

Total Door® Monthly

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Door and hardware industry information for the professional community.

2010 Seminar Schedule

Hands-on Installation, Maintenance, Troubleshooting and Electrical (for Total Door Systems)

August 25-27

November 17-19

JULY 2011

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Buy American Act: What you need to know

The Buy American Act is normally a concern only for those dealing with government contracts, but for anyone now involved with projects funded by American Recovery and Reinvestment Act (Stimulus) spending, the Buy American Act is an unavoidable provision. So what does it actually mean to “Buy American”?

The Buy American Act (BAA) has been with us for over three quarters of a century. Passed by Congress and signed into law by Franklin D. Roosevelt in 1933, it dictates a requirement that the federal government buy only domestic “articles, materials, and supplies” when they are acquired for public use. It has undergone only a handful of minor revisions since its inception (most recently in 2007) but has made its way back into the news, first in early 2009 when it became a provision of American Recovery and Reinvestment Act spending, and earlier this year when members of the 111th Congress began lobbying to strengthen the Act by broadening its scope*.

In a nutshell, the Buy American Act applies to all U.S. federal government agency purchases of goods for public use, but does not apply to services. Under the Act, all purchased goods are required to fall into one of the following two definitions:

1. Unmanufactured items must be mined or produced in the U.S.
2. Manufactured items must be manufactured in the U.S. from U.S. materials.

The most pressing problem here is the lack of a clear definition as to what constitutes “U.S. materials”. It would be nearly im-

* see link for **21st Century Buy American Act** under *Additional Reading*

possible to comply with the act if it meant all components of any manufactured products must be 100% American-made. For that reason, the actual language found in the US Code uses the phrase “substantially all” and in the FAR 48 CFR 25.101 (a) it defines American-made materials as products in which:

1. The product is manufactured in the United States; and
2. The cost of its domestic components exceeds 50% of the cost of all components of the item

The test of origin also varies depending on the project and, as a result, the language varies when we talk about construction. The Act was originally intended primarily for the procurement of “supplies” only. In the case of a construction contract, however, the test of origin applies to “articles, materials, and supplies used by the contractor and subcontractors in constructing, altering, or repairing the building or work.” (41 U.S.C. Sec. 10b and FAR § 25.2.)

Determining where the Act does and does not apply can also be tricky. An amendment was made to the ARRA this past spring removing the Buy American Act requirement for Canadian businesses. Additionally, the most recent amendment to the Act itself added a “micro-purchase threshold”, eliminating the requirements for items with a total cost of less than \$2500.

Additional Reading

Click links below to open articles in a web browser.

Current Code: Buy American Act U.S.C. Title 41 Sec. 10a-d

Current Code: Federal Acquisition Requirements (FAR) 48 CFR 25.101

The Buy American Act: Requiring Government Procurements to Come from Domestic Sources
Congressional Research Services report for Congress

21st Century Buy American Act
Proposed amendment by members of 111th Congress

Suffice it to say, implementation of the Act is not simple. For further information, the brief-but-meaty synopsis of the Act, “**The Buy American Act: Requiring Government Procurements to Come From Domestic Sources**” (link above), is a good place to start; however, a legal opinion wouldn’t be a bad idea if determining a supplier’s compliance is critical. ⚡

