

Before the
DEPARTMENT OF DEFENSE
GENERAL SERVICES ADMINISTRATION
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Washington, DC 20230

In the Matter of)	
)	
Federal Acquisition Regulation: Amendments)	Docket No. FAR-2021-0008
to the FAR Buy American Act Requirements)	RIN: 9000-AO22
)	

COMMENTS OF THE TELECOMMUNICATIONS INDUSTRY ASSOCIATION

The Telecommunications Industry Association (“TIA”) appreciates the opportunity to provide input regarding potential amendments to the Federal Acquisition Regulations (“FAR”) Buy American Act Requirements. TIA represents more than four hundred U.S. and global manufacturers and vendors of information and communications technology (“ICT”) equipment and services. TIA member companies design, produce, and sell equipment and services that support access to the internet for first responders, warfighters, astronauts, members of Congress, agency officials, scientists, and other government users; as well as for innumerable Americans who have relied on affordable, high-speed broadband for access to basic services during the COVID-19 pandemic. TIA member companies employ tens of thousands of high-wage workers across all 50 states and U.S. territories, and they power billions in U.S. exports on an annual basis.

TIA’s comments will cover the following key points that we hope that the government will consider:

1. Global companies and supply chains play a vital role in the telecommunications industry.
2. Further limiting the ability to source foreign products may inspire other governments to impose similar restrictions on U.S. products.
3. The exemption for Commercial-Off-The-Shelf (“COTS”) information technology (“IT”) products supports public sector access to information technology. Narrowing or lifting the exemption may not yield intended results and could limit government access to innovative and affordable technologies.

Zooming out, these points support a broader vision. By accelerating connectivity and ensuring that companies can focus on developing new technologies, global ICT supply chains have a vital role to play in supporting the administration’s goals to create good jobs, strengthen the domestic manufacturing base, and ensure the U.S. economy is ready to meet the challenges of the future.

I. GLOBAL COMPANIES PLAY A VITAL ROLE IN U.S. TELECOMMUNICATIONS NETWORKS

We appreciate OMB Director Drake’s affirmation during the FAR Council’s Buy American Virtual Meeting earlier this month that Buy American rules do not look at the nationality of firms in assessing whether products qualify for price preference.¹ While the majority of TIA members and standards participants are American, TIA also represents a number of trusted, global vendors of telecommunications equipment and services that are headquartered in countries that are key partners and allies of the United States. These companies play a vital and irreplaceable role in connecting Americans to the internet. There is not a single telecommunications network in the U.S. that would function using products from only U.S. vendors made with exclusively U.S. content, and both public and private sector users rely on global vendors to connect to the internet. These companies also employ Americans and have an extensive presence in the U.S. They employ engineers conducting cutting-edge research here,

¹ *FAR Council Virtual Public Meeting on the Made in America FAR Rule*, United States General Services Administration, (August 31, 2021) (available at: <https://www.regulations.gov/document/FAR-2021-0008-0006>).

manufacture products here, and pay taxes here; and like all firms, they rely on global supply chains to do so. As agencies consider changes to the FAR that would alter the traditional scope of its application, we urge them to maintain policies that remain inclusive of trusted international firms. The openness and diversity of the American economy is a strength not a weakness, and we hope and encourage that any changes to the FAR move forward with this in mind.

II. CHANGES TO PROCUREMENT RULES COULD NEGATIVELY IMPACT U.S. ICT EXPORTS

Changes to Buy American Rules that would limit or restrict U.S. government sourcing of foreign products could inspire or give cover to other governments wishing to do the same to the detriment of U.S. companies. Even in advance of this rulemaking, some foreign officials have expressed concern about potential changes to U.S. procurement policies. These include:

- **EU:** European Commissioner for Trade Valdis Dombrovskis noted in January that, “Buy American...will require some more in-depth assessment, what are the exact implications, what are the implications for EU companies, what does it mean for U.S. commitments in the WTO framework.”²
- **Canada:** Minister of Foreign Affairs Marc Garneau told Canadian television that the country’s Prime Minister was “concerned about Buy American policies, because it actually harms our bilateral trading relationship which is so tightly integrated.”³ Trade Minister Mary Ng also released a statement in response to President Biden’s Buy American executive order noting that the Canadian government would “always stand up for Canadian businesses and workers.”⁴
- **China:** At a press conference, Foreign Ministry Spokesperson Hua Chunying stated that changes to Buy American requirements “reek of protectionism.”⁵

² Vela, Jakob Hanke. *EU Trade Chief Warns Biden Over ‘Buy American’ Push*, Politico (February 18, 2021) (available at: <https://www.politico.eu/article/joe-biden-valdis-dombrovskis-eu-trade-chief-warns-over-buy-american-push/>).

³ Bolongaro, Kait. *Canada Worries About Biden’s ‘Buy American’ After Keystone Blow*, Bloomberg (January 24, 2021) (available at: <https://www.bloomberg.com/news/articles/2021-01-24/canada-worries-about-biden-s-buy-american-after-keystone-blow>).

⁴ Tweet from Mary Ng (Jan. 25, 2021) (available at: https://twitter.com/mary_ng/status/1353810637856661504?lang=en).

⁵ Foreign Ministry Spokesperson Hua Chunying's Regular Press Conference, Ministry of Foreign Affairs of the People’s Republic of China (April 1, 2021) (available at: https://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/t1866323.shtml).

- **Mexico:** Economy Minister Tatiana Clouthier released a statement that the Mexican government was “ready to analyze ‘Buy American’ rules and their compatibility with TMEC (USMCA).”⁶
- **UK:** British Ambassador to the United States Karen Pierce noted that “It’s obviously a great concern to America’s trading friends and partners if there’s a very strong push for ‘buy American’” and that the matter would require additional bilateral dialogue.⁷

While statements by foreign officials should not dictate U.S. policy, taken collectively they indicate a real concern and potential for retaliation in response to changes to FAR Buy American Act requirements.

Retaliation could impact companies in the telecommunications sector given the leading position of U.S. firms in this area and proposed changes to ICT procurement specifically. Telecommunication equipment is a significant export for the United States, accounting for \$35.9 billion in exports in 2019.⁸ While there are around 300 million internet users in the United States,⁹ there are more than 4 billion internet users around the world with billions more potential ICT customers still yet to be connected.¹⁰ This makes global sales essential to the telecommunications sector. While most of these sales are to private businesses and consumers around the world, a significant portion is to public sector entities such as State-Owned Enterprises that provide internet services, government agencies connecting employees to the internet, and to first responders. The Government Procurement Agreement (“GPA”) is a useful framework to protect the ability of U.S. firms to access these global government procurement

⁶ Tweet from Tatiana Clouthier (Jul. 28, 2021) (available at <https://twitter.com/tatclouthier/status/1420487394093150213>).

⁷ Liu, Natalie. *Britain Awaits Word from Biden Team on Trade Talks*, Voice of America News (Feb. 5, 2021) (available at: https://www.voanews.com/a/economy-business_britain-awaits-word-biden-team-trade-talks/6201684.html).

⁸ Tech Trade Snapshot 2020, CompTIA, (May, 2020) (available at: <https://connect.comptia.org/content/research/tech-trade-snapshot-2020>).

⁹ *Computer and Internet Use in the United States: 2018*, United States Census (Apr. 21, 2021) (available at: <https://www.census.gov/newsroom/press-releases/2021/computer-internet-use.html>).

¹⁰ *Measuring Digital Development: Facts and Figures 2020*, International Telecommunications Union (2020) (available at: <https://www.itu.int/en/ITU-D/Statistics/Pages/facts/default.aspx>).

markets, and TIA recommends that changes to FAR Buy American Act requirements be done in such a way to ensure America's continued compliance with its trade obligations, including the GPA.

III. NARROWING OR LIFTING THE COMMERCIAL IT EXEMPTION MAY NOT ACHIEVE INTENDED RESULTS, COULD CREATE UNINTENDED CONSEQUENCES

The commercial IT exemption was codified into law by Congress in the Consolidated Appropriations Act of 2004 in part to enable the federal government and other public sector entities to access up-to-date information technology solutions at a reasonable price point. The commercial IT exemption continues to serve this purpose, ensuring that first responders, warfighters, astronauts, agency officials, and other government users have the best and most up-to-date equipment they need to do their jobs. The increasingly connectivity-driven nature of work and the need for many public sector employees to work remotely during the COVID-19 pandemic has underlined the importance of government access to information technology products.

As technology and the nature of work continues to evolve, TIA supports continuing the commercial IT exemption to the FAR so that government employees have access to the equipment that they need and do not get locked into using government-specific product lines that may or may not evolve with the pace of innovation in consumer technology. To answer the question posed in the Federal Register Notice, there are no market conditions in which lifting the statutorily imposed waiver would lead to better, more affordable access to commercially available IT for government users. On the contrary, market conditions continue to evolve in a direction that supports more open and flexible sourcing options.

There are significant barriers that would make narrowing or eliminating the commercial IT exemption difficult for industry and that would lead to significant cost increases for the government. These include the following:

1. **U.S. ICT manufacturing relies on global inputs:** America's ICT manufacturing ecosystem is supported by the ability to source components from around the world. Devices assembled in America for public sector use rely on components made elsewhere and imposing Buy American content criteria in sourcing by narrowing the IT exemption could make this manufacturing less cost competitive.
2. **Eliminating the IT exemption would be significantly disruptive and balkanize supply chains:** The need to meet new requirements would likely necessitate the division of production into public sector and consumer product lines. It could also lead to the need to re-engineer large parts of the upstream supply chain and build new supplier relationships in an effort that would take considerable time and money, at a time when sourcing and supply chain management is already massively complicated by pandemic-related dislocations in both supply and demand. Dramatic sourcing changes could also create problems with systems integration and backward compatibility, leading to a public sector product that is less useful than its consumer counterpart. Some companies have noted that, given the investment of time and money that this would take, eliminating the IT exemption would force them to reassess their U.S. public sector business.
3. **Assessing content thresholds is not feasible for many ICT products:** What works for determining domestic content in steel or cars does not work for complex, commercially available telecommunications products. ICT products can consist of

hundreds or even thousands of dissimilar components, derive a significant portion of their value from intellectual property, or may be completely intangible and use code from individuals around the world. For physical ICT products, they are often produced by contract manufacturers who source components from subcontractors who in turn are sourcing from third parties. Tracing and assigning values for content with fidelity would be extremely challenging and could drive significant cost increases both to companies and the government.

As a result of these barriers, narrowing or lifting the IT exemption would be unlikely to achieve the employment, manufacturing base, and resiliency goals the NPRM states as objectives. At the same time, public sector access to information technology could be significantly degraded, holding back the federal government's efforts to address these issues in the context of other programs. By maintaining the IT exemption in its current form, the federal government can help public sector users across the U.S. meet the challenges of the future with the best technologies that the private sector can create.

IV. CONCLUSION

The information and communications technology sector is vital to the United States economy, powering increases in productivity across workers in all sectors. This includes the public sector. High-quality, affordable ICT products ensure that emergency personnel can respond to crises as they arise, that doctors and scientists in government labs can support the medical response to emerging pandemics, and public sector employees of all stripes can support ongoing government operations whether at home or in the office. These ICT products are supported by global supply chains, in what is a strength and not a weakness. By using content from around the world, companies can create competitively priced products that can be exported

abroad, build redundancy and resiliency into their supply chains by using inputs from multiple sources, and support high-quality U.S. jobs centered around innovation. As federal agencies consider changing the scope of Buy American provisions of the FAR, we hope that they consider the particular characteristics of the ICT sector and implement policies that ensure that public sector workers continue to have access to high-quality information technology solutions.

Patrick Lozada
Director, Global Policy

TELECOMMUNICATIONS INDUSTRY
ASSOCIATION
1310 N. Courthouse Road
Suite 890
Arlington, VA 22201
(703) 907-7700

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