

## Oklahoma Department of Transportation

Buy America (December 2022 Revision)  
Construction Control Directive No. **20140620**

December 20, 2022

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

### 1. Requirements for Iron and Steel Products

Special Provision 106-5(a-c)19 for Buy America 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 of America (USA).

"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

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

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Minor miscellaneous steel or iron components, subcomponents, and hardware necessary for encasing, assembling, and constructing the project work are exempt from these Buy America requirements.

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 are in effect only on federal projects as identified in the contract documents. 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 for Iron and Steel

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.

### 3. Additional Construction Materials

The following construction materials must be manufactured in the United States of America. This means that all manufacturing processes for the construction material occurred in the United States of America:

- Non-ferrous metals
- Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables)
- Glass (including optic glass)
- Lumber
- Drywall

An article, material, or supply should only be classified into one of the following two categories: (1) iron or steel products; or (2) construction material. An article, material, or supply should not be considered to fall into multiple categories. The iron and steel requirements apply to items that are predominantly iron or steel.

Buy America requirements do not apply to temporary elements not permanently incorporated into a project. This includes falsework, temporary sheet piling, detour bridges and the like, temporary elements left in place at the Contractor's convenience, unless the contract plans and specifications require steel or iron components (i.e. stay-in-place forms, ties for steel, sheet piling, etc.) or imply that the item be left in place, or items that are simply moved from one place to another within the same project.

Buy America only applies to construction materials that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, removed at or before completion of the project. Buy America does not apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished project, but are not an integral part of or permanently affixed to the structure.

### **Contractor Responsibilities**

- Submit a written request to the Resident Engineer which includes the origin and value of any foreign material to be used.
- 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.
- To remove and replace non-Buy America compliant material that exceeds minimal threshold unless a waiver is granted for the use. No claims for contract adjustment (additional time, money, or both) will be made because of the non-Buy America compliant material.
- After work is completed on the project, the Contractor must submit a notarized or electronically verified certification signed by the Contractor's authorized agent to the Engineer with the following information: "I hereby certify that all construction materials furnished to the Oklahoma Department of Transportation for the construction of the above referenced project that are required to be compliant with the Buy America Act have been produced in the United States of America as defined by §70912 "Definitions" of the Infrastructure and Investment Jobs Act (IIJA) (Public Law 117-58 - Nov. 15, 2021). I also hereby certify that all manufacturing processes of all steel and iron products permanently incorporated into this Oklahoma Department of Transportation referenced project including protective coating are occurred in the USA and are in accordance with 23 CFR 635.410. I further certify that all supporting documentation is on file and will be maintained for a period of three (3) years after project completion."
- The Contractor may maintain this documentation electronically or in paper format. The Department or FHWA may request to review the Contractor's supporting documentation to verify compliance with the Buy America provisions at any time. The Contractor shall provide the supporting documentation within five (5) business days of the request. The burden of proof to meet the Buy America provisions rests on the Contractor. If the supporting documentation does not undeniably demonstrate to the Department or FHWA that the iron or steel, manufactured products, or construction materials identified in the Certificates of Compliance were produced in the United States of America, then such iron, steel, manufactured products, or construction materials will be considered unacceptable and must be replaced at no cost to the Department.

#### 4. Preconstruction Conference Discussion

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

- Project Specific Certification letters from the Contractor demonstrating their understanding and intent to comply with the Buy America Requirements (see Section 5 for more detail)
- Required documentation verifying compliance with Buy America for each known steel or iron product or construction material at the time of the meeting
- Minimal use requests (see Section 2)
- Change order work involving steel or iron products, or construction material, must be in compliance and documented similarly to contract work

#### 5. 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 2019 ODOT Standard Specifications for Highway Construction. The following are requirements for compliance with Buy America:

- For each steel or iron product and construction material, the contractor will be responsible for providing to the Department all documentation required to verify that each product complies with Buy America.
- The Contractor must provide a completed Material Use Statement & Certification (MDT-1) for each steel or iron product identified in Special Provision 106-5(a-c)19 for Buy America. The MDT-1 will include the Mill Test Reports. MTD-1 certification letters must include a statement similar to the following for federal projects: "All manufacturing processes for these steel and iron products, including the application of coatings have occurred in the United States of America. "

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.

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## **ODOT Responsibilities**

**Resident Engineer** is responsible for ensuring the following:

- The contractor has submitted a notarized or electronically verified certification in accordance with Special Provision 106-5(a-c)19 for Buy America. (See Attachment 1)
- The contractor has submitted a completed MDT-1 with mill test reports when appropriate, for each steel product referenced in Special Provision 106-5(a-c)19 for Buy America.
- Materials Division has approved the MDT-1
- The following has been completed as steel products are brought on site:
  - Compare the steel products and the bill of lading/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 of America.
  - 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 lading/invoice match the MDT-1.

**Division Auditor** is responsible for the following:

- During the Division audit ensure that there is an approved MDT-1 form for each steel product referenced in Special Provision 106-5(a-c)19 for Buy America.

**Materials Engineer** is responsible for the following:

- Review and recommend acceptance for submitted MDT-1 forms with required material test reports for each steel product identified in Special Provision 106-5(a-c)19 for Buy America. Distribute notifications to the Resident Engineer and the contractor for all approved and rejected MDT-1.



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