies are required to begin encouraging use of domestic products by May 1st, and requires submission of an implementation plan by May 31st.

The new executive order seeks to fill somewhat of a gap in current federal legislation that will no doubt have an effect on an investor’s analysis of a [public-private partnership delivery model](#). The federal Buy American Act applies domestic preference to manufactured materials that are used in the construction of federal projects. Then, there are a set of [federal laws](#) that have domestic preference provisions for specific materials in specific construction projects that receive federal funding. The new executive order applies to “covered programs,” which basically includes infrastructure projects that received financial assistance from a federal program, but do not currently include domestic preference requirements. In other words, the policy now potentially applies to any project that receives federal funds, even if it is not solicited by the federal government.

The term “infrastructure projects” is broadly defined, and will apply to local projects that receive federal assistance like aviation, surface transportation, ports, water resources, and energy production projects. The new executive order expands both the types of materials and types of projects for which the Buy American policy is applicable. The interplay with rules for [local preference](#) enforced by local governments is unclear, although existing federal regulations typically prohibit the use of local preference for federally funded projects. Also unclear is whether there is or will be an actual enforcement mechanism. The significance and magnitude of this latest push for stronger domestic preference will be revealed in the coming weeks as federal agencies begin to encourage the policy and submit plans for implementation.

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