



# **DHS Domestically Sourced Uniforms and Personal Protective Equipment**

*May 18, 2020*

Fiscal Year 2020 Report to Congress



**Homeland  
Security**

*Office of the Chief Procurement Officer*

# Message from the Office of the Chief Procurement Officer

I am pleased to present the following report, “DHS Domestically Sourced Uniforms and Personal Protective Equipment,” which has been prepared by the Office of the Chief Procurement Officer (OCPO).

This report responds to language in House Report 116-180, which accompanies the Fiscal Year 2020 Department of Homeland Security (DHS) Appropriations Act (P.L. 116-93). DHS is committed to ensuring compliance with the Buy American Act (BAA), Trade Agreements Act (TAA), and the Kissell Amendment. DHS also is committed to ensuring that uniforms and personal protective equipment procured by the Department or its Components are manufactured domestically from domestic materials to the maximum extent possible.



Pursuant to congressional requirements, this report is being provided to the following Members of Congress:

The Honorable Lucille Roybal-Allard  
Chairwoman, House Appropriations Subcommittee on Homeland Security

The Honorable Chuck Fleischmann  
Ranking Member, House Appropriations Subcommittee on Homeland Security

The Honorable Shelley Moore Capito  
Chairman, Senate Appropriations Subcommittee on Homeland Security

The Honorable Jon Tester  
Ranking Member, Senate Appropriations Subcommittee on Homeland Security

Inquiries relating to this report may be directed to me at (202) 447-5300.

Sincerely,

**SORAYA  
CORREA**

Soraya Correa  
Chief Procurement Officer

Digitally signed by  
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Date: 2020.05.18  
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# Executive Summary

DHS adheres to Federal Acquisition Regulation (FAR) Part 25, *Foreign Acquisition*, policies and procedures, which implement the BAA, the World Trade Organization Government Procurement Agreement (WTO GPA) approved by Congress, the various free trade agreements (FTA), and other related initiatives and agreements. The Homeland Security Acquisition Regulation (HSAR) implements statutes and other matters unique to DHS such as the Kissell Amendment, which addresses textiles. The Homeland Security Acquisition Manual (HSAM)—DHS’s internal acquisition policies and procedures—implements or supplements requirements of the FAR and the HSAR.

In recognition of the importance and complexity of the BAA and associated laws and regulations, DHS has taken several significant steps to strengthen its acquisition practices and oversight in this area. In December 2017, DHS updated Chapter 3025, *Foreign Acquisition*, of the HSAM. The update increased the FAR approval level for BAA exceptions from the contracting officer or head of contracting activity to OCPO for purchases from a nondomestic source when, for instance, domestic sources either are not available or are available at an unreasonable cost. Also, the HSAM now requires OCPO concurrence and Secretary approval of any determination that domestic preferences would be inconsistent with the public interest. To enhance oversight further, OCPO established the Buy American Reporting Tool as the repository for all DHS BAA exceptions requiring approval by OCPO. In keeping with this theme, in July 2019, DHS took the following additional actions to strengthen its acquisition practices and oversight:

- ï Updated HSAM Chapter 3006, *Competition Requirements*, to require justifications and approvals that result in the invocation of the exception to the Buy American statute at FAR § 25.103(b)(2) or § 25.202(a)(2) to be reviewed and approved by the Chief Procurement Officer (CPO).
- ï Updated HSAM Chapter 3013, *Simplified Acquisition Procedures*, to extend the requirement for CPO review and approval to applicable sole source justifications.
- ï Updated HSAM Chapter 3025, *Foreign Acquisition*, to:
  - ï Identify documentation requirements when acquiring an item on the list of nonavailable articles at FAR § 25.104;
  - ï Identify documentation requirements when an exception to the BAA applies to the acquisition of supplies and construction materials; and
  - ï Clarify that, when an exception to the TAA applies to the acquisition, the Buy American statute applies unless one of the exceptions at FAR § 25.103 or § 25.202 also applies to the acquisition.
- ï Updated the Department’s Buy American laws training, *FCL-DHS-0074: Advanced Buy American Laws Training 3.0*, to:

- ï Provide detailed information on the applicability of the BAA, TAA, and Kissell Amendment;
- ï Make clear when OCPO and/or Secretary approval is required for an exception to the BAA;
- ï Adjust the thresholds for application of the WTO GPA and the FTAs as determined by the United States Trade Representative;
- ï Identify documentation requirements for justifications for other than full and open competition that result in the invocation of the nonavailability exception to the Buy American statute at FAR § 25.103(b)(2) or § 25.202(a)(2); and
- ï Identify actions that contracting officers should take when there is a discrepancy between the country of origin information in (1) the representations and certifications in the System for Award Management registration for the offeror and the proposal/quotation submitted by the offeror or (2) competing proposals for the same item.



# DHS Domestically Sourced Uniforms and Personal Protective Equipment

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# I. Legislative Language

This report has been prepared pursuant to language in House Report 116-180, which accompanies the Fiscal Year (FY) 2020 Department of Homeland Security (DHS) Appropriations Act (P.L. 116-93).

House Report 116-180 states:

Domestic Sourcing.—The Committee supports efforts to ensure that uniforms and personal protective equipment procured by the Department or its components are manufactured domestically from domestic materials, and encourages the Department to continue evaluating procurement strategies, consistent with all applicable laws and regulations, to increase the domestic percentage of such uniforms and equipment it sources. Within 90 days of the date of enactment of this Act, the Office of the Chief Procurement Officer is directed to provide a report on the percentage of uniforms and equipment that the Department currently procures domestically and the results of its assessment of how this percentage could be increased.

## II. Uniform Purchases

The Kissell Amendment generally requires DHS to procure textile items, including uniforms directly related to national security interests, from domestic sources. However, it includes a significant caveat that requires DHS to apply the Kissell Amendment “... in a manner consistent with United States obligations under international agreements.” The free trade agreements (FTA) entitle parties to the agreements’ nondiscriminatory treatment and equal access to U.S. Government procurement contracts. All DHS Components, including the Transportation Security Administration (TSA) and U.S. Customs and Border Protection (CBP), are covered under multiple international trade agreements. As a result, DHS uniforms include items that are manufactured domestically and other items that are manufactured nondomestically.

To ensure compliance with the Kissell Amendment, DHS uses a strategically sourced, single-award, indefinite-delivery/indefinite-quantity (IDIQ) contract, managed by CBP, to fulfill the uniform needs of the Department. The contract is mandatory for use (with limited exceptions) by CBP, the Federal Emergency Management Agency, the Federal Law Enforcement Training Centers, U.S. Immigration and Customs Enforcement, the Cybersecurity and Infrastructure Security Agency, the Federal Protective Service, TSA (which includes the Federal Air Marshal Service), U.S. Coast Guard, and U.S. Secret Service. The U.S. Food and Drug Administration also may use this contract for its uniform purposes. The FY 2019 uniform cost data provided in this report represent the Department’s estimated spending under this contract.

### A. Percentage of Domestically Procured Uniforms

DHS does not purchase uniforms on a “total uniform” basis under its strategically sourced uniform contract. Instead, DHS allows its officers and agents to order the specific uniform items needed. For example, an officer or agent can order a single uniform item in multiple quantities or any combination of uniform items in varying quantities. Currently, 1,499 different uniform items may be purchased under the contract, and, on average, 2,500,000 uniform items are ordered annually. Of these items, approximately 45 percent are manufactured in the United States with the remaining 55 percent manufactured outside the United States, pursuant to existing free trade agreements.<sup>1</sup> This is because DHS includes the item that has the best price and that meets DHS needs on the contract. Therefore, a complete uniform will be made up of both domestically and nondomestically manufactured items.

Additionally, per-unit costs vary greatly from uniform item to uniform item. For example, customized or more complex uniform items require more labor hours to produce and, therefore, are priced higher. As a result, any bulk cost per item computations using the spending data in sections B and C below will be distorted. In other words, it would be inaccurate to conclude, on the basis of the spending data below, that uniforms manufactured in the United States are less expensive than uniforms manufactured outside the United States.

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<sup>1</sup> It is estimated that, for uniform items manufactured outside the United States, 80 percent of the fabric is from the United States.

Also, with the ratification of the United States-Mexico-Canada Agreement (USMCA), TSA no longer will be able to purchase uniform items made in Mexico. As a result, the numbers will change significantly because approximately 20 percent of the total annual expenditure, i.e., \$17,500,000, is for TSA uniforms currently manufactured in Mexico. Upon full implementation of the USMCA within DHS, this expenditure will move from nondomestically manufactured to domestically manufactured items.

**B. Estimated Cost of Uniforms Manufactured in the United States**

| <b>Fiscal Year</b> | <b>Estimated Cost<sup>2</sup></b> | <b>% of Estimated Cost</b> |
|--------------------|-----------------------------------|----------------------------|
| 2019               | \$39,038,408                      | 45%                        |

**C. Estimated Cost of Uniforms Manufactured Outside the United States**

| <b>Fiscal Year</b> | <b>Estimated Cost<sup>3</sup></b> | <b>% of Estimated Cost</b> |
|--------------------|-----------------------------------|----------------------------|
| 2019               | \$47,414,753                      | 55%                        |

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<sup>2</sup> Source: Uniform contract spend data

<sup>3</sup> Source: Uniform contract spend data

### III. Personal Protective Equipment Purchases<sup>4</sup>

DHS issued a strategically sourced, multiple-award IDIQ contract for National Institute of Justice (NIJ) Level IIIA body armor, where all items available for purchase are manufactured in the United States. These contracts were awarded under a small business set-aside to three U.S. small businesses and provide DHS Components with soft, torso-protecting, concealable body armor; carry bags; concealable and outer carriers; modular pouches; and moisture-wicking undergarments. Other federal agencies approved by CBP may purchase items from these contracts as well. DHS also issued a strategically sourced, single-award IDIQ contract for NIJ Level III ballistic plates. Although this contract was not awarded under a small business set-aside, all the items available under the contract are manufactured domestically using mostly domestic materials. As such, currently 100 percent of the body armor and ballistic plates that DHS procured in FY 2019 through its strategically sourced vehicles is sourced domestically. The total value of this expenditure is provided in the table below:

| <b>Fiscal Year</b> | <b>Estimated Cost<sup>5</sup></b> |
|--------------------|-----------------------------------|
| Body Armor         | \$13,443,544.91                   |
| Ballistic Plates   | \$340,866.40                      |
| <b>Total</b>       | <b>\$13,784,411.31</b>            |

<sup>4</sup> For consistency with previous responses to Congress related to domestic sourcing of uniform items and associated equipment, personal protective equipment has been limited to body armor and ballistic panels.

<sup>5</sup> Source: Body armor and ballistic plates contract spend data

## IV. Obstacles to Increasing the Percentage of Domestically Sourced Uniforms and Personal Protective Equipment

DHS procurements of organizational clothing, personal protective equipment, and individual equipment are compliant with both U.S. Government-wide and Department-specific requirements. These requirements include the Federal Acquisition Regulation, which implements the Buy American Act (BAA) and Trade Agreements Act (TAA); the Homeland Security Acquisition Regulation, which implements the Kissell Amendment, as well as the BAA and TAA; and the Homeland Security Acquisition Manual, which sets forth the Department's internal acquisition policies and procedures. The requirement to comply with the BAA is superseded by the TAA at certain thresholds with only limited exceptions. The TAA requires nonpreferential treatment between U.S. products and products of countries participating in the World Trade Organization Government Procurement Agreement (WTO GPA) and FTAs. Because the thresholds at which the WTO GPA and FTAs apply are relatively low, the TAA often applies to DHS procurements. Even the Kissell Amendment directs DHS to apply it to textile procurements, such as uniforms, "... in a manner consistent with United States obligations under international agreements." As a result of the application of the TAA, DHS generally awards the procurement to the vendor that supplies the product that meets DHS's needs at the best price.

Despite the complex statutory construct that drives many federal procurements to comply with the TAA, the Department has taken significant steps to increase the share of American-made goods in its procurements. For example, the TAA does not apply to small business set-asides so these contracts are restricted to domestic manufacturers. Therefore, when appropriate, DHS seeks to establish small business set-asides to fulfill its needs. An example of this approach is the Department's multiple-award IDIQ contract for body armor.

Although a small business set-aside remains inappropriate for the DHS uniform contract, the Department remains interested in domestically sourcing a larger percentage of DHS uniforms. As discussed in the FY 2018 report to Congress titled, "DHS Compliance with the Buy American Act and Kissell Amendment," DHS has engaged in extensive market research to improve understanding of U.S.-based uniform manufacturing capabilities as part of its efforts to award a new uniforms contract. This market research included DHS-hosted meetings with uniform manufacturers, distributors, and fabric mills with domestic production and sourcing knowledge. These meetings, held with both large and small businesses, were designed to expand DHS's understanding of the capabilities, capacity, and interest of domestic uniform manufacturers to support more domestic sourcing of DHS uniform requirements, without compromising operational readiness. Participants were provided uniform specifications, photos, and volume data for representative uniform items from the current uniform contract.

Several key themes emerged from the discussions. Although the companies generally indicated that they had the capability to provide domestically manufactured uniform items, they also

indicated that domestic manufacturing would increase labor costs substantially over nondomestic manufacturing labor costs. Companies also identified some factors that potentially could mitigate the higher costs of domestic manufacturing, including automation or the introduction of new or increased tariffs, which would add to the cost of nondomestic finished goods. The companies explained that the more complex the uniform item or the more customization required to meet DHS needs, the more labor—a significant cost driver—that is involved. Companies expressed significant concern regarding low-volume uniform items and inconsistent demand across DHS. Unpredictable demand coupled with low volume posed a serious concern to companies with respect to maintaining a production line. There also was discussion as to whether they could make the case within their company that the contract would be sufficiently lucrative. The most significant hurdle facing domestic manufacturers is the lack of available labor, fueled by a decreased interest in individuals coming into the trade.

DHS continues to partner with the Defense Logistics Agency to look for opportunities to increase domestic spending. The Department also continues to partner with domestic manufacturing associations, including the National Council of Textile Organizations for which DHS was a scheduled presenter at its annual meeting, and the North American Association of Uniform Manufacturers and Distributors. Consequently, CBP recently competitively awarded the follow-on DHS-wide uniforms contract on an unrestricted basis. This single-award contract has a base period of 5 years, with two 1-year options. Upon full implementation of the USMCA in the coming months, this contract will be modified to require that all TSA items be sourced domestically.

DHS welcomes the opportunity to brief Committee and Subcommittee staff on its market research. As additional requirements emerge, DHS will continue to explore ways to increase the share of American-made uniforms and other goods in its procurements, while complying with the BAA, WTO GPA, TAA, and Kissell Amendment.

## Appendix: Abbreviations

| <b>Abbreviation</b> | <b>Definition</b>   |
|---------------------|---|
| BAA                 | Buy American Act  |
| CBP                 | U.S. Customs and Border Protection                        |
| CPO                 | Chief Procurement Officer                                 |
| DHS                 | Department of Homeland Security                           |
| FAR                 | Federal Acquisition Regulation                            |
| FTA                 | Free Trade Agreement                                      |
| FY                  | Fiscal Year   |
| HSAM                | Homeland Security Acquisition Manual                      |
| HSAR                | Homeland Security Acquisition Regulation                  |
| IDIQ                | Indefinite Delivery/Indefinite Quantity                   |
| NIJ                 | National Institute of Justice                             |
| OCPO                | Office of the Chief Procurement Officer                   |
| TAA                 | Trade Agreements Act                                      |
| TSA                 | Transportation Security Administration                    |
| USMCA               | United States-Mexico-Canada Agreement                     |
| WTO GPA             | World Trade Organization Government Procurement Agreement |