

Check Your LED Lighting Supplies and Construction Materials or It Could Cost You

Alert

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Recently the Federal Trade Commission entered into a [settlement](#) under which Patriot LED must pay civil damages of nearly \$158,000, plus a penalty of \$2.96 million, for its alleged false marketing of lighting products as domestic products “Made in USA.” These lighting products encompass LED lights, tubes and fixtures, including a line of LED products – called “Patriot Tubes.” The settlement is pending approval in federal court.

Entities receiving federally funded projects as prime contractors, subcontractors, grantees or agreement holders, and those in their supply chain, may be required to supply products and construct facilities with materials that comply with the Buy American Act, Trade Agreements Act, Buy America, or other applicable domestic preference rules, unless an exception applies. Under these domestic preference rules, the end products, components and construction materials must be produced or manufactured in the U.S. or a qualifying country.

Misrepresentation of what will be delivered, or failure to deliver or install compliant products and materials, can result in civil or even criminal prosecution under the False Claims Act (FCA), in addition to other government claims. Damages under the FCA range from a minimum of \$12,537 to a maximum of \$25,076 [per false claim](#), and those damages may be trebled. In addition to federal rules, states have similar domestic preference rules and false claims laws.

With the passage of the Infrastructure Investment and Jobs Act, hundreds of billions of dollars are set to be spent on infrastructure projects to construct or refurbish transportation, energy, communication, environmental, and other facilities in compliance with applicable domestic preference policies. These types of projects will be issued under government contracts, grants and other types of financial assistance agreements. With so much money from the federal government being sent to states, local governments and

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nonprofits with these domestic preference strings, the Patriot LED situation serves as a warning to entities directly or indirectly receiving these funds that they need to be vigilant to comply with applicable domestic preference requirements.

IN LIGHT OF THE PUBLICLY DISCLOSED PROPOSED SETTLEMENT WITH PATRIOT LED, WHAT SHOULD YOU DO?

Below are some steps you should consider taking promptly to avoid liability or to mitigate your risks from the use of Patriot LED products:

1. Check to see if you have any Patriot LED lighting products in your inventory, or if you have supplied or installed Patriot LED products or materials under a federally funded government contract, subcontract, grant or agreement.
2. If you have purchased, supplied or installed such products under a government contract, grant or agreement, you need to follow up to determine whether your products complied with applicable requirements. If you have reason to believe that any other vendors who have supplied products or materials for your projects have engaged in similar conduct, you should take steps to investigate.
3. If you have received from your subcontractors and vendors certifications of compliance with the applicable laws, you may be able to rely on those certifications to avoid a penalty.
4. However, if you have delivered or installed these products, you may need to do more to determine whether your products complied with requirements and, if not, what the implications are.

With the complexity and evolving nature of rules in this area, it's important to consult with legal counsel on how to address this issue as well as the steps to take to identify and address potential risks of noncompliance.

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