Gaps in Guidance, Training, and Oversight Impede FAA’s Ability To Comply With Buy American Laws
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Requested by Senate Appropriations Committee
Federal Aviation Administration | ZA2021026 | June 2, 2021

What We looked at
To support its mission to provide the safest, most efficient airspace system in the world, the Federal Aviation Administration (FAA) seeks to procure state-of-the-art systems, high-quality goods, and first-rate services. In 2017, for example, the Agency made over $4 billion worth of purchases—of which a range of $87 million to an estimated $1.7 billion could be subject to the Buy American Act (BAA) and the FAA-specific Buy American Preference provisions (BAP). In response to a congressional request, we initiated this audit to assess FAA’s policies and procedures for awarding and administering contracts in accordance with domestic content laws. Specifically, we evaluated FAA’s policies and procedures for (1) implementing Buy American requirements and (2) overseeing Buy American compliance.

What We Found
FAA’s Acquisition Management System requires Buy American–applicable contracts to include specific clauses that direct vendors to certify the origins of goods or products and contracting officers (CO) to fully understand BAA and BAP requirements. However, we found Buy American–applicable contracts where COs had omitted or improperly applied the required clauses, lacked vendor certifications, or did not fulfill contract filing requirements—due to a lack of BAA- and BAP-specific guidance and training. As a result, we estimate that FAA may have put up to $127 million in Federal funds at risk due to contracts missing required vendor certifications. In addition, while Federal policy directed agencies to monitor, enforce, and comply with the Buy American Laws, FAA does not require its staff to assess and report on compliance, although it has tools available for this purpose. The Agency also lacks effective processes for recording “place of manufacture data” or for tracking usage of BAP waivers. As a result, FAA cannot be certain that it is meeting the intent of the Buy American Laws—to purchase American-made materials and goods to strengthen our economic and national security.

Our Recommendations
We made eight recommendations to improve FAA’s compliance and oversight for contracts subject to domestic content laws. FAA concurred with all eight recommendations, which we consider resolved but open pending completion of the planned actions.

All OIG audit reports are available on our website at www.oig.dot.gov.

For inquiries about this report, please contact our Office of Government and Public Affairs at (202) 366-8751.
Memorandum

Date: June 2, 2021

Subject: ACTION: Gaps in Guidance, Training, and Oversight Impede FAA's Ability To Comply With Buy American Laws | Report No. ZA2021026

From: Mary Kay Langan-Feirson
Assistant Inspector General for Acquisition and Procurement Audits

To: Federal Aviation Administrator

To support its mission to provide the safest, most efficient airspace system in the world, the Federal Aviation Administration (FAA) seeks to procure state-of-the-art systems, high-quality goods, and first-rate services. In 2017, for example, the Agency made over $4 billion worth of purchases—of which a range of $87 million to an estimated $1.7 billion\(^1\) could be subject to Buy American (BA) Laws.\(^2\) These purchases, like many Federal acquisitions, were governed by domestic content laws—the Buy American Act (BAA)\(^3\) and the FAA-specific Buy American Preference provisions (BAP).\(^4\)

Domestic content or Buy American Laws promote U.S. manufacturing and products in order to support American industries and strengthen national security. These laws include enforcement and administrative provisions to promote the economy and create good jobs at decent wages for workers in the United States. Still, congressionally mandated audits of Department of Defense (DoD) acquisitions have revealed a high level of noncompliance with the Buy American provisions in recent years. Noting the impact that manufacturing has on our economy, the Senate Appropriations Committee directed our office to audit FAA’s purchases to ensure compliance with the Buy American Laws.\(^5\)

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\(^1\) Our $1.7 billion estimate represents the 90-percent upper confidence limit with a point estimate of $785 million and a 100-percent lower confidence limit of $87 million.

\(^2\) The phrase “Buy American Laws” as referenced in our audit report refers to all statutes, regulations, rules, and Executive orders (EO) relating to Federal procurements that require, or provide a preference for, the purchase or acquisition of goods, products, or materials produced in the United States, including iron, steel, and manufactured goods.


Accordingly, we initiated this audit to assess FAA's policies and procedures for awarding and administering contracts in accordance with domestic content laws. Specifically, we evaluated FAA's policies and procedures for (1) implementing Buy American requirements and (2) overseeing Buy American compliance.

We conducted our work in accordance with generally accepted Government auditing standards. Exhibit A details our scope and methodology. Exhibit B lists the entities we visited or contacted.

We appreciate the courtesies and cooperation of Department of Transportation representatives during this audit. If you have any questions concerning this report, please call me at (202) 345-2619 or Darren Murphy, Program Director, at (206) 255-1929.

cc: The Secretary
DOT Audit Liaison, M-1
FAA Audit Liaison, AAE-100
Background

When awarding contracts on the Agency’s behalf, FAA contracting officials must comply with Buy American Laws like the BAP and the BAA, which have overlapping statutory authority.

FAA’s BAP states that the Secretary of Transportation may obligate money for projects only if the Agency uses steel and manufactured goods produced in the United States. It does not apply to acquisitions for raw or unmanufactured materials or to ground transportation demonstration projects, air traffic controller performance research, acquisitions funded by airway science curriculum grants, civil aviation security research and development, and acquisitions relating to facilities for advanced training of maintenance technicians for air carrier aircraft.

The FAA Administrator\(^6\) has the authority to waive BAP requirements to buy U.S.-produced steel and manufactured goods when:

- The acquisition is inconsistent with public interest;
- The items are not produced in the United States in sufficient and reasonably available quantities or of satisfactory quality;
- In the case of acquisition of facilities and equipment under the Airport and Airway Improvement Act of 1982, the cost of domestically produced components or subcomponents is more than 60 percent of the total cost and final assembly has occurred in the United States;\(^7\) and
- Including domestic materials will increase the cost of overall project by more than 25 percent.

These BAP waivers are addressed in FAA’s Acquisition Management System (AMS) guidance (see table D3 in exhibit D). If a BAP waiver has been executed, FAA may acquire the foreign steel or manufactured product. Additionally, in

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\(^6\) The Secretary has delegated this authority to the FAA Administrator; Title 49, Code of Federal Regulations (CFR) § 1.83(a)(11). This authority has been subdelegated to the FAA Acquisition Executive (FAE) and, in part, the Chief of the Contracting Office and the Contracting Officer; AMS T3.6.4.A.4.

\(^7\) The FAA Administrator may only waive the BAP requirements using this justification when procuring a facility or equipment under 49 U.S.C. § 44502(a)(2) (air navigation facility), § 44509 (demonstration projects necessary for research and development), chapter 471 (airport development projects, with some exceptions), and chapter 481 (projects funded by the airport and airway trust fund, with some exceptions). See 49 U.S.C. § 50101(b)(3).
accordance with the FAA Reauthorization Act of 2018, the Secretary is required to submit an annual report to Congress on new BAP waivers.\(^8\)

Like the BAP, the BAA requires Federal agencies to procure domestic goods. Unlike the BAP, the BAA is a Governmentwide statute, and it applies to all manufactured and unmanufactured articles, materials, and supplies acquired for public use in the United States, as well as the construction, alteration, or repair of any U.S.-based public building or public work. Furthermore, acquisitions subject to certain international trade agreements (e.g., the North American Free Trade Agreement or NAFTA\(^9\)) are treated as domestic purchases for the purposes of both FAA’s BAP and the BAA.\(^10\)

The BAA contains several exceptions to its domestic content restrictions, including acquisitions where the products:

1. Will be used outside the United States;
2. Are not produced in the United States in sufficient and reasonably available commercial quantities and are not of a satisfactory quality;
3. Are procured under any contract with an award value under the micro-purchase threshold;
4. When using a domestic product would make it “impracticable to comply” or “would unreasonably increase the cost;” or
5. When using a domestic product would be inconsistent with the public interest.\(^11\)

According to the FAA Reauthorization Act of 2018, at the end of each fiscal year, FAA must report to Congress the dollar value above the micro-purchase level of all acquisitions subject to the BAA. Such acquisitions include purchases from entities that manufacture articles, materials, or supplies outside the United States.\(^12\) It is worth noting that the FAA Reauthorization reporting requirements for acquisitions falling under the BAP are different from those that fall under the BAA. The BAP reporting requirement relates to waivers, while the BAA reporting requirement relates to the dollar value of U.S. versus foreign purchases.

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8 Pub. L. 115-254, Division B, Title I, § 167 (October 5, 2018).
10 AMS T3.6.4.A.1.b.
11 In the 2004 Consolidated Appropriations Act, Congress exempted commercial information technology from the BAA restrictions; however, it did not amend BAA to reflect this new exception. Pub. L. 108-199, Division F, Title V, § 535(a). AMS implements this commercial information technology exemption for acquisitions subject to BAA only.
In light of this complex and overlapping statutory framework, AMS provides guidance on when the BAP or the BAA applies to a contract (see exhibit F). Generally, when FAA acquires steel or manufactured goods, the BAP rather than the BAA applies. AMS notes that, in many instances, the BAA will only apply when FAA acquires raw or unmanufactured materials. One exception to this general rule is when the Agency acquires steel or manufactured goods for a contract that is exempt from the BAP, such as one for civil aviation security research and development. AMS states that these contracts are governed by the BAA and its exceptions.

In addition to the Buy American reporting provisions above, Federal agencies also had reporting requirements under Executive Order 13788. This Order directed heads of executive agencies, including FAA, to scrupulously monitor, enforce, and comply with existing Buy American Laws. Additionally, it required agency heads to prepare an annual report for the Secretary of Commerce and the Director of the Office of Management and Budget (OMB) that assesses (i) the monitoring, enforcement, and implementation of, as well as compliance with, the Buy American Laws within their agencies and (ii) the use of waivers within their agencies by type and impact on domestic jobs and manufacturing. It further required agency heads to develop and propose policies to ensure that Federal financial assistance awards and procurements maximize the use of materials produced in the United States, including manufactured products; components of manufactured products; and materials such as steel, iron, aluminum, and cement.

Moreover, AMS requires several clauses to be included in contracts subject to the Buy American Laws. For the BAA, these include a clause for supplies and another for construction; the BAP has a clause for steel or manufactured products. AMS also has associated clauses that require vendors participating in Buy American–applicable contracts to certify that their goods or products are domestically made or identify the country of origin.

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13 AMS T3.6.4.A.1. and 4.f.
15 EO 13788 required annual reports for the years 2017 through 2020 and authorized the Secretary of Commerce and OMB Director to request reports for subsequent years. EO 14005 further expands reporting requirements to include a biannual report on: (1) the agency’s ongoing implementation of and compliance with Made in America Laws; (2) the agency’s analysis of goods, products, materials, and services not subject to Made in America Laws or where requirements of the Made in America Laws are waived; (3) the agency’s analysis of spending as a result of waivers used pursuant to the Trade Agreements Act of 1979, separated by country of origin; and (4) recommendations for how to further effectuate the Order.
16 AMS 3.6.4-2.
17 AMS 3.6.4-3.
18 AMS 3.6.4-5.
19 AMS 3.6.4-15, BAA certificate; and AMS 3.6.4-18, Certification Regarding Steel and Manufactured Products.
FAA uses its National Acquisition Evaluation Program (NAEP) to monitor compliance with these overlapping and complex Buy American Laws. The NAEP requires evaluators to conduct annual reviews of FAA acquisition offices to monitor the implementation of procurement requirements and processes. They examine various stages of the contracting lifecycle, from pre-award planning to post-award documentation and contract closeout.

In January 2021, the White House issued Presidential Executive Order 14005, “Ensuring the Future Is Made in All of America by All of America’s Workers,” which revoked Executive Order 13788, the applicable criteria for FAA contracts that we reviewed. While our findings are tied to the Executive order that was in effect when we conducted our field work, the recently issued Executive Order 14005 contains many similar or more rigorous administrative requirements with which Federal agencies—including FAA—will eventually have to comply. For this reason, this change in policy did not affect our audit findings or resulting recommendations. Where practical, we have noted “like” requirements in the new Executive Order that relate to, and in some cases further support our findings and recommendations.

Results in Brief

**FAA does not always implement BAA and BAP requirements on applicable contracts.**

Gaps in guidance, training, and oversight impede the Agency’s ability to comply with domestic content laws. AMS requires Agency contracting officers (CO) to include specific clauses in Buy American-applicable contracts that direct vendors to either certify that their goods or products were made domestically or identify the country of origin. AMS also notes that all FAA employees with delegated contracting authority must demonstrate appropriate knowledge and experience in all types of acquisitions, including those with BAA and BAP requirements. However, within our sample of 76 contracts, we identified 28 where COs omitted or improperly applied the required clauses, as well as contract files that lacked vendor certifications. We also found that COs misapplied BAP waivers

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20 EO 14005.
21 EO 13788.
22 The following is a breakdown of contracts reviewed: 2 with missing clauses, 12 with missing certifications, and 14 with incorrectly applied Buy American clauses.
23 When FAA purchases products or materials subject to the Buy American Laws, it must include two categories of clauses in the contract—the main clause (i.e., supply, construction, and steel and manufactured products) and the associated certification clauses. The certification clauses direct offerors to either certify that their goods or products were made domestically or identify the country of origin.
and did not always meet contract filing requirements for Buy American–related documents. Such shortfalls may be attributable to a lack of Buy American–specific guidance. For example, 3 of the 28 COs and CORs we interviewed stated that AMS is too complicated to understand and does not incorporate all the requirements for Buy American compliance. FAA’s acquisition training program also has limited content on BAA and BAP requirements, exemptions and waivers, or related AMS procedures. Instead, the Agency relies predominantly on Governmentwide classes that briefly cover the BAA but not the FAA-specific BAP. Without guidance and training to instruct its COs on how to implement these complex requirements, FAA cannot assure Congress that its significant purchases comply with the Buy American Laws. Additionally, until these issues are addressed, FAA cannot accurately report how much it spends to acquire supplies, steel, and manufactured products that originate in the United States.

**FAA does not adequately oversee Buy American compliance when administering contracts.**

Executive Order 13788 directed Federal agencies to thoroughly monitor, enforce, and comply with the Buy American Laws. Yet FAA does not have adequate policies or procedures for verifying pre- and post-award compliance with domestic content laws. In particular, FAA does not require its acquisition staff to assess and report on Buy American compliance, even though two methods—such as the NAEP evaluations and the Federal Procurement Data System–Next Generation (FPDS-NG)—are available and could be used more fully. For instance, FAA’s NAEP forms for 2016 and 2017 did not include a separate line item for assessing Buy American compliance. As a result, none of the NAEP reports we examined (all 75 from 2016 and all 56 from 2017) contained comments on whether Buy American compliance had been met. Moreover, although the NAEP form was updated in 2018 to include Buy American clauses in a list of review requirements, we found that evaluators still are not providing sufficient details in this area. FAA also lacks an effective process for ensuring it is correctly entering “place of manufacture” data into FPDS-NG—information that the Agency uses to record contracts with Buy American–compliance requirements. Due to such errors, FAA misreported 21 of 31 Buy American–applicable contracts, valued at $82 million, in FPDS-NG. Finally, although Executive Order 13788 required

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24 Similarly, EO 14005 provides that “the United States Government should, consistent with applicable law, use terms and conditions of Federal financial assistance awards and Federal procurements to maximize the use of goods, products, and materials produced in, and services offered in, the United States. The U.S. Government should, whenever possible, procure goods, products, materials, and services from sources that will help American businesses compete in strategic industries and help America’s workers thrive.” EO 14005 also requires agencies to report on their implementation of and compliance with Made in American Laws.
agencies to assess and report on their use of waivers, FAA currently does not have a system in place to track this information. Nevertheless, FAA noted that it is in the process of establishing fields in its contract writing system, the Procurement Information System for Management (PRISM), to help fulfill this requirement. Moreover, FAA’s process for using FPDS-NG (a Governmentwide system) could be modified to track waiver usage—an action encouraged by OMB. As a result of these shortfalls, FAA cannot be certain that it is meeting the intent of the Buy American Laws—to purchase American-made materials and goods to increase U.S. jobs, support American industry, and strengthen our economic and national security.

We are making recommendations to improve FAA’s compliance and oversight for contracts subject to domestic content laws.

### FAA Does Not Always Implement Domestic Content Requirements on Applicable Contracts

FAA’s AMS implements the BAA and BAP statutory requirements. As such, AMS directs FAA officials to use domestically produced supplies, construction, and steel or manufactured products, unless it is appropriate to use a BAA exception or BAP waiver. However, the Agency’s contracts do not always include BAA- and BAP-required clauses, and FAA lacks the policies, procedures, and training to ensure staff implement these domestic content requirements appropriately when they prepare contract documents.

### FAA’s Contracting Staff Do Not Always Apply the Buy American Laws Correctly When They Prepare Contracts

While some contracts lacked Buy American clauses or the appropriate certifications, others included inapplicable clauses.

#### Missing Buy American Clauses

AMS directs Agency COs who are acquiring supplies, construction materials, or steel and manufactured products to include specific clauses in every contract

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25 Similarly, EO 14005 requires agencies to report on use of longstanding or nationwide waivers in an initial report to OMB and to subsequently report to OMB on a biannual basis when they waive requirements to Made in America Laws.
where the Buy American Laws apply. Of the 76 contracts in our sample, we identified 31 that were subject to the Buy American Laws. Among those 31 contracts, we found 2 that did not include the appropriate Buy American clauses; however, FAA officials were unable to explain why the clauses had been omitted. Contracts that lack the correct clauses reduce FAA’s ability to ensure compliance with the Buy American Laws. As such, we estimate that similar omissions could be expected in 179 (7 percent) of the estimated 2,686 BA-applicable contracts in our universe, which have an estimated value of $11 million.

**Missing Buy American Certification Clauses and Vendor Certifications**

AMS also requires contracts subject to Buy American requirements to include clauses for vendor certifications stating that the offered supplies or steel and manufactured products were made in the United States. Additionally, these certification clauses direct offerors to either certify that their goods or products were made domestically or identify the country of origin. This completed vendor certification becomes part of the permanent contract file.

The following is a list of the AMS vendor certification clauses.

1. **Supplies:** Offeror certifies that each end product, except as listed on the certification, is a domestic end product—(1) an unmanufactured end product mined or produced in the U.S. or (2) an end product manufactured in the U.S., if the cost of its components mined, produced, or manufactured in the U.S. exceeds 50 percent of the cost of all its components.

2. **Construction:** Offeror agrees that only domestic construction material will be used by the contractor, subcontractors, and suppliers in the

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26 AMS 3.6.4-2 BAA (supplies); AMS 3.6.4-3 BAA (construction materials); AMS 3.6.4-5 BAP (steel and manufactured products).
27 The two contracts had a value of $937,000.
28 Our 179 estimate has a precision of -177 (-3 percent of the 6,002 contracts in our universe) at the 100-percent confidence level and +206 (+3 percent) at the 90-percent confidence level so that our confidence limits ranged from 2 to 385 (0.03 to 6 percent).
29 Our 2,686 estimate has a precision of +/-602 (+/-10 percent of the 6,002 contracts in our universe) at the 90-percent confidence level so that our confidence limits ranged from 2,085 to 3,288 (35 to 55 percent). These 2,686 contracts have an estimated value of $785 million. Our $785 million estimate has a precision of -$699 million (-17 percent of the $4 billion in our universe) at the 100-percent confidence level and a precision of +$918 million (+23 percent) at the 90-percent confidence level, so that our confidence limits ranged from $87 million to $1.7 billion (2 to 42 percent).
30 Our $11 million estimate has a precision of -$10 million (-0.3 percent of the $4 billion in our universe) at the 100-percent confidence level and a precision of +$13 million (+0.3 percent) at the 90-percent confidence level so that our confidence limits ranged from $937 thousand to $24 million (0 to 0.6 percent).
31 AMS 3.6.4-15.
performance of this contract, except for foreign construction materials, if any, listed in this contract. 32

3. Steel and manufactured products: Offeror certifies: (1) the steel and manufactured goods provided in the contract are entirely produced in the U.S., or (2) the cost of components and subcomponents produced in the U.S. is more than 60 percent of the cost of all components of the facility or equipment and final assembly of has occurred in the U.S. 33

Our review found that the files for 12 of the 31 BAA- and BAP-applicable contracts in our sample did not contain the required certifications. These certifications are necessary to avoid unauthorized purchases of foreign supplies and other products. In all, 14 vendor certifications were missing from the 12 contract files, including 2 contracts that lacked certifications for both supplies and steel or manufactured products. For example, a contract for more than $500,000 to provide test equipment components for FAA’s air route radar systems included the proper clause, but the CO did not obtain the required vendor certification stating that the items were manufactured in the United States. We found that the procured items in this example had been obtained from a foreign manufacturer in violation of the BAP. Due to the CO’s failure to obtain the required vendor certification, FAA expended more than $500,000 on unauthorized foreign items. 34 Based on our finding that 12 (valued at $70 million) of 31 contracts were missing certifications, we estimate that required certifications could be missing from 987 contracts with an estimated value of $127 million. 35 As such, FAA risks spending these funds on foreign items, which could be better spent on items that meet the Buy American Law requirements.

We asked FAA officials why the 14 certifications were not in the contract files. Based on their responses, we identified a variety of reasons, including: the COs did not know that vendor certification clauses needed to be in the contracts; the

32 AMS 3.6.4-3.
33 AMS 3.6.4-18.
34 We asked the Agency whether this example of FAA’s noncompliance with the BAP resulted in Anti-Deficiency Act violations. FAA responded that while this may be a BAP violation, it does not violate the Anti-Deficiency Act solely because the BAP prohibition on using obligated funds to purchase foreign steel or manufactured goods is not contained in an appropriations act. This is an executive branch position, which FAA follows, and is based on a 2007 opinion from the Department of Justice Office of Legal Counsel (OLC), Memorandum for the General Counsel, Environmental Protection Agency, Use of Appropriated Funds to Provide Light Refreshments to Non-Federal Participants at EPA Conferences, (April 5, 2007); see also OMB Circular A-11, section 145.2. We note that the Government Accountability Office disagreed with this OLC opinion. See Antideficiency Act—Applicability to Statutory Prohibitions on the Use of Appropriations (B-317450), March 23, 2009.
35 Our 987 estimate has a precision of +/-445 contracts (+/-7 percent of the 6,002 contracts in our universe) at a 90-percent confidence level, so that our confidence limits range from 541 to 1,432 (9 to 24 percent).
36 Our $127 million estimate has a precision of +/-$28 million (+/-0.7 percent of the $4 billion universe) at a 90-percent confidence level, so that our confidence limits range from $100 million to $155 million (3 to 4 percent).
COs were not able to locate the certifications; and the COs left the Agency without ensuring the certifications were obtained and filed. Moreover, based on our review, 3 of the 28 COs and CORs we interviewed do not know where in AMS to find additional guidance on including vendor certification clauses in contracts. One of these COs described the domino effect associated with such an omission, stating that because the relevant clause “was never included in the contract...the vendor did not supply a copy of the Steel and Manufactured Products certification.” When contracts do not require vendors to complete certifications or do not identify the Buy American requirements, FAA may be hindered in its ability to track BAA compliance and could have difficulty holding a noncompliant contractor accountable. Comments from Agency COs suggest that more comprehensive guidance for acquisition staff could both reduce the frequency of these recurring issues and improve FAA’s ability to enforce domestic content laws. Furthermore, contractor certifications can serve as crucial evidence if a product is later determined to be noncompliant and would provide FAA with the opportunity to pursue suspension, debarment, and criminal penalties for false certifications.

To gather additional information on the Agency’s Buy American–related practices, we sent a survey to all 236 of FAA’s current COs, and 81 responded. A section of the survey focused on vendor certification; 56 respondents (70 percent) stated that they rely solely on vendor self-certifications to evaluate Buy American compliance, and they do not perform any additional checks. This demonstrates that vendor certifications are critical components of FAA’s limited enforcement framework for domestic content requirements. However, as we discuss later in this report, the COs also told us that they do not conduct significant post-award surveillance to validate the integrity of vendor self-certifications.

Inclusion of Inapplicable Clauses

We also found that FAA’s contracting staff had included other non-Buy American clauses in 14 of the 31 BAA and BAP contracts in our sample. For example, one contract included a clause for NAFTA, which requires vendors to certify that—except for any Canadian and Mexican items listed in the contract documents—their end products or services originated in the United States.37 In this case, however, NAFTA did not apply as none of the products were to be acquired from Canada or Mexico, and all the work was to occur in this country.38 Inserting clauses that may not be applicable in contracts can create confusion and an unnecessary administrative burden for COs and increase the offerors’ administrative costs and thus the overall cost of FAA’s acquisitions. Based on our finding that 14 of the 31 BAA- and BAP-applicable contracts (valued at

37 AMS T3.6.4A.7.
38 AMS T3.6.4-8.
$71 million) included inapplicable domestic content clauses, we estimate that 1,166 contracts in our universe valued at $139 million may include similar unnecessary clauses regarding domestic content requirements.

Additionally, some COs added clauses detailing Buy American requirements in contracts that did not require them. While 45 of the 76 contracts in our sample were not subject to such requirements, 24 of the 45 included Buy American clauses. When we asked about this, Agency COs acknowledged that those clauses had been included in error. FAA officials explained that during fiscal year 2017—the period of our audit—COs had limited aids (e.g., contract writing and matrix tools) to help them determine which of over 600 AMS contract clauses to use; only 10 of the clauses apply to the Buy American Laws. However, in fiscal year 2018, FAA upgraded its contract writing system with improved templates that include the appropriate clauses for each type of contract. The 2018 contracts were not within the scope of our review, so we were unable to assess the results of this upgrade.

Moreover, the inclusion of unnecessary clauses complicates and confuses CO and vendor efforts to comply with the Buy American Laws. When FAA omits relevant clauses from contracts, it incorrectly signals that the acquisition is not subject to Buy American requirements; as a result, the Agency may expend funds on foreign purchases. Providing staff with proper guidance on identifying appropriate BAA- and BAP-applicable acquisitions, as well as the correct clauses to insert in contracts, can help to correct the errors and eliminate the confusion that we found during the course of our review.

**FAA Contracting Officers Frequently Misapply Buy American Preference Waivers**

Unlike the BAA, which applies across the Federal Government, the BAP—which governs acquisitions of steel and manufactured products—is specific to FAA. AMS implements the BAP and directs FAA’s contracting staff to use only U.S.-produced steel and manufactured goods on projects, unless that requirement is waived by an authorized official. We reviewed four BAP waivers executed by the

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39 Our 1,166 estimate has a precision of +/-475 contracts (+/-8 percent of the 6,002 contracts in our universe) at a 90-percent confidence level, so that our confidence limits ranged from 691 to 1,640 (12 to 27 percent).
40 Our $139 million estimate has a precision of +/-$30 million (+/-0.7 percent of the $4 billion in our universe) at a 90-percent confidence level, so that our confidence limits ranged from $109 million to $168 million (3 to 4 percent).
41 These were identified as service contracts.
42 The Procurement Information System for Management (PRISM) is FAA’s official system for procurement processing.
43 AMS T3.6.4(A)(4).
FAA Acquisition Executive (FAE) in 2013 (see table 1) that were in effect during the course of our audit; three are “public interest” waivers under the BAP. Notably, each of the four is a BAP blanket waiver, which applies to all future contracts that satisfy the waiver’s criteria, is not contract or project-specific, and remains valid unless expressly rescinded by the FAE. For example, the BAP public interest waiver for commercial information technology waives the BAP requirements “to purchase United States-made manufactured goods when those manufactured goods are information technology that are a commercial item.” According to FAA officials, the CO is responsible for determining whether a contract satisfies the waivers’ criteria. If a waiver applies, the CO is permitted to purchase foreign steel or manufactured goods.

According to AMS, vendor certifications are required for all BAP-related contracts, including instances where waivers are used. However, the blanket waiver for unit purchases that cost less than $3,000 contains contrary language, expressly stating that vendor certifications are not required when this waiver applies, effectively removing the AMS certification requirement. According to FAA, the purpose of this waiver is “to eliminate procurement delays and unnecessary administrative costs from FAA’s procurement process.” In comparison, the blanket waiver involving U.S.-made percentage component costs states that a written certification is required before the contract is awarded. The remaining two blanket waivers do not mention the need for certification and—by default—must abide by the AMS certification requirements.

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44 One of the waivers expired in 2016; it was reissued with revisions and is now “effective until expressly rescinded.” EO 14005 now requires agencies to submit to the Made in America Director an initial report describing the ongoing use of any longstanding or nationwide waivers of any Made in America Laws, with a written description of the consistency of such waivers with the policy set forth in the Executive order.

45 Unlike the BAA, the BAP statute does not specifically permit waivers for commercial information technology. Consequently, FAA created a blanket waiver, using its BAP public interest authority to permit all future purchases of foreign commercial information technology. This waiver contains language that mirrors language contained within the statutory BAA commercial information technology exception, which is implemented in both AMS and the Federal Acquisition Regulation. See 48 C.F.R. § 25.103(e) and AMS T3.6.4.A.2 and T3.6.4.3. FAA created this blanket public interest waiver without giving the public notice or an opportunity to comment. In addition, as described in greater detail later in this report, FAA has not posted the waiver on its website.

46 According to FAA officials, this particular waiver was specifically designed for the Mike Monroney Aeronautical Center. As the Agency’s main logistic center, it processes thousands of small purchases annually.
### Table 1. FAA Blanket Waivers to BAP Requirements

<table>
<thead>
<tr>
<th>Type</th>
<th>Stated Legal Basis</th>
<th>Scope and Application of BAP Waiver</th>
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<tbody>
<tr>
<td>&quot;U.S.-made Percentage Component Cost&quot;</td>
<td>Cost exceeds 60 percent of component costs (49 U.S.C. § 50101(b)(3))</td>
<td>Applies to contract actions where: (1) vendor certifies in writing before award that U.S.-produced components cost more than 60 percent of the cost of all components, and that final assembly will occur in the United States; and (2) CO verifies proper and timely submission of the vendor’s certification. Effective until expressly rescinded.</td>
</tr>
<tr>
<td>&quot;Contracts for FAA’s Logistics Center in Support of the NAS&quot;</td>
<td>Public interest (49 U.S.C. § 50101(b)(1)) and Insufficient quality and/or amount (49 U.S.C. § 50101(b)(2))</td>
<td>Applies to all contract actions in support of the NAS that are single-sourced based on proprietary data or configuration standardization. Effective until expressly rescinded.</td>
</tr>
<tr>
<td>&quot;Purchases Less Than $3,000&quot;</td>
<td>Public interest (49 U.S.C. § 50101(b)(1))</td>
<td>Applies to all contracts for manufactured goods when those manufactured goods are priced less than or equal to $3,000. Also waives need for purchasing officials to obtain a certification for each item purchased. FAA interprets the $3,000 threshold as an item cost, not a total contract cost. Effective until expressly rescinded.</td>
</tr>
<tr>
<td>&quot;Commercial Information Technology&quot;</td>
<td>Public interest (49 U.S.C. § 50101(b)(1))</td>
<td>Applies to all contracts for manufactured goods involving information technology products that are commercial items. Includes broad definitions of “commercial item” and “information technology.” Effective until expressly rescinded.</td>
</tr>
</tbody>
</table>

Source: FAA

According to one FAA acquisition official, in 2013, the Agency notified its contracting staff via email about the BAP blanket waivers and how to use them. Yet, beyond that initial outreach, FAA has not provided any further guidance or instructions on this topic. Instead, contracting staff rely solely on AMS, which only establishes who has the authority to make waivers and who can approve them. As some COs told us, AMS does not specifically discuss when it is appropriate to apply or document that COs use the BAP waivers—a point we confirmed when we reviewed FAA’s acquisition guidance. In contrast, AMS does require COs to document all BAA exceptions within contract files. AMS also requires a legal review of contracts (BAA and BAP) over $100,000. But again, we found no

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47 The Secretary has delegated this authority to the FAA Administrator; for more information, see the Background section of this report.
evidence within our sample that FAA conducted legal sufficiency reviews to verify that the correct BAP blanket waiver was being applied.

During our audit, we determined that 7 of the 31 BA-applicable contracts in our sample used FAA-specific blanket waivers. In four of the seven contracts, however, the COs applied the waiver unnecessarily or inappropriately. For example, one CO purchased test equipment for use by technicians in the field, as well as students in classroom and lab environments. The CO applied the National Airspace System Blanket (NAS) waiver to this item based on its proprietary configuration. However, the product did not appear to be made abroad. After we questioned the use of the waiver, an FAA official contacted the vendor, which said the product was domestically made, confirming that the waiver was unnecessary.

Another contract purchased six German-made, high-speed cameras for documenting crash-test experiments. In writing this contract, the CO included BAP clauses related to the purchase of a manufactured product, as well as the required certification language. The contractor returned the form, certifying that the manufactured products had been made in Germany, not the United States. However, the CO did not recognize or document that the information technology blanket waiver could have been used for the purchase of this foreign-made product.

Insufficient guidance is not the only reason Agency COs are using waivers incorrectly or not applying and documenting waivers when applicable. This also occurs due to the lack of BAA- or BAP-specific training for acquisition professionals at FAA, as we discuss below. If Agency COs do not understand how to correctly apply the waivers, FAA cannot fully assess its compliance with the Buy American Laws or the related impact on domestic jobs and manufacturing.

## FAA Provides Limited AMS Training on the Buy American Laws for Its COs and Other Acquisition Staff

AMS states that all FAA employees with delegated contracting authority must demonstrate the appropriate knowledge and experience to execute this authority on behalf of the Government. Yet FAA’s training program has limited content on how to execute Buy American requirements, BAA exceptions, BAP waivers, or any related AMS procedures for implementing this complex domestic content.

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48 Such assessments were previously required by EO 13788 and are still required by EO 14005.
49 AMS 3.1.4, Contracting Authority.
framework. Instead, FAA relies predominantly on Federal Acquisition Regulation (FAR)–based classes that cover a broad range of acquisition topics. While these classes may provide an overview of the Governmentwide BAA requirements, they do not cover the AMS and the BAP requirements that apply only to FAA.

We interviewed all 28 COs and contracting officer representatives (COR) who worked on our sample of BAA- and BAP-applicable contracts; topics included opportunities for training on domestic content requirements. Twenty-six of the 28 provided comments regarding their training: 12 said they had received “no training;” 3 COs said their training was “poor” or “insufficient;” 9 said their training was “ok” or “sufficient;” and 2 COs said their training was “good” and “excellent,” respectively. Several of the interviewees also noted that FAA does not provide formal or consistent training on the Buy American Laws. For example:

- One FAA contracting manager stated: “FAA does not have a methodology in place to ensure that all contracting personnel obtain applicable BA [Buy American] contracting training. Currently, BA training classes are not mandatory for CO/CORs or any other contracting personnel. If someone would like to learn the procurement details behind BA, a couple of ‘ad-hoc’ classes can be found in ELMS [FAA’s Electronic Learning Management System]. Brownbag meetings are also used by FAA to inform its contracting personnel on different details about BA and its procurement needs.”

- “I do not recall receiving any formal training,” stated one CO. Another said, “I only received brief training on the Buy American subject until FAA training presented [a session] during monthly leadership/training [via] VTC in April 2018. This training presented more depth than any training I received prior.”

- “I would rate the training I received on BA/DP [Buy American/domestic preference] pre- or post-award requirements as poor,” said yet another CO. “I followed the BA guidance in [AMS]…It truly upsets me that myself and other COs are unclear on certain requirements. Adequate training is not the…only culprit…BA guidance…should incorporate all the compliance needs so COs will have ONE place to reference requirements.”

In addition, 70 of the 81 people who responded to our survey said they had some type of previous training on domestic content laws. Forty-three (61 percent) of those 70 individuals described the training they received as less than sufficient.50 One CO stated that in his 12 years in the position, he only received a half-day training session on domestic content laws. Some COs said their only instruction did not cover AMS or FAA-specific domestic content requirements and waivers. In

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50 “Less than sufficient” includes survey responses of “somewhat sufficient” and “insufficient.”
addition, 61 of the 81 survey respondents said they had received some type of training on waivers. Thirty-six (59 percent) of those 61 survey respondents said that while they had received some training on how to apply waivers, it was less than sufficient. One CO said, “No real formal training [on waivers] has ever happened,” while another stated, “I don’t remember receiving BA-related training since coming to the FAA.” A third CO stated, “CORs need more training on the Buy American Act and how it applies to contracts.”

The COs’ lack of knowledge regarding Buy American requirements is a possible contributing factor in FAA’s inability to fully ensure compliance.

### COs Do Not Always File Required Documents in FAA’s Official Contract File System

According to AMS, any contract actions that occur on or after October 1, 2013, must be created in electronic format and maintained in FAA’s repository for paperless contract files, known as Electronic Document Storage (eDocS). COs must ensure documents stored in eDocS are complete, legible, accurately labeled, and filed promptly in the appropriate contract folder. They are also required to identify the location of contract files stored elsewhere—whether in paper or electronic form—in the eDocS “Annotations” section.

We found, however, that the eDocS system did not contain the required documents for 11 of the 29 contracts in our sample. (The Buy American Laws applied to 31 contracts in our sample, but 2 of these contracts were awarded before eDocS was required.) While AMS describes how to properly document a complete and official contract file in eDocS, COs and contract managers could not always give us supporting documentation for their Buy American–applicable contracts. Our review revealed that Buy American–relevant documents—such as base contracts with clauses, Buy American certifications, and BAP waivers—were frequently misplaced, mislabeled, or missing from eDocS. We also found that in some cases COs did not know which contract documents were required; in others, the COs could not find their predecessors’ contract documents. Some of these issues may be due to the lack of instructions for COs, such as when to obtain a completed vendor certification and what to maintain in the contract files.

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51 The other 20 respondents did not take any Buy American–related training.
52 AMS Electronic Commerce in Contracting, T3.1.9.A.4a.
53 AMS T3.1.9.A.4.a (2).
54 AMS T3.1.9.A.4.a (3).
We identified two 2017 NAEP reports that noted that file issues arose when the transfer of contracting responsibilities from one CO to another did not proceed smoothly. Specifically, the NAEP reports noted the lack of coordination in contract transfers as one of the reasons COs found it challenging to provide complete contract documentation. As a result, successor COs had difficulty performing post-award administrative functions as they did not have sufficient knowledge of the contract history. At the time, the NAEP evaluators recommended that FAA establish general guidance at the division level to ensure that there is a consistent, comprehensive, and smooth transition of work between COs that is monitored and enforced by management. As of the date of this report, FAA has not developed this guidance.

This is not the first time we have addressed the lack of adequate documentation in the eDocS files. A 2013 Office of Inspector General (OIG) report noted that FAA was not consistently maintaining, updating, and organizing the contract files for ATCOTS, its air traffic controller training program. In response to that report, FAA developed an eDocS user’s guide and implemented a new internal email system that—according to the ATCOTS CO—improved the Agency’s electronic file maintenance. However, despite these actions, inadequate contract documentation—such as omissions of Buy American clauses and certifications—remains a problem, preventing FAA from administering its contracts in a timely, effective manner and in accordance with the law.

The lack of Agency-specific guidance and training significantly impacts FAA’s ability to ensure the proper application of BAA and BAP requirements, exceptions, and waivers in its acquisition contracts.

# FAA Does Not Adequately Oversee Buy American Compliance When Administering Contracts

FAA does not have guidance to support or adequately document post-award Buy American compliance activities. The Agency also does not have an adequate system for identifying Buy American–applicable contracts or tracking how many waivers and exceptions FAA uses, as required by law.

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FAA’s Monitoring of Post-Award Buy American Compliance Is Insufficient

The Agency neither provides staff with guidance on post-award compliance nor monitors their efforts in this area.

**FAA Lacks Guidance on How To Monitor Post-Award Compliance**

Executive Order 13788\(^5\) directed Federal agencies, including FAA, to scrupulously monitor, enforce, and comply with the Buy American Laws.\(^5\) Yet the Agency does not have policies or procedures to guide COs on how to validate compliance after the contract is awarded. This, in turn, has encouraged COs to use inconsistent approaches to conduct surveillance, when it does occur. For instance, one official said monitoring may take place in various ways—by reviewing deliverables, invoices, quality assurance plans, and program management activities; consulting with quality reliability officers; or regularly communicating with CORs and contractors. Nevertheless, many of the 28 Agency COs and CORs we interviewed explained that they do not conduct post-award compliance checks because AMS does not require them to do so.\(^5\) Fifty-seven (70 percent) of the 81 respondents to our survey stated that they did not know how to monitor Buy American compliance throughout the acquisition lifecycle.

Even so, we did encounter an example of staff vigilance. Despite the lack of relevant policies or procedures, one CO discovered that a product a vendor had certified as Buy American compliant was contained in boxes labeled as made in a foreign country, so the CO rejected the boxes.\(^5\) However, noncompliance may not always be so easy to identify, particularly without structured controls—such as policies and procedures on verifying post-award compliance. Such controls can enhance FAA’s ability to ensure domestic products are delivered according to BAA requirements and contract specifications. COs who do not know how to verify that the Agency and its vendors have met domestic content requirements—or who do not think this is required by AMS—cannot provide assurance that the end product delivered was compliant with domestic content laws.

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\(^5\) EO 13788 § 3.

\(^5\) Similarly, EO 14005 provides that the U.S. Government should maximize the use of goods, products, and materials produced, and services offered, in the United States. It also requires agencies to report on the implementation of and compliance with Made in American Laws.

\(^5\) One option available to FAA is to fill this gap by modifying the NAEP reviews to include post-award monitoring, especially on contracts deemed to be high risk.

\(^5\) The information provided by this example came from our anonymous survey; therefore, we could not determine whether there were any consequences for the vendor or if FAA took any corrective actions.
During the course of our audit, we looked at DoD for best practices in post-award compliance verification. DoD, for example, uses a contractor purchasing system review (CPSR), in accordance with Federal acquisition regulations, to validate post-award compliance. During the CPSR, DoD contracting officials look for Buy American clauses in prime contracts, whose requirements can be met by the awarding of subcontracts. If they find the clauses, they review a sample of awards. If they identify foreign suppliers within that sample, they check to ensure the contract files contain the required Buy American certifications. FAA officials noted that CPSRs are performed by the Defense Contract Management Agency (DCMA) on larger contracts Governmentwide and that some of FAA’s contracts are included in these reviews. However, they also recognize that these reviews tend to only look at the larger contracts and may not examine FAA-specific, BAP-compliance issues. Nevertheless, FAA could implement a practice similar to the CPSRs by sampling contracts of various sizes to assess compliance with the Buy American Laws, as well as other contract requirements.

FAA Conducts Limited Monitoring of Internal Compliance With the Buy American Requirements

As mentioned above, Executive Order 13788 directed Federal agencies, including FAA, to scrupulously monitor their compliance with the Buy American Laws. According to FAA senior officials, the Agency uses NAEP procurement reviews as its primary internal control tool for ensuring that staff are monitoring compliance. However, while AMS refers to monitoring the implementation of procurement requirements in general, it makes no mention of ensuring COs monitor compliance with the Buy American requirements. Moreover, while NAEP reviews are intended to cover the full lifecycle of a contract, we found that NAEP evaluators mainly focus on the pre-award process and do not thoroughly document the results of Buy American-compliance checks.

To understand how FAA uses this internal monitoring control, we reviewed NAEP reports from 2016 and 2017. Buy American compliance was not included as a separate checklist item on the 2016 and 2017 NAEP evaluation forms, but evaluators could communicate review results by entering remarks in the form’s comment box. Yet none of the reports we reviewed (75 from 2016 and 56 from 2017) contained comments related to the FAA staff’s Buy American compliance—positive or negative. When questioned about this issue, FAA officials said that,

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60 The CPSR should be conducted in accordance with the CPSR Guidebook, DCMA instruction 109, the FAR subpart 44.3, and the DFARS 244.3. A CPSR is conducted when a contractor’s annual sales to the Government are expected to exceed $50 million in a 12-month period. These sales include all contracts/subcontracts minus those that are competitively awarded, firm-fixed-price; competitively awarded, fixed-price with economic price adjustment; or sales pursuant to part 12, which pertains to the acquisition of commercial items.

61 Similarly, since EO 14005 requires agencies to biannually report on implementation of and compliance with Made in America Laws, internal agency monitoring remains relevant.
despite the lack of comments, NAEP staff still “may” have evaluated compliance when conducting their reviews. Similarly, the NAEP evaluators told us that they did look for Buy American compliance. Although the NAEP’s main purpose is to monitor acquisition offices’ implementation of procurement requirements and processes, FAA officials told us the evaluations can be used as a Buy American–compliance check. Still, neither FAA officials nor NAEP staff provided any documentation to support these statements or to show that the evaluators record the results of their domestic content compliance reviews.

One reason for the lack of documentation is that AMS provides limited guidance on verifying post-award Buy American compliance. Moreover, based on our review of the NAEP evaluation forms for 2016 and 2017, we found that neither covered pre- or post-award compliance. Agency officials said they added assessment of domestic content compliance to the 2018 NAEP evaluation form in order to meet the requirements of Executive Order 13788. As such, although our audit covered fiscal year 2017, we looked at the 2018 NAEP reviews to confirm that FAA had updated the form. The revised form bundles Buy American compliance with 7 other requirements—consisting of almost 80 clauses—and has a checkbox that evaluators can mark to indicate “appropriate clause used.” However, the form only focuses on pre-award Buy American compliance and does not encourage NAEP staff to provide sufficient details about their assessments. We found, for example, that 16 of the 110 (15 percent) NAEP reports completed in 2018 included comments on the Buy American requirements somewhere on the forms. Yet the comments only discussed such pre-award compliance issues as:

- “Buy American Act waiver—$3K or less was incorrectly used.”
- “Appropriate Buy American clauses were in the Screening Information Requests.”

Currently, NAEP evaluator reviews are not structured to include adequate documentation or details that might prompt FAA officials to conduct comprehensive post-award follow-up checks. Without policies and procedures that include assessing post-award Buy American compliance as an action item on the NAEP checklist, FAA cannot depend on NAEP evaluations as an effective control for monitoring post-award compliance.
Executive Order 13788 also required Federal agencies to assess and report on Buy American compliance. OMB Memorandum M-17-27 provides additional guidance to agencies to maximize Executive Order 13788 policy and the statutory mandate for domestically manufactured products in contracts and grants and minimize use of exceptions and waivers. According to an FAA official, the Agency uses its Data Procurement Quality report—which validates the accuracy of the FPDS-NG data input by Agency COs—as a means for assessing Buy American compliance. FPDS-NG allows agencies to code the “place of manufacture” field to indicate—in accordance with the Buy American Act—whether the procured end products are manufactured inside or outside the United States and whether any exceptions or waivers apply. Specifically, FPDS-NG lists 10 active codes for identifying place of manufacture in the database, including foreign products acquired for resale, used outside the United States, or obtained under trade agreements (see exhibit E). However, we found that even though the system is equipped to track contracts with the Buy American requirements, FAA does not make full use of FPDS-NG. The Agency mainly uses only two of the codes—to identify that the item either (1) was manufactured in the United States or (2) is not a manufactured product but a service or research and development work. By using primarily these two FPDS-NG codes, FAA provides only limited transparency into how it applies the BAP blanket waivers when it purchases foreign-made products. In fact, we found that FAA uses the other applicable codes—i.e., “foreign end products predominantly commercial information technology” or “domestic preference would be inconsistent with the public interest”—less than 1 percent of the time to identify Buy American exceptions on contracts.

When we asked FAA officials how they measure and report on their Buy American compliance, they pointed to the information obtained from the FPDS-NG place of manufacture data field. In 2017, they reported to the Office of the Secretary that these data were over 85 percent accurate. Yet, even though FAA performs

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62 EO 14005 now requires agencies to biannually report on the implementation of, and compliance with, Made in America Laws.


64 The Office of Federal Procurement Policy (OFPP) requires Federal agencies to submit an annual report that certifies the completeness and accuracy of their FPDS-NG data. The report consists of the amount of an agency’s total procurement obligation. OFPP, Improving Acquisition Data Quality for Fiscal Years 2009 and 2019, October 7, 2009.

65 FY17 Agency Procurement Data Quality Report, Exhibit 1.
quality checks of the relevant data fields, we found significant accuracy problems with the data associated with the Buy American requirements. Based on our analysis of our sampled contracts from 2017, we found a much lower accuracy rate—only 55 percent. Specifically, 34 of 76 of our sampled contracts contained the wrong place of manufacture codes. Of these 34 contracts, FAA incorrectly reported the place of manufacture for 21 contracts (valued at over $82 million) that were subject to domestic content laws. Similarly, the Agency also misreported the place of manufacture for the remaining 13 contracts (valued at more than $256 million) that were not Buy American applicable. Overall, this equates to 34 contracts with a combined value of nearly $339 million that the Agency reported incorrectly. (See table 2 for our assessment of FAA’s reported data on Buy American compliance.) Thus, given the data accuracy issues we found, as well as the Agency’s limited use of the FPDS-NG codes, FAA cannot be certain that it is giving key stakeholders (e.g., Congress, OMB, and the Secretary of Commerce) accurate reports on its Buy American–applicable contracts or its use of the associated exceptions and waivers.

Table 2. OIG Assessment of Accuracy in FAA’s 2017 FPDS-NG Data on Buy American Compliance

<table>
<thead>
<tr>
<th>Domestic Content Applicability</th>
<th>Place of Manufacture Coded Correctly</th>
<th>Dollars Correctly Reported</th>
<th>Place of Manufacture Coded Incorrectly</th>
<th>Dollars Incorrectly Reported</th>
<th>Total Contracts</th>
<th>Total Dollars</th>
</tr>
</thead>
<tbody>
<tr>
<td>BA</td>
<td>10</td>
<td>$4,190,152</td>
<td>21</td>
<td>$82,450,769</td>
<td>31</td>
<td>$86,640,921</td>
</tr>
<tr>
<td>Non-BA</td>
<td>32</td>
<td>$1,158,253,961</td>
<td>13</td>
<td>$256,139,823</td>
<td>45</td>
<td>$1,414,393,784</td>
</tr>
<tr>
<td>Total</td>
<td>42</td>
<td>$1,162,444,113</td>
<td>34</td>
<td>$338,590,592</td>
<td>76</td>
<td>$1,501,034,705</td>
</tr>
</tbody>
</table>

Source: OIG analysis

A 2016 NAEP report provides a further illustration of FAA’s history of data inaccuracy. The evaluators who wrote the report noted the inconsistent way in which the COs enter data in FPDS-NG. They recommended that FAA train COs how to use FPDS-NG and require managers to review how the data are collected, entered, and presented to senior Agency officials and OMB. According to FAA, in December 2016, guidance was provided to COs on entering data into FPDS-NG as well as setting up different types of contracts—base contracts, blank purchase agreements, indefinite delivery/indefinite quantity, and purchase orders.

Based on our review, FAA may be over- or under-reporting its Buy American–applicable contracts. Thus, the Agency cannot be certain that it is maximizing its use of American goods and services and thus stimulating the U.S. economy, in accordance with the law, recent Executive Order, and OMB guidance.
Furthermore, inaccurate information on place of manufacture can have implications beyond FAA’s compliance with the Buy American requirements. In 2018, Congress enacted legislation\textsuperscript{66} to enhance supply chain security by prohibiting agencies from acquiring certain telecommunications and video surveillance equipment from covered firms and foreign countries. Moreover, in 2019, the President issued Executive Order 13873, which prohibits any acquisition if the transaction involves information or communication technology supplied by persons subject to the direction of a foreign adversary and poses an unacceptable risk to the United States.\textsuperscript{67} Finally, AMS requirements\textsuperscript{68} prohibit agencies “from entering into...or extending or renewing a contract with an entity that uses...covered telecommunications equipment.” Given the importance of securing the Nation’s telecommunications supply chain, it is essential for COs to have the necessary processes, guidance, and training to adequately document the country of origin when they procure applicable technology and services. While securing the telecommunications supply chain is distinct from domestic content laws, the mandates described above demonstrate that accepting materials of unknown origin not only subverts the Buy American Laws, it poses a security risk. We did not audit FAA’s efforts in this area, which was beyond the scope of our review.

\section*{FAA’s Oversight of Its BAP Waivers Is Insufficient}

FAA does not follow Federal requirements for tracking waiver usage and provides limited information to the public on its direct contract waivers.

\subsection*{FAA Does Not Track Waiver Usage}

Executive Order 13788 directed Federal agencies to minimize the use of waivers and make judicious use of public interest waivers of the Buy American Laws.\textsuperscript{69} However, FAA’s contract writing system currently does not track the use of

\textsuperscript{67} EO 13873, Securing the Information and Communications Technology and Services Supply Chain, § 1. (a)(ii)(A) and (C), May 15, 2019.
\textsuperscript{68} AMS T3.6.4.A.16.b.(1).
\textsuperscript{69} EO 13788, §§ 3 and 4. It also defines “waiver” as “exemptions from or waivers of Buy American Laws, or the procedures and conditions used by an executive department or agency (agency) in granting exemptions from or waivers of Buy American Laws.” EO 14005, § 2(c) contains similar language, defining “waiver” to mean an exception from or waiver of Made in America Laws, or the procedures and conditions used by an agency in granting exception from or waiver of Made in America Laws. As previously stated, it also directs agencies to “maximize the use of goods, products, and materials produced in, and services offered in, the United States” and to biannually report on the use of waivers.
waivers, and the Agency has indicated that this could be a time-consuming process. FAA’s rationale for using BAP blanket waivers is to make the Agency’s procurements more streamlined, timely, and efficient.

However, all Federal agencies use FPDS-NG to report contract information. In fact, OMB recommends that agencies strengthen their implementation of the Buy American Laws by adding instructions on coding such procurements to their FPDS-NG-focused user manuals, data dictionaries, and training modules.70 Yet, as noted previously, FAA uses FPDS-NG in a very limited capacity and does not use it to track waivers, especially its three blanket, public interest waivers (see table 1). The system’s existing codes potentially could be adapted to help fulfill this function—an action also encouraged by OMB. In response to our inquiry about enhancing its use of FPDS-NG to track waiver use, FAA recently told us it is in the process of modifying its contract writing system (PRISM) to allow COs to document waivers. However, this capability has not yet been implemented, and we were unable to review it as part of this audit. Without an effective waiver tracking system in place, FAA cannot fulfill the Executive Order’s direction to assess and minimize its use of public interest waivers.

**FAA Provides Limited Public Information on BAP Waiver Usage for Direct Contracts**

In accordance with the 2018 FAA Reauthorization Act, the Secretary shall, at least 10 days before a BAP waiver takes effect, (1) make a detailed written justification of the waiver determination publicly available on a DOT website and (2) provide an informal public notice and comment opportunity on the waiver determination. In addition, the Secretary must submit a report to Congress on the BAP waivers FAA issues in each fiscal year. However, as previously noted, the reauthorization language refers only to new waivers and not to those previously issued—such as the Agency’s four existing blanket BAP waivers that were executed prior to 2018 for an indefinite period and which remain in use today. As such, FAA has not made any detailed written justification of BAP waivers publicly available on a DOT website or submitted any reports to Congress pursuant to this requirement.

In contrast, FAA’s website posts information on all of the financial assistance waivers71 issued in connection with Airport Improvement Program (AIP) grants under the BAP. Since 2009, FAA has posted a total of 1,186 waivers for different financial assistance projects. Given that the Agency clearly sees the advantages of posting new and existing AIP grant waivers online, FAA could derive similar benefits by posting comparable information about the BAP waivers for its direct

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procurements. Furthermore, such an effort could provide more consistency and transparency to FAA’s implementation of the BAP.

Beyond the reporting requirements for newly issued BAP waivers, the 2018 FAA Reauthorization Act does not require the Secretary to report to the public or to Congress on FAA’s actual ongoing usage of BAP waivers to purchase foreign goods (see exhibit G). In comparison, for acquisitions subject to BAA, the reauthorization does require the Secretary to annually report to Congress and make publicly available a summary of the procurement funds spent on goods manufactured in the United States versus goods manufactured outside of the United States, as well as the total dollar value of foreign goods purchased by FAA.

The above discussion references the BAP waiver public information and reporting requirements that were in effect during our audit. However, the recently issued Executive Order 14005 now requires agencies to submit proposed waiver descriptions with detailed justifications to OMB and the General Services Administration to include information on all proposed and granted waivers on a public website. Additionally, as previously mentioned, Executive Order 14005 now requires Federal agencies to report biannually on goods, products, materials, and services not subject to Made in America Laws or where those requirements have been waived.

While it is early in the implementation process, it appears that the new Executive Order applies equally to the BAA and the BAP. Given that we found the FAA does not publish or report on its use of BAP waivers for its procurements and does not currently track its waiver use, the Agency may be challenged to comply with Executive Order 14005.

Conclusion

FAA expends significant taxpayer dollars to support its mission to provide the safest, most efficient airspace system in the world. Moreover, while FAA seeks to procure state-of-the-art systems, high-quality goods, and first-rate services, it is also required to comply with Buy American and domestic preference laws that have been enacted to promote American jobs and the U.S. economy. Yet gaps in its acquisition policies and procedures impede the Agency’s ability to comply with these important domestic content requirements. FAA has opportunities to improve upon its oversight by providing its staff with adequate policies, procedures, and training to ensure compliance with Made in America requirements. Until it takes steps to close these gaps in its Buy American compliance and oversight, FAA cannot assure Congress and the public that it is
spending taxpayer dollars on U.S.-made supplies and products in accordance with the law.

**Recommendations**

To improve compliance and oversight for contracts subject to the Buy American Act (BAA) and the FAA-specific Buy American Preference (BAP) provisions, we recommend that the Federal Aviation Administrator:

1. Revise the Acquisition Management System (AMS) to include policy and guidance covering the BAA and BAP laws and requirements, specifically on the application of clauses, exceptions, and waivers, as well as when to obtain contractor certifications. Implementing this recommendation could put $127 million to better use by reducing the risk of FAA improperly procuring foreign-made supplies and products.

2. Develop and implement formal training that focuses on the application of FAA’s BAA and BAP requirements, contract clauses, and waivers, as well as on obtaining and retaining required vendor certifications.

3. Revise AMS to include policy and guidance for FAA’s Electronic Document Storage record-keeping system to include the retention of BAA and BAP documents in the official contract file.

4. Revise AMS to include guidance and procedures on how to monitor post-award compliance with the BAA requirements, including actions to take when acquisition clauses—such as vendor certification requirements—are incomplete or erroneously omitted.

5. Revise the National Acquisition Evaluation Program evaluation form and procedures to require evaluators to review and document Buy American compliance, e.g., by listing the categories of Buy American clauses as separate entries and including procedures that show evaluators how to test and document compliance.

6. Enhance existing quality control procedures to require acquisition personnel to enter FAA domestic content data (i.e., place of manufacture codes) accurately in the Federal Procurement Data System–Next Generation.

7. Develop and implement procedures for collecting, tracking, analyzing, and reporting on FAA’s use of the BAP waivers and the BAA exceptions.
8. Develop and implement procedures to ensure FAA posts information on its existing use of BAP blanket waivers, as well as any newly executed waivers, for direct contracts on a public website.

Agency Comments and OIG Response

We provided FAA with our draft report on March 16, 2021, and received its response on April 15, 2021, which is included as an appendix to this report. FAA concurred with recommendations 2 through 8 as written and provided appropriate planned actions and completion dates. FAA partially concurred with recommendation 1.

In its official response, FAA agreed to implement recommendation 1 by updating its policy and guidance on the application of clauses, exceptions, waivers, and vendor certifications by January 31, 2022. However, FAA disagreed with our conclusion that this action could put $127 million to better use. According to the Agency, (1) OIG did not provide evidence that the contracts identified with missing certifications were awarded contrary to BAA requirements or that noncompliant products had been delivered to FAA and (2) OIG did not identify any instances of waste or show that FAA’s mission was not fully supported by the products received.

We would like to make a few clarifying points with respect to FAA’s partial non-concurrence with recommendation 1. First, some of the 12 contracts in our sample that lacked certifications were not solely BAA-applicable; in fact, 9 pertained to the BAP. Moreover, one BAP-applicable contract involved the improper procurement of more than $500,000 in foreign-manufactured test equipment. After we reviewed this example with Agency officials and offered them an opportunity to provide us with evidence to the contrary, FAA acknowledged this was an improper BAP procurement. Thus, our audit does include evidence that an improper foreign procurement resulted when the Agency did not obtain the required contractor certification.

Second, these same 12 contracts formed the basis for our finding that FAA could put a projected $127 million to better use by updating AMS policy and guidance regarding when to obtain vendor certifications. Our projection serves as an estimate of the funds at risk from having certifications missing within the entire universe of BAA and BAP contracts. Vendor certifications are a critical tool for enforcing Buy American compliance—such as assisting contracting officials on whether a waiver applies. FAA’s failure to ensure contractors submit complete certifications limits the Agency’s ability to hold them accountable if they do not meet Buy American requirements. In particular, vendor certifications provide
crucial evidence if FAA decides to pursue false claims or suspension and debarment for noncompliance.

Finally, FAA’s response indicates that the Agency does not fully understand what our funds put to better use recommendation represents. FAA states that it disagrees with our finding because it does not represent an actual waste of funds or that the contracts in question did not support the Agency’s mission. Yet our funds put to better use determination is not intended to reflect waste or failure to support FAA’s mission. Rather, it represents an estimate of funds that could be used more efficiently if management takes the steps necessary to implement our recommendation. Overall, it is our position that FAA’s failure to implement vendor certification requirements risks the unnecessary spending of public funds for the procurement of foreign supplies and manufactured goods. These actions undercut the very basis of domestic content laws, which seek to promote the expenditure of public funds on U.S. manufactured goods and products in order to support American industries and strengthen national security.

**Actions Required**

We consider all recommendations resolved but open pending completion of the planned actions.
We conducted this performance audit between September 2018 and February 2021 in accordance with generally accepted Government auditing standards as prescribed by the Comptroller General of the United States. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives, regarding FAA’s policies and procedures for awarding and administering contracts in accordance with domestic content laws. Specifically, we evaluated FAA’s compliance with and oversight of the BAA and Agency-specific BAP requirements.

To conduct our audit, we assessed FAA’s contracting policies and procedures for awarding and administering contracts in accordance with the Buy American Laws and other relevant Federal laws and regulations. We interviewed FAA senior acquisition management and program officials about the Agency’s training on the Buy American requirements and methods for measuring compliance. We also reached out to DoD-OIG for best practices on conducting Buy American audits and the Government Accountability Office to determine if there would be any overlap with its work. In January 2021, during the course of our audit, the White House issued Executive Order 14005, which revoked Executive Order 13788—the applicable criteria for the FAA contracts reviewed. This change in policy did not affect our audit findings or recommendations.

Although grants are also governed by the Buy American Laws, we did not include them within the scope of our audit. Our review included only direct contract actions. To select our sample, we used FPDS-NG to extract a universe of all of FAA’s potential direct contract actions for fiscal year 2017. We focused on fiscal year 2017 when selecting our sample since this was the first complete year of contracts available to us following the congressional request. The extraction contained 20,272 contract actions. We combined the current contract values for these actions using the Procurement Instrument Identifier (PIID) data field, which resulted in 6,959 contracts. We deleted 957 contract actions that had either negatives, zeros, or blanks as values so that our universe consisted of 6,002 PIIDs with a total current contract value of $4 billion. We stratified this universe into 3 strata and selected a statistical sample of 76 PIIDs with a total contract value of $1.5 billion (37.3 percent) of the $4 billion in our universe. We used these data to evaluate FAA’s compliance with domestic content laws and the Agency’s own guidance.

- Stratum 1 was a census of all nine PIIDs with a current contract value greater than $50 million.
• Stratum 2 was a probability proportional to size with replacement sample of 4 of 348 PIIDs with current contract values between $1 million and $50 million where size was the current contract value.

• Stratum 3 was a probability proportional to size sample of 63 of 5,645 PIIDs with current contract values under $1 million.

This sampling methodology was selected because it is widely used and accepted in the accounting industry and government auditing. Our sampling design allowed us to project our findings to the universe. In addition, we used our sample to check the accuracy of the information we downloaded from FPDS-NG. To test the completeness of our universe we asked five Agency COs to provide a list of open contracts they managed during fiscal year 2017. We received 113 open contract numbers and found 8 that did not appear in our universe, which showed that the universe we obtained from FPDS-NG was not complete. However, this universe was the best information available since each Federal department annually certifies that data contained in FPDS-NG are complete. Even though our universe was incomplete, we deemed it sufficiently reliable for the purpose of this audit.

To obtain an understanding of how FAA monitors Buy American compliance, we interviewed 28 of the 29 COs and CORs associated with the 76 contracts in our sample. We did not interview the 29th contracting officer because that individual no longer works for the Agency.

To assess how FAA uses NAEP as an internal monitoring control for Buy American compliance, we reviewed 3 years of NAEP reviews—for 2016, 2017, and 2018. To obtain a broader view of BAA compliance and training, we surveyed all of FAA’s current COs and contracting specialists. We developed the survey’s 12 questions and tested them internally and externally in accordance with the Council of the Inspectors General on Integrity and Efficiency’s Guide on the Inspector General Empowerment Act’s Exemption to the Paperwork Reduction Act. We used SurveyMonkey to administer our survey. We sent a survey link to 236 COs and contracting specialists and received 81 responses for a response rate of 34 percent. We did not require respondents to answer all the questions and consolidated some responses, so our response rates varied by question.
Exhibit B. Organizations Visited or Contacted

Department of Transportation Facilities

Office of the Secretary
- Acquisition Policy Oversight and Business Strategies Division

Federal Aviation Administration
- Headquarters, Washington, DC
- Mike Monroney Aeronautical Center, Oklahoma City, OK
- Regional Office, Burlington, MA
- Regional Office, College Park, GA
- Regional Office, Des Moines, WA
- Regional Office, Fort Worth, TX
- William J. Hughes Technical Center, Atlantic City, NJ

Other Organizations

Department of Defense, Office of Inspector General

Government Accountability Office
### Exhibit C. List of Acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>AIP</td>
<td>Airport Improvement Program</td>
</tr>
<tr>
<td>AMS</td>
<td>Acquisition Management System</td>
</tr>
<tr>
<td>ATCOTS</td>
<td>Air Traffic Control Optimum Training Solution</td>
</tr>
<tr>
<td>BA</td>
<td>Buy American</td>
</tr>
<tr>
<td>BAA</td>
<td>Buy American Act</td>
</tr>
<tr>
<td>BAP</td>
<td>Buy American Preference</td>
</tr>
<tr>
<td>CFR</td>
<td>Code of Federal Regulations</td>
</tr>
<tr>
<td>CO</td>
<td>Contracting Officer</td>
</tr>
<tr>
<td>COR</td>
<td>Contracting Officer Representative</td>
</tr>
<tr>
<td>CPSR</td>
<td>Contractor Purchasing System Review</td>
</tr>
<tr>
<td>DCMA</td>
<td>Defense Contract Management Agency</td>
</tr>
<tr>
<td>DFARS</td>
<td>Defense Federal Acquisition Regulation Supplement</td>
</tr>
<tr>
<td>DoD</td>
<td>Department of Defense</td>
</tr>
<tr>
<td>DOT</td>
<td>Department of Transportation</td>
</tr>
<tr>
<td>eDocS</td>
<td>Electronic Document Storage</td>
</tr>
<tr>
<td>ELMS</td>
<td>Electronic Learning Management System</td>
</tr>
<tr>
<td>FAA</td>
<td>Federal Aviation Administration</td>
</tr>
<tr>
<td>FAE</td>
<td>FAA Acquisition Executive</td>
</tr>
<tr>
<td>FAR</td>
<td>Federal Acquisition Regulation</td>
</tr>
<tr>
<td>FPDS-NG</td>
<td>Federal Procurement Data System-Next Generation</td>
</tr>
<tr>
<td>FY</td>
<td>Fiscal Year</td>
</tr>
<tr>
<td>NAEP</td>
<td>National Acquisition Evaluation Program</td>
</tr>
<tr>
<td>NAFTA</td>
<td>North American Free Trade Agreement</td>
</tr>
<tr>
<td>NAS</td>
<td>National Airspace System</td>
</tr>
<tr>
<td>OIG</td>
<td>Office of Inspector General</td>
</tr>
<tr>
<td>OLC</td>
<td>Office of Legal Counsel</td>
</tr>
<tr>
<td>OMB</td>
<td>Office of Management and Budget</td>
</tr>
<tr>
<td>PIID</td>
<td>Procurement Instrument Identifier</td>
</tr>
<tr>
<td>PRISM</td>
<td>Procurement Information System for Management</td>
</tr>
</tbody>
</table>
### Table D1. AMS Guidance on BAA Exceptions for Supplies

<table>
<thead>
<tr>
<th>AMS Guidance</th>
<th>Exceptions apply when:</th>
</tr>
</thead>
<tbody>
<tr>
<td>T3.6.4.A.2 – Supplies</td>
<td>A supply purchase is valued at the micro-purchase threshold or less</td>
</tr>
<tr>
<td></td>
<td>Domestic preference is not in the public interest</td>
</tr>
<tr>
<td></td>
<td>Supplies will be used outside the United States</td>
</tr>
<tr>
<td></td>
<td>Purchase of domestic supplies would be unreasonable in terms of cost</td>
</tr>
<tr>
<td></td>
<td>Domestic end items are not produced in sufficient and reasonably available commercial quantities and are not of a satisfactory quality</td>
</tr>
<tr>
<td></td>
<td>Supplies are commercially available information technology</td>
</tr>
</tbody>
</table>


### Table D2. AMS Guidance on BAA Exceptions for Construction

<table>
<thead>
<tr>
<th>AMS Guidance</th>
<th>Exceptions apply when use of a particular domestic construction material:</th>
</tr>
</thead>
<tbody>
<tr>
<td>T3.6.4.A.3 – Construction Materials</td>
<td>Would unreasonably increase the cost</td>
</tr>
<tr>
<td></td>
<td>Would be impractical</td>
</tr>
<tr>
<td></td>
<td>Is not mined, produced, or manufactured in sufficient and reasonably available commercial quantities, or of a satisfactory quality</td>
</tr>
<tr>
<td></td>
<td>Valued at the micro-purchase threshold or less</td>
</tr>
<tr>
<td></td>
<td>The Administrator, in written non-delegable determination, states applying the Buy American Act to a construction material is not in the public interest</td>
</tr>
<tr>
<td></td>
<td>For construction contracts with an estimated acquisition value of $10,441,216 or more, Canadian and Mexican construction materials may be treated as domestic for purposes of BAA restrictions, pursuant to the NAFTA Implementation Act*</td>
</tr>
<tr>
<td></td>
<td>The BAA restrictions do not apply to information technology that is a commercial item</td>
</tr>
</tbody>
</table>


Table D3. AMS Guidance on BAP Exceptions for Steel & Manufactured Products

<table>
<thead>
<tr>
<th>AMS Guidance</th>
<th>Exceptions apply when:</th>
</tr>
</thead>
<tbody>
<tr>
<td>T3.6.A.4(a) – Steel and Manufactured Products</td>
<td>Domestic product preference is inconsistent with public interest</td>
</tr>
<tr>
<td></td>
<td>United States goods are not produced in a sufficient and reasonably available amount or quality</td>
</tr>
<tr>
<td></td>
<td>Facilities and equipment acquisitions under the Airport and Airway Improvement Act of 1982 include domestically produced components/subcomponents that are more than 60 percent of the cost of all components with final assembly in the United States</td>
</tr>
<tr>
<td></td>
<td>Domestic materials will increase the cost of the overall project contract by more than 25 percent</td>
</tr>
</tbody>
</table>

### Exhibit E. FPDS-NG Place of Manufacture Codes

<table>
<thead>
<tr>
<th>FPDS-NG Code</th>
<th>Description</th>
<th>Current Use by FAA</th>
<th>Percent Used by FAA</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>The action is for (i) A foreign end product that is manufactured in the United States but still determined to be foreign because 50 percent or more of the cost of its components is not mined, produced, or manufactured inside the United States or inside qualifying countries; or (ii) Services performed in the United States by a foreign concern.</td>
<td>No longer valid as of October 1, 2006</td>
<td>N/A</td>
</tr>
<tr>
<td>B</td>
<td>The action is for (i) Any other foreign end product; or (ii) Services performed outside the United States by a foreign concern.</td>
<td>No longer valid as of October 1, 2006</td>
<td>N/A</td>
</tr>
<tr>
<td>C</td>
<td>Not a manufactured end product action.</td>
<td>Used by FAA</td>
<td>54 percent</td>
</tr>
<tr>
<td>D</td>
<td>The action is predominantly for acquisition of manufactured end products that are manufactured in the United States.</td>
<td>Used by FAA</td>
<td>42 percent</td>
</tr>
<tr>
<td>E</td>
<td>The foreign manufactured end products acquired are predominantly for use outside the United States (FAR 25.100).</td>
<td>Used by FAA</td>
<td>Less than 1 percent</td>
</tr>
<tr>
<td>F</td>
<td>The foreign manufactured end products acquired are predominantly for resale (FAR 25.103(d)).</td>
<td>Used by FAA</td>
<td>Less than 1 percent</td>
</tr>
<tr>
<td>G</td>
<td>The foreign manufactured end products are predominantly eligible products acquired under Trade Agreements (FAR 25.402(a)(1)).</td>
<td>Used by FAA</td>
<td>Less than 1 percent</td>
</tr>
<tr>
<td>H</td>
<td>The foreign manufactured end products are predominantly commercial information technology items (FAR 25.103(e)).</td>
<td>Used by FAA</td>
<td>Less than 1 percent</td>
</tr>
<tr>
<td>I</td>
<td>The head of the agency has made a determination that domestic preferences would be inconsistent with the public interest (FAR 25.103(a)).</td>
<td>Not used by FAA</td>
<td>N/A</td>
</tr>
<tr>
<td>J</td>
<td>The foreign manufactured end products were predominantly not domestically available as shown by one of the following: (i) The item is listed at FAR 25.104 (FAR 25.103(b)(1)). (ii) The agency did an individual determination (FAR 25.103(b)(2)). (iii) No offer of a domestic end product was received, even though the acquisition was synopsized and conducted through full and open competition (FAR 25.103(b)(3)).</td>
<td>Used by FAA</td>
<td>Less than 1 percent</td>
</tr>
<tr>
<td>K</td>
<td>The cost of the offered domestic end products was unreasonable (FAR 25.103(c), 25.105, and Subpart 25.5).</td>
<td>Not used by FAA</td>
<td>N/A</td>
</tr>
<tr>
<td>L</td>
<td>The foreign manufactured end products are predominantly qualifying country end products (DFARS 225.003 and 225.872-1).</td>
<td>For DoD use only</td>
<td>N/A</td>
</tr>
</tbody>
</table>

Note: AMS does have language similar to the FAR for codes E, and G through K.

Source: GSA FPDS-NG Data Element Dictionary
Exhibit F. Complexities Associated With Determining BAP and BAA Usage

Is this a contract:
• For ground transportation demonstration projects?
• For air traffic controller performance research?
• Funded by airway science curriculum grants?
• For civil aviation security research and development? Or
• Relating to facilities for advanced training of maintenance technicians for air carrier aircraft?

No

Are you acquiring steel or manufactured goods?

Yes

No

Apply FAA’s Specific Buy American Preference (BAP) or BAP waivers

- Public interest
  • Less than $3K
  • Contracts in Support of NAS
  • Commercial IT
  • And others, as may be executed by the FAE in the future
- Domestic items are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality
- The cost of domestically produced components or subcomponents is more than 60 percent of the total cost and final assembly has occurred in the United States
- Including domestic materials will increase the cost of overall project by more than 25 percent

Apply Governmentwide Buy American Act (BAA) or BAA exceptions

- Will be used outside the United States
- Domestic items are not produced in sufficient and reasonably available commercial quantities or are not of a satisfactory quality
- Are procured under any contract with an award value under the micro-purchase threshold
- When using a domestic product would make it “impracticable to comply” or “would unreasonably increase the cost”
- When using a domestic product would be inconsistent with the public interest
- Commercial information technology

Source: OIG analysis
## Exhibit G. Buy American Reporting Requirements

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Reporting to</th>
<th>BAP</th>
<th>BAA</th>
</tr>
</thead>
<tbody>
<tr>
<td>FAA Reauthorization Act of 2018, § 167</td>
<td>Congress</td>
<td>Annual Report—For each fiscal year, the Secretary shall submit to the appropriate committees of Congress a report on waivers issued under [BAP], during the fiscal year. Applies only to new waivers issued each fiscal year.</td>
<td>Does not apply.</td>
</tr>
<tr>
<td>FAA Reauthorization of 2018, § 544/49 U.S.C. § 40110(d)(5)</td>
<td>Congress</td>
<td>Does not apply.</td>
<td>For all acquisitions subject to BAA above the micro-purchase threshold, FAA must report (i) the dollar value of any articles, materials, or supplies purchases that were manufactured outside the United States; and (ii) a summary of the total procurements funds spent on goods manufactured in the United States versus funds spent on good manufactured outside the United States.</td>
</tr>
<tr>
<td>Executive Order 13788 (revoked January 25, 2021)</td>
<td>Department of Commerce and OMB</td>
<td>§ 3 required all agencies to report to the Director of OMB and the Secretary of Commerce on their findings, analysis, and recommendations with respect to Buy American Laws (BAA and BAP).</td>
<td></td>
</tr>
<tr>
<td>OMB Memorandum M-17-27</td>
<td>Department of Commerce and OMB</td>
<td>OMB Memo M-17-27 requires all agencies to report to the Director of OMB and the Secretary of Commerce on their findings, analysis, and recommendations with respect to Buy American Laws.</td>
<td></td>
</tr>
<tr>
<td>Executive Order 14005 (issued January 25, 2021)</td>
<td>OMB, Made in America Office</td>
<td>§ 11 requires agencies to submit an initial report to the Made in America Director on: implementation of, and compliance with Made in American Laws; any longstanding or nationwide waivers; and recommendations on how to further the policy in Executive Order 14005. § 12 requires agencies to submit biannual reports to the Made in America Director on: implementation of, and compliance with Made in American Laws; analysis of agency’s use of products not subject to Made in America Laws or where requirements were waived; the agency’s spending as a result of waivers issued pursuant to the Trade Agreements Act; and recommendations on how to further the policy in Executive Order 14005.</td>
<td></td>
</tr>
</tbody>
</table>

Source: FAA Reauthorization Act of 2018, EO 13788, EO 14005, and OMB M-17-27
**Exhibit H.** Major Contributors to This Report

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>DARREN MURPHY</td>
<td>PROGRAM DIRECTOR</td>
</tr>
<tr>
<td>KENNETH PRATHER</td>
<td>PROGRAM DIRECTOR</td>
</tr>
<tr>
<td>ANN WRIGHT</td>
<td>PROJECT MANAGER</td>
</tr>
<tr>
<td>ALLISON CLEVELAND</td>
<td>SENIOR AUDITOR</td>
</tr>
<tr>
<td>PAUL STARK</td>
<td>SENIOR ANALYST</td>
</tr>
<tr>
<td>DANIEL FOX</td>
<td>SENIOR ANALYST</td>
</tr>
<tr>
<td>KYLE STANLEY</td>
<td>ANALYST</td>
</tr>
<tr>
<td>DIANA RAFANELLO</td>
<td>ANALYST</td>
</tr>
<tr>
<td>CELESTE BORJAS</td>
<td>ATTORNEY ADVISOR</td>
</tr>
<tr>
<td>JANE LUSAKA</td>
<td>SENIOR WRITER-EDITOR</td>
</tr>
<tr>
<td>GEORGE ZIPF</td>
<td>SUPERVISORY MATHEMATICAL STATISTICIAN</td>
</tr>
<tr>
<td>PETRA SWARTZLANDER</td>
<td>SENIOR STATISTICIAN</td>
</tr>
<tr>
<td>MAKESI ORMAND</td>
<td>STATISTICIAN</td>
</tr>
<tr>
<td>WILLIAM SAVAGE</td>
<td>IT SPECIALIST</td>
</tr>
</tbody>
</table>
Memorandum

Date: April 14, 2021
To: Mary Kay Langan-Feirson, Assistant Inspector General for Acquisition and Procurement Audits
From: H. Clayton Foushee, Director, Office of Audit and Evaluation, AAE-1

FAA is committed to maximizing the purchase of products, materials, and services produced and/or offered in the United States to enhance the prosperity of American businesses and foster job creation for American citizens. FAA intends to augment its “Buy American” policy by expanding existing training to address unique FAA requirements, enhancing current systems to address compliance and transparency, and by expanding oversight of Buy American Act requirements. These revisions to policy and process will also facilitate compliance and demonstrate FAA’s commitment with Executive Order 14005 of January 25, 2021, Ensuring the Future Is Made in All of America by All of America’s Workers.

Since OIG’s audit focused FAA’s Buy American Act actions for Fiscal Year (FY) 2017, it did not fully consider actions taken and implemented by FAA in FY 2018 – 2021 to address FAA’s implementation of Buy American Laws, accountability requirements established through the FAA Reauthorization Act of 2018, and Executive Orders issued to maximize the use of American-Made goods, products and materials. FAA has taken the following actions since FY 2018 to enhance its compliance with Buy American Laws:

- FAA transitioned to the Federal Procurement Data System–Next Generation in FY 2017/FY 2018, enabling FAA to better leverage the standardization, controls, and reporting capabilities already employed across the Federal Government. This allowed the Agency to enhance its oversight of Buy American activities, improve consistency in the reporting of contract activity and waiver usage, and leverage resources and training established for the Executive Branch.

- The Agency implemented a new version of its contract writing system within its Procurement Information System for Management in FY 2017/FY 2018 to consolidate and standardize clause management and solicitation formation into a single system.
Contracting Officers now have an enterprise solution that will help ensure appropriate clauses (including those for Buy American) are included in FAA solicitations for products, materials, and services.

- FAA’s National Acquisition Evaluation Program expanded its review of awards subject to the Buy American Act and preference standards in FY 2018 and revised its review checklists to better include Buy American policies and considerations in its evaluations of agency activity.

The Agency has reviewed the draft report and concurs with recommendations 2-8, as written. The FAA plans to complete actions to implement recommendations 2-4 by January 31, 2022, and complete actions for recommendations 5-8 by September 30, 2021. While we agree to implement recommendation 1 by January 31, 2022, we disagree with OIG’s conclusion that implementing the recommendation could put $127 million to better use because (1) OIG did not provide evidence that the contracts identified with missing certifications were awarded contrary to BAA requirements and noncompliant products were delivered to FAA and (2) OIG did not identify any instances of waste or that FAA mission was not fully supported by the products received.

We appreciate this opportunity to respond to the OIG draft report. Please contact H. Clayton Foushee at Clay.Foushee@faa.gov if you have any questions or require additional information about these comments.
Our Mission

OIG conducts audits and investigations on behalf of the American public to improve the performance and integrity of DOT’s programs to ensure a safe, efficient, and effective national transportation system.