

Dear Secretary McDonough:

The Buy American Act and other domestic purchasing laws have existed for decades, but an increasing number of loopholes, carveouts, and exceptions have rendered them practically toothless. More recently, a liberal attitude toward granting waivers from these laws has undermined the federal government's purchasing from U.S. manufacturers. We are concerned that the Department of Veterans Affairs (VA) is falling short in its duty to support domestic producers.

On January 25, 2021, President Biden issued Executive Order (EO) 14005: "Executive Order on Ensuring the Future Is Made in All of America by All of America's Workers," building on EO 13881, "Maximizing Use of American-Made Goods, Products, and Materials" issued by President Trump on July 17, 2019. The president directed VA, and all other federal agencies, to use the terms and conditions of contracts and financial assistance to maximize the use of goods and services produced and performed in the United States. The Executive Order also established the Made in America Office (MIAO) as the central reviewing body for all agency waivers to "Made in America" laws. MIAO's objectives are to boost transparency and reduce the number of waivers to increase domestic purchasing. It is unclear whether MIAO is achieving these goals or driving any meaningful increase in federal agencies' purchasing from domestic producers.

Following EO 14005, the Office of Management and Budget (OMB) issued memorandum M-21-26 which identified key information that agencies are required to report in order to justify their non-availability procurement waivers. MIAO has been directed to post that information to a publicly available website, madeinamerica.gov, in order to promote accountability and public trust in the waiver process. VA maintains a similar waiver website. However, MIAO, VA, and other agencies seem to have taken a narrow view of what information is required.

The information posted on madeinamerica.gov about VA non-availability procurement waivers is typically vague and includes minimal descriptions of what market research was performed or how VA staff searched for domestic alternatives. It does not seem to provide any evidence of supplier scouting with supply chain experts such as local chambers of commerce, industry and trade associations, or the Manufacturing Extension Partnership. What the public and Congress see is a watered-down version of the waiver that includes almost none of the information that OMB requires agencies to report. While MIAO is permitted to withhold information consistent with protecting national security and executive branch confidentiality, it is hard to see how that is relevant to the VA procurements listed.

Additionally, VA has posted just two approved Build America, Buy America Act (BABAA) waivers on its public website since May 2022, pertaining to the state home construction grant program and the state cemetery grant program, generally. This is a

remarkably low number given that the Infrastructure Investment and Jobs Act (P.L. 117-58), or IIJA, was signed into law almost two years ago, and the website indicates it has not been updated for nearly six months. We question whether the information VA has provided is accurate and complete. We believe the measures required by OMB would support transparency and increased participation by domestic suppliers, but the fact that they are not being carried out makes the whole exercise self-defeating. We think you would agree that VA should be caring for the men and women who have served with products made with the American ingenuity they fought to defend.

Furthermore, VA has not provided this Committee with any evidence that the Department has reduced its number of waivers and meaningfully increased domestic purchasing since the issuance of EO 14005 and the passage of the IIJA. In fact, judging by the information published on madeinamerica.gov, waiver requests to buy foreign-made goods instead are being approved quickly—rubber stamped at a rate of nearly 100 percent, at many agencies, including VA.

Pursuant to the Committee's ongoing oversight of VA's compliance with "Made in America" laws, I request the following information by October 13, 2023. When producing documents, do not alter them in any way, including but not limited to application of redactions or a watermark. Additionally, digital copies should be provided in a format that enables their printing and copying by the Committee.

- 1) Any documentation or evidence that VA has increased domestic sourcing in procurement contracts and financial assistance since the issuance of EO 14005;
- 2) Complete copies of any and all requested or granted VA waivers not posted on madeinamerica.gov or the VA BABAA website as well as any supporting information related to waivers posted on such websites;
- 3) Copies of VA's financial assistance policies and procedures regarding BABAA requirements; standard domestic sourcing language VA is using in notices of funding opportunities and grant terms and conditions; and an update on VA's efforts to implement an agency-level BABAA grant waiver process; and
- 4) A staff-level briefing on the Office of Acquisition, Logistics, and Construction's efforts to better implement "Made in America" laws throughout VA.

Thank you for your attention to this matter.

Sincerely,

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