

Buy America Update



Presented by

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ORIGIN OF BUY AMERICA

- 1982 Surface Transportation Assistance Act
23 USC 313, 23 CFR 635.410
- 2012 MAP-21 Legislation modified it to apply to all projects with a NEPA action **and** federal money used on any portion or phase of the project

WHAT IS BUY AMERICA?

➤ IRON & STEEL only

- All domestic manufacturing - melting, rolling, cutting, bending, welding, coatings, etc.
- Only products **permanently** incorporated into the project
- Applies to donated items

➤ Entire construction cost at risk of being ineligible for reimbursement

APPLIES TO UTILITY AND RAILROAD WORK

- All work included in construction contracts
- Work performed by railroad or utility owners ELIGIBLE for reimbursement with any source of funding

EXCLUDES RAILROAD AND UTILITY WORK

- Ineligible for reimbursement and performed by utility owner
- Relocating existing items on site
- Work not included in our contracts

FHWA Letter to AASHTO

December 20, 2012

“As a result of the MAP-21 amendment, the application of Buy America cannot be narrowed to exclude utility work, even if such utility work is not reimbursed with Federal-aid highway funds.”

“The only instance where Buy America would not apply to utility work is where such work is not eligible for Federal-aid because the State is **legally unable to pay** the utility. In these instances, such work would not constitute a contract that is eligible for assistance.”

Legal Exemption Criteria

- By law, UDOT is required to reimburse 50% or 100% of utility work on state right-of-way
NO exemption.
- If utility is on private property rights, reimbursement is required.
NO exemption.
- State law allows local agencies to enact local ordinances and enter into franchise agreements that define whether they reimburse. **POSSIBLE** exemption.

Non-Reimbursable Language

“Upon written notice to Company, the City may require the relocation and removal or reinstallation of any facilities located in, on, along, over, across, through, or under any of the streets. The relocation of facilities by Company shall be at no cost to the City”

Reimbursable Language

“If a City project is funded by federal or state monies that include an amount allocated to defray the expenses of relocation of facilities, then the City shall compensate Company up to the extent of such amount for any Relocation costs mandated by the project to the extent that the City actually receives such federal or state funds.”

Document Legal Exemption

- Determine whether local government is legally able to reimburse utility relocations by reviewing local ordinances and franchise agreements.
- If not, the local government sends a written statement, to be kept in project documentation, stating “**City is legally unable to reimburse the utility....**”

FHWA Memo - Manufactured Products

Dec. 21, 2012

Waived:

- Nuts, bolts, washers and other common off-the-shelf hardware
- Manufactured products not predominantly iron and steel
 - Less than 90% iron and steel by volume

FHWA Memo - Manufactured Products

Dec. 21, 2012

Buy America still applies to:

- Steel or iron components of precast concrete products (reinforcing steel, wire mesh, pre-stressing or post-tensioning strands or cables)
- Steel or iron pipe, conduit, grates, manhole covers, risers
- Steel fencing material, fence posts

Examples

Wooden Pole Power Line

Waived materials:

- Poles and all associated hardware
- Conductors
- Transformers

Steel Gas Line

- Pipe is subject to Buy America
- Hot-tap materials and pipe fittings are not

Summary

- MAP-21 has removed the option of using state or local money for utility reimbursement
- Local agencies may have ordinances or franchise agreements that allow utility work to be done without Buy America compliance
- FHWA memo on Manufactured Products provides additional flexibility:
 - Emphasis on major steel items
 - 90% steel/iron test for manufactured products

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