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Understanding the Buy American Act in the Antenna Industry

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The Buy American Act

The Buy American Act (BAA) was passed by Congress and signed by President Herbert Hoover in 1933. It is later codified and amended as Title 41 U.S.C. chapter 83 as the Buy American statute. This law requires the U.S. government to give preference to American-made products in its purchases to materials and supplies that were mined, produced, or manufactured in the United States for public use. The BAA applies to all U.S. federal government agencies and departments, including the Department of Defense (DoD), and requires them to purchase domestic end products and construction materials unless an exception applies. The law may be waived in some cases if the domestic product is more expensive or inconsistent with the public interest. The Federal Acquisition Regulatory (FAR Council) under the Biden Administration signed and approved on January 21, 2021, for Buy American under Executive Order E.O. 14005 to a more reduce and realistic competitive costing structure by controlling the procured domestic content in the percentage requirement.

Buy American Act and Buy America Act can easily be confused and mixed up. Buy

American Act and Buy America Act are under two separate legislative and regulatory requirements. Buy American Act is regulated by the Federal Acquisition Regulatory (FAR Council). Under the amendment by the Biden Administration's executive order E.O. 14005 amendment for goods or products procurement for public use on all federal facility constructions. Under the Buy American Act statute, the products are qualified as being domestic when they are 100% manufactured in the United States and it must have at least 50% domestic content. Buy America Act has been regulated by the Federal Transit Administration (FTA) for mass-transit procurement for public use on all highways, railways, and bridges since 1982. Buy America Act's end products must be 100% manufactured in the United States and a 100% domestic content for all steel and iron components must be mined, melted, and manufactured in the United States. Buy America Act and Buy American Act relative differences are outlined in Table #1 below.

Table #1

Buy America Act	Buy American Act
Regulated by Federal Transit Administration (FTA) for mass-transit procurement for public use on all highways, railways, and bridges under Reagan administration since 1982.	Regulated by Congress through Federal Acquisition Regulatory (FAR Council) and signed in law by President Herbert Hoover in 1933 on all goods or products procurement for public use on all federal facility constructions.
Title 49 CFR Parts 661 and 663	Title 41 U.S.C. Chapter 83
End products must be 100% manufactured in the United and 100% domestic content for all steel and iron components MUST be mined, melted, and manufactured in the United States.	End products must be 100% manufactured in the United States with at least 50% domestic content for procurement of all material and products for building a federal facility.

Buy American Act (BAA) applies when the federal government is directly assisting the procurement of products for building all federal facilities. From Table #2 below, Buy American Act is much easier to comply since the domestic content starts at 50% compares to the 100% with Buy America Act. Buy American Act has a lower domestic content threshold starting at 55% initially prior to January 1, 2022 and then gradually increase to 75% by 2029 as listed by the calendar year below.

Table #2

Year	Domestic Content Threshold (%)
Prior to January 1, 2021	50%
January 1, 2021 to 2022	55%
January 1, 2022 to 2023	Increase to 60%
January 1, 2024 to 2028	Increase to 65%
January 1, 2029 onward	Increase to 75%

The purpose and intend of BAA are to align Federal procurement policy with the Biden Administration's recently published strategy to improve domestic supply chain resiliency in critical sectors, such as information and communications technology (ICT), clean energy, defense, public health, agriculture, and transportation.

The Federal Acquisition Regulation (FAR) sets regulations and rules for determining whether solicited "construction material" or "end products" are "domestic". The FAR needs to determine whether they were mined, produced, or manufactured in the

United States substantially all from components mined, produced, or manufactured in the United States. The FAR uses a two (2) part test to determine whether a manufactured end-product or construction material is domestic:

- The end product or construction material must be manufactured in the United States; and
- A certain percentage of all component parts (determined by the cost) must also be mined, produced, or manufactured in the United States (a requirement known as the "component test" until early 2021, when it was redesignated the "domestic content test"). For an end-product or construction material that does not consist wholly or predominantly of iron or steel or a combination of both, the cost of domestic components must exceed 55 percent of the cost of all components. The domestic content test is waived for acquisitions of commercially available off-the-shelf (COTS) items, but not if they are iron or steel products (unless they are COTS fasteners). For an end product that consists wholly or predominantly of iron or steel or a combination of both, the cost of foreign iron and steel must constitute less than 5% of all the components.

The BAA encourages the use of domestic end products and construction materials by adding a "price preference" for such goods, applied when the procuring agency assesses the "reasonableness" of the cost of domestic offers. The Department of Defense (DoD) has a price preference for procurements of 50% for both large (>$40 millions) and small businesses (<$40 millions). Where a domestic offer is not a lower offer than a foreign, the procuring agency applies the price preference by adding a specified percentage to the price of the foreign low offer, inclusive of duty.

The price of the domestic bid is deemed reasonable if the price does not exceed the price of the low offer with the addition of the price preference. Under the current FAR, large businesses offering domestic supplies received a 20 percent price preference (up from the original 6%), and small businesses offering domestic supplies received a 30 percent price preference (up from the original 12%).