Executive Order 12849 of May 25, 1993

Implementation of Agreement With the European Community on Government Procurement

WHEREAS, the United States and the European Community (EC) have entered into a Memorandum of Understanding on Government Procurement (Agreement) that provides appropriate reciprocal competitive government procurement opportunities;

WHEREAS, the commitments made in the Agreement are intended to become part of an expanded General Agreement on Tariffs and Trade Agreement on Government Procurement (GATT Code) and are an important step toward an expanded GATT Code;

WHEREAS, as a result of these commitments, U.S. businesses will obtain increased access to EC member state procurement for U.S. goods and services;

WHEREAS, I have determined that it is inconsistent with the public interest to apply the restrictions of the Buy American Act, as amended (41 U.S.C. 10a–10d), to procurement covered by the Agreement;

NOW, THEREFORE, by virtue of the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–2518), and in order to implement the Agreement, it is hereby ordered as follows:

Section 1. In applying the provisions of the Buy American Act, the heads of the agencies listed in Annex 1, Parts A and B, of this order are requested, as of the date of this order, to apply no price differential between articles, materials, or supplies of U.S. origin and those originating in the member states of the EC.

Sec. 2. For purposes of this order, the rule of origin specified in section 308 of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2518), shall apply in determining whether goods originate in the member states of the EC.

Sec. 3. This order shall apply only to solicitations, issued by agencies listed in Annex 1, Parts A and B, of this order, above the threshold amounts set forth in Annex 2.

Sec. 4. This order shall apply to solicitations outstanding on the date of this order, except for those for which the initial deadline for receipt of bids or proposals has passed, and to all solicitations issued after the date of this order.

Sec. 5. Except for procurements by the Department of Defense, the United States Trade Representative (USTR) shall be responsible for interpretation of the Agreement. The USTR shall seek the advice of the interagency organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a)) and consult with affected agencies, including the Office of Federal Procurement Policy.

Sec. 6. This Executive order is effective immediately. Although regulatory implementation of this order must await revisions to the Federal Acquisition Regulation (FAR), it is expected that agencies listed in Annex 1, Parts A and B, of this order will take all appropriate actions in the interim to implement those aspects of the order that are not dependent upon regulatory revision.
Sec. 7. Pursuant to section 25 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 421(a)), the Federal Acquisition Regulatory Council shall ensure that the policies established herein are incorporated in the FAR within 30 days from the date this order is issued.

THE WHITE HOUSE,
Annex 1A

Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy
   (Not including national security procurement made in support of safeguarding nuclear materials or technology and entered into under the authority of the Atomic Energy Act; and oil purchases related to the Strategic Petroleum Reserve)
Department of Health and Human Services
Department of Housing and Urban Development
Department of the Interior
Department of Justice
Department of Labor
Department of State
Department of Transportation
   (The national security consideration currently applicable to the Department of Defense under the GATT Government Procurement Code is equally applicable under this Agreement to the Coast Guard)
Department of the Treasury
United States Agency for International Development
General Services Administration (other than Federal Supply Groups 51 and 52 and Federal Supply Class 7340)
National Aeronautics and Space Administration
Department of Veterans Affairs
Environmental Protection Agency
United States Information Agency
National Science Foundation
Panama Canal Commission
Executive Office of the President
Farm Credit Administration
National Credit Union Administration
Merit Systems Protection Board
ACTION Agency
United States Arms Control and Disarmament Agency
Office of Thrift Supervision
Federal Housing Finance Board
National Labor Relations Board
National Mediation Board
Railroad Retirement Board
American Battle Monuments Commission
Federal Communications Commission
Federal Trade Commission
Interstate Commerce Commission
Securities and Exchange Commission
Office of Personnel Management
United States International Trade Commission
Export-Import Bank of the United States
Federal Mediation and Conciliation Service
Selective Service System
Smithsonian Institution
Federal Deposit Insurance Corporation
Consumer Product Safety Commission
Equal Employment Opportunity Commission
Federal Maritime Commission
National Transportation Safety Board
Nuclear Regulatory Commission
Overseas Private Investment Corporation
Administrative Conference of the United States
Board for International Broadcasting
Commission on Civil Rights
Commodity Futures Trading Commission
The Peace Corps
National Archives and Records Administration

Annex 1B

The Power Marketing Administrations of the Department of Energy
Tennessee Valley Authority

Annex 2

Thresholds Applicable to Agencies listed in Annex 1A
Goods contracts—130,000 SDRs (currently $176,000)
Construction contracts—$6,500,000

Thresholds Applicable to Agencies listed in Annex 1B
Goods contracts—$450,000
Construction contracts—$6,500,000