

Oklahoma Department of Transportation

Buy America
Construction Control Directive No. **20140620**

July 1, 2016

Scope: To establish the procedures for the Department's monitoring and oversight of the Buy America requirements defined in the Standard Specifications and the Code of Federal Regulations (CFR), and to ensure the contractor's compliance with these requirements.

1. Requirements

Subsection 106.01.B of the 2009 Standard Specifications requires that the contractor comply with the Buy America provisions of Title 23 CFR 635.410 which states that all manufacturing processes, including the application of a coating, for all steel or iron products permanently incorporated into the project shall have occurred in the United States (U.S.).

"All manufacturing processes" is defined as any process required to change the raw ore or scrap metal into the finished steel or iron product (smelting, rolling, extruding, bending, etc.).

"Coating" is defined as any process which protects or enhances the value of the steel or iron product to which the coating is applied (epoxy, galvanizing, painting, etc.).

The following materials are exempt, unless processed or refined to include substantial amounts of steel or iron material, and may be used regardless of source in the domestic manufacturing process for steel or iron material:

- Raw Materials (iron ore or alloys)
- Scrap
- Pig iron
- Processed, pelletized, and reduced iron ore material
- Aluminum
- Brass
- Copper

For recycled steel, only the manufacturing processes to produce steel products must occur domestically beginning at the point where the recycled

steel is melted.

While the following items may be considered insignificant or non-structural they are still subject to compliance with the Buy America requirements:

- Stay in place forms
- Temporary steel sheeting left in place
- Fencing and associated hardware

The Buy America requirements apply to all projects whether federally funded or not. Failure to comply with these requirements on a federally funded project will result in withdrawal of federal funds from the entire project.

2. Minimal Use Request

The federal regulations allow a minimal use of foreign steel or iron if the cost of such materials does not exceed 0.1 percent of the total contract amount, or \$2,500, whichever is greater. This threshold applies to the cumulative amount of all foreign steel and iron used on the project. The contractor must submit a written request to the Resident Engineer which includes the origin and value of any foreign material to be used. This request must be submitted prior to the work being performed and preferably at the preconstruction conference. The Contractor must track the amount of incorporated foreign steel and iron throughout the life of a project to ensure the minimal use threshold amount is not exceeded. For purposes of this paragraph, the cost is that shown to be the value of the steel and iron products as they are delivered to the project.

Contractor Responsibilities

- Submit a written request to the Resident Engineer which includes the origin and value of any foreign material to be used.
- Attach a completed Certificate of Materials Origin (MDT-2).
- Await written approval from the Resident Engineer prior to incorporating foreign steel or iron into the project.
- Track the value of incorporated foreign steel and iron throughout the life of a project to ensure the minimal use threshold amount is not exceeded.

ODOT Responsibilities

Resident Engineer is responsible for the following:

- Review the submitted MDT-2 and determine if the contractor's request is within the allowable limits for minimal use.
- If the Resident Engineer feels the request is acceptable, contact Construction Division to obtain written concurrence.
- Notify the contractor in writing of acceptance or rejection and document in the project file.
- Track the value of incorporated foreign steel and iron throughout the life of a project to ensure the minimal use threshold amount is not exceeded.

3. Preconstruction Conference Discussion

A discussion of the Buy America requirements for all steel and iron products permanently incorporated into projects should be included in the preconstruction conference and cover the following items:

- Project Specific Certification letters from the Contractor and Subcontractors demonstrating their understanding and intent to comply with the Buy America Requirements (see Section 4.1 for more detail).
- Contractor shall provide a list of all steel and iron products and suppliers to be used on the project (see attached spreadsheet).
- Required documentation verifying compliance with Buy America for each known steel or iron product at the time of the meeting (see Section 4.2)
- Minimal use requests (see Section 2)
- Change order work involving steel must be in compliance and documented similarly to contract work

4. Compliance with Buy America Requirements

The Contractor's responsibility for meeting the Buy America requirements is specified in the contract Special Provision related to Subsection 106.01 of the 2009 ODOT Standard Specifications for Highway Construction. The following are requirements for compliance with Buy America:

- 1) Before any work begins that incorporates steel or iron products into the project, the contractor shall submit a project specific certification letter stating that all manufacturing processes involved with the production of these products will occur in the U.S., along with project specific certification letters from each subcontractor for each steel or iron product to be used on the project. Examples of acceptable

language for these letters are included in this directive.

- 2) For each steel or iron product, the contractor and subcontractor will be responsible for providing to the Department all documentation required to verify that each product complies with Buy America in accordance with the requirements of the corresponding category listed below. The Contractor must provide a completed:
- Material Use Statement & Certification (MDT-1) for each steel or iron product in Category 1 incorporated into the project.
 - Certificate of Materials Origin (MDT-2) for each steel or iron product in Categories 1 and 2 incorporated into the project.

In most instances, determination of compliance with Buy America requirements should be achieved prior to incorporating the product into the work. If not, the Resident Engineer will be responsible for withholding payment for this work until compliance has been determined.

- 3) For steel or iron products incorporated into the project that the origin was not domestic the contractor may be subject to:
- Removing and replacing the work
 - Forfeiting payment for the work
 - Assessment of penalty

The various steel and iron products (referred to herein as 'steel') that are permanently incorporated into projects have been grouped into the following categories with the roles and responsibilities listed to ensure compliance with the Buy America requirements:

Category 1

General

This category covers major steel items as listed below. For items in this category, the Contractor is responsible for the following:

- Submitting completed MDT-1 and MDT-2 forms for each item with steel to both the Resident Engineer and Materials Engineer.
- The MDT-1 will include the Mill Test Reports, and the MDT-2 will list each corporate entity involved in the manufacturing of the steel item from melting through all fabrication processes.
 - Mill test reports and certification letters must include a statement similar to the following: "All manufacturing processes

for these steel and iron products, including the application of coatings have occurred in the United States.”

- Certifications for a particular item should be retained in one location to allow easy access for auditing purposes.
- Certifications should be retained by the Contractor until final acceptance of the project.

ODOT Responsibilities

Resident Engineer is responsible for ensuring the following:

- The contractor has submitted a completed MDT-1 and MDT-2, with mill test reports when appropriate, for each steel product used on the project.
- Materials Division has approved the MDT-1 and MDT-2 for each steel product.
- The following has been completed as steel products are brought on site:
 - Compare the steel products and the bill of laden/invoice to the MDT-1 to ensure the material type, quantity and source of the steel products match.
 - For reinforcing steel bars delivered to the project site, compare the bar markings on the bars with the photographs located on the Materials Division website to verify the steel reinforcing bars are from an approved mill located in the United States.
 - Document in the Sample Record “Addtl Sample Data” tab and the appropriate AM template in SiteManager when a steel product was checked for Buy America and if the steel products and bill of laden/invoice match the MDT-1.

Division Auditor is responsible for the following:

- During the Division audit ensure that there is an approved MDT-1 and MDT-2 form for each steel product.

Materials Engineer is responsible for the following:

- Review and recommend acceptance for submitted MDT-1 forms with required material test reports and MDT-2 for each steel product used on the project.
- Distribute notifications to the Resident Engineer and the contractor for all approved and rejected MDT-1 and MDT-2.
- Collect Buy America certifications during inspection of the structural steel items, bridge bearing assemblies and various other items fabricated out of state that will be performed by an independent consultant working under direction of the Materials Engineer.

Items

The steel products covered in this category are as follows:

- Products used in pavements, bridges, or other structures cast at the project site:
 - Structural steel (girders, diaphragms, anchor bolts, high-strength bolts, sealed expansion joints, etc.)
 - Reinforcing steel (epoxy coated or black)
 - Welded wire fabric
 - Steel spiral wire (drilled shaft cages, bridge rail, etc.)
 - Steel piling
 - Drill shaft casing (permanent)
 - Dowel bars and baskets for paving
 - Steel sheet piling (permanent)
 - Bridge bearing assemblies (fixed and expansion)(includes bearing pads)
 - Post-tensioning steel (strands, wedges, anchor plates, etc.)
- Steel monotube structures
- Galvanized steel supports for overhead and cantilevered sign structures
- Sign posts and bases (2 ½" diameter and larger and wide flange posts)

Category 2

General

This category covers the steel items as listed below. For items in this category, the Contractor is responsible for the following:

- Submitting completed MDT-2 forms for each item with steel to the Resident Engineer.
- The MDT-2 will list each corporate entity involved in the manufacturing of the steel item from melting through all fabrication processes.
 - The MDT-2 forms should be retained by the Contractor until final acceptance of the project.

ODOT Responsibilities

Resident Engineer is responsible for ensuring the following:

- The contractor has submitted a completed MDT-2 for each steel product used on the project.
- The following has been completed as steel products are brought on site:

- Compare the steel products and the bill of laden/invoice to the MDT-2 to ensure the material type, quantity and source of the steel products match.
- Document in the Sample Record "Addtl Sample Data" tab and the appropriate AM template in SiteManager when a steel product was checked for Buy America and if the steel products and bill of laden/invoice match the MDT-2.
- Compare the manufacturer markings on cast iron products delivered to the project site with the photographs located on the Materials Division website to verify the cast iron products are from an approved foundry located in the United States.

Division Auditor is responsible for the following:

- During the Division audit ensure that there is an approved MDT-2 form for each steel product.

Materials Engineer is responsible for the following:

- Accept, review and approve requests submitted by a fabricator for a product or facility to be placed on the ODOT Materials Division Approved Products List (APL).
- Performs testing of fencing products submitted by the Resident Engineer for their acceptance.

Items

The steel and iron products covered in this category are as follows:

- Cast iron products (frames, grates, hoods, manhole covers, etc.)
- Fencing materials
- Corrugated steel pipe
- Corrugated steel pipe end treatments
- Steel pipe
- Ductile iron pipe
- Underground utility encasement conduit
- Stay in place forms

Category 3

General

This category covers traffic related items which typically have been placed on the ODOT Traffic Engineering Division's Qualified Products List (QPL). For items in this category listed on the QPL, a programmatic Certificate of Materials Origin (MDT-3) will be on file with the Traffic Division. For items in this category that are not listed on the QPL, the Contractor is responsible for

submitting a completed MDT-3 form for each pay item with steel to the Resident Engineer. The MDT-3 lists all corporate entities involved throughout the manufacturing process for each steel and iron product used on the project.

ODOT Responsibilities

Resident Engineer is responsible for ensuring the following:

- Check Traffic Engineering Division's QPL to determine if a steel product is on it and if an MDT-3 form has been completed by the manufacturer of the steel product. If the steel product is not on the QPL and/or a completed MDT-3 form cannot be provided, then contact the Traffic Engineer to add the steel product prior to allowing the contractor to install the item.
- Once the steel product is on the QPL and a completed MDT-3 form has been provided, then the following needs to be completed as that steel product is brought on site:
 - Compare the steel products and the bill of lading/invoice to the MDT-3 to ensure the material type, quantity, and source of the steel products match.
 - Document in the Daily Work Reports when a steel product was checked for Buy America and if the steel products and bill of lading/invoice match the MDT-3.

Division Auditor is responsible for the following:

- During the Division audit ensure that the products are on the QPL for each steel product in this category incorporated into the project.

Traffic Engineering Division is responsible for maintaining a list of approved traffic related items that fall into this category which can be found on the Traffic Division QPL as follows:

- For each steel product on the list, there should be a MDT-3 form completed that includes each corporate entity involved in the manufacturing of the steel item from melting through all fabrication processes.
- For traffic steel items not on the QPL with a MDT-3 form, work with Construction Division on the approval of these items having manufacturers provide each corporate entity involved in the manufacturing of the steel item from melting through all fabrication processes. The manufacturers should complete a MDT-3 for their product.

Items

The steel products covered in this category are as follows:

- Traffic signal poles and mast arm
- Highway lighting poles and mast arm
- High mast lighting towers
- Guardrail, guardrail posts, end sections, terminals, impact attenuators
- Cable barrier
- Sign posts and bases (less than 2 ½" in diameter and square tubing)
- Steel electrical conduit

Category 4

General

This category covers pre-stressed and precast concrete items receiving full-time inspection by ODOT as the concrete items are cast. Items in this category are required to have a signed and dated project specific certification for each corporate entity involved in the manufacturing of the steel item from melting through all fabrication processes. This includes the Mill Test Reports with a certification from the supplier /fabricator that references the Buy America requirements and lists each corporate entity involved throughout the manufacturing processes. Mill test reports and certification letters must include a statement similar to the following: "All manufacturing processes for these steel products, including the application of coatings have occurred in the United States."

ODOT Responsibilities

Resident Engineer is responsible for the following:

- Ensure all pre-stressed and precast concrete items have an approved inspection mark when they arrive to the project that indicates the Materials Division has verified the pre-stressed and precast items have met the Buy America requirements. Examples of approved inspection marks may be found on the Materials Division website.
- Ensure that the items delivered to the project are listed on a summary letter distributed by the Materials Engineer.
- Document in the appropriate AM template in SiteManager when a Pre-stressed or precast structure arrives on the project including that it was stamped by ODOT and the producer's unique identifying mark and date fabricated.

Materials Engineer is responsible for the following:

- Direct the inspection by an independent consultant of the pre-stressed and precast concrete items.
- Verify the independent consultant inspector completes the following:

- Ensure mill test reports and certifications are provided from each corporate entity involved throughout the manufacturing processes of any steel use in the concrete elements.
- Maintain all certifications for steel used in each element and provide the certifications to the Materials Engineer prior to fabrication of the concrete elements.
- Affirm the fabricator identifies each item with a unique identifying mark (i.e. 33-13-20 mk 2, 14).
- Identify accepted items by placing an approved inspection mark prior to shipment, and provide a summary letter approved by a Professional Engineer to the Materials Engineer.
- Maintain all certifications in Materials Division's project files and will not be distributed to the Resident Engineer.
- Distribute or place in SiteManager a copy of the consultant's summary letter for the Resident Engineer's use.

Items

The pre-stressed and precast concrete items covered in this category are as follows:

- Pre-stressed concrete beams and girders
- Precast panels
- Precast MSE and sound walls
- Precast bridge arches

Category 5

General

This category covers non-structural precast concrete items that are not full-time inspected by ODOT. Fabricators for items in this category have been placed on the ODOT Materials Division Approved Products List (APL). The fabricator is required to provide a signed and dated project specific certification listing each corporate entity involved in the manufacturing process from melting through all fabrication processes. The certification must reference the Buy America requirements using a statement similar to the following: "All manufacturing processes for these steel and iron products, including the application of coatings have occurred in the United States." The steel used in the fabrication of these items will be certified by the fabricator for general use in production and cannot be tied specifically to any individual item.

ODOT Responsibilities

Resident Engineer is responsible for the following:

- Ensure all precast concrete items have the official ODOT inspection mark when they arrive to the project that indicates the Materials Division has verified the precast items from this fabricator have met the Buy America requirements. The official ODOT inspection mark may be found on the Materials Division website.
- Ensure that the items delivered to the project are from a fabricator listed on the Materials Division APL.
- Document in the appropriate AM template in SiteManager when a precast structure arrives on the project including that it was stamped by ODOT.

Material Division is responsible for the following:

- Conduct random checks on precast plants based on a frequency established by Materials Division. During the plant visits, tags on steel products currently being used in the precast items should be checked against certifications kept on file to demonstrate that all manufacturing processes for these steel and iron products including the application of coatings have occurred in the United States.
- Identify accepted items by placing the official ODOT inspection mark prior to shipment.
- The Materials Engineer will maintain all certifications in Materials Division's fabricators files and will not be distributed to the Resident Engineer.

Items

The pre-stressed and precast concrete items covered in this category are as follows:

- Precast box culverts
- Reinforced concrete pipe and precast end sections
- Precast inlets and catch basins
- Precast manholes

Category 6

General

This category covers miscellaneous steel or iron components, subcomponents and hardware necessary to encase, assemble and construct certain highway products and manufactured products. For items in this category, the Contractor is responsible for the following:

- Ensure that all manufacturing processes for these steel and iron products, including the application of coatings have occurred in the

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United States.

- Provide documentation to verify compliance upon request.
- Certifications should be retained by the Contractor/supplier until final acceptance of the project.

ODOT Responsibilities

Resident Engineer: Ensure all parties involved with this project are aware of the steel products incorporated into this project that fall into this category.

Items

The following items are included in this category:

- Cabinets
- Covers
- Clamps
- Fittings
- Sleeves
- Miscellaneous hardware (washers, bolts, nuts, and screws)
- Tie wire
- Spacers
- Chairs or other steel reinforcement supports
- Lifting hooks
- Pipe Valves
- Electronic components
- Temporary falsework
- Mailbox and installation assembly



John Leonard, P.E.
Construction Engineer