

Trade Agreements Act Certificate

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This Standard Document is a Trade Agreements Act (TAA) certificate of compliance that government contractors are required to submit with their bids and offers on TAA-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 Trade Agreements Act (TAA) that federal government contractors must submit with their bids and offers for TAA-covered supply contracts. The language and format of this certificate are prescribed in the Federal Acquisition Regulation (FAR). (48 C.F.R. §§ 25.1101(c)(2) and 52.225-6.)

The TAA, a federally enacted country of origin (COO) obligation applicable to government contracts, prohibits the US government from procuring goods or services that do not originate from either the US or a **Designated Country** (see Drafting Note, Specifying Foreign Line Items). The TAA implements free trade agreements (FTAs) entered into by the US government that guarantee signatory countries nondiscriminatory treatment in government procurement activities conducted by other signatory countries. The TAA applies to most procurements valued at:

- \$180,000 or more for supply contracts.
- \$6,932,000 or more 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).)

For more information on COO requirements applicable to federal government contractors, including the criteria for TAA and Buy American Act (BAA) applicability, see Practice Note, Buying American: Country of Origin Requirements in US Government Contracts ([7-573-3545](#)). For TAA-specific noncompliance scenarios and best practices, see Trade Agreements Act: Common Non-Compliance Scenarios and Best Practices for Federal Government Contractors Checklist ([5-574-1805](#)).

ASSUMPTIONS

The scope of this Standard Document is limited to supply contracts. In particular, the certificate set forth at FAR § 52.225-6 is prescribed for use in connection with TAA-covered supply contracts. The mechanics of completing the TAA construction contract certificate are similar to those for the

TAA supply contract certificate, but fall outside the scope of this resource. The process for determining, representing, and

documenting TAA compliance in connection with service contracts is also beyond the scope of this resource.

Trade Agreements Act Certificate

(a) The offeror certifies that each end product, except those listed in paragraph (b) of this provision, is a U.S.-made or designated country end product, as defined in the clause of this solicitation entitled "Trade Agreements."

(b) The offeror shall list as other end products those supplies that are not U.S.-made or designated country end products.

Other End Products:

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

DRAFTING NOTE: SPECIFYING FOREIGN LINE ITEMS

When completing a TAA certificate, a bidder or offeror is required to identify goods that are not from either the US or a Designated Country **by proposed contract line item** in Subsection (b). **Designated Countries** are countries either:

- With which the US has signed a reciprocal agreement not to discriminate in government procurement.
- That have otherwise been determined to be TAA-eligible (such as Least Developed Countries).

For a list of Designated Countries under the TAA, see Practice Note, *Buying American: Country of Origin Requirements in US Government Contracts: TAA Eligible Countries* ([7-573-3545](#)).

Many contractors misunderstand the mechanics of completing this section of

TAA certificates. By leaving Subsection (b) of the certificate blank, bidders and offerors represent that they will supply exclusively US or Designated Country end products. Government auditors and investigators generally do not consider confusion about the mechanics of completing the TAA certificate a valid excuse for a contractor's failure to comply with TAA requirements in its performance of the resulting contract.

When completing Subsection (b) of the certificate, bidders and offerors **should not list TAA-compliant end products**. Products are TAA-compliant if they are either:

- Wholly grown, produced, or manufactured in the US or a Designated Country.
- Substantially transformed into new and different articles of commerce in the US or a Designated Country.

(19 U.S.C. § 2518(4).) The United States Court of Federal Claims recently ruled that the FAR TAA clause allows for the purchase of all COTS domestic end products (i.e., COTS products “manufactured” in the US), even if such products do not meet the more rigorous “substantial transformation” test. (*Acetris Health, LLC v. United States*, 2018 WL 3425071 (Fed. Cl. July 16, 2018), *appeal docketed*, No. 18-2399 (Fed. Cir. Sept. 20, 2018).) If a federal government contractor is planning to supply End Products which are manufactured but not substantially transformed in the US, it should expressly note this in subsection (b) or elsewhere in the certificate; however, it should not list such products in subsection (b).

As commercial products and services evolve over time, the available guidance for determining the TAA COO of certain items

can lag, resulting in substantial ambiguity about the proper COO. For information on TAA applicability on software and cloud computing, see Practice Note, *Buying American: Country of Origin Requirements in US Government Contracts: Application to Evolving Technologies* ([7-573-3545](#)).

For more information on the separate tests for determining TAA COO under supply and service contracts, see Practice Note, *Buying American: Country of Origin Requirements in US Government Contracts: TAA Test for Compliance: Products* ([7-573-3545](#)) and *TAA Test for Compliance: Services* ([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](#)).

(c) The Government will evaluate offers in accordance with the policies and procedures of Part 25 of the Federal Acquisition Regulation. For line items covered by the WTO GPA, the Government will evaluate offers of U.S.-made or designated country end products without regard to the restrictions of the Buy American statute. The Government will consider for award only offers of U.S.-made or designated country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for those products are insufficient to fulfill the requirements of this solicitation.

DRAFTING NOTE: PROHIBITION OF NONELIGIBLE PRODUCTS

Part 25 of the FAR implements the COO requirements and obligations applicable to government contracts, including the TAA's prohibition on government acquisition of noneligible products under TAA-covered procurements. Noneligible products are products that do not originate from either the US or a Designated Country. If an offeror or bidder lists a noneligible end product in Subsection (b), the procuring agency's contracting officer is required to reject the bid or offer unless the contractor obtains a TAA waiver such as that provided for in Subsection (c).

The TAA's outright prohibition contrasts with the BAA's preference-setting for domestic end products, which is implemented through the price evaluation penalty applied to offers of foreign products. When the TAA applies, the BAA is waived and the BAA's price evaluation preference for domestic offers is not applicable. However, Subsection (c) indicates that products from non-Designated Countries may be considered for award of a TAA-covered government contract if the contracting officer determines that:

- There are no offers for items from the US or Designated Countries.

- The offers for items from the US or Designated Countries would be insufficient to fulfill the procuring agency's needs.

For information on the penalties for failing to comply with the TAA 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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