

SPECIAL PROVISION
SECTION 105
GENERAL SCOPE OF WORK
(Build America, Buy America)

105.11 Other Federal Requirements this section is replaced with the following:

105.11 Build America, Buy America Requirements

Unless expressly otherwise provided in the Bid Documents, the following provisions are hereby incorporated into the Contract.

This project is subject to the Buy America (23 CFR 635.410) and Build America, Buy America Act (BABA) included in the Infrastructure Investment and Jobs Act (IIJA), Public Law No. 117-58. Further guidance can be found at the FHWA Buy America Construction Program Guide linked here:

<https://www.fhwa.dot.gov/construction/cqit/buyam.cfm>

The Contractor shall certify compliance with Buy America and BABA in the following categories. An article, material or supply should only be classified into one of the following categories and is classified based on its state when it arrives at the project site.

1. **Iron and Steel:** All iron and steel permanently incorporated into the project must be produced in the United States. The only exception to this requirement is the production of pig iron and the processing, pelletizing, and reduction of iron ore, which may occur in another country. This means all manufacturing processes, from the initial melting stage through the application of coatings, must occur in the United States. Any process that modifies the chemical content, the physical size and shape, or the final finish is considered a manufacturing process, including rolling, extruding, machining, bending, grinding, drilling, and coating. “Coating” includes epoxy coating, galvanizing, painting, or any other coating that protects or enhances the value of the material.

Existing De Minimis Use Exemption for Iron and Steel: The requirements of the law and regulations do not prevent a minimal use of foreign steel and iron materials if the total cost of such materials used does not exceed one-tenth of one percent (0.1%) of the total construction contract price or \$2,500.00, whichever is greater.

2. **Manufactured Products:** Articles, materials, or supplies that have been processed into a specific form and shape, or combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies. If a domestic product is taken out of the United States for any process, it becomes a foreign source material.

All Manufactured Products used in the project must be manufactured in the United States (“final assembly requirement”). “Component” means an article, material, or supply, whether manufactured or unmanufactured, incorporated directly into a manufactured product or, where applicable, an iron or steel product. If a manufactured product is

predominantly iron, steel, or a combination of both it must meet the above requirements for iron and steel products. Predominantly iron or steel or a combination of both means the total cost of the iron and steel content exceeds 50 percent of the total cost of all its components.

Precast concrete products classified as Manufactured Products must additionally have predominantly iron or steel components meet the above requirements for iron and steel. Cabinets or other enclosures of intelligent transportation systems (ITS) and other electronic hardware systems classified as Manufactured Products must also comply with the above requirements for iron and steel if the cabinet or enclosure is predominantly iron or steel.

3. **Construction Materials:** Items, articles, materials, or supplies that consist of only one of the items listed below:
 - i. Non-ferrous metals.
 - ii. Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables).
 - iii. Glass (including optic glass);
 - iv. Fiber optic cable.
 - v. Optical fiber.
 - vi. Lumber.
 - vii. Engineered wood; and
 - viii. Drywall.

Minor additions of articles, materials, supplies, or binding agents to a Construction Material do not change the categorization of the Construction Material.

All Construction Materials permanently incorporated into the project must be produced in the United States. For the Construction Material to be considered “produced in the United States,” it must meet the following standards:

- i. Non-ferrous metals. All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.
- ii. Plastic and polymer-based products. All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.
- iii. Glass. All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.
- iv. Fiber optic cable (including drop cable). All manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding, and jacketing, occurred in the United

States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic, and polymer-based products, or any others.

- v. Optical fiber. All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.
- vi. Lumber. All manufacturing processes, from the initial debarking through treatment and planning, occurred in the United States.
- vii. Drywall. All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.
- viii. Engineered wood. All manufacturing processes, from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

Construction Materials brought on site and combined with other materials are not considered Manufactured Products. Items that consist of two or more of the listed Construction Materials that have been combined off-site through a manufacturing process, and items that include at least one of the listed materials combined with a material that is not listed through a manufacturing process should be treated as Manufactured Products rather than as Construction Materials.

Specifically Excluded Materials

Section 70917(c) of the Build America Buy America Act specifically excludes certain materials from being classified as either construction materials or manufactured products. These exclusions include cement and cementitious materials, aggregates (such as stone, sand, or gravel), and aggregate binding agents or additives.

Additionally, when these materials are combined as an unsettled mixture without a final form upon arriving at the work site, such as wet concrete or hot mix asphalt, the mixture is not considered a manufactured product. However, if these same materials are combined off-site to create a finished product, such as precast concrete, that finished product is considered a manufactured product.

Public Interest Waiver of BABA Requirements for De Minimis Costs

The US Department of Transportation issued a public interest Waiver of Buy America Requirements for De Minimis Costs. The Waiver for De Minimis Costs exempts Manufactured Products and Construction Materials produced outside the United States for which the total value of the non-compliant products is no more than the lesser of \$1,000,000 or 5% of total applicable costs for the project.

The obligation to track costs throughout the life of the contract is the Contractor's responsibility. The term "total applicable costs" is defined as the total actual final material cost of the compliant and non-compliant iron and steel, Manufactured Products, and Construction Materials.

Certification

For iron and steel materials and for Manufactured Products produced predominantly of iron or steel or a combination of both*, the Contractor shall submit a certification from the producer of steel or iron, or any product containing steel or iron as a component, stating that all steel or iron furnished or incorporated into the furnished product was manufactured in the United States in accordance with the requirements of the Buy America provisions of 23 CFR § 635.410, as amended. Such certification shall also include (1) a statement that the iron or steel product or component was produced entirely within the United States, or (2) a statement that the iron or steel product or component was produced within the United States, except for minimal quantities of foreign steel and iron valued at \$ (actual value). A “Buy America” Certification is required from each manufacturer, fabricator, supplier, subcontractor that engages in “manufacturing” as defined above.

**Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50% of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products, castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of the iron or steel components.*

In addition, upon completion of the project, the Contractor shall certify in writing as to the overall compliance with BABA and provide the total project delivered cost of all foreign Manufactured Products and Construction Materials. The Contractor shall also submit individual certifications from all subcontractors and suppliers that furnish applicable Construction Materials and Manufactured Products valued at \$10,000 or more. Such individual certifications shall be submitted upon delivery of the Construction Material or Manufactured Products to the site.

Example certification:

I hereby certify that this project is in compliance with the Build America, Buy America Act (Public Law 117- 58) requirements for this project. All Iron and Steel, Manufactured Products produced predominantly of steel or iron, Manufactured Products and Construction Materials that are permanently incorporated into the work for this project were produced in the United States of America, with the only exceptions as noted below.

As required, we will maintain all records and documents pertinent to the Build America, Buy America Act requirements, at the address given above, for not less than 3 years from the date of Final Acceptance. These files will be available for inspection and verification by the Maine Department of Transportation and/or the Federal Highway Administration.

We further certify that the total value of foreign steel and iron for this project is \$ _____, said value being less than 0.1% of the total construction contract price or \$2,500.00, whichever is greater.

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We further certify that the total material cost of foreign Manufactured Products and Construction Materials for this project is \$_____, said value being no more than the lesser of \$1,000,000 or 5% of total applicable costs. The term “total applicable costs” is defined as the total actual final material cost of the compliant and non-compliant iron and steel, Manufactured Products, and Construction Materials.

Signed (*Contractor*)
(*President*) (*Contractor Firm*)