# What Foreign Life Sciences Companies Need to Know About Selling to the U.S. Government

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Foreign companies, such as life sciences companies, should take advantage of the opportunity to sell to the U.S. Government. A foreign company need not have a U.S. presence in order to sell to the U.S. Government. The U.S. Government is the single largest customer in the world – buying approximately $500B worth of products and services per year. In addition, government contracts are long – they are typically 5 years rather than only one year which provides a company with a predictable revenue for a long period of time. Plus, many companies want to sell to the Government because the projects are often cutting-edge – and the Government will permit companies to include Independent Research and Development costs into its indirect cost pool. And, most importantly, the U.S. Government always pays its bills.

If your company is interested in selling its products or services to the U.S. Government, you must become familiar with the Government's website called "FedBizOpps" at www.FedBizOpps.gov – it stands for Federal Business Opportunities and is referred to in the industry as "FBO." By law, the Government publishes its formal solicitations for purchases valued at more than $25K on FBO. A foreign company can customize its search for opportunities to sell its products and services to the Government on this website. But, a foreign company must obtain a U.S. Taxpayer Identification number – which it can do by engaging a U.S. based registered agent or a corporate attorney.

There are several basic requirements for foreign companies which include:

1. Possessing a Dun & Bradstreet number;
2. Being in business for at least 2 years;
3. Having an acceptable past performance rating;
4. Offering commercial items at fair and reasonable prices;
5. Submitting offers in English;
6. Accepting payment in U.S. dollars;
7. Compliance with the Buy American Act; and
8. Compliance with the Trade Agreements Act.

The most common – and by far the most costly - mistake that foreign companies make when selling to the U.S. Government is to ignore compliance with the Trade Agreements Act ("TAA"). Unlike the Buy America Act which permits foreign companies to provide goods to the U.S. Government but just makes it more difficult for the foreign companies to beat the U.S. companies on price, the TAA provides that the U.S. Government may acquire **ONLY** U.S.-made or designated country end products. An end product is defined as "those articles, materials and supplies" to be acquired for public use. Designated countries include World Trade Organization Government Procurement Act countries (43), Free Trade Agreement countries (18), Least Developed countries (46) and Caribbean Basin countries (22). The countries are all listed in FAR Part 25 at www.acquisition.gov.

Unfortunately, the TAA Rule of Origin Test is not completely objective. The country of origin is normally determined by reference to the last country in which the goods were "substantially transformed" – that is, subjected to a process that gives it a new name, use or essential character. But, therein lies the rub.

There is room for disagreement as to whether a particular operation substantially transforms a product. For example, a foreign company may open a facility in California so that it can look like its product is substantially transformed in the U.S., but it might not actually be transformed at all – it may be just window-dressing in an effort to meet the TAA test.

Foreign companies can seek guidance by reference to the customs ruling letters or by requesting a binding ruling from U.S. Customs and Border Protection as to the country to origin of any specific product.

With our corporate, international practice, healthcare and FOA teams, AGG can assist your company with the details of complying with these basic requirements.

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