MEMORANDUM FOR: All State Administrative Agency Heads
All State Administrative Agency Points of Contact
All Urban Area Security Initiative Points of Contact
All State Homeland Security Advisors
All State Emergency Management Agency Directors
All Eligible Regional Transit Agencies
All Private Sector Transportation Security Partners
All Public and Private Sector Port Security Partners
All Tribal Nation Points of Contact

FROM: Thomas DiNanno
Assistant Administrator for Grant Programs
Federal Emergency Management Agency

SUBJECT: Removal of Buy American and Hire American Award Term from Department of Homeland Security Standard Terms and Conditions for 2017

I. Purpose


II. Applicability

This IB is applicable to all preparedness grants awarded by FEMA on or after May 24, 2017.

III. Background

A. On April 18, 2017, the President signed Executive Order (EO) 13788, Buy American and Hire American. The purpose of EO 13788 includes maximizing the use of goods, products, and materials produced in the United States through terms and conditions of Federal financial assistance (i.e., grant) awards and Federal procurements, in a manner consistent with law. The EO applies to the “Buy American Laws” of the United States, defined to mean “all statutes, regulations, rules, and Executive Orders relating to Federal
procurement or Federal grants—including those that refer to “Buy America” or “Buy American”—that require, or provide a preference for, the purchase or acquisition of goods, products, or materials produced in the United States, including iron, steel, and manufactured goods.”

B. In response to EO 13788, on May 24, 2017, DHS added a “Buy American and Hire American” award term to the DHS Standard Terms and Conditions applicable to FEMA grant awards. FEMA included this award term in several awards issued on or after that date.

C. On June 30, 2017, the U.S. Office of Management and Budget issued implementing guidance for EO 13788, memorandum M-17-27. As explained in that memorandum, for Federal grant awards there is no primary law that imposes the “Buy American Laws” as that term is defined in EO 13788. M-17-27 provides that applicability of Buy American Laws for Federal grant awards “varies by the authorizing and appropriation statutes imposed on specific Federal financial assistance programs.”

D. On August 29, 2017, DHS removed the “Buy American and Hire American” award term from the DHS Standard Terms and Conditions because DHS determined that there are no Buy American Laws imposed on any specific DHS grant program by such program’s authorizing and appropriation statutes.

IV. Guidance

A. FEMA hereby rescinds the “Buy American and Hire American” award term from any grants awarded on or after May 24, 2017 that originally included that term.

B. The removal and rescission of the “Buy American and Hire American” term only applies to the authorizing and appropriation statutes imposed on specific FEMA grant programs. The removal and rescission of this award term has no impact on any other laws or policies governing a recipient or subrecipient’s procurements, hiring, or other expenditures of funds. For example, if a State law or policy requires a “Buy American” requirement for State procurements regardless of the source of funding, the State should continue to follow its own laws and policies when expending FEMA grant funds, in a manner that complies with the terms of its grant award. Recipients and subrecipients should consult with their own advisors, staff, or legal counsel to confirm applicable requirements.

V. Questions

Questions regarding this IB may be directed to the applicable GPD or Regional Program Analyst.

VI. Review Date

This IB will be reviewed within five years (5) from date of issuance.