

in contracts for public improvements, was superseded. See sections 10a to 10d of this title.

§ 10a. American materials required for public use

Notwithstanding any other provision of law, and unless the head of the department or independent establishment concerned shall determine it to be inconsistent with the public interest, or the cost to be unreasonable, only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States, shall be acquired for public use. This section shall not apply with respect to articles, materials, or supplies for use outside the United States, or if articles, materials, or supplies of the class or kind to be used or the articles, materials, or supplies from which they are manufactured are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. This section shall not apply to manufactured articles, materials, or supplies procured under any contract the award value of which is less than or equal to the micro-purchase threshold under section 428 of this title.

(Mar. 3, 1933, ch. 212, title III, § 2, 47 Stat. 1520; Pub. L. 100-418, title VII, § 7005(b), Aug. 23, 1988, 102 Stat. 1553; Pub. L. 103-355, title IV, § 4301(b), Oct. 13, 1994, 108 Stat. 3347.)

AMENDMENTS

1994—Pub. L. 103-355 inserted at end “This section shall not apply to manufactured articles, materials, or supplies procured under any contract the award value of which is less than or equal to the micro-purchase threshold under section 428 of this title.”

1988—Pub. L. 100-418, §§ 7004, 7005(b), temporarily substituted “Federal agency” for “department or independent establishment”. See Effective and Termination Dates of 1988 Amendment note below.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 4301(c) of Pub. L. 103-355 provided that: “Notwithstanding any other provision of law—

“(1) section 32 of the Office of Federal Procurement Policy Act [41 U.S.C. 428], as added by subsection (a); and

“(2) the amendment made by subsection (b) [amending this section]; shall take effect on the date of the enactment of this Act [Oct. 13, 1994] and shall be implemented in the Federal Acquisition Regulation not later than 60 days after such date of enactment.”

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENT

Section 7004 of title VII of Pub. L. 100-418 provided that: “The amendments made by this title [see Short Title of 1988 Amendment note below] shall cease to be effective on April 30, 1996, unless the Congress, after reviewing the report required by section 305(k) of the Trade Agreements Act of 1979 [former 19 U.S.C. 2515(k)], and other relevant information, extends such date. After such date, the President may modify or terminate any or all actions taken pursuant to such amendments.”

Section 7005(f) of title VII of Pub. L. 100-418 provided that: “The amendments made by this section [amend-

ing sections 10a, 10b, 10c, and 10d of this title and section 2511 of Title 19, Customs Duties] shall take effect upon enactment [Aug. 23, 1988].”

SHORT TITLE OF 1988 AMENDMENT

Section 7001 of title VII of Pub. L. 100-418 provided that: “This title [enacting section 10b-1 of this title, amending this section, sections 10b, 10c, and 10d of this title, and sections 2511 and 2515 of Title 19, Customs Duties, enacting provisions set out as notes under section 10a of this title, and amending provisions set out as notes under section 10c of this title] may be cited as the ‘Buy American Act of 1988’.”

SHORT TITLE

Section 7, formerly section 5, of title III of act Mar. 3, 1933, as added by Pub. L. 103-355, title X, § 10005(f)(4), Oct. 13, 1994, 108 Stat. 3409, and renumbered and amended by Pub. L. 104-106, div. D, title XLIII, § 4321(a)(11), Feb. 10, 1996, 110 Stat. 671, provided that: “This title [enacting this section, sections 10b and 10c of this title, and provisions set out as notes under section 10c of this title] may be cited as the ‘Buy American Act’.”

IMPLEMENTATION OF BUY AMERICAN ACT WITH RESPECT TO CERTAIN WATER RESOURCE PROJECTS

Pub. L. 100-371, title V, § 508, July 19, 1988, 102 Stat. 875, provided that:

“(a) GENERAL RULE.—For purposes of title III of the Act of March 3, 1933 (47 Stat. 1520; 41 U.S.C. 10a-10c) [41 U.S.C. 10a, 10b, 10b-1, 10c], commonly known as the Buy American Act, a cofferdam or any other temporary structure to be constructed by the Secretary of the Army, acting through the Chief of Engineers, shall be treated in the same manner as a permanent dam constructed by the Secretary of the Army.

“(b) APPLICABILITY.—Subsection (a) shall only apply to contracts entered into after the date of the enactment of this Act [July 19, 1988].”

EXEMPTION OF FUNCTIONS

Functions authorized by Foreign Assistance Act of 1961, as amended, as exempt, see Ex. Ord. No. 11223, eff. May 12, 1965, 30 F.R. 6635, set out as a note under section 2393 of Title 22, Foreign Relations and Intercourse.

APPLICABILITY OF BUY AMERICAN ACT WITH RESPECT TO EUROPEAN COMMUNITY

For applicability of Buy American Act to procurements covered by agreement with the European Community on government procurement, see Ex. Ord. No. 12849, May 25, 1993, 58 F.R. 30931, set out as a note under section 2511 of Title 19, Customs Duties.

ACT REFERRED TO IN OTHER SECTIONS

The Buy American Act is referred to in sections 10b-2, 10b-3, 42, 428 of this title; title 10 section 2533; title 15 sections 2507, 5528; title 19 sections 2512, 2513, 3105; title 20 sections 6067, 9275; title 24 section 225h; title 25 section 1638b; title 42 section 5206.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10b, 10c, 10d of this title; title 10 sections 2457, 2533.

§ 10b. Contracts for public works; specification for use of American materials; blacklisting contractors violating requirements

(a) Every contract for the construction, alteration, or repair of any public building or public work in the United States growing out of an appropriation heretofore made or hereafter to be made shall contain a provision that in the performance of the work the contractor, subcontractors, material men, or suppliers, shall use only such unmanufactured articles, mate-

rials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States except as provided in section 10a of this title: *Provided, however*, That if the head of the department or independent establishment making the contract shall find that in respect to some particular articles, materials, or supplies it is impracticable to make such requirement or that it would unreasonably increase the cost, an exception shall be noted in the specifications as to that particular article, material, or supply, and a public record made of the findings which justified the exception.

(b) If the head of a department, bureau, agency, or independent establishment which has made any contract containing the provision required by subsection (a) of this section finds that in the performance of such contract there has been a failure to comply with such provisions, he shall make public his findings, including therein the name of the contractor obligated under such contract, and no other contract for the construction, alteration, or repair of any public building or public work in the United States or elsewhere shall be awarded to such contractor, subcontractors, material men, or suppliers with which such contractor is associated or affiliated, within a period of three years after such findings is made public.

(Mar. 3, 1933, ch. 212, title III, § 3, 47 Stat. 1520; Pub. L. 100-418, title VII, § 7005(c), Aug. 23, 1988, 102 Stat. 1553.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-418, §§ 7004, 7005(c)(1), which directed that this section be temporarily amended by substituting “Federal agency” for “department or independent establishment”, was executed to subsec. (a) as the probable intent of Congress. See Termination Date of 1988 Amendment note below.

Subsec. (b). Pub. L. 100-418, §§ 7004, 7005(c)(2), temporarily substituted “Federal agency” for “department, bureau, agency, or independent establishment”. See Termination Date of 1988 Amendment note below.

TERMINATION DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-418 to cease to be effective on Apr. 30, 1996, unless Congress, after reviewing report required by former section 2515(k) of Title 19, Customs Duties, extends such date, see section 7004 of Pub. L. 100-418, set out as an Effective and Termination Dates of 1988 Amendment note under section 10a of this title.

PROHIBITION ON USE OF FUNDS FOR CONSTRUCTION CONTRACTS WITH CONTRACTORS OF FOREIGN COUNTRIES WHICH DENY UNITED STATES CONTRACTORS FAIR OPPORTUNITIES IN CONSTRUCTION PROJECTS OF THAT COUNTRY'S GOVERNMENT

Provisions prohibiting the obligation or expenditure of funds to enter into any contract for construction, alteration, or repair of any public building or public work in the United States or any territory or possession of the United States with any contractor or subcontractor of a foreign country, or any supplier of products of a foreign country, during any period in which such foreign country denies fair and equitable market opportunities for products and services of the United States in procurement or bidding for construction projects that cost more than \$500,000 and are funded in whole or in

part by the government of such foreign country or by an entity controlled directly or indirectly by such foreign country were contained in the following appropriation acts:

Pub. L. 101-516, title III, § 340, Nov. 5, 1990, 104 Stat. 2187.

Pub. L. 101-514, title V, § 511, Nov. 5, 1990, 104 Stat. 2098.

Pub. L. 100-202, § 109, Dec. 22, 1987, 101 Stat. 1329-434; Pub. L. 105-362, title XIV, § 1401(d), Nov. 10, 1998, 112 Stat. 3294.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10c, 10d of this title.

§ 10b-1. Omitted

CODIFICATION

Section, act Mar. 3, 1933, ch. 212, title III, § 4, as added Aug. 23, 1988, Pub. L. 100-418, title VII, § 7002(2), 102 Stat. 1545; amended Oct. 13, 1994, Pub. L. 103-355, title VII, § 7206(a), 108 Stat. 3382, which related to prohibition on procurement contracts, was omitted in view of section 7004 of Pub. L. 100-418 which provided that the amendment by Pub. L. 100-418 enacting this section ceased to be effective on Apr. 30, 1996. See section 7004 of Pub. L. 100-418, set out as an Effective and Termination Dates of 1988 Amendment note under section 10a of this title.

Another prior section 4 of act Mar. 3, 1933, was temporarily renumbered section 5 and is set out as a note under section 10c of this title.

§ 10b-2. Limitation on authority to waive Buy American Act requirement

(a) Determination by Secretary of Defense

(1) If the Secretary of Defense, after consultation with the United States Trade Representative, determines that a foreign country which is party to an agreement described in paragraph (2) has violated the terms of the agreement by discriminating against certain types of products produced in the United States that are covered by the agreement, the Secretary of Defense shall rescind the Secretary's blanket waiver of the Buy American Act with respect to such types of products produced in that foreign country.

(2) An agreement referred to in paragraph (1) is any reciprocal defense procurement memorandum of understanding, between the United States and a foreign country pursuant to which the Secretary of Defense has prospectively waived the Buy American Act for certain products in that country.

(b) Report to Congress

The Secretary of Defense shall submit to the Congress a report on the amount of Department of Defense purchases from foreign entities in fiscal year 2004. Such report shall separately indicate the dollar value of items for which the Buy American Act was waived pursuant to any agreement described in subsection (a)(2) of this section, the Trade Agreement Act of 1979 (19 U.S.C. 2501 et seq.), or any international agreement to which the United States is a party.

(c) “Buy American Act” defined

For purposes of this section, the term “Buy American Act” means title III of the Act entitled “An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes”, approved March 3, 1933 (41 U.S.C. 10a et seq.).