

Prepared by the New Zealand Embassy in Washington D.C.

Summary – Rāpopoto

- The Biden Administration has proposed detailed changes to “Buy American” rules including increasing US content in products procured by the federal government.
- Experts believe proposed reforms are unlikely to have much of an impact New Zealand businesses providing goods and services to US government agencies because federal procurement between the two countries is covered under the WTO Government Procurement Agreement (GPA).
- However, as part of the consultation period, the Administration has requested comments on possible future reforms, including the substantial transformation test which could have implications for New Zealand’s access to the market.

Report – Pūrongo

The United States has announced details of how it will toughen “Buy American” rules as signalled in the Executive Order President Joe Biden issued upon entering office in January. Changes outlined in the [Notice of Proposed Rulemaking](#) would raise the required US content for a product to be considered “domestic”, apply enhanced price preferences for critical goods, and increase reporting requirements for suppliers. There is now a 60-day consultation period before the Administration finalises the rules. Biden said this would make “Buy American a policy, not just a promise I’m putting the weight of the federal government behind that commitment.”

If confirmed, the domestic content requirements would immediately rise from 50 percent to 60 percent. This would then increase incrementally to 75 percent over the next eight years, although a “fallback threshold” would allow products with a lower domestic content to qualify under certain circumstances. According to the White House [fact sheet](#), these changes “would close a problematic loophole in the current regulation, while also allowing businesses time to adjust their supply chains to increase the use of American-made components.”

The new rules would also put more onus reporting requirements on suppliers to show how they meet the domestic content threshold criteria. Currently, suppliers only note whether or not they meet the threshold. In future, suppliers would have to provide to the federal government the specific percentage of domestic content of products that were awarded under a contract.

The “Buy American” scope will be enlarged with the establishment of a framework for favouring “a domestic product that is considered a critical product or made up of critical components.” Enhanced price preferences would apply to select critical products and components identified by the Critical Supply Chain review and the pandemic supply chain strategy. Separate rulemaking will be undertaken to add critical products and components to the Federal Acquisition Regulation (FAR) and to establish the associated preferences.

Contrary to expectations, the Biden Administration did not propose a replacement of the “component test,” which measures the domestic content of a product by the value of its components. In the January Executive Order, the FAR Council was directed to consider a new test that would measure “the value that is added to the product through US-based production or US job-supporting economic activity.” Instead of proposing a new test, it is seeking public comments on “how domestic content might be better calculated” as well as the strengths and shortcomings of the current test.

The FAR Council has also asked for comments on the “the impact of the substantial transformation test and potential lost opportunities for American workers.” That test is used to determine whether a product covered by the GPA or a free trade agreement is eligible for a waiver under the Trade Agreements Act of 1979.

The FAR Council is seeking comments on whether the current exemption of commercial information technology purchases is still relevant and whether “current marketplace conditions support narrowing or lifting” it. It is also considering whether the waiver of the component test for commercially available off-the-shelf items should be continued.

To date, price preferences have only been applied to goods. But the FAR Council is seeking comments on how the federal government could “promote the use of Made in America services” and whether there are critical services that should be accorded price preferences.

Initial reaction to new rules

Washington-based “Buy American” regulatory experts are of the view that these changes are unlikely to have much of an impact on federal procurement covered under the WTO Government Procurement Agreement (GPA) of which New Zealand is a member. President Biden has underscored that US allies should not view “Buy American” rules as a trade barrier. “Resilient supply chains must have built in redundancies – a health crisis or natural disaster in one location must never again threaten the global economy. We must work with our trading partners to promote equitable growth, protect workers' rights, and advance environmental justice globally.”

The Biden Administration touted the regulatory change as a win for small businesses and created a new manufacturing office within the Small Business Administration’s federal contracting division to support this work. And union leaders responded favourably to the announcement. The American Federation of Labor and Congress of Industrial Organizations said past administrations’ promises have amounted to “lip service”, but “the Biden Administration is following through on the simple concept that American taxpayers’ dollars should be used to create jobs and advance production here at home.”

However, industry groups have expressed opposition to the proposed changes. The US Chamber of Commerce called the proposal to raise the domestic content threshold for products “inefficient, costly, and ultimately counterproductive” and argued that “procurement officials need more flexibility rather than less.”

We are aware that New Zealand companies have been engaged in the US federal procurement market in recent years, particularly in the supply of ICT goods. If any business has concerns or questions about the regulatory changes, they are welcome to contact the exporter helpline:

Email exports@mfat.net

Call 0800 824 605

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