

DMG BRIEFING NOTE: Buy American Act (BAA)

Executive Summary

When selling goods to the U.S. Government, a contractor must be aware of many contractual provisions that affect performance upon the contract. Buried within boilerplate language are clauses that alter what appears on the face of the contract. For instance, the request for certain goods may not state that country of origin is material, but within the boilerplate there will be included the Buy American Act (BAA).

Traditionally, the U.S. Government has preferred supplies originating in America through the BAA. In recent times this restriction has been relaxed by the Agreement on Governmental Procurement (GPA) and other trading agreements. BAA is largely inapplicable to supplies originating in countries that are signatories to the GPA.

What does this mean for the potential bidder? You must ensure that your products are sourced from the U.S. or countries who are signatories to the GPA. To offer goods from other countries would make you non-compliant and subject to contractual penalties.

However, if your non-U.S. country of origin appears on the GPA you are not yet in the clear. There are other requirements and amendments that place further restrictions on the origin of certain goods or classes of goods.

The Berry Amendment and other DoD specific restrictions limit foreign purchases of certain items to protect America's ability to respond to national emergencies. These restrictions, applicable to most defense oriented goods, are designed to ensure that the U.S. can mobilize its armed forces without depending upon the supply of goods from potentially hostile countries or across contested shipping channels. Some goods from close allies, such as Canada, are allowed as substitutes, but each specific situation requires careful analysis with all current and applicable regulations.

How DMG Can Help You

Before bidding on a contract for the supply of goods, you must understand the source requirements for the goods and know whether your offered solution will be compliant with the requirements. This is doubly important in defense contracting where the restrictions are tighter. DMG personnel have responded to many bids and written many proposals. We know what terms should be included, where to find them, and how to determine if a particular good is compliant. If you need help creating a compliant bid, or you just want a second set of eyes on a bid you would like to submit, we are here to help.

Ignorance is not an excuse, and even where the U.S. 'forgets' to include a standard term required by Congress, the contractor is charged with knowing the term should be included.

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Regulations and best practice relevant to Government Contracting change over time, and The DMG is delivering a series of seminars on Government Contracting. For the latest information please contact info@defensemg.com for current information on venues and schedule. Alternatively, please register at www.defensemg.com so that we can email to you new and updated briefing notes as they become available.