

“BUY AMERICA”

Proposed Utility Relocation Material Requirement

“ The reason each DOT continually evaluates their utility coordination process is to achieve the most efficient and cost effective ways in which the utility relocation activity can be performed to the benefit of the highway project and, ultimately, the rate payer/tax payer”

2012 AASHTO Subcommittee on Right of Way and Utilities Conference

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1. HOW DOES THIS “BUY AMERICA” FEDERAL LAW APPLY TO THE UTILITY RELOCATION REIMBURSEMENT PROCESS?

- A. Under Ohio law (and most all states) a utility is only in a compensable position when it can provide proof it holds a “property right”.
- B. Impacts on a “property right” are not subject to contract or agreement guidelines
- C. Why are utility companies subject to this “Buy America” regulation when other “property right” owners (building owners, railroads, etc.) are not?
- D. Under the Federal reimbursement requirements subject to the “Davis Bacon” Act for minimum wage, utilities are not subject to that law because the reimbursement obligation is not subject to a contract or agreement. How is the “Buy America” Law any different?

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2. WHAT “VALUE” DOES THE “BUY AMERICA” LAW PROVIDE TO THIS UTILITY RELOCATION REIMBURSEMENT PROCESS?

- A. From what I could gather, this “Buy America” Law was passed in 1982. That was 30 years ago!! Why is such a regulation being implemented now?
- B. What beneficial information was used by FHWA to make a decision to impose this regulation?

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3. TIME AND COST LOSSESS ASSOCIATED WITH THE IMPLEMENTATION OF THIS “BUY AMERICA” REGULATION

- A. Upon notification of the highway project, if the utility determines that the material they have was not manufactured in America, they will be required to find at least two such manufactures because, under 23 CFR 645, the materials have to be bid. This will take additional time to do that and will add unneeded time to their relocation schedule, which will impact the project schedule.
- B. Under this “Buy America” regulation, there is no question this additional process for finding American made materials will result in the cost of those materials being more than what the utility company’s normal process would provide.
- C. The time and costs the utilities and DOTs will need to use to meet this “Buy America” regulation places an “undo burden” on both and there will be no appreciable benefit to our American economy.

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QUESTIONS & COMMENTS

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