

# THE DENVER POST

## How Trump's 'Buy American' order could play out

Paul Wiseman

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When President Donald Trump signed an executive order Tuesday in Kenosha, Wis., he sent a characteristically blunt message.

“The policy of our government,” Trump declared, “is to aggressively promote and use American-made goods.”

For too long, he complained, American companies that have bid on U.S. government contracts — for work ranging from building roads to supplying computer equipment to federal agencies — have unfairly lost out to foreign competitors.

“The result has been countless jobs and countless contracts that have been lost to cheap, subsidized and low-quality foreign goods,” the president argued.

“Buy American” requirements that are written into U.S. law “have been gutted,” he said, by loopholes, allowing too many contracts to go to overseas bidders. Countless jobs and contracts that have been lost to cheap, subsidized and low-quality foreign goods, Trump asserted.

Under his presidency, Trump assured the crowd, that will change.

Here's a look at how Buy American provisions work, what the White House intends to do and what it all might mean for government contracts and the taxpayers who finance them.

### **WHAT IS 'BUY AMERICAN'?**

The Buy American Act of 1933 requires the government's purchases to favor U.S.-made products. Additionally, the Surface Transportation Act of 1978 requires that American-made iron, steel and other manufactured goods be used when federal dollars pay for highway, aviation, rail and other transportation projects.

### **SO WHAT'S THE WHITE HOUSE'S COMPLAINT?**

Government contracting “is a highly complex area, with lots of exceptions and exceptions to exceptions,” says Stephanie Harden, a lawyer specializing in government contracts at Blank Rome LLP. Government agencies can bypass U.S. suppliers, for example, whose bids come in too high or if the required goods and services aren't available domestically. Under several free-trade deals — including the World Trade Organization's Agreement on Government Procurement — contractors from 59 countries have the right to be treated the same as U.S. companies when it comes to many federal contracts.

But the White House says that such exemptions have gone too far and that U.S. contractors are unjustly losing out. The U.S. Government Accountability Office, a federal watchdog agency, reported in February that under the WTO procurement agreement, foreign companies have

gained far more access to U.S. government contracts than American companies have gained to overseas government contracts.

“These rules offshore our tax dollars rather than investing them to create jobs and innovation at home,” says Lori Wallach, director of Public Citizen’s Global Trade Watch, a critic of U.S. trade policy.

### **WHAT DID THE PRESIDENT’S ORDER DO?**

Not much — at least initially.

Trump is ordering government agencies to review the way they award contracts to assess how they affect U.S. jobs and manufacturers and to make sure they “maximize the use of materials produced in the United States.”

Commerce Secretary Wilbur Ross and the Office of the U.S. Trade Representative will study whether and how current trade agreements undermine Buy American provisions in U.S. law. By November, they must report their findings and recommend ways to strengthen Buy American requirements.

“The good news is, they are actually trying to get some data before they harden policy,” says Jeffrey Schott, a senior fellow in trade policy at the Peterson Institute for International Economics, which advocates free trade.

### **WHAT’S NEXT?**

Not clear. Harden, anticipating a possible crackdown on how contracts are awarded, is telling clients to make doubly sure that they are complying with Buy American requirements.

But some analysts note that Trump already has retreated from some earlier vows to toughen America’s trade policies and say they suspect that the Buy American order might not amount to much.

“What this executive order is saying is: ‘Hey, Wilbur Ross. Go out and find me some cosmetic changes to make,’” says Daniel Ikenson, director of the trade policy center at the libertarian Cato Institute.

Then again, Trump could seek to cancel or limit the waivers that give some foreign bidders equal footing with American contractors. He might renegotiate trade deals — such as the North American Free Trade Agreement with Canada and Mexico — to protect U.S. companies.

But Schott says other countries would likely respond to stricter Buy American policies by making it harder for U.S. companies to bid on foreign government contracts.

And Trump’s approach could prove costly to U.S. taxpayers and consumers. By making it harder for foreign companies to compete for contracts, Cato’s Ikenson says, the U.S. government would be allowing American companies “to raise their prices and reduce their quality.”

“Import competition keeps domestic producers honest,” Ikenson says. “Taxpayers will not get the bang for the buck” — especially important as the government considers a possible \$1 trillion infrastructure-building program.

Schott of the Peterson Institute adds: “If U.S. firms are the best suppliers in terms of meeting the technical standards and quality requirements, then they are already supplying the contract” — without any extra government help.

Yet in a briefing paper given to reporters, the White House says such critics fail “to take into account” that helping American contractors would boost American incomes, raise tax revenue and help revive U.S. industry. And it says U.S. trading partners already have policies that favor homegrown companies, thereby limiting their ability to retaliate against a tougher Buy American policy.