



Office of Audits  
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TO: Thomas A. Sharpe, Jr.  
Commissioner  
Federal Acquisition Service (Q)

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SUBJECT: Audit of Trade Agreements Act Compliance Across Federal  
Acquisition Service Purchasing Programs  
Audit Memorandum Number A160108

We are terminating our *Audit of Trade Agreements Act Compliance Across Federal Acquisition Service Purchasing Programs*. The objectives of the audit were to: (1) determine if products offered under Federal Acquisition Service (FAS) programs are Trade Agreements Act (TAA) compliant and if country of origin information is accurate, and (2) evaluate FAS's monitoring processes and enforcement of contract requirements.

During our audit survey work, FAS began strengthening internal controls over TAA compliance and the accuracy of country of origin information. In light of FAS's ongoing efforts, we have elected to stop our audit fieldwork. However, we are providing three observations that may assist FAS in further strengthening the control environment surrounding TAA compliance and the accuracy of country of origin labeling.

## Background

FAS manages the Multiple Award Schedules Program (Schedules Program) under which it establishes long-term governmentwide contracts. Through these contracts, millions of products are made available to government agencies including, but not limited to, office supplies, flatware, tools, and laboratory equipment. In fiscal year 2016, approximately \$8 billion of products were sold through the Schedules Program.

Products offered under the Schedules Program are required by Federal Acquisition Regulation (FAR) Part 25.4, *Trade Agreements*, to be TAA compliant, which means that the product was made in the United States or a country designated by United States trade agreements. A product is also considered TAA compliant if it meets the

substantial transformation test. Under this test, a product made or assembled into an end product in the United States or a designated country is considered TAA compliant. In accordance with FAR 52.212-3, *Offeror Representations and Certifications – Commercial Items*, contractors are required to self-certify that the products offered through their schedule contracts are TAA compliant. Prior to contract award, the FAS contracting officer must verify that the contractor provided such a certification. This enables FAS to advertise that all products offered through the Schedules Program, including those offered through GSA's online shopping and ordering system, GSA Advantage, are evaluated and awarded in accordance with the TAA.

Recently, however, FAS has faced scrutiny from the public and Congress concerning the accuracy of country of origin information for products listed on GSA Advantage. For instance, in March 2016, Truth in Advertising, Inc. (Truth in Advertising) notified GSA that it had identified numerous Made in the USA misrepresentations on GSA Advantage. Truth in Advertising also alleged that some products were wholly made in non-designated countries, meaning they were not TAA compliant.

In response to these concerns, FAS identified contractors that offered the alleged noncompliant items on GSA Advantage. FAS then asked these contractors to confirm or revise the country of origin information or remove the product from their contracts and GSA Advantage. Additionally, FAS undertook a series of steps designed to improve controls over TAA compliance and country of origin labeling. These included: (1) a new standard operating procedure to vet claims of noncompliance, (2) a review to determine if Industrial Operations Analyst (IOA) findings related to TAA compliance were addressed, and (3) a tool to identify country of origin variances on GSA Advantage.

## **Observations**

During our survey work, we made three observations regarding TAA compliance and country of origin labeling. Specifically, we observed: (1) FAS can further develop controls to detect TAA noncompliance; (2) instances where TAA noncompliance was identified, but not remedied; and (3) several schedule solicitations that included an outdated TAA clause. FAS should address these issues to hold contractors accountable to contract requirements surrounding TAA compliance and provide assurance to its customer agencies that only TAA compliant products are offered through the Schedules Program.

### **Observation 1 – FAS can further develop controls to detect TAA noncompliance.**

Although FAS has implemented controls to detect TAA noncompliant products on GSA Advantage, our survey work indicated that these controls need further development to increase their effectiveness and improve TAA compliance. Specifically, we found that while FAS had created an online data dashboard to assist acquisition personnel in identifying potential country of origin misrepresentations, it had not developed guidance for its use. We also found products that had been removed from GSA Advantage for noncompliance are being reposted.

**FAS lacks guidance or policy on how to use its online data dashboard.** FAS has developed an online data dashboard that acquisition personnel can use as a tool to detect potential country of origin misrepresentations for products listed on GSA Advantage. This tool works by identifying variances in the country of origin information for products with the same product number. For instance, if six contractors mark a specific hammer as being “Made in Canada” and two contractors label the same item as being “Made in America,” the tool will flag the variance for further review. At the time of our audit survey, FAS was in the early stages of implementing the dashboard; however, there was no guidance or policy to instruct acquisition personnel on its use.

**Noncompliant items are being repeatedly offered on GSA Advantage.** When FAS identifies TAA noncompliant items, it takes action to remove them from GSA Advantage. However, there is no control to ensure that once a noncompliant product is removed, it is not offered again. For example, FAS removed 77 TAA noncompliant products from GSA Advantage that were brought to its attention by Truth in Advertising. When we tested 19 of these products during our audit survey, we found that 10 were once again available for purchase.

### **Observation 2 – TAA noncompliance was not remedied.**

Acquisition personnel responsible for managing product schedules under the Schedules Program told us that they rely upon FAS’s Contractor Assessments Program as the primary means for ensuring TAA compliance. Contractor assessments are performed by FAS’s IOAs, who evaluate a contractor’s ability to meet the terms and conditions of schedule contracts, including TAA compliance. The IOAs compile their findings into a report which is provided to the contracting officer and documented in the contract file. Contracting officers are then responsible for pursuing and remediating the findings documented in the report, as appropriate.

During our audit survey, we found that FAS may lack appropriate management oversight to ensure that contracting officers follow up on IOA findings related to TAA noncompliance. Our observation was confirmed through the results of a Quality Assurance Review performed by FAS’s Office of Policy and Compliance.<sup>1</sup> The Quality Assurance Review evaluated contractor assessment reports issued between fiscal year 2015 and the second quarter of fiscal year 2016 and identified a “lack of proper corrective action” to remedy reported TAA deficiencies. Without corrective action, the contractor assessments – FAS’s primary means to ensure TAA noncompliance – were ineffective.

### **Observation 3 – Schedule solicitations included an outdated TAA clause.**

FAS did not update schedule solicitations with the current contract clause governing TAA compliance. In accordance with FAS Instructional Letter 2011-04 *Federal Supply Schedule (FSS) Solicitation Refresh Management*, all schedule solicitations must be updated in June and December of each year. These solicitations contain required

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<sup>1</sup> This office was formerly the Office of Acquisition Management.

schedule contract clauses and terms and conditions, including FAR 52.225-5, *Trade Agreements*, which lists designated countries for purposes of TAA compliance.

Prior to our audit survey, the FAS Office of Policy and Compliance reviewed schedule solicitations to ensure that they included FAR 52.225-5. However, FAS's review did not detect that most of the solicitations included an outdated TAA clause. Specifically, we found that 21 of the 24 schedule solicitations reviewed by FAS (88 percent) did not include the TAA clause current at the time of the review.

FAS should review all schedule solicitations to ensure that they incorporate the current TAA clause. Additionally, FAS should strengthen its controls for solicitation refreshes to ensure that they incorporate all current contract clauses.

## **Conclusion**

While FAS has initiated efforts to strengthen its controls surrounding TAA compliance, we are providing these observations from our audit survey to assist FAS in further strengthening the control environment surrounding TAA compliance and the accuracy of country of origin labelling. These observations relate to the detection of TAA noncompliant products, the remediation of identified TAA noncompliance, and updating schedule solicitations. Improvements in these areas may provide FAS and customer agencies with greater assurance that only TAA compliant products are offered through the Schedules Program.

On behalf of the audit team, I would like to thank you and your staff for the courtesies extended during our audit. If you have any questions regarding this memorandum, please contact Susan Myers, Audit Manager, at (202) 273-7376, or me at (816) 926-8605.