



Introduction to TAA Compliance for Government IT Suppliers, Distributors, Resellers and Contractors



Executive Summary

If you supply products for GSA Schedules and other government contracts, those products must comply with the federal Trade Agreements Act (TAA).¹

TAA requires that products originate from the United States or another approved country.

Failure to comply with TAA can lead to bid award cancellation, multimillion-dollar fines and exclusion from federal contracting.

Sourcing TAA-compliant IT products presents two main challenges: compensating for the absence of key electronics manufacturing centers from the list of TAA-approved countries and unraveling the complexity of global supply chains. Understanding how to overcome these challenges is imperative to government contractors and their suppliers alike.



The People's Republic of China does not appear on the list of TAA-approved countries, which presents a special challenge when sourcing IT equipment .

What is TAA?

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 Designated countries include:



- Countries that have reciprocal trade agreements with the United States, including Canada, Mexico and Australia.
- Countries that participate in the World Trade Organization’s Government Procurement Agreement, including Japan and many European countries.
- Caribbean Basin countries, such as Costa Rica, Haiti and Jamaica.
- Countries designated as “least developed,” such as Afghanistan, Bangladesh, Laos and Ethiopia.

The People’s Republic of China and some other major electronics manufacturing centers are absent from the list of designated countries, which makes sourcing TAA-compliant IT equipment especially challenging.



TAA requirements are built into GSA Schedule contracts, IDIQ contracts and most DOD contracts.

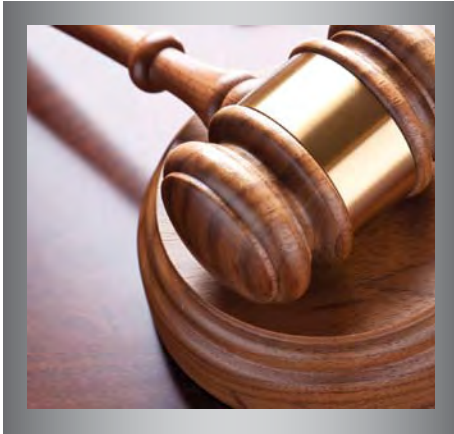
When does TAA apply?

TAA compliance requirements are built into federal procurement contracts such as GSA (General Services Administration) Schedule contracts, IDIQ (Indefinite Delivery, Indefinite Quantity) contracts and most DOD (Department of Defense) contracts. Although TAA requirements only apply beyond a certain dollar threshold (currently \$203,000 for goods and services), it does not mean that TAA can be ignored if orders received are typically 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.



A whistle-blower lawsuit originally filed by a competitor resulted in four office-supply companies paying \$27 million in penalties for TAA violations. Whistle-blower lawsuits filed by current or former employees have cost companies millions more.

What are the penalties for failing to comply with TAA?



GSA Schedule contracts provide a gateway to billions of dollars in government expenditures, but they also carry a significant responsibility of regulatory compliance. TAA once had a reputation of not being strictly enforced, but that has changed. The government has made TAA compliance enforcement a priority, and TAA audits have led to suspension or complete exclusion from federal contracting for businesses 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. This type of 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 U.S. office-supply companies paying penalties between \$4.75 million and \$9.8 million each.⁴



In addition to fines and negative publicity, companies found in violation of TAA invite further scrutiny by government auditors.



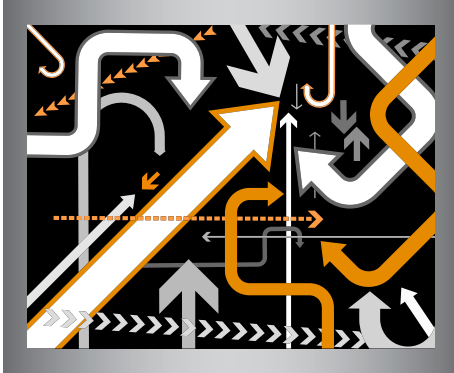
If you sell to government contractors, you need to be ready to prove that your TAA-compliant products are really compliant and back it up in writing.

And it isn't just competitors that you need to worry about—current and former employees can also file whistle-blower lawsuits and reap large rewards. These cases are often settled because the long-term risk of being barred from doing business with the federal government far outweighs the short-term financial penalties involved. In addition to fines and negative publicity, companies found in violation of TAA also invite further scrutiny by government auditors, which can lead to even bigger problems. Governmental investigations can be very expensive and breed the kind of uncertainty that most businesses prefer to avoid.



Do I need to worry about TAA if I'm not a contractor?

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 guaranteed 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 to the satisfaction of your customers. You may even be asked to indemnify contractors against damages arising from noncompliance.



Given the complexity and global nature of modern electronics manufacturing, the best way to determine TAA compliance is to work with a reputable manufacturer that has firm supply chain control. The manufacturer will be able to certify a product's TAA compliance status with a high degree of certainty and provide the documentation to back it up.

How can I tell whether a product is TAA-compliant?

Determining TAA compliance isn't always as simple as looking for a "Made in China" label.

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 or fraudulent certifications and usually know more about the details of the supply chain and exactly where products come from. They're also more likely to be around if there's ever a problem that requires proof of TAA compliance.

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





Unless you source products from a reputable manufacturer that is in firm control of its supply chain, you can't be confident that you're really receiving TAA-compliant products.

Conclusion

If you supply products to the government or government contractors, you need to determine whether those products are

TAA-compliant. Penalties for noncompliance are prohibitive. The best way to ensure TAA compliance is to source products from a reputable manufacturer capable of managing the supply chain and certifying each product's TAA compliance status.

For more information about TAA-compliant UPS systems, PDUs, rack enclosures, KVM switches, console servers, surge protectors and cables, contact the Government Sales Division at **773.869.1200** or **govt@tripplite.com**. For a complete listing of Tripp Lite's TAA-certified IT solutions, including specifications and links to authorized resellers, visit **www.tripplite.com/taa**.





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¹ TAA applies to most, but not all, federal procurement contracts. Consult your corporate compliance officer and legal counsel to determine whether TAA applies to your contract or proposal. It is important to remember that there is no penalty for offering TAA-compliant products where they are not required, but there may be substantial penalties for offering noncompliant products. It is therefore safer to err on the side of compliance.

² For the current list of designated countries, refer to <http://gsa.federalschedules.com/resource-center/resources/taa-designated-countries.aspx>

³ Source: <http://www.gsa.gov/schedules-ordering>

⁴ Source: http://www.justice.gov/opa/pr/2006/February/06_civ_074.html

Note: The information contained in this document is not intended to be legal advice. Contact a qualified legal professional if you require legal advice.