



Expires – Upon Issuance of LPP

Update to Exhibit 12-G: Required Federal-aid Contract Language

I. BACKGROUND

In response to recent changes in federal regulations, Exhibit 12-G: Required Federal-aid Contract Language of the Local Assistance Procedures Manual (LAPM) needs to be updated to incorporate two significant revisions related to Buy America and the Davis-Bacon regulations. The purpose of this Office Bulletin is to highlight these policy changes and provide guidance for their implementation.

The Buy America requirements have undergone revisions with the passage of the Build America Buy America (BABA) Act, which was enacted as part of the Infrastructure Investment and Jobs Act (IIJA) on November 2021. The Office of Management and Budget (OMB) recently issued its final guidance on August 23, 2023, to implement the updated BABA provisions of IIJA and provide clarity on the provisions related to domestic preferences.

On August 23, 2023, final guidance was issued to update the Davis-Bacon and Related Acts. These revised regulations address several issues that have arisen over time in the administration and enforcement of the relevant regulations, offering greater regulatory clarity concerning numerous Davis-Bacon requirements.

II. POLICY

The updated Buy America requirements aim to ensure that all iron, steel, manufactured products, and construction materials permanently incorporated into federal-aid projects are produced in the United States. The final Buy America guidance establishes standards defining "all manufacturing processes" for each material subject to Buy America requirements (refer to 2 CFR 184.6). Additionally, the guidance updates the list of construction materials subject to Buy America requirements (refer to 2 CFR 184.3).

The revised Davis-Bacon regulations encompass alterations in prevailing wages, wage determinations, definitions, compliance principles, and enforcement. Comprehensive information regarding these changes can be accessed at: <https://www.dol.gov/agencies/whd/government-contracts/construction/rulemaking-davis-bacon>. These revisions are included in the revised Form FHWA-1273 effective October 23, 2023.

III. PROCEDURE

Buy America

To align with the effective date of the final guidance, **all projects authorized (E-76) on or after October 23, 2023** must adhere to the final guidance on construction materials as outlined in 2 CFR 184.



Davis-Bacon and related Acts

The revised Form FHWA-1273 has been introduced to accommodate the updated Davis-Bacon requirements. **Starting from October 23, 2023**, all prime construction contracts awarded by contracting agencies, as well as their associated subcontracts, must integrate this latest version. This requirement applies to many projects that are currently in the advertising phase.

IV. APPLICABILITY / IMPACTS

This Office Bulletin is applicable to all aspects of the federal-aid program whenever the Buy America and Davis-Bacon requirements are applicable. The table below lists the changes to the January 2023 LAPM and Exhibit 12-G. The LAPM chapter changes will be incorporated into the January 2024 Local Programs Procedure (LPP), while changes to Exhibit 12-G will be integrated and released upon publication of this Office Bulletin.

Chapter Section / Exhibit	Changes that supersede current publication
<p>LAPM 12.8 Federal Contract Requirements</p>	<p><u>Buy America</u></p> <p>FHWA’s policy for Buy America requires a domestic manufacturing process for all steel and iron products, manufactured products, and construction materials that are permanently incorporated in a federal-aid funded project.</p> <p>Manufactured products are those that contain steel or iron components that equate to 90 percent or more by weight of the product. Steel or iron products used within precast concrete products, such as reinforcing steel, wire mesh, and pre-stressing or post-tensioning strands, rods, or cables, must meet Buy America regardless of the percentage of use.</p> <p>FHWA defines a construction material as an article, material, or supply that is considered or consists primarily of consists of only one of the following items: non-ferrous metals, plastic, and polymer-based products (including polyvinylchloride, and composite building materials, and polymers used in fiber optic cables), glass, (including optic glass), fiber optic cable (including drop cable), optical fiber, lumber, engineered wood, or drywall. The manufacturing processes for all materials governed by Buy America requirements are outlined in accordance with 2 CFR 184.6. If one or more of these construction materials have been combined by a manufacturer with other materials through a manufacturing process, Buy America requirements do not apply unless otherwise specified.</p> <p>...</p> <p>Buy America requirements apply to all steel and iron products, manufactured products, and construction materials supplied and permanently incorporated into a federal-aid project regardless of the</p>



	<p>funding source used to purchase the product and regardless of how the products were procured (i.e., agency furnished materials, materials added by change order, etc.). The LPA must not list non-domestic steel and iron products, or construction materials as nonparticipating in order to circumvent the Buy America requirements.</p> <p>...</p> <p>Alternate bid provisions. The LPA elects to include alternate bid provisions for both, foreign and domestic steel and iron materials. The contract provisions must require all bidders to submit a bid based on furnishing domestic steel and iron materials, and clearly state that the contract will be awarded to the bidder who submits the lowest total bid based on furnishing domestic steel and iron materials unless such total bid is more than 25 percent higher than the total bid based on foreign steel or iron products. The comparison must be between the total lowest bid using domestic iron/steel steel and iron product and the total lowest bid using foreign iron/steel steel and iron product. The LPA must coordinate with their DLAE prior to using the alternate bid provisions; the DLAE will coordinate with FHWA.</p>
<p>LAPM 16.11 Quality Assurance Program</p>	<p><u>Materials Requiring a Buy America Certification</u></p> <p>Steel and iron products and construction materials Iron and steel, manufactured products, and construction materials permanently incorporated into the project must comply with Buy America requirements per 23 CFR 635.410 and Section 70914 of the Build America, Buy America (BABA) Act. All steel and iron products must be delivered with a COC stating all manufacturing processes involved in the production of the products occurred within the United States.</p> <p>In addition to the COC requirements mentioned earlier in this section, a Buy America COC must also include the mill markings or heat numbers. All manufacturing processes for construction materials as defined in 2 CFR 184.6 must occur in the United States.</p> <p>Contractors must provide certificates of compliance with each project delivery for all construction materials used for the projects. Manufacturer's certificate of compliance must identify where the construction material was manufactured and attest specifically to the Buy America compliance 2 CFR 184.6. Minor additions of articles, materials, supplies, or binding agents to these construction materials do not change the categorization of the construction material.</p>



<p>Exhibit 12-G 8. Buy America</p>	<p><u>Construction Materials</u></p> <p>Buy America requirements apply to the following construction materials that are or consist primarily of:</p> <ol style="list-style-type: none"> 1. Non-ferrous metals 2. Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables) such as: <ol style="list-style-type: none"> 2.1 Polyvinylchloride 2.2 Composite building materials 3. Glass (including optic glass) 4. Fiber optic cable (including drop cable) 5. Optical fiber 6. Lumber 7. Engineered wood 8. Drywall <p>All manufacturing processes for these materials as defined in 2 CFR 184.6 must occur in the United States.</p>
<p>Exhibit 12-G Form FHWA-1273</p>	<p>The updated Form FHWA-1273, dated October 23, 2023 replaces the July 5, 2022 version. A section-by-section summary of the changes is accessible on FHWA's website at: https://www.fhwa.dot.gov/construction/cgit/fhwa1273_changes230906.pdf</p> <p>In addition, a direct link will now be provided to FHWA's Form FHWA-1273 rather than the full text as previously included in Exhibit 12-G.</p>
<p>Exhibit 12-G</p> <p>Note: <i>To avoid frequent updates to this Exhibit, the following changes identified in the Local Programs Procedures (LPP) 23-01 have also been incorporated with this update.</i></p>	<p><u>14. Federal Trainee Program</u></p> <p>This section applies if a number of trainees or apprentices is specified in the special provisions shown on the Notice of Bidders.</p> <p>...</p> <p>The prime contractor shall furnish the apprentice or trainee with a copy of the program that the prime contractor will comply with in providing the training.</p> <p>Furnish the apprentice or trainee a:</p> <ol style="list-style-type: none"> 1. Copy of the training plan approved by the U.S, Department of Labor or a training plan for trainees approved by both Caltrans and FHWA 2. Certification showing the type and length of training satisfactorily completed <p>Maintain records and submit reports documenting contractor's performance under this section.</p>



Recommended: Approved by email on October 12, 2023
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