

U.S. Department of Commerce
Renewable Energy and Energy Efficiency Advisory Committee
Charter 6, 2020-2022 ● Recommendation Fact Sheet

Recommendation #11 [approved May 12, 2022] Conduct a review of the impact of the “Buy American Act” as it relates to U.S. Government procurement of Renewable Energy equipment and power.

We recommend that the Department of Commerce conduct a study within 18 months that provides an accurate, data-driven assessment of the impact of the “Buy American Act” on U.S. manufacturing in the renewable energy sector, by analyzing historical U.S. Government procurement data and documents related to the purchase of renewable energy equipment, including through Power Purchase Agreements.

Such a study should include:

- 1) the analysis and documentation of Power Purchase Agreements (“PPA”) entered into by the U.S. Government during the period 2010-2021, to include the size, duration, and value of each agreement, as well as documentation of the country-of-origin of the equipment (ie: solar modules; wind turbines; batteries);
- 2) an analysis of US Government procurement of renewable energy-based electrical generation equipment, including but not limited to solar modules and cells, wind turbines, energy storage as well as the ratio of spend for equipment vs. the value of signed PPAs; and
- 3) an online “dashboard” tracking the U.S. Government’s procurement of such equipment or execution of a PPA to purchase electricity generated from the use of such equipment (in such case to include the country of origin of the generating equipment used in the PPA). This report will include an analysis of why, in the cases of PPAs, when applicable, the U.S. Government chose foreign vendors versus domestic suppliers for materials and equipment used in the systems covered by the PPA.

Sub-Committee(s): Clean Energy Supply Chains

Background Information:

Current Federal Regulations governing the U.S. Government’s obligations regarding the procurement of American-made goods (“Buy American Act”, BAA regulations”) governs the purchase of equipment and materials. However, the current regulations do not govern the

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purchase of services, or in the context of electrical generation, does not include the purchase of generated power. Said another way, when the Government enters into an agreement to purchase electricity from a private party, for a period of time, there is no "Buy American" test applied to the equipment used, for example, in a solar field, in which the electricity has been generated.

It has been the long-held belief of domestic manufacturers that the overwhelming percentage of U.S. Government purchases of renewable energy is conducted via a service agreement or PPA, and thus the majority of procurement is not regulated by Federal BAA provisions. This means that the U.S. Government may, and likely is, procuring such energy generated from equipment manufactured in other countries, rather than domestically, and historically likely includes equipment manufactured in countries, including China, whose national interests may not align with the United States interests, or, as identified by the U.S. Government, may include equipment whose manufacture relies on practices the United States has deemed objectionable, such as forced labor.

Expected Effect on U.S. Export Competitiveness:

It will be pointless to develop an export philosophy for American renewable energy equipment and services if deployments of domestic renewable energy solutions are dominated by foreign technology, equipment and associated fabrication and installation services using foreign suppliers and service providers. As the country transitions to a greater dependence on Renewable Energy, the U.S. Government should "lead the way" by modernizing its BAA laws and regulations to include the procurement of power. In doing so, the U.S. Government also incentivizes the expansion of domestic manufacturing, which leads to a stronger manufacturing base, and increased export potential.

Specific Agencies Responsible for Implementation:

Department of Commerce (DOC) with inputs from Department of Energy, the Office of Management and Budget (OMB), Department of Defense, department of Transportation, Department of the Interior (BOEM) , Department of Treasury, and the General Services Administration (GSA). Study by DOC should include inputs from U.S. industry representatives across the equipment supply, fabrication services, material supply and service for installation, operations, and maintenance of such equipment.

Measures of Success:

The goals of this study should be to identify and communicate:

- (i) The quantifiable amount of electricity that the U.S. Government has procured or procures via Service Contract or Power Purchase Agreement that is not subject to Federal BAA regulations, for the period from 2010 to the present.
- (ii) The countries-of-origin of the generating equipment used in any such Service or Power Purchase Agreement,

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- (iii) The quantifiable amount of Renewable Energy-based generating equipment procured by the U.S. Government that is compliant with Federal BAA provisions, during the same covered period
- (iv) The quantifiable amount of Renewable Energy-based generating equipment procured by the U.S. Government that is non-compliant with Federal BAA provisions, or otherwise officially exempted from compliance, during the same covered period
- (v) The creation of a publicly available online “dashboard” that provides transparency into the procurement metrics discussed in i-iii, above
- (vi) An analysis of the factors that procuring agents identify as to reasons that American-manufactured goods were not selected, as part of a direct equipment procurement or a PPA.
- (vii) Any commercial and risk factors precluded selecting American suppliers
- (viii) Possible remedial actions to overcome the factors identified in (vi) and (vii) above