

## GSA ORDER

Subject: General Services Administration Acquisition Manual; GSAM Case 2025-G505,  
Clarifying Foreign Acquisition Prescriptions for GSA Contracts

### 1. Purpose.

This order transmits a revision to the GSA Acquisition Manual (GSAM) to provide guidance for GSA COs when determining which foreign acquisition rules (*e.g.*, the Buy American Act (BAA)<sup>1</sup> or the Trade Agreements Act (TAA)<sup>2</sup>) apply when establishing an indefinite delivery vehicle (IDV). It also clarifies FAR references with respect to a clause and provision prescription for the TAA.

As a result of this GSAM change, BAA or TAA applicability determinations shall be made at the IDV contract level when establishing new GSA IDV contracts and also applies to all orders or purchases made against the IDV.

### 2. Background.

Some of the most complex acquisition policy areas in the Federal Acquisition Regulation (FAR) are the procedures for foreign acquisitions. Generally speaking, COs will need to apply one of two sets of foreign acquisition rules to their procurement under FAR Part 25: the BAA<sup>3</sup> or the TAA<sup>4</sup>. As a general rule, the BAA will apply to all contracts with an estimated value above the micropurchase threshold, unless the TAA applies to the acquisition.

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<sup>1</sup> 41 U.S.C. §§ 8301-8305.

<sup>2</sup> 19 U.S.C. § 2501, *et seq.*

<sup>3</sup> The BAA favors the purchase of “domestic end products” and “domestic construction materials” on certain Federal contracts performed in the United States. As a general rule, the BAA restricts purchases to products that are both: (i) physically produced or manufactured in the United States and (ii) contain a minimum percentage of domestically made components, based on the costs of the end products’ domestically sourced components vs cost of foreign sourced components, in order to provide a preference for domestic goods.

<sup>4</sup> The TAA provides authority for the President to waive the BAA for eligible products from countries that have signed an international trade agreement with the United States, or that meet other criteria. See FAR 25.402. Offers of eligible products receive equal consideration with domestic offers. The TAA prohibits end products or services from non-designated countries. Under the TAA, the test to determine country of origin includes consideration of whether the product has undergone “substantial transformation” (*i.e.*, transforming an article into a new and different article of commerce, with a name, character, or use distinct from the original article). Although services can be subject to the TAA, the place where the service provider is “established” is the country of origin. FAR 25.402(a)(2). Therefore, unless a service provider is established in a non-TAA compliant country, it is not typically an issue.

Unless an exception applies, the TAA will apply if the estimated total value of the acquisition meets the United States Trade Representative established thresholds at FAR 25.402.

The FAR does not clearly explain how to apply these concepts to IDVs. This GSAM change provides that guidance by explaining that the contracting officer (CO) determines the potential total value at the IDV level and selects the appropriate foreign acquisition law. That selection then flows down to all orders and purchases under the IDV.

### Background of the historical application of BAA and TAA at GSA

There has long been inconsistency about whether the BAA or TAA applicability determination should be made at the IDV contract level, the task order level, or the point of obligation (such as purchasing order level materials under a task order). For example, GSA makes the BAA or TAA applicability determination at the IDV contract level for the Multiple Award Schedule (MAS) contracts. In practice, because of the estimated dollar value of the GSA MAS contracts, the TAA will generally always apply, unless a specific Special Item Number (SIN) under a given MAS contract is set-aside for small business.<sup>5</sup> The applicability of the BAA or TAA then flows down from the MAS contract down to the order level; the TAA requirements apply to orders placed under non-set-aside SINs, and the BAA requirements apply to orders placed under set-asides. In making a determination of BAA or TAA applicability, the MAS CO considers whether any exceptions apply.

In contrast, some existing IDVs include both (or none) of the BAA and/or TAA provisions and clauses and require the ordering CO to determine which clauses apply at the order level. This has led to confusion from contractors in terms of what certifications to provide at the contract and order level and how to remain compliant throughout the contract. It has also led to confusion from COs in terms of what market research is required at the order level, what documentation is required, and how to hold contractors accountable in contract performance. This change ensures consistency across GSA contracting programs.

3. Effective date. January 17, 2025
4. Explanation of changes. This amendment includes non-regulatory changes. For full text changes of the amendment see Attachment A, GSAM Text Line-In/Line-Out.

This amendment revises the language in the GSAM as follows:

- Subpart 525.11 is added to give guidance on how to calculate contract values to determine foreign acquisition dollar thresholds.

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<sup>5</sup> Per FAR 25.401(a)(1), the TAA does not apply to acquisitions set aside for small businesses. However, the BAA may still apply to the set-aside SINs. Generally speaking, any set-aside SIN leads to a completely set-aside MAS contract as well.

5. Questions and answers. The following questions and answers are meant to provide guidance to situations that may arise given the policy interpretation in this GSAM change.
- a. What foreign acquisition rules apply when establishing a new GSA IDV?
- i. The easiest way to determine which rules apply is to use the [Buy American and Trade Agreements Decision Tools](#). Start by using the applicable Clause and Provision Selection tool. The unique considerations for establishing a new IDV based on this GSAM change require determining the estimated contract value. When prompted with that question, ensure you include the value of all options as though they were exercised and the value of all expected orders against the IDV.
  - ii. Based on the dollar value of the GSA IDV, this will likely result in your IDV applying the TAA (unless it is a small business set-aside or some other exception applies to the IDV). Accordingly, all orders off of the IDV will also be subject to the TAA, regardless of the dollar value or other characteristics of the order itself.
  - iii. The most common reason an IDV will not apply TAA is if you are setting aside the IDV for small business (though other exceptions in FAR 25.401 may also apply). In those cases, the BAA will likely apply at the IDV contract level and will flow down to all orders under the IDV regardless of the dollar value of any order<sup>6</sup>.
- b. Is there any language GSA contracting activities can include when creating IDVs to ensure contractor compliance with the BAA or TAA throughout the contract lifecycle (including orders)?
- i. Sample language to include in IDVs is below. Acquisition teams should consult with Acquisition SME(s) for Foreign Acquisition and Service Level Policy Office (e.g., FAS OPC, PBS OAM, National Office of Leasing) and/or legal counsel, as appropriate, to modify this sample language for their particular IDV.
    - A. (Sample Language for TAA)--"Post Task Order Award Modifications and Additional Purchases - FAR 25, Foreign Acquisition, requirements extend throughout performance of Task Orders, to include all CLINS, Contract Modifications and Post-Task Order Award additions. Contractor compliance with FAR 52.225-6, Trade Agreements Certificate, is an ongoing obligation throughout performance of the contract, including any Task Orders, Other Direct Costs, or other performance under the contract."
    - B. (Sample Language for BAA supply contracts)--"Post Task Order Award Modifications and Additional Purchases - FAR 25, Foreign Acquisition, requirements extend throughout performance of Task Orders, to include all CLINS, Contract Modifications and Post-Task Order Award additions. Contractor compliance with FAR 52.225-2, Buy American Certificate, is an ongoing obligation throughout performance of the contract, including any Task Orders, Other Direct Costs, or other performance under the

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<sup>6</sup> That is, unless a different BAA exception applies (e.g., the acquisition is entirely for commercial IT), in which case no foreign acquisition clauses are required. See FAR 25.103 and 25.202, respectively for supplies or construction materials.

contract.

- c. There are numerous exceptions identified in the FAR<sup>7</sup> for foreign acquisition rules. What do I do if only *part* of my acquisition involves an exception? For example, if my acquisition is valued above the TAA threshold, and I am only setting part of my IDV aside for small business, but not setting aside the entire IDV?
- i. The underlying rationale for each exception is unique and requires analysis on a case-by-case basis. Acquisition teams should consult with Acquisition SME(s) for Foreign Acquisition and Service Level Policy Office (e.g., FAS OPC, PBS OAM, National Office of Leasing) and/or legal counsel, as appropriate in these circumstances.
  - ii. General guidance could involve not including set-aside and non-set-aside portions in the same IDV.
- d. When placing an order off a GSA IDV, which foreign acquisition rules apply?
- i. This depends on the specific IDV terms and conditions. As stated above, some existing IDVs made the foreign acquisition determination at the IDV contract level, whereas others may require the ordering CO to determine which clauses apply at the order level.
  - ii. Users of IDVs are encouraged to review the specific IDV ordering guide and contract language to determine the appropriate foreign acquisition rules and when to apply them (*i.e.*, BAA or TAA, contract or order level).
  - iii. Currently, only the GSA MAS and Alliant 3 contracts have TAA applicability determinations at the IDV contract level (and GSA MAS has small-business-set-aside SINs that only apply BAA). Use of any other IDV requires user diligence to ascertain the applicable rules.
  - iv. Any solicitation for a GSA IDV that is issued after the effective date of this GSA Order requires the CO to make a BAA or TAA applicability determination at the IDV contract level. Based on typical dollar values of GSA IDVs, it is likely that the TAA will apply at the IDV contract level and that application will flow down to the orders regardless of the dollar value or other characteristics of the order.
- e. If the IDV includes the provision at FAR 52.225-6 and the clause at FAR 52.225-5, Trade Agreements, do all items procured have to be TAA-compliant or a nonavailability determination made?
- i. Yes, the provision at FAR 52.225-6 and its requirement to provide certifications regarding the country of origin for end products extend to the entire lifecycle of the IDV and any resulting orders off the IDV. Supplies that are unknown at the time the IDV is awarded (*e.g.*, order-level materials or other direct costs) must also comply with TAA, but may be eligible for a non-availability determination in accordance with agency policy (see GSAM 525.502, FAR 25.502(b)(3), and FAR 52.225-6(c)).

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<sup>7</sup> See FAR 25.103 for BAA exceptions for supplies; FAR 25.202 for BAA exceptions for construction materials; and FAR 25.401 for exceptions to the TAA.

- ii. The exceptions in FAR 25.401 do not apply at the order level because the determination has already been made at the IDV contract level.
  - A. Example 1: Placing an order for an AbilityOne item. The fact that the order is for an item from a mandatory source does not relieve the contractor from the requirement to provide a TAA-compliant item because the TAA application was determined at the IDV contract level and “flows down” to the order.
  - B. Example 2: Placing a small business set-aside order against an IDV that was not set-aside. The fact that the order is set aside for small business does not relieve the contractor from the requirement to provide a TAA-compliant item because the TAA application was determined at the IDV contract level and “flows down” to the order.
  - C. Example 3: Placing an order against an IDV with an estimated value that exceeds the applicable TAA threshold and was entirely set aside for small business. In this case, the IDV CO likely determined that the TAA is not applicable to the IDV because it meets the exception in FAR 25.401(a)(1). However, the BAA will still apply to the IDV and orders placed against it, unless the IDV CO separately determined that an exception to the BAA is applicable.
  
- f. When authorizing a vendor to procure items as an other direct cost (ODC) (or similar) through an order off an existing GSA IDV, which foreign acquisition rules apply?
  - i. This depends on the IDV terms and conditions. As stated above, existing IDVs may utilize different policy interpretations.
  - ii. Users of IDVs are encouraged to review the specific IDV ordering guide and contract language to determine the appropriate foreign acquisition rules and when to apply them (*i.e.*, BAA or TAA, contract or order level).
  - iii. However, if the BAA or TAA applicability determination flows from the IDV contract level to the order level, all ODC items are also subject to the BAA or TAA, respectively. For example, contractors must make the appropriate certifications for ODC products.
  
- g. What guidance can you offer for BPAs?
  - i. Generally speaking, a BPA against GSA MAS would have already applied TAA on the MAS contract, therefore, the TAA would flow through to all calls/orders from the BPA.
  - ii. FAR 13.303-4 generally describes how to apply dollar thresholds for non-MAS BPAs.
  
- 6. Applicability. This change applies to all new contracts and solicitations created after the effective date, existing governmentwide IDVs must be modified at the next reasonable opportunity to do so. For example, an existing IDV that is near its end of life (for example, less than a year remaining) would generally NOT be modified. However, a newly awarded IDV should be modified when practicable (for instance at option exercise if not sooner).

7. Point of contact.

- a. For clarification of content, contact Bryon Boyer, GSA Acquisition Policy Division, at [gsarpolicy@gsa.gov](mailto:gsarpolicy@gsa.gov).
- b. For contract specific questions, consult with Acquisition SME(s) for Foreign Acquisition and Service Level Policy Office (e.g., FAS OPC, PBS OAM, National Office of Leasing) and/or legal counsel, as appropriate.

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## GSAM Case 2024-G505

### GSAM Text, Line-In/Line-Out

#### GSAM Baseline: Change 194 effective 12/16/2024

- Additions to baseline made by rule are indicated by **[bold text in brackets]**
- Deletions to baseline made by rule are indicated by ~~strikethroughs~~
- Five asterisks (\*\*\*\*\* ) indicate that there are no revisions between the preceding and following sections
- Three asterisks (\*\*\*) indicate that there are no revisions between the material shown within a subsection

### PART 525 - FOREIGN ACQUISITION

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#### [Subpart 525.11 - Solicitation Provisions and Contract Clauses

##### 525.1170 Applying foreign acquisition prescriptions to GSA-created contracts.

- (a) In order to calculate the dollar value to determine which FAR subpart 25.11 provisions and clauses for either the Buy American Act or the Trade Agreements Act, if any, apply to a contract created by a GSA contracting activity (but not pursuant to an interagency agreement):
  - (1) Aggregate the value of all options as though they were exercised; and
  - (2) Aggregate the value of all expected orders (i.e., the expected total contract value) against the indefinite-delivery contract.
  - (3) To determine whether the Trade Agreements Act threshold has been met, do not include the dollar value of a contract that is excepted from the Trade Agreements Act by FAR 25.401 (e.g., do not include the dollar value of a contract set aside for small business).
- (b) The foreign acquisition rules (i.e., either the Buy American Act or the Trade Agreements Act, but never both) that apply at the indefinite-delivery contract level, also apply (i.e., flow down) at the order level under that indefinite-delivery contract, meaning:
  - (1) If the Buy American Act applies to an indefinite-delivery contract, then the Buy American Act also applies to all orders against that indefinite-delivery contract regardless of the dollar value or other characteristics of the order itself; or instead
  - (2) If the Trade Agreements Act applies to an indefinite-delivery contract, then the Trade Agreements Act also applies to all orders against that indefinite-delivery contract, regardless of the dollar value or other characteristics of the order itself.]

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