

## APTAC Body of Knowledge Competency Guide

### D. Specialized Knowledge

#### D.2 Buy American Act (BAA)/Trade Agreements Act (TAA)

##### Description

A. General: The Buy American Act (BAA) is a domestic preference program encouraging the purchase of American made articles, goods and supplies and construction materials. The Trade Agreements Act allows federal buyers the opportunity to purchase of goods made in “**designated countries**” based on various trade agreements. An important contrast is that the determination or test of the country of origin is different between the two Acts.

B. Buy American Act: The Buy American Act restricts the purchase of foreign made supplies for use in the U.S. unless the CO determines that the lowest domestic offer is unreasonable or that an exception applies. Under the Buy American Act a product is considered domestic end product if the product is mined, produced or manufactured in the United States. A manufactured product is considered U.S. made if (1) it is manufactured in the US and (2) more than **50% of the cost of its component parts are made in the U. S.** Therefore, contractors have to perform a cost comparison of the components making up the end product to determine if the contractor can certify it to be a U. S made end-product. The BAA does not apply to items used outside of the U.S. and items below the micro-purchase order. Exceptions to the BAA include:

1. Public Interest
2. Unreasonable cost of domestic product - (evaluation factors would be applied to the domestic offer that has a reasonable chance of receiving the award)
3. Commissary resale item
4. Non-Availability
5. Commercially available IT off the shelf items

C. The Trade Agreements Act: (TAA) differs from the Buy American Act in that it applies to eligible **end products** rather than component parts. The TAA test to determine the “country of origin” is **substantial transformation** of an article into a new and different article of commerce with a name, character or use distinct from the original article. (FAR 25.001(c)). All GSA schedule holders must comply with the Trade Agreement Act which is updated regularly as our agreements with other countries are modified. The list of current “designated countries” can be found at FAR 25.402-406. Different trade agreements have differing monetary thresholds for supplies, services and construction materials. These thresholds are updated every two years.

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Some exceptions to the Trade Agreements Act:

1. Acquisitions set aside for small business
2. Resale items
3. Acquisitions not using full and open competition or sole-source acquisitions justified in accordance with FAR 13.501 (b)
4. Acquisitions of certain services FAR 25.401 (b)
5. National security & services purchased in support of military overseas
6. Research and Development contracts

**References:**

Buy American Act- 41 U.S.C. 10a-d, EO 10582, FAR 25, FAR 52.225-1 and 2, FAR 52.225-9 thru 12, DAU course CLC 027

Trade Agreements Act- 19 U.S. C. 2501-2582, EO 12260, FAR 25.4, FAR 52.225-5 and 6,

Prohibited Sources: FAR 25.7

Definitions- FAR 25.003

Contract Management, “Purchased in the USA: An examination of emerging issues surrounding foreign acquisition”, Eric Cho, October 2012, pp. 28-39

<b>Item</b>	<b>BAA</b>	<b>TAA</b>	<b>Notes</b>
Exceptions	<ul style="list-style-type: none"> <li>• Public Interest</li> <li>• Non-Availability</li> <li>• Unreasonable Cost</li> <li>• Commercial off the shelf IT item</li> <li>• Resale</li> </ul>	<ul style="list-style-type: none"> <li>• SB set asides</li> <li>• National Security</li> <li>• Sole-Source items</li> <li>• Exempted Services</li> <li>• Resale items</li> <li>• R &amp; D contracts</li> <li>• Acquisitions under FAR 8.6-7</li> </ul>	

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Test for origin of mfg product	1. Manufactured in US 2. Cost of domestic components exceeds 50% of total product cost	End product is substantially transformed in the US or designated country	FAR 25.001(c )
Scope	<ul style="list-style-type: none"> <li>All supplies and construction materials</li> <li>Not applicable to services</li> </ul>	<ul style="list-style-type: none"> <li>Certain FSC's</li> <li>GSA Schedules</li> <li>Services</li> </ul>	FAR 25.401(b) excluded services
Threshold	<ul style="list-style-type: none"> <li>N/A to purchases under the micro purchase</li> <li>Construction materials under \$7,443,000</li> </ul>	<ul style="list-style-type: none"> <li>\$194,000+ for <u>WTO GPA</u> supply or service contract</li> <li>\$7,443,000+ for construction</li> </ul>	Thresholds based on type of contract and country of origin & revised every 2 yrs. FAR 25.402(b)
Contractor certifies country of origin	Yes	Yes	
Evaluation factor for unreasonable cost	<ul style="list-style-type: none"> <li>6% large business and 12% SB price evaluation factor (civilian agencies)</li> <li>50% price evaluation factor (DOD contracts)</li> </ul>	No	
Prohibited Sources	Yes- Cuba, Iran, Sudan, Burma, North Korea	Yes- Cuba, Iran, Sudan, Burma, North Korea	FAR 25.7