

Federal Acquisition Regulation

25.402

The service (Federal Service Codes from the Federal Procurement Data System Product/Service Code Manual are indicated in parentheses for some services.)	WTO GPA	Bahrain FTA, CAFTA-DR, Chile FTA, NAFTA, Oman 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, telegraph services, facsimile services, and private leased circuit services, but not information services, as defined in 47 U.S.C. 153(20))..	*	*	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—V503).	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

\*NOTE 1. 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.  
 \*\*NOTE 2. 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.

[69 FR 1054, Jan. 7, 2004, as amended at 69 FR 77874, Dec. 28, 2004; 70 FR 18958, Apr. 11, 2005; 71 FR 219, Jan. 3, 2006; 71 FR 20307, Apr. 19, 2006; 71 FR 36937, June 28, 2006; 71 FR 67777, Nov. 22, 2006; 74 FR 28428, June 15, 2009]

**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 Act 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 USTR has waived the Buy American Act 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 ap-

proximately every 2 years. The various thresholds are summarized as follows:

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, El Salvador, Dominican Republic, 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
Israeli Trade Act .....	50,000	.....	.....

[69 FR 77874, Dec. 28, 2004, as amended at 71 FR 219, Jan. 3, 2006; 71 FR 865, Jan. 5, 2006; 71 FR 20307, Apr. 19, 2006; 71 FR 36937, June 28, 2006; 71 FR 67777, Nov. 22, 2006; 72 FR 46358, Aug. 17, 2007; 73 FR 10963, Feb. 28, 2008; 73 FR 16747, Mar. 28, 2008; 74 FR 28428, June 15, 2009; 75 FR 38690, July 2, 2010]

#### 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.

[64 FR 72419, Dec. 27, 1999, as amended at 65 FR 36026, June 6, 2000; 67 FR 21535, Apr. 30, 2002; 67 FR 56123, Aug. 30, 2002; 69 FR 1054, Jan. 7, 2004; 69 FR 77875, Dec. 28, 2004]