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Taiwan Added to List of TAA-Compliant Countries Effective August 11, 2009

On August 11, 2009, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council issued an interim rule amending the Federal Acquisition Regulation (“FAR”) to implement a new Free Trade Agreement with Taiwan. This long-awaited interim rule adds Taiwan to the list of “designated countries” from which the U.S. government may order supplies, services and construction materials to fulfill contracts covered by the Trade Agreements Act (“TAA”).

Generally, government contracts in excess of certain dollar thresholds, set by the U.S. Trade Representative, are exempt from the requirements the Buy American Act (“BAA”) and instead are subject to the TAA. FAR 25.402(b) identifies the contract dollar thresholds required under various trade agreements that determine when the TAA applies to a particular procurement. These amounts currently range from \$50,000-\$194,000 for supply contracts, \$67,826-\$194,000 for service contracts and \$7,443,000-\$8,817,449 for construction contracts. The U.S. Trade Representative may revise these dollar thresholds approximately every two years.

Unlike the BAA, which applies a content-based purchasing preference for non-commercial off-the-shelf products¹ containing less than 51% American-made component parts and that are manufactured in the U.S. (Note: under the BAA commercial off-the-shelf products need only be manufactured in the U.S.), the TAA generally prohibits the sale of products that are not “substantially transformed” in the U.S. or a “designated country.” As a general matter, so long as a product is substantially transformed in the U.S. or a designated country, it may be sold to the U.S. Government under contracts covered by the TAA. However, some contracts may be subject to more restrictive foreign sourcing requirements such as the Berry Amendment, which requires certain products to contain 100% U.S.-made components or that every step in the manufacturing process must occur in the U.S. Moreover, the American Recovery and Reinvestment Act of 2009 (“Recovery Act”) implements additional Buy American restrictions in certain circumstances for contracts funded with Recovery Act funds. See [The Implementation of the Buy American Provision of the American Recovery and Reinvestment Act of 2009](#) and [A Series of Unintended Consequences: Implementing the Buy American Provision of the American Recovery and Reinvestment Act of 2009](#), by Sean Bamford for additional details (Note: Taiwan was added to the list of designated countries for Recovery Act contracts covered under the Buy American provision).

The addition of Taiwan to the list of designated countries is of special significance to many federal contractors, particularly GSA Schedule contractors who hold Federal Supply Schedule contracts such as GSA's Schedule 51V Hardware Store or Schedule 70 IT contracts. Effective August 11, 2009, these contractors may be able to add certain Taiwanese-made products to their GSA Schedule contracts.

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