

GOVERNMENT PROJECTS - FREQUENTLY ASKED QUESTIONS

What is the Buy American Act (BAA)?

The BAA restricts the U.S. Government from purchasing non-domestic supplies/construction materials for use within the United States.

What does the BAA require?

Under the BAA, for a manufactured product to be considered “domestic”, it must be manufactured in the U.S. and a significant percentage of the total cost of the components of the product must be of U.S. origin.

What is the Trade Agreements Act (TAA)?

The TAA gives the President the authority to waive BAA restrictions for eligible products from countries that have trade agreements with the U.S. Accordingly, BAA restrictions are not applicable in acquisitions subject to certain trade agreements. In acquisitions covered by the TAA, end products and construction materials from certain countries can be supplied to the U.S. Government. Generally, the dollar value of the acquisition determines whether the TAA applies.

Are there statutes other than BAA that restrict the products that can be supplied to the U.S. government?

Yes. Projects that are funded by certain agencies (for example, the FTA or FHWA) may contain different “Buy America” restrictions. These may be more or less restrictive than the BAA restrictions, depending on the funding agency. These will generally be cited by reference to a statute in a certificate of compliance (for example, 49 U.S.C. § 5323(j)(1) or 23 U.S.C. 313).

Are these “Buy America” requirements waived by the TAA?

Generally, no.

What is the BABAA?

The Build America, Buy America Act (BABAA) requires that all of the iron, steel, manufactured products, and construction materials used in infrastructure projects are produced in the United States.

Is the BABAA the same as the BAA?

No; however, they contain similar requirements for manufactured products in that for such a product to be considered “produced in the United States”, it must be manufactured in the U.S. and a significant percentage of the total cost of the components of the product must be of U.S. origin.

Is the BABAA waived by the TAA?

Generally, no, but other waivers may apply so please reach out with any questions. If possible, determine the agency and the dollar amount to help to determine if any exceptions may apply.

Can we sell products for federal government projects?

Yes, the SKUs identified in the attached tables may generally be sold under acquisitions subject to the TAA based on country of origin.

Can I sell something on a federal project if it is not on our list?

No, but we will keep the list updated and may add products from time to time. If you believe a certain product is missing from this list of SKUs please let us know.

When will we need to know whether our products are USMCA-compliant”?

“USMCA compliance” will be relevant in situations where we need to know whether our product will be eligible for duty-free treatment.

Does a product need to be “USMCA-compliant” to sell for a federal government project?

No; the requirements of the USMCA are separate from the domestic preference requirements applicable to federal government projects.

Can I provide a certification if it is requested? Do I need permission?

Yes, the attached letter has a standard certification for the compliant products. Feel free to provide it to actual or potential customers.

The customer is asking if the products meet the requirements of the Buy American Act (BAA)?

No, however they qualify under the TAA, which provides non-discriminatory treatment of products from certain countries. See the attached list of SKUs for eligible products.

The customer is insisting that we meet the requirements of the BAA, what do I do?

Our products, except for BLS, generally do not meet the BAA, but there is an exception under the TAA providing for non-discriminatory treatment of products from certain countries, including those identified in the attached tables. We will not always be able to persuade someone that our products may be used even if that is accurate.

The customer is asking if we can provide a certificate of non-compliance under the BAA?

We can provide such a certificate, which may allow the agency to buy a product in its discretion or subject to certain exceptions. But our products should qualify under the TAA, which provides for non-discriminatory treatment of products from certain countries, including those identified in the attached tables.

Do we meet the BAA for any products?

Generally not, except for BLS. The BAA requires US origin of components must account for over 60% (except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029) of total component cost and the product must be “manufactured” in the US. But we meet the TAA, which provides for non-discriminatory treatment of products from certain countries, including those identified in the attached tables. BLS can be addressed separately.

The project won't take place for a while, how can I be sure the listing will remain current in terms of country of origin?

We are committed to ensuring that the products on the attached tables remain TAA compliant, subject only to changes in law or unforeseen emergency. If either of these things happens, we will make best efforts to notify everyone promptly.

Why are competitors able to comply with the BAA, but we cannot?

Some of them have manufacturing facilities in the US. We don't, except for (mainly) tubs. But our products can still comply with requirements under the TAA. Today, BAA governs relatively few procurement projects.

The customer is saying that they are dealing with requirements that are specific to a particular agency, how do I respond?

Most federal projects are ok under the TAA, but sometimes agencies do have their own requirements. We would be happy to look at any particular agency requirements and provide feedback. We always encourage the customer to get their own legal advice.

Are there exceptions to the TAA?

Certain defense, information technology, textiles, flags, and mass transit projects. But most federal procurement is under the TAA. We are happy to discuss any issues, and encourage the customer to get their own legal advice also.

What if I am asked a question I don't know?

Please reach out to Legal or Compliance with any questions. Here is our contact information:

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The client is asking about the disclaimer, what do I say?

Our legal, compliance and trade teams spent a lot of time to come up with the list of TAA compliance. They included a disclaimer because they don't know the specifics of every situation, so we cannot make a blanket representation, although we are confident in our list.

Does this apply to Government projects outside of the US?

Generally not, stick mainly to projects in the US. If it's overseas, please reach out to the Legal department. Contractually, LIXIL Americas can only sell American Standard in US, MX, Canada, Dominican Republic, Puerto Rico, USVI and Brazil.