

# Government Contracts Blog

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## **New 2010 Updates to Buy American and Trade Agreements Dollar Thresholds; Buy American Requirements Remain Elusive and Complicated**

Effective January 1, 2010, the U.S. Trade Representative (USTR), Ronald Kirk, published new dollar thresholds determining the applicability of the Buy American Act (BAA), the Trade Agreements Act (TAA), and (potentially) other "Buy American" preferences to the United States' various international free trade agreements. *See* 74 Federal Register 68907 (December 29, 2009). The changes to the dollar thresholds are effective through the end of 2011, so it is doubtful that we will see any additional escalation until 2012.

Following are the new dollar thresholds, as published by the USTR, for purchases by most agencies of the U.S. Government:

Trade Agreement	Supply Contract (equal to or exceeding)	Service Contract (equal to or exceeding)	Construction Contract (equal to or exceeding)
WTO GPA	\$203,000	\$203,000	\$7,804,000
FTAs			
Australia FTA	\$70,079	\$70,079	\$7,804,000
Bahrain FTA	\$203,000	\$203,000	\$9,110,318
CAFTA-DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua)	\$70,079	\$70,079	\$7,804,000
Chile FTA	\$70,079	\$70,079	\$7,804,000
Morocco FTA	\$203,000	\$203,000	\$7,804,000
NAFTA			

—Canada	\$25,000	\$70,079	\$9,110,318
—Mexico	\$70,079	\$70,079	\$9,110,318
Oman FTA	\$203,000	\$203,000	\$9,110,318
Peru FTA	\$203,000	\$203,000	\$7,804,000
Singapore FTA	\$70,079	\$70,079	\$7,804,000

A few quick notes about these thresholds.

- *First*, there are some agencies of the U.S. Government (such as the FAA) that have separate dollar thresholds. The thresholds listed above will apply to purchases by most federal agencies, but be aware that your customer could easily be the exception that proves the rule.
- *Second*, there are slightly different dollar thresholds for purchases by certain state or local governments that are spending federal funds subject to the BAA or TAA. These alternate thresholds are outlined in the USTR notice for you to peruse at your leisure. Enjoy.
- *Third*, just because the USTR has issued an edict stating that these changes are "effective January 1, 2010," does not necessarily mean that the rest of the federal Government will immediately recognize the new thresholds. When the [dollar thresholds were last updated in February 2008](#) or when Taiwan was recently added as a designated country under the TAA in July 2009 (discussed [here](#) and [here](#)), several of our clients informed us that their Contracting Officers were unwilling to recognize the change until a formal change was made to the Federal Acquisition Regulation. No doubt, you should engage with your Contracting Officer if any of these new dollar thresholds work to your advantage so that your contract with the U.S. Government can be modified accordingly. It will not necessarily happen "automatically." As for a formal change to the FAR, we expect that an interim rule will probably be published next month.
- *Fourth*, it is unclear how, exactly, these changes will impact other "Buy American" provisions such as Section 1605 of the American Recovery and Reinvestment Act of 2009 (ARRA). Currently, interim rules implementing Section 1605 (FAR Subpart 25.6) [place the dollar threshold at \\$7,443,000](#). The ARRA final rules have been under consideration since July 2009, but we would not be surprised to see the final ARRA Buy American rules (whenever they are ultimately published) incorporate the new, revised dollar threshold of \$7,804,000. So much for predictability in the regulatory process.
- *Finally*, if your head is spinning with regard to all of these different "Buy American" requirements, all signs seem to point to these issues getting even more complicated. Section 4002 of H.R. 2847 (one of the final omnibus appropriations bills, which appropriates funds for nearly a dozen federal agencies, including the Department of Justice, Department of Commerce and NASA) includes a provision extending the ARRA Buy American requirements to funds appropriated under H.R. 2847. Part of the so-called "Jobs for Main Street Act" or "Stimulus Part II" (as some have dubbed it), this plainly demonstrates the tendencies toward "Buy America

creep" about which we have [previously warned](#). Further emphasizing this issue, Congressman Daniel Lipinski (D-IL) and Senator Russell Feingold (D-WI) have both introduced legislation (H.R. 4351 and S. 2890) that would significantly expand the impact of the BAA and make it more difficult to obtain waivers. One cannot help but wonder if a Trade War is exactly what the U.S. economy needs right now. But the mongers are most assuredly beginning to monger.

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