



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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Released

B-116193

APR 13 1978

The Honorable Jack Brooks
Chairman, Committee on Government
Operations
House of Representatives

Dear Mr. Chairman:

This is in reply to your letter of March 1, 1978, requesting our comments on H.R. 11108, 95th Congress, 2d Session, to amend the Buy American Act.

As presently written, the Buy American Act, 41 U.S.C. §10a-d, and its implementing Executive Order 10582, 41 U.S.C. §10d, require that the Government buy a domestically produced item rather than a comparable foreign-produced item unless the price of the foreign-produced item, adjusted by a specified percentage, is less.

H.R. 11108 would amend title III of the Act of March 3, 1933, (41 U.S.C. § 10a-c) by redesignating sections 4 and 5 as sections 6 and 7, respectively, and incorporating new sections 4 and 5.

Section 4 of H.R. 11108 would require the head of each department or independent establishment to issue regulations which would adjust the bid or offered price of foreign-produced items either by excluding any duty from the bid or offered price and adding not less than 50 per centum of the bid or offered price (exclusive of duty) to the remainder, or by adding to the bid or offered price (inclusive of duty) a factor of not less than 6 per centum of that bid or offered price, whichever results in the greater bid or price.

If H.R. 11108 were enacted, section 4 would allow the various departments and independent establishments to adjust a foreign-produced item's bid or offered price by an indefinite amount. We believe that, without more definitive criteria on the factor to be used in the procurement of specific items or classes of items, the agencies are unlikely to be consistent in their application of the Buy American Act. Consistency

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could be assured by either including appropriate criteria in the Act or assigning responsibility for such criteria to the Office of Federal Procurement Policy.

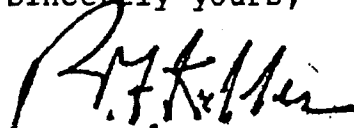
In our report on "Governmental Buy-National Practices of the United States and Other Countries--an Assessment," (ID-76-67, 9/30/76), we recommended establishing the same factor under the Buy American Act for both civilian and military agencies. We stated that such factors should be periodically reviewed to both recognize a preference for U.S. sources and, contingent on reciprocal actions by our trading partners, to encourage domestic competition.

Section 5 of H.R. 11108 would prohibit an executive or military department, bureau, agency, or independent establishment from providing financial assistance in the form of grants-in-aid to any person (including any State or political subdivision) to be used for the acquisition for public use of any articles, materials, and supplies unless the person agrees to adjust the bids and offered prices in the manner specified in section 4.

We believe situations could arise where such a requirement might defeat the purpose of the assistance in that the additional cost of the project occasioned by application of the Act could offset the benefits derived from the grant-in-aid.

If you have any questions, we will be glad to discuss them with you or your staff.

Sincerely yours,



Deputy Comptroller General
of the United States