

The Savings in Construction Act of 1996

Public Law 104-289 of October 11, 1996

The "Cox bill"

[The Cox bill (P.L. 104-289) prohibits federal contract documents that are issued for bid after January 10, 1997, from solely specifying modular concrete block and modular metric recessed lighting fixtures unless analyses show that the installed costs of these products are no higher than the installed costs of similar inch-pound products. Since the bill took effect, most federal contract documents have specified block and fixtures in metric sizes but allowed inch-pound substitutions. In one case, however, contract documents for a federal building neglected to make such an allowance. The problem was remedied by issuing a letter from the responsible federal agency to the contractor stating that inch-pound concrete block and recessed lighting fixture substitutions were permitted. Federal managers and their A/E's must work to ensure that contract documents fully comply with the requirements of the Cox bill.]

SECTION 1. SHORT TITLE.

This Act may be cited as the "Savings in Construction Act of 1996".

SEC. 2. Findings.

The Congress finds the following:

(1) The Metric Conversion Act of 1975 was enacted in order to set forth the policy of the United States to convert to the metric system. Section 3 of that Act requires that each Federal agency use the metric system of measurement in its procurement, grants, and other business-related activities, unless that use is likely to cause significant cost or loss of markets to United States firms, such as when foreign competitors are producing competing products in non-metric units.

(2) In accordance with that Act and Executive Order 12770, of July 25, 1991, Federal agencies increasingly construct new Federal buildings in round metric dimensions. As a result, companies that wish to bid on Federal construction projects increasingly are asked to supply materials or products in round metric dimensions.

(3) While the Metric Conversion Act of 1975 currently provides an exemption to metric usage when impractical or when such usage will cause economic inefficiencies, amendments are warranted to ensure that the use of specific metric components in metric construction projects do not increase the cost of Federal buildings to the taxpayers.

SEC. 3. DEFINITIONS.

Section 4 of the Metric Conversion Act of 1975 (15 U.S.C. 205c) is amended --

(1) by striking "and" at the end of paragraph (3);

(2) by striking "Commerce." in paragraph (4) and inserting "Commerce;"; and

(3) by inserting after paragraph (4) the following:

"(5) 'full and open competition' has the same meaning as defined in section 403(6) of title 41, United States Code;

"(6) 'total installed price' means the price of purchasing a product or material, trimming or otherwise altering some or all of that product or material, if necessary to fit with other building components, and then installing that product or material into a Federal facility;

"(7) 'hard-metric' means measurement, design, and manufacture using the metric system of measurement, but does not include measurement, design, and manufacture using English system measurement units which are subsequently reexpressed in the metric system of measurement;

"(8) 'cost or pricing data or price analysis' has the meaning given such terms in section 304A of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254b); and

"(9) 'Federal facility' means any public building (as defined under section 13 of the Public Buildings Act of 1959 (40 U.S.C. 612) and shall include any Federal building or construction project --

"(A) on lands in the public domain;

"(B) on lands used in connection with Federal programs for agriculture research, recreation, and conservation programs;

"(C) on or used in connection with river, harbor, flood control, reclamation, or power projects;

"(D) on or used in connection with housing and residential projects;

"(E) on military installations (including any fort, camp, post, naval training station, airfield, proving ground, military supply depot, military school, or any similar facility of the Department of Defense);

"(F) on installations of the Department of Veteran Affairs used for hospital or domiciliary purposes; or

"(G) on lands used in connection with Federal prisons, but does not include (i) any Federal Building or construction project the exclusion of which the President deems to be justified in the public interest, or (ii) any construction project or building owned or controlled by a State government, local government, Indian tribe, or any private entity."

SEC. 4. IMPLEMENTATION IN ACQUISITION OF FEDERAL FACILITIES.

(a) The Metric Conversion Act of 1975 (15 U.S.C. 205 et sec.) is amended by inserting after section 13 the following new section:

"SEC. 14. IMPLEMENTATION IN ACQUISITION OF CONSTRUCTION SERVICES AND MATERIALS FOR FEDERAL FACILITIES.

"(a) IN GENERAL. -- Construction services and materials for Federal facilities shall be procured in accordance with the policies and procedures set forth in chapter 137 of title 10, United States Code, section 2377 of title 10, United States Code, title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), and section 3(2) of this Act.

Determination of a design method shall be based upon preliminary market research as required under section 2377(c) of title 10, United States Code, and section 314B(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 264b(c)). If the requirements of this Act conflict with the provisions of section 2377 of title 10, United States Code, or section 314B of the Federal Property and Administrative Services Act of 1949, then the provisions of 2377 or 314B shall take precedence.

"(b) CONCRETE MASONRY UNITS. -- In carrying out the policy set forth in section 3 (with particular emphasis on the policy set forth in paragraph (2) of that section) a Federal agency may require that specifications for the acquisition of structures or systems of concrete masonry be expressed under the metric system of measurement, but may not incorporate specifications that can only be satisfied by hard-metric versions of concrete masonry units, in a solicitation for design or construction of a Federal facility within the United States or its territories, or a portion of said Federal facility, unless the head of the agency determines in writing that --

"(1) hard-metric specifications are necessary in a contract for the repair or replacement of parts of Federal facilities in existence or under construction upon the effective date of the Savings in Construction Act of 1996; or

"(2) the following 2 criteria are met:

"(A) the application requires hard-metric concrete masonry units to coordinate dimensionally into 100 millimeter building modules; and

"(B.) the total installed price of hard-metric concrete masonry units is estimated to be equal to or less than the total installed price of using non-hard-metric concrete masonry units. Total installed price estimates shall be based, to the extent available, on cost or pricing data or price analysis, using actual hard-metric and non-hard-metric offers received for comparable existing projects. The head of the agency shall include in the writing required in this subsection an explanation of the factors used to develop the price estimates.

"(c) RECESSED LIGHTING FIXTURES. -- In carrying out the policy set forth in section 3 (with particular emphasis on the policy set forth in paragraph (2) of that section) a Federal agency may require that specifications for the acquisition of structures or systems of recessed lighting fixtures be expressed under the metric system of measurement, but may not incorporate specifications that can only be satisfied by hard-metric versions of recessed lighting fixtures, in a solicitation for design or construction of a Federal facility within the United States or its territories unless the head of the agency determines in writing that --

"(1) the predominant voluntary industry consensus standards include the use of hard-metric for the items specified; or

"(2) hard-metric specifications are necessary in a contract for the repair or replacement of parts of Federal facilities in existence or under construction upon the effective date of the Savings in Construction Act of 1996; or

"(3) the following 2 criteria are met:

"(A) the application requires hard-metric recessed lighting fixtures to coordinate dimensionally into 100 millimeter building modules; and

"(B) the total installed price of hard-metric recessed lighting fixtures is estimated to be equal to or less than the total installed price of using non-hard-metric recessed lighting fixtures. Total installed price estimates shall be based, to the extent available, on cost or pricing data or price analysis, using actual hard-metric and non-hard-metric offers received for comparable existing projects. The head of the agency shall include in the writing required in this subsection an explanation of the factors used to develop the price estimates.

"(d) LIMITATION. -- The provisions of subsections (b) and (c) of this section shall not apply to Federal contracts to acquire construction products for the construction of facilities outside of the United States and its territories.

"(e) EXPIRATION. -- The provisions contained in subsections (b) and (c) of this section shall expire 10 years from the effective date of the Savings in Construction Act of 1996."

SEC. 5. OMBUDSMAN.

Section 14 of the Metric Conversion Act of 1975, as added by section 4 of this Act, is further amended by adding at the end the following new subsection:

"(f) AGENCY OMBUDSMAN. --

(1) The head of each executive agency that awards construction contracts within the United States and its territories shall designate a senior agency official to serve as a construction metrication ombudsman who shall be responsible for reviewing and responding to complaints from prospective bidders, subcontractors, suppliers, or their designated representatives related to --

"(A) guidance or regulations issued by the agency on the use of the metric system of measurement in contracts for the construction of Federal buildings; and

"(B) the use of the metric system of measurement for services and materials required for incorporation in individual projects to construct Federal buildings. The construction metrication ombudsman shall be independent of the contracting officer for construction contracts.

"(2) The ombudsman shall be responsible for ensuring that the agency is not implementing the metric system of measurement in a manner that is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms in violation of the policy stated in section 3(2), or is otherwise inconsistent with guidance issued by the Secretary of Commerce in consultation with the Interagency Council on Metric Policy while ensuring that the goals of the Metric Conversion Act of 1975 are observed.

"(3) The ombudsman shall respond to each complaint in writing within 60 days and make a recommendation to the head of the executive agency for an appropriate resolution thereto. In such a recommendation, the ombudsman shall consider --

"(A) whether the agency is adequately applying the policies and procedures in section 3 of this Act;

"(B.) whether the availability of hard-metric products and services from United States firms is sufficient to ensure full and open competition; and

"(C) the total installed price to the Federal government.

"(4) After the head of the agency has rendered a decision regarding a recommendation of the ombudsman, the ombudsman shall be responsible for communicating the decision to all appropriate policy, design, planning, procurement, and notifying personnel in the agency [sic]. The ombudsman shall conduct appropriate monitoring as required to ensure the decision is implemented, and may submit further recommendations, as needed. The head of the agency's decision on the ombudsman's recommendations, and any supporting documentation, shall be provided to affected parties and made available to the public in a timely manner.

"(5) Nothing in this section shall be construed to supersede the bid protest process established under subchapter V of chapter 35 of title 31, United States Code."

SEC. 6. EFFECTIVE DATE AND MISCELLANEOUS PROVISIONS.

(a) EFFECTIVE DATE. -- This Act and the amendments made by this Act shall take effect 90 days after the date of enactment of this Act.

(b) SAVINGS PROVISIONS. -- This Act shall not apply to contracts awarded and solicitations issued on or before the effective date of this Act, unless the head of a Federal

agency makes a written determination in his or her sole discretion that it would be in the public interest to apply one or more provisions of this Act or its amendments to these existing contracts or solicitations.