AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

I

103D CONGRESS
1ST SESSION

H. R. 903

To amend title III of the Act of March 3, 1933, commonly known as the Buy American Act, to require Federal agencies to increase domestic procurement in times of economic recession, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 16, 1993

Mr. MURTHA introduced the following bill; which was referred to the Committee on Government Operations

---

A BILL

To amend title III of the Act of March 3, 1933, commonly known as the Buy American Act, to require Federal agencies to increase domestic procurement in times of economic recession, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Fairness in Federal Purchases Act of 1993''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress makes the following findings:

(1) The Congress had high expectations for commercial benefits from the Government Procurement Code (in this section referred to as the ''Code'') enacted as part of the Trade Agreements Act of 1979, with a potential opening of $20,000,000,000 to $25,000,000,000 in trade opportunities for United States export sales to foreign government procurement entities.

(2) According to the Comptroller General of the United States, in each year since implementation of the Code on January 1, 1981, the United States has spent approximately $18,000,000,000 in foreign source procurement while in each such year United States suppliers took in only $4,000,000,000 from sales to overseas governments, for a total imbalance in each such year of an estimated $14,000,000,000.

(3) Federal Government agencies have confirmed that—

(A) the Code has had less overall commercial value than originally anticipated; and

(B) of the markets opened, the benefits were disproportionately in favor of foreign suppliers.

(4) The Congress has concerns about—

(A) inadequate monitoring of foreign government compliance with the Code;

(B) inadequate efforts to enforce the rights of the United States;

(C) the lack of United States Government assistance to firms wishing to take advantage of opened markets; and

(D) the continued lack of progress to open foreign markets.

(5) The United States economy over the past months has been in a condition of relative instability, with negative growth resulting in lost jobs and lost sales for both small and large businesses.

(6) After 13 years of limited opportunities for United States companies overseas under the Code, the time has come to address the matter of imbalance with respect to the government procurement practices of the United States' trading partners and to refocus United States Federal procurement policy during this period of economic adjustment, in order to enhance opportunities for small businesses and areas of high unemployment.

(7) The use of United States Federal procurement dollars to assist small businesses and preserve the jobs of workers who traditionally have the fewest

resources to withstand economic recession is a sound practice and policy for the Government.

(8) The policy established by this Act will serve to reduce the imbalance in government purchases and thereby put domestic companies on an equitable basis and help alleviate the United States balance of payments problem.

(b) PURPOSE.—The purpose of this Act is to promote fairness in Federal procurement by creating greater access to Federal procurement funds for small businesses and areas of high unemployment during economic downturns.

SEC. 3. REQUIREMENT THAT FEDERAL AGENCIES INCREASE DOMESTIC PROCUREMENT AND PROCUREMENT FROM SMALL-BUSINESS CONCERNS DURING ECONOMIC RECESSIONS.

(a) IN GENERAL.—Title III of the Act of March 3, 1933, commonly known as the Buy American Act (41 U.S.C. 10a–10c), is amended—

(1) by redesignating sections 5 and 6 as sections 6 and 7, respectively; and

(2) by inserting after section 4 the following new section:

"SEC. 5. REQUIREMENT THAT FEDERAL AGENCIES INCREASE DOMESTIC PROCUREMENT AND PROCUREMENT FROM SMALL-BUSINESS CONCERNS DURING ECONOMIC RECESSIONS.

''(a) GENERAL REQUIREMENT.—(1) Subject to paragraph (2), upon the 1st occurrence after the date of the enactment of the Fairness in Federal Purchases Act of 1993 of the notification described in subsection (b)(1), the following requirements shall take effect:

''(A) Each head of a Federal agency shall determine the amount of any difference between—

''(i) the amount such agency spent on procurement of goods and services from foreign government sources during the preceding fiscal year; and

''(ii) the amount such foreign governments spent on procurement of similar goods and services from domestic sources during the preceding fiscal year, and

if the amount described in clause (i) exceeds the amount described in clause (ii), shall decrease the amount such agency spends on procurement from foreign government sources and increase the amount such agency spends on procurement from domestic sources in order to eliminate the disparity between the amount spent on procurement from foreign gov-

ernment sources and the amount spent on procurement from domestic sources.

''(B) Each head of a Federal agency shall determine whether the amount such agency spent on procurement of goods and services from small-business concerns during the preceding fiscal year was less than 35 percent of the total amount such agency spent on procurement of goods and services, and if necessary, shall increase the amount such agency spends on procurement of goods and services from small-business concerns so that such amount equals or exceeds 35 percent of such total amount.

''(C) In the case of any procurement contract, the offered price of a domestic end product shall be considered unreasonable only if the lowest acceptable domestic offer exceeds the lowest acceptable foreign offer, inclusive of duty—

''(i) by more than 6 percent, in the case of a domestic offer from a large business that is not a labor surplus area concern; or

''(ii) by more than 15 percent, in the case of a domestic offer from a small-business concern or from a labor surplus area concern.

''(2)(A) Except as provided in subparagraph (B), the requirements of paragraph (1) shall cease to apply upon

the expiration of the 36-month period beginning on the date that the notification described in subsection (b)(1) occurs.

''(B) The requirements of paragraph (1) shall cease to apply upon the expiration of any of the following periods if during such period both the notifications described in subsection (b)(2) occur:

''(i) The 18-month period beginning on the date that the publication described in subsection (b)(1) occurs.

''(ii) The 6-month period following the 18-month period described in clause (i).

''(iii) The 6-month period following the 6-month period described in clause (ii).

''(3) The Administrator for Federal Procurement Policy shall provide to each head of a Federal agency the information necessary to carry out paragraphs (1) and (2).

''(b) NOTIFICATION.—(1) The notification described in this paragraph is either—

''(A) the publication in the Federal Register by the Secretary of Labor of an unemployment rate equal to or in excess of 5 percent for the preceding fiscal year quarter; or

''(B) the publication in the Federal Register by the Secretary of Commerce of a decline in the gross national product during such fiscal year quarter.

''(2) The notifications described in this paragraph are—

''(A) the publication in the Federal Register by the Secretary of Labor of an unemployment rate of less than 5 percent for the preceding fiscal year quarter; and

''(B) the publication in the Federal Register by the Secretary of Commerce of a stable or increasing gross national product during 2 consecutive fiscal year quarters.

''(c) DEFINITIONS.—For purposes of this section:

''(1) The term 'domestic end product' means—

''(A) an unmanufactured end product mined or produced in the United States; or

''(B) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components, including transportation costs to the place of incorporation into the end product and any applicable duty (whether or not a duty-free entry certificate is issued).

''(2) The term 'domestic offer' means an offered price for a domestic end product, including transportation to destination.

''(3) The term 'foreign end product' means an end product other than a domestic end product.

''(4) The term 'foreign government source' means entities comparable to United States Government agencies covered by the Government Procurement Code.

''(5) The term 'foreign offer' means an offered price for a foreign end product, including transportation to destination and duty, whether or not a duty-free entry certificate is issued.

''(6) The term 'Government Procurement Code' means title III of the Act of March 3, 1933, commonly known as the Buy American Act.

''(7) The term 'labor surplus area' means a geographical area identified by the Secretary of Labor as an area of concentrated unemployment or underemployment or an area of labor surplus.

''(8) The term 'labor surplus area concern' means a concern that together with its 1st-tier subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the contract

on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.

''(9) The term 'small-business concern' has the meaning provided in section 3(a)(1) of the Small Business Act.''.

(b) CONFORMING AMENDMENT TO THE TRADE AGREEMENTS ACT OF 1979.—Subsection (a) of section 301 of the Trade Agreements Act of 1979 (19 U.S.C. 2511(a)) is amended by inserting after ''or practice'' the following: ''(excluding section 5 of title III of the Act of March 3, 1933, commonly known as the Buy American Act)''.

○