Subpart 25.4 - Trade Agreements

Parent topic: Part 25 - Foreign Acquisition

25.400 Scope of subpart.

(a) This subpart provides policies and procedures applicable to *acquisitions* that are covered by-

(1) The World Trade Organization Government *Procurement* Agreement (*WTO GPA*), as approved by Congress in the Uruguay Round Agreements Act (Public Law 103-465);

(2) Free Trade Agreements (FTA), consisting of-

(i) USMCA (*United States*-Mexico-Canada Agreement, as approved by Congress in the *United States*-Mexico-Canada Agreement Implementation Act (Government *Procurement* Agreement applicable only to the *United States* and Mexico) (Pub. L. 116-113) (19 U.S.C. chapter 29 (sections 4501-4732));

(ii) Chile FTA (the *United States*-Chile Free Trade Agreement, as approved by Congress in the *United States*-Chile Free Trade Agreement Implementation Act of 1993 (Pub. L. 108-77) (19 U.S.C. 3805 note));

(iii) Singapore FTA (the *United States*-Singapore Free Trade Agreement, as approved by Congress in the *United States*-Singapore Free Trade Agreement Implementation Act (Pub. L. 108-78) (19 U.S.C. 3805 note));

(iv) Australia FTA (the *United States*-Australia Free Trade Agreement, as approved by Congress in the *United States*-Australia Free Trade Agreement Implementation Act (Pub. L. 108-286) (19 U.S.C. 3805 note));

(v) Morocco FTA (The *United States*-Morocco Free Trade Agreement, as approved by Congress in the *United States*-Morocco Free Trade Agreement Implementation Act (Pub. L. 108-302) (19 U.S.C. 3805 note));

(vi) CAFTA-DR (The Dominican Republic-Central America-*United States* Free Trade Agreement, as approved by Congress in the Dominican Republic-Central America-*United States* Free Trade Agreement Implementation Act (Pub. L. 109-53) (19 U.S.C. 4001 note));

(vii) Bahrain FTA (the *United States*-Bahrain Free Trade Agreement, as approved by Congress in the *United States*-Bahrain Free Trade Agreement Implementation Act (Pub. L. 109-169) (19 U.S.C. 3805 note));

(viii) Oman FTA (the *United States*-Oman Free Trade Agreement, as approved by Congress in the *United States*-Oman Free Trade Agreement Implementation Act (Pub. L. 109-283) (19 U.S.C. 3805 note));

(ix) Peru FTA (the *United States*-Peru Trade Promotion Agreement, as approved by Congress in the *United States*-Peru Trade Promotion Agreement Implementation Act (Pub. L. 110-138) (19 U.S.C. 3805 note));

(x) Korea FTA (the *United States*–Korea Free Trade Agreement Implementation Act (Pub. L. 112-41) (19 U.S.C. 3805));

(xi) Colombia FTA (the *United States*–Colombia Trade Promotion Agreement Implementation Act (Pub. L. 112-42) (19 U.S.C. 3805 note)); and

(xii) Panama FTA (the *United States*-Panama Trade Promotion Agreement Implementation Act (Pub. L. 112-43) (19 U.S.C. 3805 note));

(3) The *least developed country* designation made by the U.S. Trade Representative, pursuant to the Trade Agreements Act (19 U.S.C. 2511(b)(4)), in *acquisitions* covered by the *WTO GPA*;

(4) The Caribbean Basin Trade Initiative (CBTI) (determination of the U.S. Trade Representative that *end products* or *construction material* granted duty-free entry from countries designated as beneficiaries under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701, *et seq*.), with the exception of Panama, *must* be treated as *eligible products* in *acquisitions* covered by the *WTO GPA*);

(5) The Israeli Trade Act (the U.S.-Israel Free Trade Area Agreement, as approved by Congress in the *United States*-Israel Free Trade Area Implementation Act of 1985 (19 U.S.C. 2112 note)); or

(6) The Agreement on Trade in Civil Aircraft (U.S. Trade Representative waiver of the Buy American statute for signatories of the Agreement on Trade in Civil Aircraft, as implemented in the Trade Agreements Act of 1979 (19 U.S.C. 2513)).

(b) For application of the trade agreements that are unique to individual agencies, see agency regulations.

25.401 Exceptions.

(a) This subpart does not apply to-

(1) *Acquisitions* set aside for small businesses;

(2) *Acquisitions* of arms, ammunition, or war materials, or purchases indispensable for national security or for *national defense* purposes;

(3) *Acquisitions* of *end products* for resale;

(4) *Acquisitions* from Federal Prison Industries, Inc., under subpart 8.6, and *acquisitions* under subpart 8.7, *Acquisition* from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled;

(5) Other *acquisitions* not using *full and open competition*, if authorized by subpart 6.2 or 6.3, when the limitation of competition would preclude use of the procedures of this subpart; or *sole source acquisitions* justified in accordance with 13.501(a); and

(6) Goods and services specifically excluded under individual trade agreements, such as exceptions negotiated by the U.S. Trade Representative for particular agencies. See the agency supplementary regulations.

(b) In the World Trade Organization Government *Procurement* Agreement (*WTO GPA*) and each FTA, there is a U.S. schedule that lists services that are excluded from that agreement in *acquisitions* by the *United States*. *Acquisitions* of the following services are excluded from coverage by the U.S. schedule of the *WTO GPA* or an FTA as indicated in this table:

	The Service (Federal Service Codes from the Federal *Procurement* Data System Product/Service Code Manual are indicated in paren-theses for some services.)	*WTO GPA* and KOREA FTA	Bahrain FTA, CAFTA-DR, Chile FTA, Columbia FTA, USMCA, Oman FTA, Panama FTA, and Peru FTA	Singapore FTA	Australia and Morocco FTA
(1)	All services purchased in support of military services overseas.	X	X	X	X
(2)	(i) Automatic data processing (ADP) telecommunications and transmission services (D304), except enhanced (*i.e.,* value-added) telecommunications services.	X	X		
	(ii) ADP teleprocessing and timesharing services (D305), telecommunications network management services (D316), automated news services, data services or other information services (D317), and other ADP and telecommunications services (D399).	X	X		
	(iii) Basic telecommunications network services (*i.e.,* voice telephone services, packet-switched data transmission services, circuit-switched data transmission services, telex services, facsimile services, and private leased circuit services, but not information services, as defined in 47 U.S.C.153(24)).	*	*	X	X
(3)	Dredging.	X	X	X	X

(4)	(i) Operation and management contracts of certain Government or privately owned facilities used for Government purposes, including *Federally Funded Research and Development Centers*.	X		X	
	(ii) Operation of all Department of Defense, Department of Energy, or the National Aeronautics and Space Administration facilities; and all Government-owned research and development facilities or Government-owned environmental laboratories.	**	X	**	X
(5)	Research and development.	X	X	X	X
(6)	Transportation services (including launching services, but not including travel agent services).	X	X	X	X
(7)	Utility services.	X	X	X	X
(8)	Maintenance, repair, modification, rebuilding and installation of equipment related to ships (J019).		X		X
(9)	Nonnuclear ship repair (J998).		X		X

* Note1. *Acquisitions* of the services listed at (2)(iii) of this table are a subset of the excluded services at (2)(i) and (ii), and are therefore not covered under the *WTO GPA*.

** Note2. *Acquisitions* of the services listed at (4)(ii) of this table are a subset of the excluded services at (4)(i), and are therefore not covered under the *WTO GPA*.

25.402 General.

(a)

(1) The Trade Agreements Act (19 U.S.C.2501, *et seq*.) provides the authority for the President to waive the Buy American statute and other discriminatory provisions for *eligible products* from countries that have signed an international trade agreement with the *United States*, or that meet certain other criteria, such as being a *least developed country*. The President has delegated this waiver authority to the U.S. Trade Representative. In *acquisitions* covered by the *WTO GPA*, Free Trade Agreements, or the Israeli Trade Act, the U.S. Trade Representative has waived the Buy American statute and other discriminatory provisions for *eligible products*. *Offers* of *eligible products* receive equal consideration with *domestic offers*.

(2) The *contracting officer shall* determine the origin of services by the country in which the firm providing the services is established. See subpart 25.5 for evaluation procedures for supply contracts covered by trade agreements.

(b) The value of the *acquisition* is a determining factor in the applicability of trade agreements. Most of these dollar thresholds are subject to revision by the U.S. Trade Representative approximately every 2 years. The various thresholds are summarized as follows:

Table 1 to Paragraph (b)

Trade Agreement	Supply Contract (equal to or exceeding)	Service Contract (equal to or exceeding)	*Construction* Contract (equal to or exceeding)
WTO GPA	$174,000	$174,000	$6,683,000
FTAs			
Australia FTA	105,767	105,767	6,683,000
Bahrain FTA	174,000	174,000	13,749,689
CAFTA-DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua)	105,767	105,767	6,683,000
Chile FTA	105,767	105,767	6,683,000
Colombia FTA	105,767	105,767	6,683,000
Korea FTA	100,000	100,000	6,683,000
Morocco FTA	174,000	174,000	6,683,000
USMCA			

-Mexico	105,767	105,767	13,749,689
Oman FTA	174,000	174,000	13,749,689
Panama FTA	174,000	174,000	6,683,000
Peru FTA	174,000	174,000	6,683,000
Singapore FTA	105,767	105,767	6,683,000
Israeli Trade Act	50,000	-	-

25.403 World Trade Organization Government Procurement Agreement and Free Trade Agreements.

(a) *Eligible products* from *WTO GPA* and FTA countries are entitled to the nondiscriminatory treatment specified in 25.402(a)(1). The *WTO GPA* and FTAs specify *procurement* procedures designed to ensure fairness (see 25.408).

(b) *Thresholds.*

(1) To determine whether the *acquisition* of *products* by lease, rental, or lease-purchase contract (including lease-to-ownership, or lease-with-*option*-to purchase) is covered by the *WTO GPA* or an FTA, calculate the estimated *acquisition* value as follows:

(i) If a fixed-term contract of 12 months or less is contemplated, use the total estimated value of the *acquisition*.

(ii) If a fixed-term contract of more than 12 months is contemplated, use the total estimated value of the *acquisition* plus the estimated *residual value* of the leased equipment at the conclusion of the contemplated term of the contract.

(iii) If an indefinite-term contract is contemplated, use the estimated monthly payment multiplied by the total number of months that ordering would be possible under the proposed contract, *i.e.,* the initial ordering period plus any optional ordering periods.

(iv) If there is any doubt as to the contemplated term of the contract, use the estimated monthly payment multiplied by 48.

(2) The estimated value includes the value of all *options*.

(3) If, in any 12-month period, recurring or multiple awards for the same type of product or *products* are anticipated, use the total estimated value of these projected awards to determine whether the *WTO GPA* or an FTA applies. Do not divide any *acquisition* with the intent of reducing the estimated value of the *acquisition* below the dollar threshold of the *WTO GPA* or an FTA.

(c) *Purchase restriction.*

(1) Under the Trade Agreements Act (19 U.S.C. 2512), in *acquisitions* covered by the *WTO GPA*, acquire only U.S.-made or *designated country end products* or U.S. or *designated country* services, unless *offers* for such *end products* or services are either not received or are insufficient to fulfill the requirements. This purchase restriction does not apply below the *WTO GPA* threshold for *supplies* and services, even if the *acquisition* is covered by an FTA.

(2) This restriction does not apply to purchases of *supplies* by the Department of Defense from a country with which it has entered into a reciprocal agreement, as provided in departmental regulations.

25.404 Least developed countries.

For *acquisitions* covered by the *WTO GPA*, *least developed country end products*, *construction material*, and services *must* be treated as *eligible products*.

25.405 Caribbean Basin Trade Initiative.

Under the Caribbean Basin Trade Initiative, the *United States* Trade Representative has determined that, for *acquisitions* covered by the *WTO GPA*, *Caribbean Basin country end products*, *construction material*, and services *must* be treated as *eligible products*. In accordance with Section 201 (a)(3) of the Dominican Republic-Central America-*United States* Free Trade Implementation Act (Pub. L. 109-53) (19 U.S.C. 4031), when the CAFTA-DR agreement enters into force with respect to a country, that country is no longer designated as a beneficiary country for purposes of the Caribbean Basin Economic Recovery Act, and is therefore no longer included in the definition of "*Caribbean Basin country*" for purposes of the Caribbean Basin Trade Initiative.

25.406 Israeli Trade Act.

Acquisitions of *supplies* by most agencies are covered by the Israeli Trade Act, if the estimated value of the *acquisition* is $50,000 or more but does not exceed the *WTO GPA* threshold for *supplies* (see 25.402(b)). Agencies other than the Department of Defense, the Department of Energy, the Department of Transportation, the Bureau of Reclamation of the Department of the Interior, the Federal Housing Finance Board, and the Office of Thrift Supervision *must* evaluate *offers* of *Israeli end products* without regard to the restrictions of the Buy American statute. The Israeli Trade Act does not prohibit the purchase of other *foreign end products*.

25.407 Agreement on Trade in Civil Aircraft.

Under the authority of Section 303 of the Trade Agreements Act, the U.S. Trade Representative has waived the Buy American statute for *civil aircraft and related articles* that meet the substantial transformation test of the Trade Agreements Act, from countries that are parties to the Agreement on Trade in Civil Aircraft. Those countries are Albania, Austria, Belgium, Bulgaria, Canada, Croatia,

Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Macao China, Malta, Montenegro, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Taiwan (Chinese Taipei), and the United Kingdom.

25.408 Procedures.

(a) If the *WTO GPA* or an FTA applies (see 25.401), the *contracting officer must*-

(1) Comply with the requirements of 5.203, Publicizing and response time;

(2) Comply with the requirements of 5.207, Preparation and transmittal of synopses;

(3) Not include technical requirements in *solicitations* solely to preclude the *acquisition* of *eligible products*;

(4) Specify in *solicitations* that *offerors must* submit *offers* in the English language and in U.S. dollars (see 52.214-34, Submission of *Offers* in the English Language, and 52.214-35, Submission of *Offers* in U.S. Currency, or paragraph (c)(5) of 52.215-1, Instruction to *Offerors*-Competitive *Acquisitions*); and

(5) Provide unsuccessful *offerors* from *WTO GPA* or FTA countries notice in accordance with 14.409-1 or 15.503.

(b) See subpart 25.5 for evaluation procedures and examples.