



**Office of Audits
Office of Inspector General
U.S. General Services Administration**

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FROM: NICHOLAS PAINTER
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SUBJECT: FAS Lacks Sufficient Controls to Monitor and Prohibit the Sale of Trade Agreements Act Non-Compliant Products in Support of the Government's COVID-19 Response

The purpose of this letter is to notify you of weaknesses in FAS's controls to monitor and prohibit the sale of Trade Agreements Act (TAA) non-compliant products.

During our ongoing monitoring of GSA's activities in response to the nationwide public health emergency resulting from COVID-19, we identified two issues.¹ First, we found that FAS contracting officers did not report TAA non-compliant products that were added to contracts in support of the government's COVID-19 response, rendering FAS's control to monitor and roll back the use of a regulatory exception ineffective. Second, we found that FAS contracting officers modified contracts to add TAA non-compliant products that were not in support of the government's COVID-19 response.

Background

To support the government's COVID-19 response, GSA's Senior Procurement Executive (SPE) issued a Class Determination and Findings memo (SPE Memo) on April 3, 2020.² The SPE Memo provided an exception to the TAA and Buy American statutory clauses for several Federal Supply Classes (FSCs) that were not available in sufficient supply from TAA and Buy American statute-compliant sources. Through additional supplements, this exception was in effect until April 30, 2021.

¹ Assignment Number A201018-1.

² GSA Senior Procurement Executive Class Determination and Findings (D&F) *Buying for America - Exception for Non-availability for Trade Agreements and Buy American Statute clauses* (SPE Memo SPE-2020-11, April 3, 2020).

To implement the SPE Memo, FAS issued guidance to its contracting officers on how to add TAA non-compliant products to Schedules Program contracts.³ As a control to ensure TAA compliance after the SPE Memo expired, this guidance required FAS contracting officers to report TAA non-compliant products into the FAS Office of Policy and Compliance's Acquisition Oversight Google Form (Google Form). Using the contracts on this Google Form, the FAS Office of Policy and Compliance would issue modifications to remove TAA non-compliant products from affected contracts when the SPE Memo expired.

We reviewed the Google Form, regional tracking forms, and GSA *Advantage!* sales data to determine the scope of Schedules Program contracts that were modified in accordance with the SPE Memo. In reconciling these separate data sources, we identified 10 contracts that were missing from the Google Form and performed additional analysis of these contracts.⁴

Findings

We identified two weaknesses in FAS's controls to monitor and prohibit the sale of TAA non-compliant products that need to be addressed to strengthen FAS's support of federal initiatives.⁵ First, FAS contracting officers did not report some TAA non-compliant products, rendering FAS's control to monitor and roll back the use of the SPE Memo exception ineffective. Second, we identified contracts containing TAA non-compliant products that were not in support of the government's COVID-19 response. Specifically, FAS contracting officers awarded modifications adding TAA non-compliant products prior to the SPE Memo and TAA non-compliant products outside of the excepted FSCs.

FAS Contracting Officers Did Not Always Report TAA Non-Compliant Products

We identified four contracts that FAS contracting officers modified in accordance with the SPE Memo, but failed to report using the Google Form. Due to our inquiries, FAS contracting officers ultimately added these contracts to the Google Form. However, FAS's established control to monitor and roll back the use of expired regulatory exceptions is only effective if FAS personnel adhere to established reporting requirements. If future exceptions are granted, FAS should consider how to increase the effectiveness of similar controls.

³ FAS Policy and Procedure *Awarding Trade Agreements Act (TAA) Non-Compliant Products Under Federal Supply Schedule (FSS) Contracts pursuant to Senior Procurement Executive (SPE) Class Determination and Findings (D&F) (SPE Memo 2020-11), Buying for America - Exception for Non-availability for Trade Agreements and Buy American Statute Clauses*, (PAP 2020-06, April 3, 2020).

⁴ We found an additional 16 contracts with GSA *Advantage!* sales of TAA non-compliant items in FSCs that were not authorized by SPE Memo SPE-2020-11. Although the sale of these TAA non-compliant products was outside the scope of our COVID monitoring efforts, we brought these to the attention of FAS's Office of Policy and Compliance.

⁵ *Ensuring the Future Is Made in All of America by All of America's Workers* (Executive Order 14005, January 25, 2021).

FAS Contracting Officers Modified Contracts to Add TAA Non-Compliant Products That Were Not in Support of the Government’s COVID-19 Response

For six contracts, FAS contracting officers added TAA non-compliant products that were not within the scope of the SPE Memo. We found that some contracts were modified during the same time period as the SPE Memo exception; however, they added TAA non-compliant products (e.g., notebooks, brushes, and lockers) from FSCs that were not authorized by the SPE Memo. Additionally, we identified a contract that had been modified in 2019 and 2020 to add TAA non-compliant products, including three products with North Korea listed as the country of origin. Not only is North Korea a TAA non-compliant country, but the Federal Acquisition Regulation specifically prohibits most imports from North Korea into the United States.⁶

Our results demonstrate that FAS’s controls to monitor and prohibit the sale of TAA non-compliant products are insufficient. While we are not issuing formal audit recommendations, FAS should address these weaknesses in order to support recent federal initiatives and ensure future compliance with federal regulations.

This assignment is managed out of the Southeast Sunbelt Region Audit Office and conducted by the individuals listed below:

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Mark Lee, Assistant Commissioner, FAS Office of Policy and Compliance
Stephanie Shutt, Director, Multiple Award Schedule Program Management Office

⁶ Federal Acquisition Regulation 25.701(b), *Restrictions administered by the Department of the Treasury on acquisitions of supplies or services from prohibited sources.*