

Buy American Act Certificate

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This Standard Document is a Buy American Act (BAA) certificate of compliance that government contractors are required to submit with their bids and offers on BAA-covered procurements. This Standard Document has integrated notes with important explanations and drafting tips.

DRAFTING NOTE: READ THIS BEFORE USING DOCUMENT

This Standard Document is a required certificate under the Buy American Act (BAA) that federal government contractors must submit with their bids and offers for BAA-covered supply contracts. The language and format of this certificate are required and prescribed in the Federal Acquisition Regulation (FAR) (48 C.F.R. §§ 25.1101(a) and 52.225-2).

The BAA, a federally enacted country of origin (COO) obligation applicable to government contracts, seeks to restrict the government's purchase of items that are not domestic end products through a price evaluation penalty applied to competing offers of foreign end products. The BAA generally applies to supply and construction contracts with an estimated value between \$3,000 and the dollar threshold established for the Trade Agreements Act (TAA), another COO requirement applicable to government contracts. The TAA threshold is established approximately every two years by the US Trade Representative and is currently:

- \$180,000 for supply contracts.
- \$6,932,000 for construction contracts.

The estimated value of a procurement includes the value of the base award period and the value of all option periods. (48 C.F.R. § 25.403(b)(2).) However, the BAA is generally waived for contracts above the TAA threshold and, therefore, the contractor submits a TAA certificate. If the BAA is waived, the contractor is not required to submit a BAA certificate. However, contractors should be mindful that the TAA does not apply to certain categories of procurements, regardless of dollar value, including:

- Arms, ammunition, or war materials.
- Purchases indispensable for national security.
- Sole-source acquisitions.
- Small business set-aside contracts.

(48 C.F.R. § 25.401.)

For more information on COO requirements on federal government contractors, including the criteria for BAA and TAA applicability, see Practice Note, [Buying American: Country of Origin Requirements in US Government Contracts \(7-573-3545\)](#).

For BAA-specific noncompliance scenarios and best practices, see Buy American Act: Common Non-Compliance Scenarios and Best Practices for Federal Government Contractors Checklist ([8-574-6585](tel:8-574-6585)).

ASSUMPTIONS

The scope of this Standard Document is limited to supply contracts. In particular, the certificate at FAR § 52.225-2 is prescribed for

use only in connection with supply contracts. The mechanics of completing BAA certificates for construction contracts are similar, but fall outside the scope of this resource. In addition, the process for documenting “Buy American” compliance in the context of other federal statutory regimes, such as highway construction contracts funded by the Federal Transit Authority, is beyond the scope of this resource.

Buy American Act Certificate

(a) The offeror certifies that each end product, except those listed in paragraph (b) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of “domestic end product.” The terms “commercially available off-the-shelf (COTS) item,” “component,” “domestic end product,” “end product,” “foreign end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American Act—Supplies.”

(b) Foreign End Products:

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

DRAFTING NOTE: SPECIFYING FOREIGN LINE ITEMS

When completing a BAA certificate, a bidder or offeror is required to identify all foreign end products used in its submission by **proposed contract line item** in Subsection (b).

Many contractors misunderstand the mechanics of completing BAA certificates. By leaving Subsection (b) of the certificate blank, bidders and offerors represent that they will supply exclusively domestic end products as defined under the BAA. Government auditors and investigators

generally do not consider confusion about the mechanics of completing the BAA certificate a valid excuse for a contractor’s failure to comply with BAA requirements in its performance of the resulting contract.

When completing Subsection (b) of the certificate, bidders and offerors **should not list domestic end products**. The BAA prescribes two tests for determining whether items qualify as domestic end products, depending on whether they are:

- **Non-manufactured products.** To qualify as a domestic end product, a non-manufactured product must be mined or produced in the US (48 C.F.R. § 25.003).
- **Manufactured products.** A manufactured product qualifies as a domestic end product if:
 - it is manufactured in the US; and
 - the cost of its components mined, produced, or manufactured in the US exceeds 50% of the cost of all of its components (48 C.F.R. § 25.101(a).)
- All offers of domestic end products are evaluated to have an unreasonable cost.
- Information technology is a commercial item.
- The procuring agency determines that domestic preference is inconsistent with the public interest.
- Sufficient quantities are not available from domestic sources.
- The contracting agency purchased items for resale at military bases.

For more information on the BAA COO tests, see Practice Note, *Buying American: Country of Origin Requirements in US Government Contracts: BAA Compliance Tests* ([7-573-3545](#)).

For information on commercial item contracting in government contracts, see Practice Note, *Government Contracts: Reduced Risk Through Commercial Item Contracting* ([5-532-3257](#)).

BAA EXCEPTIONS

There are several exceptions to the requirement to supply domestic end products under the BAA, including when:

For more information on BAA exceptions, see Practice Note, *Buying American: Country of Origin Requirements in US Government Contracts: Instances Where the BAA Does Not Restrict Foreign Offers* ([7-573-3545](#)).

The exception for unreasonable cost is implemented through the BAA's price evaluation preference, which is only determined after the contracting agency's evaluation of bids or offers. In such circumstances, the BAA certificate is applicable and foreign end products must be listed in Subsection (b). The BAA certificate should not generally be included in solicitations that are subject to other exceptions to the BAA's requirement to supply domestic end products.

(c) The Government will evaluate offers in accordance with the policies and procedures of Part 25 of the Federal Acquisition Regulation.

DRAFTING NOTE: PRICE EVALUATION PENALTY

Part 25 of the FAR implements the COO requirements and obligations applicable to government contractors, including the BAA and its price evaluation penalty. The price evaluation penalty is an amount added to a bid or offer that increases the dollar value assigned to offers of foreign end products for evaluation purposes only. This price evaluation penalty is applied by contracting officers in connection with the

bid evaluation process but is not actually paid to successful bidders and offerors of foreign end products.

In contrast with the TAA, the BAA's price evaluation penalty is not an absolute prohibition on supplying foreign end products. Contracting agencies may properly purchase foreign end products if they are cheaper than domestic end

products after the BAA price evaluation penalty has been applied.

The price evaluation penalty is currently:

- For civilian agency procurements:
 - 6% of the foreign offer's price if the low domestic offeror is **a large business concern**; and
 - 12% of the foreign offer's price if the low domestic offeror is **a small business concern**.
- 50% of the foreign offer's price for all Department of Defense procurements

(48 C.F.R. §§ 25.105(b) and 225.105(b).)

For more information on the BAA price evaluation penalty, see Practice Note, *Buying American: Country of Origin Requirements in US Government Contracts: Price Evaluation Penalty* ([7-573-3545](#)).

For information on the penalties for failing to comply with the BAA and other COO requirements, see Practice Note, *Buying American: Country of Origin Requirements in US Government Contracts: Penalties for Non-Compliance with COO Requirements* ([7-573-3545](#)).

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