

Memorandum

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To: DEPUTY DISTRICT DIRECTORS, Construction
DEPUTY DIVISION CHIEF, Structure Construction
CONSTRUCTION MANAGERS
SENIOR CONSTRUCTION ENGINEERS
RESIDENT ENGINEERS

Date: December 13, 2022

File: Division of Construction
CPD 22-13



From: RAMON HOPKINS, Chief
Division of Construction

Subject: **BUY AMERICA**

In November 2021, the Infrastructure Investment and Jobs Act was signed into law. This act included the Build America, Buy America Act, which expands federal Buy America requirements. The California Department of Transportation (Caltrans) has addressed these requirements in a standard special provision that will be edited and used in each project's plans, specifications, and estimates submitted to the Division of Engineering Services – Office Engineer as of November 10, 2022. These corresponding contracts' special provision requirements will replace Section 6-1.04, "Buy America," of the *Standard Specifications*. Ongoing construction contracts, without the standard special provision, will continue to require the Buy America requirements for steel and iron materials or products only, and no change orders will be written to incorporate modified requirements on these contracts. This directive seeks to provide contract administration guidance on the expanded Buy America requirements.

The expanded federal Buy America requirements apply to:

- Steel or iron materials
- Manufactured products containing steel or iron
- Additional construction materials, namely:
 - Nonferrous metals
 - Plastic or polymer-based products
 - Glass
 - Lumber
 - Drywall

DEPARTMENT OF TRANSPORTATIONSteel or Iron Materials

This area of coverage is unchanged from previous Buy America requirements. Guidance can be found in Section 3-604B, "Steel and Iron Materials," of the *Construction Manual*.

Manufactured Products Containing Steel or Iron

Deputy Directive DD-119, "Buy America for Steel and Iron Products," dated June 28, 2021, identifies the manufactured products containing steel or iron that are subject to Buy America requirements. Specifically, steel or iron within precast concrete products is subject to Buy America requirements. Other manufactured products containing steel or iron will be subject to Buy America requirements only when the percentage of steel or iron is 90 percent or more of the weight of the manufactured product. The standard special provision clarifies these requirements and allowances.

Steel or iron used in manufactured products subject to Buy America requirements will follow the same validation requirements for steel or iron construction materials, including certified mill test reports identifying where the steel or iron was melted and manufactured, as well as certificates of compliance.

Additional Construction Materials

In applying Buy America requirements to additional construction materials, it is important to first assess whether the construction material has been combined with other construction materials at the manufacturer. If so, the item is considered a manufactured product and conditionally exempt from Buy America requirements, unless the manufactured product contains steel or iron. Refer to Note 1 in attachment 2 of this directive. For example, individual panes of glass arriving at the project site for use would be classified as a construction material and subject to Buy America requirements, while a pane of glass contained within an aluminum or vinyl frame arriving on site from a manufacturer would be considered a manufactured product and not subject to Buy America requirements.

While steel and iron Buy America requirements address raw source materials, surface treatments, and coatings; currently there are no similar requirements for additional construction materials. Therefore, compliance will be based solely on the manufacturing processes at the manufacturing facility, which must occur in the United States.

The additional construction materials subject to Buy America do not have a minimum use allowance of nondomestic materials like that specified for steel and iron materials.

Caltrans requires that additional construction materials subject to Buy America requirements have certificates of compliance from their manufacturers or producers and attestation statements that all manufacturing processes occurred in the United States. Documentation is required with each delivery of subject materials to the project and is a prerequisite to acceptance and payment. Certificates of compliance from contractors or suppliers do not meet these requirements. Discuss Buy America validation requirements for additional construction materials at the preconstruction conference with the contractor, whose previous sources of supply may be unable to provide this

required validation documentation. Also discuss the importance of use of DOT Form CEM-3101, "Notice of Materials to be Used," for identifying domestic manufacturers of construction materials subject to Buy America requirements.

Special Considerations

- Buy America requirements do not apply to temporary work that is not incorporated into the completed work.
- Buy America requirements do not apply to tools or construction equipment used to construct the work.
- Buy America requirements do not apply to existing project materials or products that are modified or moved to another location on the same project, for example, relocation of an existing culvert.
- Review the Buy America special provision requirements for your contract to determine whether a Buy America waiver was obtained from the Federal Highway Administration for certain materials or products. Any such material or product exception will be identified in Section 6-1.04 of the contract's special provisions.
- Certain projects that were identified as a nonfederal-aid risk project and identified a project material or product with domestic source nonavailability, may have eliminated the federal Buy America requirements within the contract's special provisions. Refer to Note 2 in attachment 2 of this directive. In such cases, the only remaining state-mandated Buy America requirements are those for crumb rubber.
- Authorized material lists may differentiate items by domestic or nondomestic sources. When federal Buy America requirements within the contract's special provisions apply, assure that only domestic sources from an authorized material list are used for covered elements.
- While project-specific Buy America waiver requests may be made during construction, their use is strongly discouraged: The process generally takes 18 to 24 months, and ultimately such requests are frequently denied. Refer to Section 3-604B(2), "Federal Highway Administration Approval of Waivers," of the *Construction Manual* for waiver request process used on steel and iron, because requests for additional construction materials will be similar. If the contractor cannot locate a domestic producer of the material, contact the project engineer and specification owner to aid in identifying potential domestic producers. It also may be appropriate to consider a change order for use of alternate designs or materials. It is critical to assure that federal-aid eligibility is not jeopardized for the project, its phases, or other projects tied to the subject project through a NEPA document. Refer to Note 2 in attachment 2 of this directive. In rare instances, it

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may be necessary to eliminate the subject work by change order to preserve federal-aid eligibility.

- As these newly expanded Buy America requirements are implemented nationwide by federal-aid recipients, there may be material shortages of standard items. Refer to Section 3-806B, “Material Shortage,” of the *Construction Manual* for guidance on material shortage determinations and related contract administration guidance.

Additional guidance on Buy America will be incorporated into Section 3-604, “Buy America,” of the *Construction Manual*. The attached frequently asked questions document provides additional details concerning Buy America requirements.

If you have questions or comments regarding this directive, contact Ken Darby, Division of Construction, at Ken.Darby@dot.ca.gov or (916) 764-6929.

Attachment:

1. Frequently Asked Questions
2. Supporting Notes to the Directive