

## *Buy America requirements: A boon for the US economy or a bust for construction firms? Construction Dive, ft. Erik Ortmann*

August 4, 2016 - Erik Ortmann, partner in Kaufman Dolowich & Voluck's Long Island office, was quoted in Kim Slowey's article in *Construction Dive* on how *Buy America* requirements affect construction firms.

*Buy American* — its sounds great, right? After all, what's wrong with requiring businesses, especially those using federal dollars, to spend their money here at home? As it turns out, some construction industry groups claim the rules intended to help American manufacturers and suppliers could be hurting construction companies as part of the deal.

Attorney Erik Ortmann, partner at Kaufman Dolowich & Voluck in New York, said there is an exception to the 100% American-made rule for transportation projects when it comes to rolling stock items like rail cars, but the rules still require such items to be more than 60% American-made, with final assembly taking place in the U.S.

Ortmann said compliance is key, particularly when it comes to obtaining supplier and manufacturer certifications that the products or materials were in fact made in the U.S. In that respect, Ortmann pointed to the case of New York City's Second Avenue Subway project. The Metropolitan Transportation Authority had to rip out and replace a fire suppression system after the Federal Transit Administration determined some of the system components originated in Finland. This occurred despite the fact that the contractor provided the MTA with certification that it was an American-made system that met transportation project requirements, according to the FTA.

Anyone can apply for a waiver of the *Buy America* rules, but the successful applications have to show strong arguments in relation to public interest, availability and price differential, according to Ortmann. The application must speak to all of these factors. "It doesn't play well to just say, 'It costs more.' That isn't an excuse," he said.