


 Check out
 the video


Project Development Contract Specifications Buy America Contract Requirements

www.fhwa.dot.gov/federal-aidessentials

Domestically manufactured steel and iron products must be used in Federal-aid projects in accordance with Buy America requirements



As Americans, we often hear the terms “Made in America” or “Buy American.” But with regard to Federal-aid construction projects, the term “Buy America” means something different. As a local public agency, or LPA, when using Federal-aid funds for construction of a project, you must ensure that your contract complies with the Buy America provisions.



Before we go any further, there are two provisions of Federal law that have similar names and intent. However, each has distinctly separate requirements as applied to the use of American made products.

- One provision is the Buy American Act of 1933. This act applies to procurement by a Federal agency administering and managing a project.
- The second provision is the Buy America requirement of the Federal-aid program. This regulation requires domestic production of all steel and iron products permanently used in Federal-aid projects. Further, the Buy America requirement applies to both highway and non-highway projects.

Note that the Federal Transit Administration has a Buy America requirement that applies to transit projects. The Federal Highway Administration’s (FHWA) Buy America requirement for Federal-aid contracts is the subject of our discussion. The Buy America provisions apply to all iron and steel material that is permanently incorporated into a Federal-aid highway construction project. This means that all iron and steel product manufacturing and fabrication processes must be performed within the borders of the United States, or its territories. If any manufacturing or fabrication process of a domestic iron or steel product is performed outside the United States, the entire product, not just the work done or the components added, is considered foreign-source material.



Manufacturing is any process that modifies the chemical content, the physical shape, size, or the final finish of the product. Steel manufacturing starts with smelting and ends with coating. Fabrication is the cutting, bending and welding of steel plate material into a usable structural steel product.



Most State departments of transportation, State DOTs, have included the Buy America requirements as either a general provision, or a material specification, in their standard specification books. Check to see if the State specifications can be incorporated into your project plans, or can be used as examples to develop your own unique Buy America contract specification.

Circumstances might arise when you may not be able to fully comply with the intent of the Buy America requirements.

When these circumstances exist, the regulations provide allowances as a means to still conform to the Buy America requirements. The allowances to the regulations are minimum threshold, temporary use, and substantial increase to contract cost.

The contract minimum threshold section allows the use of a minimal quantity of non-domestic iron or steel in a Federal-aid project. The cumulative value of non-conforming material cannot exceed 0.1 percent of the total contract amount or \$2,500, whichever is greater. If the cumulative value reaches this minimum threshold limit, then all additional installed material must be of domestic origin.



The second allowance in the regulations is the temporary use of steel or iron. This is when the contractor temporarily uses and removes steel or iron items that are used only as a construction

aid. Steel or iron products used for temporary purposes such as sheet piling, drilled shaft linings, and formwork for casting concrete are not subject to the limit on manufacturing location. As a clarification, installation is permanent only when the contract documents require the product to be left in place.

The third allowance is a project waiver when the cost of using domestic iron or steel substantially increases the proposed contract cost. To implement this allowance, the bid specifications must allow contractors to submit alternate bids based on using domestic or foreign steel. This specification must clearly state that the contract award will be for the lowest overall bid using domestic steel, unless the lowest overall bid using foreign steel is lower than the overall bid using domestic steel by more than 25 percent. This is a cost savings feature in the law. The total contract bid value is used to calculate this percentage, not just the cost of the steel or iron products.

The law also provides a clarification for pre-assembled, manufactured products. The Buy America provisions require that iron and steel components in pre-assembled manufactured products must also conform to the regulation.

If you determine that your project meets any of these circumstances, first, consider redesigning your project to use domestic iron and steel, then, if that cannot be done, prepare the appropriate documentation to justify the use of non-conforming or foreign-produced material. Coordinate with your appropriate oversight agency to ensure that all of the support documentation is adequate and approvals are received.

If you cannot use the allowances or redesign the project to incorporate domestic steel or iron products, there is another option. The law provides a waiver process for use of non-domestic steel or iron products.

To obtain a waiver, you must prepare and submit a formal request through your State DOT to FHWA to waive the Buy America requirements. A waiver may be granted upon finding that one of the following two circumstances are met:

- When it is shown that following the Buy America requirements is inconsistent with the public interest. Please note that a lower cost foreign product is not an acceptable public interest finding.

- When there aren't enough domestic steel or iron products of satisfactory quality available, or the required products are not produced domestically.

The waiver approval process is a lengthy regulatory requirement. Waiver requests undergo a thorough review by FHWA, including a nationwide public involvement process via online commenting, as well as the publication of the agency's finding in the Federal Register.



In summary, your product specifications must require domestically produced steel and iron products with allowances noted for your Federal-aid project. When selected products can't meet this requirement, submit a request for approval of a project-specific waiver, but allow your agency sufficient time to work through the national public involvement process this requirement, submit a request for approval of a project-specific waiver, but allow your agency sufficient time to work through the national public involvement process.

Web Resources

- FHWA guidance on Buy America regulations, includes links to materials on implementation
<http://www.fhwa.dot.gov/construction/cqit/buyam.cfm>
- Link to Buy America waiver request for steel and iron
<http://www.fhwa.dot.gov/construction/contracts/waivers.cfm>
- FHWA guidance on Buy America regulations in Q & A format
http://www.fhwa.dot.gov/construction/contracts/buyam_qa.cfm
- FHWA Contract Administration Manual guidance on Buy America found in Section B, subsection 1
<http://www.fhwa.dot.gov/programadmin/contracts/core02.cfm#s2B01>
- Buy America regulations for steel and iron permanently incorporated into a Federal -aid project
<http://www.ecfr.gov/cgi/t/text/text-idx?c=ecfr&sid=a825bd455136916aaef4f47bd2d69e88&rgn=div5&view=text&node=23:1.0.1.7.23&idno=23#23:1.0.1.7.23.4.1.6>
- Overview of the various Buy American product requirements for all USDOT
<http://www.dot.gov/highlights/buyamerica>

The content of this document is not a substitute for information obtained from State departments of transportation, appropriate FHWA Division Offices, and applicable laws. Scenarios have been simplified for emphasis and do not necessarily reflect the actual range of requirements applicable to the scenario or this topic. This document was created under contract number DTFH63-12-F-00025 by the Federal Highway Administration, U.S. Department of Transportation, and is offered to the public to heighten and focus awareness of Federal-aid requirements within the local public agencies community and reinforces the importance of these necessary policies, procedures, and practices.

This companion resource is the script content for the video production of the same name.