



U.S. General Services Administration

# Federal Acquisition Service

## Acquisition Policy Updates: Made in America E.O. 14005

*Presenting:*

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**Heartland Acquisition Center Industry Event**

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## Agenda

- FAS Perspective on [E.O. 14005, Ensuring the Future is Made in All of America by All of America's Workers](#)
- Trade Agreements Act (TAA) vs. Buy American Act (BAA)
- Schedule Contract Requirements
- Schedule TAA and Country of Origin Controls
- Key Takeaways- How Industry Can Support the Goals of E.O. 14005

## E.O. 14005 Highlights

- Goal is to maximize use of **American-made** products, materials, services to **increase global competitiveness** and **create quality US jobs**
- Does not impact MAS contracts due to Trade Agreements Act (TAA)
- Creates a Made in America Director position in the Office of Management and Budget (OMB)
- Requires that GSA establish a public website to display information on proposed and approved waivers to the Buy American Act (BAA)

## E.O. 14005 Highlights

- Supplier scouting to help agencies find American manufacturers
- FAR Council required to consider:
  - Replacing BAA component test
  - Increasing domestic content thresholds
  - Increasing price preferences for domestic end products/materials
  - Updating list of non-available articles
- FAR Council to provide recommendations on applicability of BAA to commercial IT

## Trade Agreements Act (TAA) Basics

- Dollar value of an acquisition generally determines which trade agreements apply
- TAA applies to all MAS contracts (and, therefore, MAS orders)
  - MAS contracts include the clause [52.225-5 Trade Agreements](#)
- TAA restricts purchases to **US made end products** or **designated country end products**
- **Substantial transformation** is the test to determine country of origin
- For services, country of origin is determined by country in which firm is established
- BAA does not apply acquisitions covered by TAA

## Buy American Act (BAA) Basics

- Mandates a price preference for domestically produced supplies and construction materials purchased for use within the U.S.
- Applies over the micropurchase threshold
- BAA exceptions include nonavailability, public interest, unreasonable cost, commercial IT, commissary resale
- Two-part “component” test to define “domestic end product” or “domestic construction material” (except for COTS items)

## Schedule Contract Requirements

- Contractors are required to:
  - Provide products/services that are TAA compliant (i.e., manufactured or “substantially transformed” in the U.S. or a designated country)
  - Accurately designate the country of origin (COO) (per I-FSS-600 *Contract Price Lists*)
- Contractors may make “substantial transformation” determinations on their own, request an opinion from a 3rd-party expert, or go to the Office of Regulations and Rulings within CBP (cbp.gov)
- **Note:** GSA temporarily waived TAA requirements for certain items to support the Federal Government’s response to the COVID-19 pandemic ([SPE Memo SPE-2020-11](#))

## TAA and Country of Origin (COO) Flags

- GSA regularly analyzes the 40M+ products on *GSAAdvantage!* for TAA compliance and accurate “US” country of origin designations (i.e., “MiA items”)
- GSA uses industry data and algorithms to flag products that are likely TAA non-compliant or misdesignated as “made in the US”
- The flagged items are incorporated into tools and processes that are used to manage TAA compliance and COO accuracy in the pre-award and post-award phase of the Schedule acquisition life cycle



## Price Point PLUS Portal (4P)

- Schedule COs use the Price Point PLUS Portal (4P) to identify products that -
  - Are potentially TAA non-compliant
  - May inaccurately designate the COO as “US” (i.e., MiA items)
- 4P is used for
  - New offers
  - Contract modifications
- Schedule offerors and contractors may be asked by the CO to correct offers and mods

## Program-wide TAA and “MiA” Corrections

- Once or twice a year, FAS runs a program-wide process to resolve TAA and MiA flagged items on *GSAAdvantage!*
- The process resolves the majority of potential non-compliant items by working with the Schedule contractors with the most flagged items
- Since the process began in 2018 -
  - The total number of items on *GSAAdvantage!* have **increased** by 43%
  - TAA flagged items have **decreased** by 89%
  - MiA flagged items have **decreased** by 44%

## Program-wide TAA and “MiA” Corrections

- During the life of the contract, FAS may email your company’s point(s) of contact regarding potentially non-compliant products
- FAS will require Schedule contractors to, as applicable:
  - re-affirm the current country of origin designation
  - change the designation to the correct country of origin
  - delete the product if it is TAA non-compliant
- **If you are contacted, please take action** as instructed! The flagged products may be deleted if you are not responsive.

## Other Supply Chain Risks

- FAS uses a similar program-wide approach to address other supply chain risks
- FAS may email your company's point of contacts regarding the following -
  - Products with national security risks (e.g., Kaspersky Labs, Huawei, ZTE, etc.)
  - Products that are Essentially the Same as AbilityOne products
- [Vendor Support Center](#) is a great resource for information

## Related Tools and Processes Expected in FY21

- In FY21, TAA and MiA risk mitigation will be enhanced by several new tools, pilots and policies
- The **Verified Products Portal (VPP)** will be a manufacturer and wholesaler facing portal where participants will be able provide rich data elements such as:
  - Supplier Authorization
  - Product Description and Images
  - Supply Chain Attributes

## Related Tools and Processes Expected in FY21

- The **High Risk Transactional Initiative** (HRTI) is a tool that surveys FAS customers to determine if a completed transaction was compliant. FAS is using HRTI to improve the customer experience and Schedule contractor performance.
- A **standardized internal compliance policy** will outline -
  - when contractor performance issues warrant action from the Schedule CO;
  - escalating actions COs can take if the performance issue is not resolved

## Key Takeaways

- Make sure your company has controls in place to track the country of origin for all products awarded to your Schedule contract
- Ensure products on Schedule contract are TAA compliant and the country of origin is correct - particularly “US” designations
- If you are contacted by GSA regarding products that may be TAA or MiA non-compliant, respond in a timely manner in accordance with the instructions