

GSA/TAA Compliance Guide for Government Procurement

If you are supplying products for GSA Schedules and other government contracts, those products must comply with TAA.¹ TAA requires that products originate from the United States or another approved country. Failure to comply with TAA can lead to award cancellation, multimillion dollar fines and suspension or debarment from federal contracting. Scrutiny of TAA compliance has intensified due to increased governmental oversight, *qui tam* “whistle-blower” lawsuits and TAA-related bid protests, so the days when TAA could be disregarded without repercussions are long past. Because contractors face serious consequences, they have begun to require their suppliers to certify products for TAA compliance and even indemnify them against damages arising from noncompliance. Understanding TAA is imperative to contractors and their suppliers alike.

TAA refers to the Trade Agreements Act (19 U.S.C. § 2501–2581), which is intended to foster fair and open international trade. TAA requires that products must be produced or undergo “substantial transformation” within the United States or a designated country,² including countries that have reciprocal trade agreements with the United States, Caribbean Basin countries and certain “least developed” countries. The People’s Republic of China and some other major players in electronics manufacturing are notably absent from the list of designated countries, which makes supplying TAA-compliant electronic equipment more difficult.

TAA compliance requirements are built into federal procurement contracts such as GSA Schedule contracts, IDIQ contracts and most Department of Defense contracts. Although TAA requirements only apply beyond a certain dollar threshold (currently \$194,000 for goods and services), it does not mean you can ignore TAA if you typically receive orders below that threshold. The General Services Administration states:

Since the estimated dollar value of each Schedule exceeds the established TAA threshold, TAA is applicable to all Schedules. In accordance with TAA, only U.S.-made or designated country end products shall be offered and sold under Schedule contracts.³

That means all products offered under GSA Schedule contracts must be TAA compliant, regardless of cost.

TAA once had a reputation of not being strictly enforced, but that has changed in the past several years. The government has made TAA compliance enforcement a priority, and TAA audits have led to suspension or debarment for contractors found to be in violation. Some vendors have also begun to police their competitors for TAA compliance, using violations to lodge bid protests and invalidate competitors’ awards.

One office products company even filed a *qui tam* “whistle-blower” lawsuit against several competitors after noticing they were supplying noncompliant products under their GSA Schedule contracts. A *qui tam* lawsuit allows the whistle-blower to receive up to 25% of any award or settlement recovered by the government. The case was filed under the False Claims Act and resulted in four of the largest American office products companies paying penalties between \$4.75 million and \$9.8 million each.⁴

GSA Schedule contracts provide a gateway to billions of dollars in government expenditures, but they also carry a significant responsibility of regulatory compliance. If TAA compliance was ever something that could be disregarded, recent fines and penalties show that is no longer the case.

If you don’t have a GSA Schedule contract but sell to contractors, you’ll increasingly find that they won’t buy products that are not certified to be TAA compliant. With TAA compliance issues coming to the forefront of contractors’ consciousness, you’ll need to understand TAA and be able to certify that your products are TAA compliant. You may even be asked to indemnify contractors against damages arising from noncompliance.

Determining TAA compliance isn’t as simple as looking at a “made in” stamp. Complex issues of “substantial transformation” during the manufacturing process can affect whether a product is compliant, requiring determination according to the particular facts of each case. It may not be practical or even possible for contractors to go through every product they sell to determine compliance. It is more cost-effective and reliable to source products from manufacturers that possess the detailed product knowledge and firm supply chain control required to verify TAA compliance. Reputable, well-established manufacturers have more to lose from erroneous certifications and usually know more about where their products come from.

In addition, GSA will work with Schedule contractors to ensure TAA compliance. In the past, contractors who have worked with GSA to remove noncompliant products from the GSA Schedules have been able to do so without penalty.

If you supply products to the government or government contractors, you need to make sure those products are TAA compliant. Penalties for noncompliance are prohibitively expensive. The best way to ensure TAA compliance is to source products made by reputable manufacturers capable of certifying their TAA compliance status.