

United States Senate

WASHINGTON, DC 20510

120 HUIYSHOPE AVENUE
SUITE 401
HARTFORD, CT 06106
(860) 549-8463

<http://murphy.senate.gov>

May 10, 2017

The Honorable James N. Mattis
Secretary of Defense
U.S. Department of Defense
1400 Defense Pentagon
Washington, DC 20301

Dear Secretary Mattis:

As I have communicated to four of your predecessors, I remain concerned about the enforcement of our domestic procurement laws, specifically the Buy American Act and the Berry Amendment. Since coming to Congress, I have been alarmed by the amount of statutorily allowable waivers and exceptions to the Buy American Act used by the Department of Defense. Increasingly though, reports of non-compliance and lack of enforcement exacerbate my worry that our manufacturing base will continue to erode without drastic reform.

The latest cause for alarm is the case of Lt. Col. Frederick Lamar Burnett, who last month was convicted of defrauding the Department of Defense of \$6.2 million through a scheme involving contracts for backpacks and baseball caps.

The facts of this case highlight the need for reform within your department. According to the indictment, Lt. Col. Burnett's company was awarded a contract in 2005 to supply the Army with baseball caps used for recruitment. This contract and the two subsequent contracts were legally required to be fulfilled using 100% U.S.-made products. Instead of providing American-made products, however, Lt. Col. Burnett purchased the products directly from China and then hid their foreign origin by hiring workers to remove all the Chinese labels. After the award of a second contract in 2007 for \$4 million dollars, a competing firm protested the award, knowing that the only way that Lt. Col. Burnett could be supplying these items at that price was through the use of artificially inexpensive foreign sources. Stunningly, even with this information, Lt. Col. Burnett was allowed to proceed with the fulfillment of the contract as long as he certified that the material was U.S.-made, even though everyone involved – the government, Burnett and his protesting company – knew that this certification was not possible.

Thankfully, the Defense Criminal Investigative Service (DCIS) and Army Criminal Investigation Command (CID) uncovered this fraud, and with the help of the U.S. Attorney's office, was able to convict Burnett on three counts of wire fraud. I thank those agencies for their work on this case.

A conviction in this case, however, does not dismiss longstanding systemic problems with Buy American Act and Berry Amendment compliance. This non-compliance was brought to light in

the last several years by multiple DoD Inspector General (IG) reports that highlighted possibly widespread deficiencies in enforcement of the Buy American Act and the Berry Amendment.

I am concerned with a culture within the contracting community articulated in these DoD IG audits that would allow for Lt. Col. Burnett to be awarded these contracts. The problematic mindset was recently articulated at a House Armed Services Committee hearing by a former Deputy Chief Management Officer who said that “the acquisition community has been able to work around [Buy American provisions]”. It is my strong view that Buy American provisions are not in place to be “worked around;” they are important protections for our continually-eroding defense industrial base.

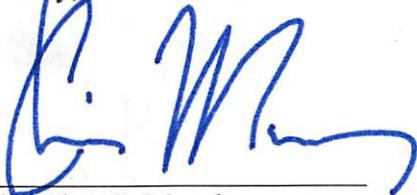
I was heartened that through Executive Order 13788, President Trump heeded the recommendation I made in a January 23, 2017 letter that urged him to require a government-wide audit of compliance with the Buy American Act, and reduce the use of Buy American Act waivers.

As a result of Executive Order 13788 you are required to “scrupulously monitor, enforce, and comply with Buy American Laws, to the extent they apply, and minimize the use of waivers, consistent with applicable law.” Had contracting staff been scrupulously monitoring the contracts awarded to Lt. Col. Burnett, perhaps his fraud would have been discovered before the award of subsequent contracts, which along with his court proceedings have cost taxpayers millions of dollars.

It is important to remember that this fraud was only uncovered because a competing company filed a complaint. With the numerous statutorily acceptable waivers, and demonstrated non-compliance and non-enforcement, the deck is already stacked too high against American companies. To ask these American manufacturers to also be on the lookout for well-orchestrated fraud is unreasonable and unacceptable.

I look forward to reviewing the plan you are required to develop pursuant to Sec. 3 (b) of Executive Order 13788. I respectfully ask that you share this plan with Congress no later than September 15, 2017, the date by which Executive Order 13788 requires this plan to be completed. This assessment is critical for the health of the defense industrial base. I look forward to working with you to increase compliance with the Buy American Act in support of our domestic manufacturers and I would appreciate the opportunity to discuss this issue with you in person.

Sincerely,



Christopher S. Murphy
United States Senator