Buy America and Utilities

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Agenda

• Overview of US Code & Federal Law
• Application of Buy America
• Flexibilities in Buy America
• Buy America as it relates to Utilities
• Q&A
Buy America

Buy American
SAFETEA-LU §1903 codified Buy America (§ 165 of STAA of 1982) as 23 USC 313.

ISTEA: Section 1041(a) defined application of coating to iron and steel as manufacturing process and,
   Section 1048(a) dropped cement, included iron.

FHWA REGULATION: 23 CFR 635.410 Requires use of domestic iron and steel in all Federal-aid construction projects.
Title 23 USC 313. Buy America

(a) Notwithstanding any other provision of law, the Secretary of Transportation shall not obligate any funds authorized to be appropriated to carry out the Surface Transportation Assistance Act of 1982 (96 Stat. 2097) or this title and administered by the Department of Transportation, unless steel, iron, and manufactured products used in such project are produced in the United States.”
Title 23 CFR 645.117, Cost Development and Reimbursement

• ‘Materials and supplies, if available, are to be furnished from company stock…’
• ‘…The utility shall not be required to change its existing standards for materials used in permanent changes to its facilities….’

As long as the materials meet the requirements specified in Title 23 USC 313, Buy America
Title 23 USC 313. Buy America

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What is manufacturing process?

Any process that:
• modifies the chemical content
• physical shape or size
• or final finish.

Includes:
• initial smelting through the bending and coating stages.
• rolling, extruding, machining, grinding, drilling and welding must take place domestically.
Buy America requirements

- Foreign source steel billets
- Domestic source steel billets
- Temporary use of foreign steel and iron
Buy America Flexibilities:

- Waivers
- Alternate Bid Process
- Minimum Amount
Project Specific Waivers:
- Requires approval from Secretary of DOT
- Must comply with 23 CFR 635.410(c)(1)
  - Public interest finding
  - Domestic steel products are not available.
- Requires informal review process.
- FHWA strongly recommends that agencies consider re-design with domestic products to avoid the lengthy waiver process.
Nationwide Waivers – by FHWA rule making

• Specific Ferryboat parts in February 1994

• Pig iron and processed, pelletized and reduced iron ore in March, 1995.
Other Buy America Flexibilities

**Alternative Bid Procedure**
Contract package must include:

- Alternative bids for foreign vs domestic steel
- Foreign steel alternative must be 25% lower than domestic alternative
- Based on total contract bid

**Minimal use**
0.1% contract value or $2500, whichever is greater
Utility relocation work incorporated into a federally funded construction contract.

- All materials must meet Buy America.
- Cannot make materials non participating.
- Cannot make component plans locally funded to circumvent Buy America.
- Cannot donate foreign steel materials.
Stand alone federally funded utility relocation work

- All materials must meet Buy America.
- Cannot make materials non participating.
- Cannot make component plans locally funded to circumvent Buy America.
- Cannot donate foreign steel materials.
Standalone non-federally funded utility relocation contracts.

• Does not need to meet Buy America.
• Work may be done concurrently with a separate federally funded construction contract.
• Work that incorporates foreign steel may not be used as federal match.
Implementing Buy America

Utility Agreements

- Include Buy America provisions
- Buy America Certification requirements
The State DOT is responsible for enforcement of the Buy America provisions.

- Inspect as any other Project.
- Buy America material certification is required.
Does this meet Buy America?
Intentional Violations:

• Affixing a label bearing ‘Made in America’,
• Representing that any product, not produced in the USA, used in Federal-aid Highway Program (Title 23) projects, was produced in the USA.

Penalty: Debarment (Title 48 CFR 9.4)
Questions?

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Are the following statements TRUE or FALSE regarding BUY AMERICA as it pertains to the FHWA Federal Aid Program?

1. Steel manufactured in the United States may contain up to 50% (by value) foreign steel, without an exception being required.

   FALSE
2. A Canadian reinforced concrete pipe manufacturer uses steel rebar cages wholly fabricated in the United States. The Firm asserts that it is only assembling components, not fabricating steel, and therefore, it is complying with Buy America.

**TRUE**
3. Steel and Iron bolts incorporated in a project do not need to meet Buy America requirements?

FALSE
4. Steel billet or slab made overseas can be rolled in the USA and still be “domestic”

FALSE
5. No foreign steel is allowed

**FALSE** - it is allowed under minimal use