

Understanding common domestic preference requirements

Impact of domestic preference requirements on government projects

“Domestic preference” refers to requirements imposed upon contractors and their suppliers concerning the origin and composition of the products or materials that will be utilized in the construction or completion of these projects. Having a general understanding of these requirements is useful because it impacts customer base and sales.

U.S. Federal Government agencies, and some state and local government agencies, must comply with domestic sourcing laws when acquiring supplies, services or construction materials. For federal agencies, there are four primary domestic sourcing laws: **Buy America Act** (“Buy America”), **Buy American Act** (“BAA”), **Build America Buy America**, and **Trade Agreements Act** (“TAA”). The applicable rules and regulations for a specific situation can be determined by understanding the funding source, the amount of the procurement, and the specific agency’s controlling regulations. The following provides a general overview of these provisions.

Buy American Act (BAA)

The Buy American Act (BAA) creates a national purchasing preference for federal government agencies to buy domestic end products when it purchases supplies and construction materials. The Buy American Act uses a two-part test to determine if an end product is domestic: (1) the article must be manufactured in the United States; and (2) the cost of the domestic components must exceed 60% of the costs of all of the components. Over the next several years the percentage will increase to 65% effective in calendar year 2024 and 75% effective in calendar year 2029. The relevant threshold is determined by the year that the goods are sold in, not the year that the contract was originally executed. A price premium of 20% or 30% (depending on the size of the business) will be added for pricing evaluation by the contracting officer (making it less competitive) when the domestic requirement is not satisfied.

The components test prong does not apply to commercial off the shelf (COTS) items, unless the COTS items consist wholly or predominately of iron or steel. A COTS item is a product that is customarily used by the public for non-government purposes, is sold in substantial quantities in the commercial marketplace, and is offered to the government without modification. However, for COTS items or any products that consist wholly or predominately of steel or a combination of both, the cost of foreign iron or steel must be less than 5% of the cost of all the components of the end product in order to be considered domestic.

The BAA has multiple exclusions and waiver processes available that allow for the purchase of foreign end products. The most prevalent is the public interest waiver. Under the public interest waiver, the head of an agency may waive application of the Buy American Act if it determines the domestic preference is inconsistent with the public interest and it has an agreement with a foreign government that provides a blanket exception to the statute. The Department of Defense has used the public interest waiver to waive application of the Buy American Act to twenty-six countries, including Canada, Japan, the United Kingdom, and Germany.

The Federal Aviation Administration (FAA) Buy American provisions require that all steel and manufactured goods used in Airport Improvement Program (AIP) funded projects be produced in the United States. In addition to being produced in the United States, recipients must certify that the product is comprised of 100% U.S. materials.

Buy America

Buy America is applicable to state and local government projects typically when these projects are funded by the Federal Transit Administration (FTA). For a manufactured product to be compliant with FTA Buy America, all of the product’s manufacturing processes must take place in the U.S. and 100% of the components of supplies or construction materials must be made in the U.S. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents. A cost-based waiver is applicable if the cost of domestic materials is 25% more expensive than foreign materials. A price premium of 25% will be added for pricing evaluation by the contracting officer if the domestic requirement is not satisfied.



The Federal Transit Administration, Amtrak, Federal Highway Administration, Federal Railroad Administration, Buy America Build America, Infrastructure Investment and Jobs Act, and the Environmental Protection Agency all have their own respective Buy America regulations that differ slightly in content and application.

Build America, Buy America

The Build America, Buy America Act, applies a domestic content procurement preference requirement to Federally funded public "infrastructure projects" after May 14, 2022. The domestic content procurement preference requires that all iron, steel, manufactured products, and construction materials used in covered infrastructure projects are produced in the United States. In addition to the product being produced in the United States, the cost percentage of the domestic content of the product must be greater than 55% of the total cost of the product.

Trade Agreements Act (TAA)

The TAA waives application of the BAA based on the overall country of origin of the components. In order to achieve TAA compliance, the components must be "wholly" sourced from the US or a designated country. A product can be compliant with the TAA even if 100% of its components are foreign components, as long as the components are substantially transformed in the U.S. or a designated country (those that have trade agreements with the U.S.

that require their goods to be treated the same as U.S. domestic products). The TAA's substantial transformation requirement is different from the BAA's manufacturing requirement. A product is "substantially transformed" when a fundamental change in its form, nature or character occurs- when it has been transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. There are also dollar thresholds applicable to TAA compliance (i.e. the dollar value of the acquisition determines which of the trade agreements applies).

Compliance Actions

With the government funding of federal and state projects, reporting obligations may be imposed concerning the domestic content of the products supplied to Eaton's customers for covered projects. Contractors (prime or sub-contractors) may be required to 'certify' that the products they are purchasing or utilizing for covered projects comply with the various domestic preference regulations. Also, Eaton's customers may request or require Eaton to 'certify' or verify that products we supply are compliant. Should you have any questions regarding the compliance status of Eaton's products, do not hesitate to reach out to your local Eaton sales representative for more information.

For additional information, visit [Eaton.com/BuyAmerica](https://www.eaton.com/BuyAmerica)

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