

Section 1: Frequently Asked Questions Concerning Buy America Preference for Local Agency Administered Projects

Q. What is the definition of authorization for locally administered projects to implement new Buy America requirement?

A. Authorization refers to an authorization (E-76) for construction phase of the project.

Q. What is the basis for waiver?

A. LPAs may request a waiver of the Buy America requirement for specific projects, certain materials or products, in specific geographical areas, or combinations of both if:

- Buy America is inconsistent with the public interest, or
- There is not a sufficient supply of domestic materials of satisfactory quality.

Q. How are Buy America requirements applied on those projects with or without federal funds?

A. Caltrans Division of Local Assistance (DLA) supports the intent of Buy America Preference requirements as modified by the Infrastructure Investment and Jobs Act (IIJA). In general, Caltrans DLA will apply these requirements on all contracts. Furthermore, the Buy America Preference requirements are mandated on those federal-aid risk projects, including those projects with federal-aid, projects under a NEPA document that have other projects containing federal-aid, projects with other phases containing federal-aid, and those projects desiring to maintain future federal-aid eligibility. On nonfederal-aid risk projects and where a domestic supply concern with a particular material or product has been noted, the project engineer may exempt the project from federal Buy America Preference requirements. Exhibit 12-G has been revised to reflect the new Buy America requirements.

Q. The application of Buy America to manufactured products appears broadly applied within the Infrastructure Investment and Jobs Act and the Office of Management and Budget guidance. Do all manufactured products need to meet Buy America requirements?

A. No. Currently a 1983 FHWA waiver concerning manufactured products results in only those manufactured products containing iron or steel being subject to Buy America requirements. Deputy Directive, DD-119, "Buy America for Steel and Iron Products," (<https://admin.onramp.dot.ca.gov/deputy-directives>) is consistent with this application and further identifies those manufactured products containing steel or iron that are subject to Buy America requirements. DD-119 also establishes a minimum 90% steel or iron threshold by weight criterion. The updated Exhibit 12-G, Section 8, "Manufactured Products" has incorporated these items for clarity.

Q. The Office of Management and Budget guidance describes a U.S. manufacturing cost percentage criterion for manufactured products Buy America compliance. How do we apply that criterion for manufactured products subject to Buy America?

A. The criterion (percentage of U.S. manufacturing cost) is not applicable to manufactured products that are subject to Buy America (i.e., those manufactured products containing steel or iron) since the [FHWA's 1983 Buy America waiver](#) waives the application of Buy America requirements to manufactured products that do not include steel and iron components . Caltrans has worked with FHWA CA Division to develop separate application and validation requirements for manufactured products in California containing iron or steel. These are found in DD-119 (Buy America for Steel and Iron Products) and Exhibit 12-G, Section 8, “Manufactured Products” of the applicable contract’s specifications.

Q. When must my project include the revised Buy America requirements that add other construction materials (i.e., non-ferrous metals, plastic and polymer-based products, glass, lumber, and drywall)?

A. FHWA has clarified that projects with E76 dates before November 10, 2022, may proceed with prior Buy America requirements. This is because of the USDOT temporary 180-day waiver concerning additional construction materials and the existing 1983 FHWA waiver concerning manufactured products. In the absence of an extension of the temporary waiver of Buy America requirements on construction materials, federal-aid projects with E76 approval dates on or after November 10, 2022, will need to comply with new Buy America requirements. The DLA has chosen to implement new Buy America requirements on construction materials for projects submitted for E76 CON authorization after November 9, 2022, to ensure federal-aid eligibility is maintained.

Q. What about non-federal aid projects that have federal-aid risks associated with them, such as those under a NEPA umbrella with sibling contracts containing federal-aid, or those projects with other phases containing federal-aid?

A. In such cases, the contract will need to be Buy America compliant to avoid risks to the other federal-aid contracts or phases. As there will be no E76 approval date for the non-federal aid project, the project’s CON fund allocation date will be used for comparison with the November 10, 2022, date, and determination of which Buy America requirements will be applicable. The DLA has chosen to implement these new Buy America requirements for such projects submitted for CON fund allocation after November 9, 2022, to ensure federal-aid eligibility is maintained.

Q. If my construction contract must meet the Buy America Preference requirements because of federal funding, NEPA document, other project phase containing federal-aid or future federal funding eligibility, but there are anticipated availability or public interest concerns with portions of the work in requiring domestic materials and or products, how should I proceed?

A. FHWA waivers for materials and or products may be requested during the design and PS&E phases based on public interest and or availability concerns. These waivers may take a considerable amount of time for consideration with no guarantee of approval. Domestic materials and or products with an alternate design might be an option in some cases. In cases where a single domestic option has been identified, sole-source requirements will need to be

followed. The LPA must wait until the FHWA's Buy America Waiver approval to request PS&E approval. In the case of non-federally funded project that must meet the Buy America Preference requirements, the LPA must wait for the FHWA's Buy America Waiver approval to advertise the project for bids. Refer to OB [22-07 Modified Buy America Requirements](#) for updated LAPM Chapter 12, Section 12.8 "Buy America" for information on waiver.

Q. Does DD-119 presently consider the revised Buy America Preference requirements of the IIA?

A. No, currently DD-119 only concerns Buy America for steel and iron materials and products. As further federal guidance information is provided, DD-119 will be revised to address expanded requirements.

Q. How will the new Buy America waivers (public interest or non-availability) be processed?

A. Initiators of the request (e.g., local agency specification owners, project engineers, divisions, etc.) will review the new process outlined on the Division of Budgets – Office of Federal Resources webpage at (to be developed) and complete the justification and provide required supporting documentation before forwarding to the Office of Federal Resources. Completed requests will then be forwarded to FHWA-CA Division for initial federal consideration, then to FHWA-HQ for consideration prior to the new Made in America Office for final request consideration. Along this path there may be need to revise and or supplement the request by the initiator and prior to the final decision and there will be a period of public posting for comment. Initiators should start such requests at least 700 calendar days before E76 CON authorization as such requests are time intensive. Initiators may request project specific or programmatic waivers with limited effective dates. Note that full consideration of availability and expense of materials and products covered by Buy America must be performed prior to the project's E76 CON authorization milestone. By adequately considering these conditions, project funding estimates can be representative of the work and reduce instances of inability to award such projects due to insufficient funds. Clearly identifying exempted items through approved FHWA waivers and other constraints (e.g., sole source items) will assist bidders in developing representative bid costs and sourcing suppliers for the items of work. Experiencing related availability issues in the construction phase of the project will likely result in project delivery delay and may have the potential for additional costs and or delivery of a lesser scoped project. Refer to OB [22-07 Modified Buy America Requirements](#) for updated LAPM Chapter 12, Section 12.8 "Buy America" for information on waiver.

Q. I have obtained a Buy America waiver for a certain material or product for my project. How do I identify that the material or product may be obtained from a nondomestic source within the contract?

A. Use the Exhibit 12-G, Section 8, "Waivers" in accordance with its instructions and identify the material or product in the appropriate subsection for which Buy America is no longer applicable.

Q. How will Buy America waivers for increase in total project cost (> 125%) be handled?

A. Unlike those Buy America waiver requests due to public interest or non-availability, the project cost waiver is conditional on comparing domestic and nondomestic bids for the specific project. If pursued, this will involve use of a Non-Standard Special Provision (NSSP) to; 1) have bidders provide domestic and nondomestic bids for items of concern, 2) identify the bid evaluation process, and 3) provide application/non application of Buy America requirements that are dependent on the successful bid. Local agency Project engineers would develop such NSSP and include the approved NSSP in the contract. Note that only where a large portion of the contract's bid items by cost are subject to Buy America requirements might a 25% increase in total project cost of the domestic bid (Buy America requirements) in comparison to a nondomestic bid be realized. The successful bidder's total bid value alternatives would be compared to determine if the 25% project cost threshold was met. Note that while FHWA preapproval of this project cost waiver process is not required, the project file must include documentation of use, as well as nondomestic and domestic bid results, and award. The LPA must coordinate with their District Local Assistance Office prior to use the Alternate bid provisions. DLA will inform and share any successful nondomestic contract award be provided to FHWA CA Division for information purposes.

Q. What are the limitations or restrictions on raw materials or recycled materials used in the production of the additional construction materials identified in Exhibit 12-G, Section 8?

A. In the absence of specific guidance, Caltrans has not specified any restrictions on the raw materials or recycled materials that can be used in the production of these additional construction materials. This includes the sourcing of timber for lumber and crude oil for plastics and polymer-based products.

Q. As a specification owner, what is expected in terms of Buy America for my areas of ownership?

A. Since the default condition is that Buy America will apply to projects, specification owners must assure that domestic sources of Buy America covered materials or products in their standard work items and specifications exist. If only a single domestic source is known, the specification owner must follow sole-source requirements for advertising applicable projects. In cases where domestic supply is of concern, specification owners should consider alternative materials and or designs that meet quality and performance requirements. When specifying brand names or trade names in the standards, specification owners must assure these producers can domestically produce the Buy America covered work item. If a specification owner identifies that the Buy America covered work item or element must be on an Authorized Material List, the specification owner must assure the Authorized Material List contains domestic only sources. Similarly, do not specify Buy America covered alternatives where only nondomestic sources are known. The specification owner may also be asked to update cost estimates for affected work items due to the application of new Buy America requirements.

Q. What happens when a particular standard work item, that is subject to Buy America requirements, does not have a known domestic source?

A. These standard work items should be avoided by using alternative materials or designs as a general practice. In the event there is no workaround solution, the specification owner may pursue a Buy America waiver from FHWA. These requests take considerable time (> 18 months) and may ultimately be declined. Such waiver requests must include support documentation, including the good faith efforts the agency has taken in meeting and maximizing Buy America compliance for the material/product.

Q. What are the responsibilities concerning Buy America on nonstandard work items?

A. The project engineer will principally determine the need for nonstandard work items on a particular project. As part of this, they will also need to look at the project's federal-aid risk. If the project is a federal-aid risk project and the nonstandard work items include Buy America covered work, it is the project engineer's responsibility to confirm domestic sourcing is available and where applicable, the sole-sourcing requirements of a single domestic known source. If no such domestic source is known, the project engineer should look at alternate materials or designs as a work-around solution. If such workarounds are not practical, the project engineer may make a Buy America waiver request to the FHWA transportation engineer in the district corresponding to the project's location. Note that such waiver requests are time intensive processes that will typically take more than 18 months to receive a final response and often such requests are denied. Where a NSSP approval request is made to support a nonstandard work item, the approving authority (e.g., local agency specification owner or delegated authority) is to verify that supporting documentation or statement is included with the request regarding the domestic sourcing availability for a Buy America covered material. If a Buy America waiver has been obtained, this is to be included within the NSSP approval request. The project engineer will edit SSP waivers section in accordance with Exhibit 12-G, Section 8 instructions depending on the conditions involved. Note that if the project is not a federal-aid risk project and a concern is identified regarding the domestic availability of a project's material, consult with DLAEs to allow editing to remove the federal Buy America requirements from the nonfederal-aid risk project.

Q. Can the minimum use allowance for steel or iron (greater of 0.1% of original contract amount or \$2500) be utilized for nondomestic sourcing of material within the advertised plans, specifications, and estimate?

A. The minimum use allowance is meant to allow the successful Contractor and contract administrator a means to alleviate encountered domestic source concerns. Such nondomestic source requests by the Contractor must be preapproved by the resident engineer prior to the use of the material so that the cumulative total cost of such approved requests is not exceeded for the project. It is therefore not desirable to consider this allowance in preparation of the plans, specifications and estimates and those Buy America covered materials are to have identified domestic sources. Also note, that presently, there are no similar minimum use allowances for the additional construction materials subject to Buy America requirements.

Section 2: Bidder Inquiry FAQ Portion

Ref: Office Bulletin 22-07 Modified Buy America Requirements

Q. What are the additional construction materials covered by the new Buy America requirements from the Infrastructure Investment and Jobs Act (Nov. 2021)?

A. The identified additional construction materials are non-ferrous metals, plastic and polymer-based products, glass, lumber, and drywall. For applicable contracts, these contract provisions are in Exhibit 12-G, Section 8, "Construction Materials". These are in addition to steel and iron materials which remain covered under Buy America requirements.

Q. Which manufactured products with iron or steel are subject to Buy America requirements?

A. Those iron and steel materials used in precast concrete products regardless of the amount of steel or iron used. For other manufactured products containing iron or steel, only when the amount of steel and iron materials is 90 percent or more by weight of the total manufactured product, will the steel and iron materials need to be Buy America compliant. Reference Exhibit 12-G, Section 8, "Manufactured Products" of the applicable contract provisions.

Q. Do the previous minimum use allowances (nondomestic sources) for iron and steel still apply?

A. Yes, the greater of either 0.1 percent of total contract amount or \$2500 is the maximum value of nondomestic steel and iron that may be authorized in advance for use by the resident engineer during the construction phase of the project. The value of such material is based on the value as delivered to the project. Note that this allowance is separate from any other project material or product that may have received an FHWA waiver, which would be identified in the contract provisions if applicable.

Q. Does the minimum use allowance (nondomestic sources) for iron and steel, extend to the additional construction materials (i.e., non-ferrous metals, plastic and polymer-based products, glass, lumber, and drywall)?

A. No. Presently there is no similar minimum use allowance for these additional construction materials.

Q. Exhibit 12-G, Section 8 lists specific construction materials covered by Buy America but does not list materials not subject to Buy America. If a material is not listed, is it exempt from Buy America?

A. Certain materials are exempt from Buy America requirements including cement, cementitious materials, aggregates, additives, or aggregate binding agents. Unless the material itself has been identified within your contract specifications as needing to meet Buy America, the material may be procured from either a domestic or nondomestic manufacturers or producers, subject to meeting other specified contract requirements.

Q. Which lumber construction materials will be subject to the new Buy America requirements?

A. Buy America requirements will apply to solid wood boards, planks, and posts. Engineered wood products such as plywood, OSB, and glulam beams are not considered lumber and Buy America will not apply to these products. Timber poles are not considered lumber and will not be subject to Buy America requirements. In addition, only those lumber materials that are permanently incorporated into the work are subject to Buy America requirements. Lumber used for constructing cast-in-place concrete elements is not subject to Buy America requirements, so long as the form materials are not permanently incorporated into the project.

Q. Do required surface treatments of lumber construction materials also need to meet Buy America?

A. There is currently an absence of guidance and regulations related to how surface treatments and coatings are to be interpreted for Buy America compliance on the additional construction materials (e.g., lumber) identified in Exhibit 12-G, Section 8, "Construction Materials" of applicable contract provisions. Caltrans will not require these surface treatments and coatings be performed domestically in the absence of specific guidance or regulations. However, Caltrans will not consider these surface treatments and coatings as "other construction materials" for the purpose of classifying the combined material as a manufactured product.

Q. What glass construction materials are subject to Buy America requirements?

A. Buy America applies to those glass construction materials that are solely comprised of glass. These include glass panes that are incorporated into the work through assembly in the field. This does not include glass panes that have been incorporated into a manufactured product (e.g., window framed product) and then incorporated into the work.

Q. Are fiberglass products subject to Buy America requirements?

A. If the fiberglass product is comprised of 100% fiberglass, the product is subject to Buy America requirements. If other construction materials have been incorporated during the manufacturing process, the fiberglass product is not subject to Buy America requirements.

Q. Are glass beads used for retro reflectivity on traffic paints, subject to Buy America requirements?

A. Glass beads are solely comprised of glass and are therefore subject to Buy America requirements.

Q. Which of the following types of glass (float, laminated, obscured, tempered, insulated, and low-E) are required to be Buy America compliant under the construction materials definition?

A. Laminated and insulated glass are manufactured products that involve other construction materials being added to create product. As such, both laminated and insulated glass are not covered under the construction material definition of Buy America. If the glass consists of a single

construction material and has not been manufactured into a combined product such as a window (glass pane and frame), then the glass is subject to Buy America.

Q. What type of materials comprised of non-ferrous metals would be subject to Buy America requirements?

A. Common non-ferrous metals, such as aluminum, copper, lead, nickel, tin, titanium, zinc, brass, and bronze, are subject to Buy America if used as construction materials in various shapes, sizes, and gauges including, but not limited to sheets, channels, bars, pipe, couplers, fittings, bolts, nuts, etc. and products comprised of 100% of the non-ferrous metal itself. If the non-ferrous metal is combined with other construction materials during a manufacturing process, the product is considered a manufactured product. Only those manufactured products containing steel or iron in accordance with Exhibit 12-G, Section 8, "Manufactured Products" of applicable contract provisions are subject to Buy America requirements.

Q. What type of plastic or polymer-based items are considered construction materials and subject to Buy America requirements?

A. The material must be 100% plastic or polymer to be a construction material. Plastics or polymers that are combined with other construction materials in a manufacturing process are considered a manufactured product. Only those manufactured products containing steel or iron in accordance with Exhibit 12-G, Section 8, "Manufactured Products" of applicable contract provisions are subject to Buy America. A common example of a polymer-based products subject to Buy America would be HDPE or PVC pipe and fittings.

Q. What about products that consist of two or more of the Buy America covered construction materials?

A. Once a construction material is combined with another construction material in a manufacturing process, it is considered a manufactured product. Only those manufactured products containing steel or iron are currently covered under Buy America requirements in accordance with Exhibit 12-G, Section 8, "Manufactured Products" of applicable contract provisions. For example, shielded electrical conductors and fiber optic cables are considered manufactured products.

Q. If I plan to use some of the identified construction materials in Exhibit 12-G, Section 8, "Construction Materials" in temporary facilities or as a construction aid that will not ultimately be part of the permanent work, are such materials subject to Buy America requirements?

A. No, see the first line under Exhibit 12-G, Section 8 for applicable contract provisions.

Q. For the additional construction materials subject to Buy America as identified in Exhibit 12-G, Section 8, "Construction Materials", what documentation is required to show compliance and receive payment?

A. Pursuant to Exhibit 12-G, Section 8, "Construction Materials" the Contractor must provide certificates of compliance with each project delivery of such materials. These manufacturer certificates of compliance must identify where the construction material was manufactured and attest specifically to Buy America compliance (all manufacturing processes for these materials occurred in the United States). Compliant Buy America documentation is one of the prerequisites to payment eligibility of associated bid items.

Q. Does Buy America apply to construction materials that are relocated from an existing location in the project to another location on the project?

A. No. Relocation of existing items falling under the construction material definition are not subject to Buy America requirements. For example, a non-ferrous metal article shown to be relocated on the plans would not be a new or added construction material to the project subject to Buy America requirements.

Section 3: Construction Contract Administration FAQ Portion

Q. My construction contract has been awarded and approved with Buy America Preference requirements included. My contractor has been unable to locate a domestic manufacturer/producer for a covered material. Can I write a change order to exempt the Buy America requirements for this material?

A. Review your Buy America provisions and determine if the use of nondomestic material is allowed under the minimum allowance provision and that the project's cumulative value limit will not be violated. If the amount exceeds the project's limit, consider domestic materials with an alternative design. If these alternatives have been exhausted, consider a formal FHWA waiver for the material under a public interest or availability justification. The LPA must wait for FHWA's approval of the Buy America waiver to incorporate the material in the project or may risk jeopardizing federal funding on the entire project. Note that these Buy America waivers are time extensive (e.g., often greater than 18 months) and there is no guarantee such a waiver request will ultimately be approved. Where an FHWA waiver is obtained, you may write a change order to exempt the corresponding material. Make sure the project engineer notifies the specification owner of such issues to limit further instances of such issues. Note that in those instances where a "material shortage," as defined by contract, has been identified, nonworking days may be provided during critical delay periods. In rare instances, it may be necessary to eliminate portions of the work by change order to avoid federal funding issues.

Q. Do I (resident engineer) need to authorize nondomestic use of iron and steel that fall under the minimum use provision (i.e., the greater of 0.1% of the total bid or \$2500) before its use?

A. Yes, nondomestic iron or steel to be used in the contract under the minimum use provision (see Exhibit 12-G, section 8, "Steel and Iron Materials," of applicable contract specifications) must be authorized prior to its use in the work. You must obtain material cost information from the Contractor in considering this authorization and track a running balance of authorized material

costs to assure the project's cumulative minimum use allowance limit is not exceeded. Note that generally, the cost of such material is considered as its value when delivered to the project. Maintain such records within the project records.

Q. My contractor is using plywood material for forming reinforced concrete elements that is from a nondomestic source and is utilizing nondomestic sources for construction equipment used in performing the work. Are these covered under Buy America requirements?

A. Temporary work that is not incorporated into the finished work is not subject to Buy America requirements. Examples of temporary work include form materials used to construct the work, temporary culverts, temporary traffic control devices, and the like that are not incorporated into the finished work. Similarly, tools and equipment used to construct the work (e.g., construction equipment) need not be from a domestic manufacturer and are not subject to Buy America.

Q. I (resident engineer) have additional construction materials that are subject to Buy America on my contract. How do I validate and accept such materials for compliance with Buy America requirements?

A. Unlike steel and iron materials, which have mill certificate requirements for documenting Buy America compliance, other construction materials do not presently have a uniform accepted method of manufacturer certification and identification for tracking purposes. In the absence of such an industry standard, the Department has specified a manufacturer certificate of compliance and attestation statement concerning Buy America compliance that is to be provided for each delivery of material to the project (refer to Exhibit 12-G, Section 8, "Construction Materials," of applicable contract specifications). This documentation is to be reviewed and filed within the project records to support acceptance and payment of these materials.