

## Implications of the Buy American Act on Technology Transition

The Buy American Act – ([41 U.S.C. § 10a–10d](#)), establishes a preference for purchases of domestic end products (i.e., supplies produced in the United States substantially from components produced in the United States) valued in excess of the micro-purchase threshold (\$2500) for use within the United States. Under the regulation, an end product is considered manufactured in the United States if the cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The component test is applied for end products, not for the individual components themselves. The Buy American Act applies to all federal agencies as implemented through the Federal Acquisition Regulation (FAR) at [FAR 25.000](#) and, for DoD, at [DFARS Subpart 225.1](#). Exceptions, detailed at FAR Subpart 25.103 may be granted for the public interest, domestic non-availability, unreasonable cost, and resale.

Other pieces of Federal legislation extend similar requirements to third-party purchases that utilize Federal funds, such as highway and transit programs. Because many State and Local Governments obtain grant funding from the U.S. Government (e.g. DHS fire act grants) these governments have also adopted the Buy American provisions in their legislation on procurement activities. Thus incorporation of foreign procured components, subsystems, etc. in any CTTSO/TSWG project should be carefully considered.

For CTTSO/TSWG R&D project contracts, the Buy American Act may not be included for R&D efforts because it is not a procurement of goods. However, when the prototype is transitioned to production for military and federal use as well as some state and local use, the Buy American Act provisions come into play.

Thus, developers should ensure that over 50% of the value of their prototypes and eventual products are made in the United States or qualifying countries. The valuation for foreign components must also include shipping costs. "Qualifying country" means a country with a memorandum of understanding or international agreement with the United States. Qualifying countries are listed in [DFARS 225.872-1](#). In certain government procurements, the requirement purchase may be waived if purchasing the material domestically would burden the government with an unreasonable cost (the price differential between the domestic product and an identical foreign-sourced product exceeds a certain percentage of the price offered by the foreign supplier), if the product is not available domestically in sufficient quantity or quality, or if doing so is in the public interest.

Developers should evaluate their markets and potential sales in coordination with their contracting officer and attorney.