



Where Government Contracting Starts



Buy America vs. Buy American Act

Apply this purchasing preference program to State of Alaska contracts

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Where Government Contracting Starts

Today's Agenda

- ❖ Brief history of the programs
 - Buy American Act (BAA)
 - Buy America Act
 - Build America, Buy America (BABA)
 - Trade Agreement Act & Berry Amendment
- ❖ Definitions
- ❖ Federal Agency requirements
- ❖ Applying the requirements to State contracts
 - Contract Examples
 - Contract Compliance
 - State resource websites



❖ Buy American Act (BAA):

- Passed in 1933 & Signed by President Hoover
- Is a **domestic sourcing preference** statute that applies to federal government contracting when the government is purchasing goods. It mandates that products used in federal projects be sourced domestically to support American manufacturers and workers.
- This act ensures that federal spending contributes to the US economy by prioritizing the use of American-made products.
- Other pieces of legislation extend similar requirements to third party purchases that utilize federal funds, such as highway & transit programs

References: (1) https://en.wikipedia.org/wiki/Buy_American_Act
(2) <https://ijabuyersguide.com/buy-american-act-requirements/>

- ❖ The **Buy America Act** is a provision of the [Surface Transportation Assistance Act](#) of 1982, is [49 U.S.C.](#), § 5323 (j), and **applies only to mass-transit-related procurements valued over US\$100,000 and funded at least in part by federal grants.**
- ❖ This provision requires that federal tax dollars used to purchase steel, iron, and manufactured goods used in a transit project are produced domestically in the United States.
- ❖ Statutory References: 49 U.S.C. Section 5323(j) / FAST Section 3011
- ❖ Eligible Activities: Buy America applies to all federally funded purchases of steel, iron and manufactured goods, including rolling stock purchases and capital leases.

References: (1) https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Buy_America_Fact_Sheet.pdf

❖ Build America, Buy America Act of 2021 (BABA):

- Enacted as part of the [Infrastructure Investment and Jobs Act in 2021](#), **BABA** reinforces the principles of the BAA. IIJA is often called the Bipartisan Infrastructure Law (BIL), reflecting the broad government support for this funding.
- BABA requires that all iron, steel, **manufactured products**, and construction materials used in **federally funded infrastructure** projects be produced in the United States.



References: (1) <https://ijabuyersguide.com/buy-american-act-requirements/>

41 U.S.C. § 8302 American materials required for public use

(a) In General -

(1) **Allowable materials**

- Only unmanufactured articles, materials, and supplies that have been mined or produced in the United States, and
- **only manufactured articles, materials, and supplies that have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States,** shall be acquired for public use...

“Restricts the purchase of supplies, that are not domestic end products, for use within the United States, unless...”

References: (1) <https://uscode.house.gov/view.xhtml?path=/prelim@title41/subtitle4/chapter83&edition=prelim>

...unless the head of the department or independent establishment concerned determines their acquisition to be inconsistent with the public interest or their cost to be unreasonable or that the articles, materials, or supplies of the class or kind to be used, or the articles, materials, or supplies from which they are manufactured, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality...

A foreign or non-domestic end product may be purchased if the contracting officer determines that the price of the lowest domestic offer is unreasonable or if another exception applies. FAR 25.001(a)(1)

In other words: the BAA seemingly prohibits the acquisition of non-domestic products and constructions materials; however, in practice, this act serves as a **price preference** for domestic products.



- ❖ **End Product** means those articles, materials, and supplies to be acquired for public use.
- ❖ **Domestic End Products** are unmanufactured end product mined or produced in the United States OR an article, material and/or supply that pass the two-part test for manufactured products.
 - Two-part test:
 1. The article must be manufactured in the US **AND**
 2. Except for an end product that consists wholly or predominantly of iron or steel or a combination of both, **the cost of domestic components shall exceed 60 percent of the cost of all the components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029**
- ❖ **Component** means an article, material or supply incorporated directly in an end product.

- **Component Costs:**
 - Purchased by contractor; acquisition cost, transportation cost, and duty costs
 - Manufactured by contractor; costs associated with manufacturing process, including transportation costs plus allocable overhead costs, excluding profit. Does not include labor costs.
 - Does not include any costs associated with the manufacture of the end product.

- ❖ **Commercial off-the-Shelf (COTS) FAR Subpart 2.101**
 1. Means any item of supply (including construction material) that is
 - i. A commercial item (as defined in paragraph (1) of the definition of the definition of “commercial product” in this section);
 - ii. Sold in substantial quantities in the commercial marketplace; and
 - iii. Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form for in which it is sold in the commercial marketplace
- ❖ **COTS:**
 - ✓ are offered to the federal government, without modification, in the same form as the commercial marketplace
 - ✓ do not have to meet the cost of component requirement
 - ✓ Identify the country of origin in order to calculated component cost

❖ **Manufactured:**

No regulatory definition – developed by case law: Government Accountability Office (GAO), Boards of Contract Appeals, and Federal courts

- Completion of the article in the form required for use by the government
 - ✓ Created from component parts, materials, etc. OR
 - ✓ Retrofitted, adjusted, assembled or redesigned into the useable end product – made suitable for its intended use

❖ **County of Origin:**

According to Part 134.1 of the Customs Regulations, “Country of origin” means “the country of manufacture, production, or growth of any article of foreign origin entering the United States. <https://www.braumillerlaw.com/what-is-the-country-of-origin/>

❖ **Substantial Transformation:**

Means that the good underwent a fundamental change (normally as a result of processing or manufacturing in the country claiming origin) in form, appearance, nature, or character, which adds to its value an amount or percentage that is significant in comparison to the value which the good (or its components or materials) had when exported from the country in which it was first made or grown. Usually a new article of commerce—normally one with a different name—is found to result from any process that Customs decides has brought about a “substantial transformation” in the pre-existing components. <https://www.trade.gov/rules-origin-substantial-transformation>

- (2) Exceptions.—This section does not apply—
- (A) to articles, materials, or supplies for **use outside the United States**;
 - (B) if articles, materials, or supplies of the class or kind to be used, or the articles, materials, or supplies from which they are manufactured, **are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and are not of a satisfactory quality**; and
 - (C) to manufactured articles, materials, or supplies procured under any contract with an award value that is **not more than the micro-purchase threshold under section 1902 of this title**.

Micro-Purchase Thresholds

Supply: \$10,000

Construction: \$2,000 (Construction Wage Rate Requirements Statute – formerly Davis-Bacon Act)

Service: \$2,500 (Service Contract Labor Standards – formerly the Service Contract Act of 1965)

25.001 General.

- (a) [41 U.S.C. chapter 83](#), Buy American—
 - (1) **Restricts the purchase of supplies, that are not domestic end products**, for use within the United States. **A foreign end product may be purchased if the contracting officer determines that the price of the lowest domestic offer is unreasonable or if another exception applies (see [Subpart 25.1](#)); and**
 - (2) Requires, with some exceptions, the use of only domestic construction materials in contracts for construction in the United States (see [Subpart 25.2](#)).
- (b) **The restrictions in the Buy American statute are not applicable in acquisitions subject to certain trade agreements (see [Subpart 25.4](#)). In these acquisitions, end products and construction materials from certain countries receive nondiscriminatory treatment in evaluation with domestic offers.** Generally, the dollar value of the acquisition determines which of the trade agreements applies. Exceptions to the applicability of the trade agreements are described in [Subpart 25.4](#).

25.001 General.

(c) The test to determine the country of origin for an end product under the Buy American statute (see the various country “end product” definitions in [25.003](#)) is different from the test to determine the country of origin for an end product under the trade agreements, or the criteria for the representation on end products manufactured outside the United States (see [52.225-18](#)).

(1) The Buy American statute uses a two-part test to define a “domestic end product” or “domestic construction material” (manufactured in the United States and a domestic content test). The domestic content test has been waived for acquisition of commercially available off-the-shelf (COTS) items, except a product that consists wholly or predominantly of iron or steel or a combination of both (excluding COTS fasteners) (see [25.101\(a\)](#) and [25.201\(b\)](#)).

(2) Under the trade agreements, the test to determine country of origin is “substantial transformation” (*i.e.*, transforming an article into a new and different article of commerce, with a name, character, or use distinct from the original article).

(3) For the representation at [52.225-18](#), the only criterion is whether the place of manufacture of an end product is in the United States or outside the United States, without regard to the origin of the components.

FAR clauses

- ❖ FAR 52.225-1 (Buy American Act – Supplies)
- ❖ FAR 52.225-2 (Buy American Act – Certificate)
- ❖ FAR 52.225-9 (Buy American – Construction Materials)
- ❖ FAR 52.225-10 (Notice of Buy American Requirement – Construction Materials)

DFARS clauses

- ❖ DFARS 252.225-7000 (Buy American-Balance of Payments Program Certificate)
- ❖ DFARS 252.225-7001 (Buy American and Balance of Payments Program)

25.402 General

(a)(1) The Trade Agreements Act ([19 U.S.C. 2501](#), *et seq.*) provides the authority for the President to waive the Buy American statute and other discriminatory provisions for eligible products from countries that have signed an international trade agreement with the United States, or that meet certain other criteria, such as being a least developed country. The President has delegated this waiver authority to the U.S. Trade Representative. In acquisitions covered by the WTO GPA, Free Trade Agreements, or the Israeli Trade Act, the U.S. Trade Representative has waived the Buy American statute and other discriminatory provisions for eligible products. Offers of eligible products receive equal consideration with domestic offers.

(2) The contracting officer shall determine the origin of services by the country in which the firm providing the services is established. See [subpart 25.5](#) for evaluation procedures for supply contracts covered by trade agreements.

25.403 World Trade Organization Government Procurement Agreement and Free Trade Agreements.

(a) Eligible products from WTO GPA and FTA countries are entitled to the nondiscriminatory treatment specified in [25.402\(a\)\(1\)](#). The WTO GPA and FTAs specify procurement procedures designed to ensure fairness (see [25.408](#)).



State of Alaska Construction Contracts

How are the BAA & BABA
Programs applied

- ❖ Applicable for any projects that contain federal funds accepted by the State of Alaska
 - Includes funds from:
 - ✓ Department of Transportation – Federal Highway Administration (FHWA)
 - ✓ Department of Transportation – Federal Aviation Administration (FAA)
 - ✓ United States Environmental Protection Agency (EPA)
 - Depending on the funding source – there may be a variation in the Build America, Buy America (BABA) requirement. The agency cannot lessen the USC but they can increase (more stringent) the content or percentage requirement(s).



Federal Aviation
Administration



§313. Buy America (23 USC 313)

- (a) Notwithstanding any other provision of law, the Secretary of Transportation shall not obligate any funds authorized to be appropriated to carry out the Surface Transportation Assistance Act of 1982 (96 Stat. 2097) or this title and administered by the Department of Transportation, unless steel, iron, and manufactured products used in such project are produced in the United States.
- (b) The provisions of subsection (a) of this section shall not apply where the Secretary finds-
- (1) that their application would be inconsistent with the public interest;
 - (2) that such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
 - (3) that inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.



References: (1) <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title23-section313&num=0&edition=prelim>



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DOT Construction Program

§ 635.410 Buy America requirements. (23 CFR 635.410)

- (b) No Federal-aid highway construction project is to be authorized for advertisement or otherwise authorized to proceed **unless at least one of the following requirements is met:**
- (1) The project either:
 - (i) Includes no permanently incorporated steel or iron materials, or
 - (ii) if steel or iron materials are to be used, all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes which protect or enhance the value of the material to which the coating is applied.
 - (2) The **State has standard contract provisions that require the use of domestic materials and products, including steel and iron materials,** to the same or greater extent as the provisions set forth in this section.

References: (1) <https://www.ecfr.gov/current/title-23/chapter-I/subchapter-G/part-635/subpart-D/section-635.410>



Where Government Contracting Starts

DOT Construction Program

§ 635.410 Buy America requirements. (23 CFR 635.410)

- (3) The State elects to include alternate bid provisions for foreign and domestic steel and iron materials which comply with the following requirements. Any procedure for obtaining alternate bids based on furnishing foreign steel and iron materials which is acceptable to the Division Administrator may be used. The contract provisions must
- (i) **require all bidders to submit a bid based on furnishing domestic steel and iron materials,** and
 - (ii) **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 exceeds the lowest total bid based on furnishing foreign steel and iron materials by more than 25 percent.

References: (1) <https://www.ecfr.gov/current/title-23/chapter-I/subchapter-G/part-635/subpart-D/section-635.410>



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FAA Construction



Federal Aviation Administration

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Aircraft Air Traffic Airports Pilots & Airmen Data & Research Regulations Space Drones

Home / Airports / Airport Improvement Program (AIP) / Buy American Preference Requirements

Overview

2024 AIP Grants

AIP Glossary

AIP Grant / Apportionment Data

AIP Grant Histories >

AIP Grant Payments

Airports Capital Improvement Plan

AIP Program Guidance Letters (PGLs) >

AIP Supplemental Appropriation >

Benefit-Cost Analysis (BCA)

Buy American Preference Requirements

Economically Distressed Areas

Buy American Preference Requirements

The Buy American Preferences under 49 U.S.C. § 50101 require that all steel and manufactured goods used in Airport Improvement Program (AIP) funded projects be produced in the United States. In accepting AIP funding, grant recipients must certify that all steel or manufactured products used on any portion of the AIP-funded project are produced in the United States and are of 100 percent U.S. materials.


Under 49 U.S.C. § 50101(b), FAA has the authority to waive these Buy American Preferences if certain market or product conditions exist. These are:

1. Applying the Buy American Preferences would be inconsistent with the public interest;
2. The steel or goods produced in the U.S. are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality;
3. When the cost of components and subcomponents produced in the U.S. is more than 60 percent of the cost of all components of the facility or equipment procured and final assembly occurs in the United States; or
4. Including domestic material will increase the cost of the overall project by more than 25 percent.

Buy American Build American (BABA) Act Implementation

- [BABA Implementation Fact Sheet](#)
- [IIJA, BABA, and Executive Order 14005 Implementation Fact Sheet](#)

https://www.faa.gov/airports/aip/buy_american



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FAA Preference Requirements

- ❖ **Buy American Build American (BABA) Act Implementation**
 - [BABA Implementation Fact Sheet](#)
 - [IIJA, BABA, and Executive Order 14005 Implementation Fact Sheet](#)
- ❖ **Buy American Guidance**
 - [Buy American Guidance \(AIP Handbook, Change 1, Appendix X\)](#)
 - [Buy American Preferences \(49 U.S.C. § 50101\)](#)
- ❖ **Buy American Waivers**

To request a Buy American Waiver on a specific AIP-funded project, Airport sponsors should contact their appropriate [Regional Office or Airport District Office \(ADO\)](#). The following documents may be required when requesting a Buy American Waiver:

 - [Buy American Project/Product Content Percentage Calculation Worksheet \(Form 5100-136\)](#)
 - [Buy American Final Assembly Questionnaire \(Form 5100-137\)](#)

FAA Headquarters (APP-500) maintains a list of equipment that is frequently used on AIP-funded projects that has been issued a Nationwide Waiver. Sponsors do not need to request waivers for equipment on this Buy American Conformance List. Please use the Contact Us link below to find out how equipment is added to this list.

References: (1) https://www.faa.gov/airports/aip/buy_american

SEC. 70914. APPLICATION OF BUY AMERICA PREFERENCE. (Build America, Buy America)

- (a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the head of each Federal agency shall ensure that **none of the funds made available for a Federal financial assistance program for infrastructure, including each deficient program, may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.**
- (b) WAIVER.—The head of a Federal agency that applies a domestic content procurement preference under this section may waive the application of that preference in any case in which the head of the Federal agency finds that—
- (1) applying the domestic content procurement preference would be inconsistent with the public interest;
 - (2) types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
 - (3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

References: (1) <https://www.congress.gov/117/plaws/publ58/PLAW-117publ58.pdf>

Construction Materials Defined:

An article, material, or supply (other than an item of primarily iron or steel) that is or consists primarily of:

- Non-ferrous metals
- a manufactured product
- cement and cementitious materials
- aggregates such as stone, sand, or gravel
- aggregate binding agents or additives that are or consist primarily of:
 - non-ferrous metals;
 - plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables)
- glass (including optic glass)
- lumber
- drywall



Construction Materials are not:

- Steel/Iron (separate category)
- Manufactured Products (separate category)
- Materials exempted in BABA Section 70917 (c)
 - Cement & cementitious materials
 - Aggregates such as stone, sand, or gravel
 - Aggregate binding agents or additives



OMB M-22-11 also says to treat anything composed of two construction materials as a manufactured product.

OMB final guidance divides articles, materials, and supplies into four categories:

1. iron or steel products;
2. manufactured products;
3. construction materials; and
4. section 70917(c) materials, which include aggregate, its additives and binding agents, and cement and similar material.

An item can only fall into one of these categories (e.g., if an item is classified as an iron or steel product, a construction material, or a section 70917(c) material, then it is not a manufactured product). However, an item may also not fall within any of the categories, such as topsoil, which would not be an iron or steel product, manufactured product, or construction material. In addition, BABA requirements only apply to items that are "consumed in, incorporated into, or affixed to" an infrastructure project. They do not apply to tools, equipment, and supplies that are brought to a construction site and removed at or before the completion of the project (e.g., temporary scaffolding), and equipment or furnishings that are used at or within the finished project (e.g., chairs or computer equipment).


References: (1) [https://www.steptoelaw.com/en/news-publications/final-build-america-buy-america-guidance-published.html#:~:text=D.&text=In%20BABA%20section%2070917\(c,of%2070917\(c\)%20materials](https://www.steptoelaw.com/en/news-publications/final-build-america-buy-america-guidance-published.html#:~:text=D.&text=In%20BABA%20section%2070917(c,of%2070917(c)%20materials).

Final Build America, Buy America Guidance Published:


WHAT CONTRACTORS AND FINANCIAL ASSISTANCE RECIPIENTS NEED TO KNOW ABOUT COMPLIANCE WITH THE BUY AMERICA PREFERENCE

Authors


Paul R. Hurst, Amba M. Datta, Tyler Evans, Caitlin Conroy, Anna Menzel



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STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
CENTRAL REGION



BID FORM, CONTRACT, BOND, STANDARD MODIFICATIONS
AND SPECIAL PROVISIONS FOR:

State of Alaska Construction Contracts

Applying BABA requirements to Bid Documents



Where Government Contracting Starts

Looking at the Bid Documents

Not sure where to start – read the bid package!

6. **Buy America Provision.** Effective for Federal award obligations after October 23, 2023, meet the requirements at 2 CFR 184 for construction materials.

Iron products, steel products, and predominantly iron or steel manufactured products remain subject to the requirements of 23 CFR 635.410 and related FHWA Interpretations and waivers.

Manufactured products that are not predominantly iron or steel continue to be waived under FHWA's 1983 waiver of manufactured products.

On August 16, 2023, USDOT issued a waiver at 88 FR 55817 applicable to construction materials on FHWA funded projects.

HSP20-7A revises the specifications in 106-1.01 to incorporate these new requirements.

2 CFR 184:
<https://www.federalregister.gov/documents/2023/08/23/2023-17724/guidance-for-grants-and-agreements>

23 CFR 635.410:
<https://www.govinfo.gov/content/pkg/CFR-2022-title23-vol1/xml/CFR-2022-title23-vol1-sec635-410.xml>


USDOT waiver at 88 FR 55817:
<https://www.federalregister.gov/documents/2023/08/16/2023-17602/waiver-of-buy-america-requirements-for-de-minimis-costs-and-small-grants>

FHWA interpretations, waivers, regulations, policy and guidance on Buy America:
<https://www.fhwa.dot.gov/construction/cqit/buyam.cfm>

Do not make assumptions based on the last bid!

Language may change based on the funding source (FAA vs. FHWA)

Political environmental may have an impact on current laws implemented by previous administration





Where Government Contracting Starts

Looking at the Bid Documents

Not sure where to start – read the bid package!

SECTION 106 CONTROL OF MATERIALS

11/14/23 (HSP20-7A)

106-1.01 SOURCE OF SUPPLY AND QUALITY REQUIREMENTS. *Delete the fourth paragraph and substitute the following:* The Contractor shall submit a certificate of compliance according to Subsection 106-1.05 for each item listed on the Material Certification List. The Engineer may authorize the use of materials based on a certificate of compliance and Form 25D-62 Certificate of Buy America Act Compliance. Materials incorporated into the project on the basis of a certificate of compliance may be tested at any time, whether in place or not, and, if they do not conform to Contract specifications, they may be rejected and ordered removed under the Subsection 105-1.11.

Delete the BUY AMERICA PROVISION in its entirety and substitute the following:

BUY AMERICA PROVISION. On projects using federal funds the Contractor shall ensure all iron, steel, manufactured products, and construction materials incorporated into the project are produced in the United States as required by 2 CFR Part 184 Buy America Preferences for Infrastructure Projects and 23 CFR §635.410, Buy America requirements.

The Contractor shall submit a completed Non-Domestic Minimal Use & De Minimis Register, Form 25D-60, prior to award of the contract. When the Contractor becomes aware of a change from or error in a previously submitted Form 25D-60, the Contractor shall submit an updated Form 25D-60.

The Contractor shall submit a completed Certificate of Buy America Act Compliance Form 25D-62 for each product that is predominately steel or iron, or a combination of both, manufactured products, and construction materials incorporated into the project. The Department will not allow installation of, nor pay for, products that must comply with Buy America until the Contractor has submitted acceptable Forms 25D-60 and 25D-62.

Manufactured products that are not predominantly steel or iron, or a combination of both, or construction materials are not subject to Buy America provisions. Declare manufactured products on Form 25D-62 regardless of their exemption.

Non-domestic products in excess of the minimal use and/or the de minimis amounts shall be replaced at no expense to the State. Failure to comply may also subject the Contractor to default and debarment.

Certifying Construction Materials:

- Relies on certification like steel/iron
 - Supplier with sufficient control and knowledge of the manufacturing process
 - Original manufacturer, fabricator, vendor, contractor, or subcontractor
- FHWA, certify on form 25D-62 for each construction material
- FAA, certify on form 25D-154 for each construction material



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Looking at the Bid Documents

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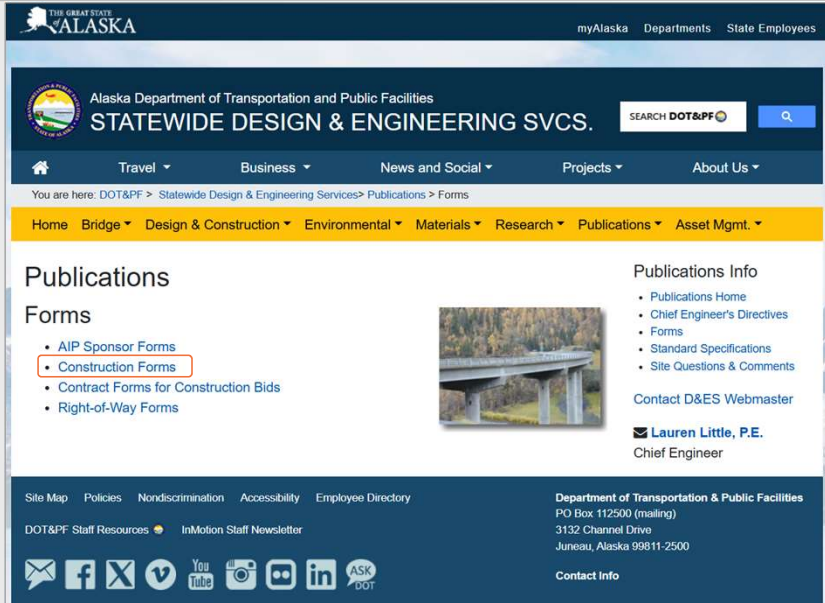
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ALASKA APEX ACCELERATOR
Where Government Contracting Starts

State of Alaska Websites



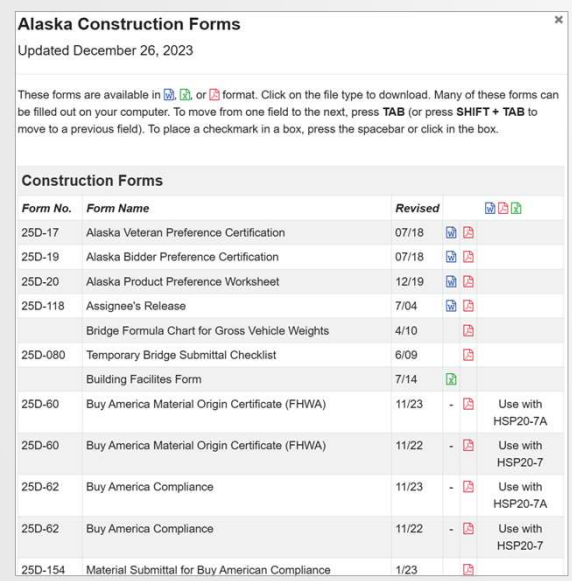
[Forms, Publications, Statewide Design & Engineering Services, Transportation & Public Facilities, State of Alaska](https://dot.alaska.gov/stwddes/dcspubs/forms.shtml)

<https://dot.alaska.gov/stwddes/dcspubs/forms.shtml>



ALASKA APEX ACCELERATOR
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Certification Forms



Form 25D-60

Non-Domestic Minimal Use & De Minimis Register
Federal-Aid Highway Contracts

Project Name and Number¹ _____

NON-DOMESTIC PRODUCTS AND CONSTRUCTION MATERIALS ²	COST AGAINST IRON & STEEL MINIMAL USE ³	COST AGAINST DE MINIMIS AMOUNT ⁴

Form 25D-62

Certificate of Buy America Act Compliance
Federal-Aid Highway Contracts


Project Name and Number¹ _____

Pay Item No. / Pay Item Description² _____ Does 25D-60 need to be updated?
 Yes No

PRODUCT OR CONSTRUCTION MATERIAL ³	QUANTITY ⁴	NON-DOMESTIC OR UNKNOWN ORIGIN ⁵	DOMESTIC ⁶	PREDOMINANTLY IRON OR STEEL OR BOTH ⁷	CONSTRUCTION MATERIAL ⁸	MANUFACTURED PRODUCT ⁹	PROJECT SPECIFIC INVENTORY ¹⁰	COST OF NON-DOMESTIC ORIGIN ¹¹
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

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ALASKA
DEPARTMENT OF TRANSPORTATION
AND
PUBLIC FACILITIES



**STANDARD
SPECIFICATIONS
FOR
HIGHWAY CONSTRUCTION
2020 Edition**

**SECTION 106
CONTROL OF MATERIAL**

106-1.01 SOURCE OF SUPPLY AND QUALITY REQUIREMENTS. The Contractor shall furnish all materials required to complete the work except those specified to be furnished by the Department. The Contractor shall supply materials that are new and that meet Contract requirements.

BUY AMERICA PROVISION. On projects using federal funds, the Contractor shall comply with the requirements of 23 CFR 635.410, Buy America requirements, and shall submit a completed Material Origin Certificate, Form 25D-60, prior to award of the contract. When the Contractor becomes aware of a change from or error in a previously submitted Material Origin Certificate (Form 25D-60), the Contractor shall submit an updated Material Origin Certificate (Form 25D-60). All steel and iron products which are incorporated into the work, shall be manufactured in the United States except that minor amounts of steel and iron products of foreign manufacture may be used, provided the aggregate cost of such does not exceed one tenth of one percent (0.001) of the total contract amount, or \$2,500, whichever is greater. For the purposes of this paragraph, the cost is the value of the products as they are delivered to the project including freight.


"Manufactured in the United States" means all manufacturing processes starting with the initial mixing and melting through the final shaping, welding, and coating processes must be undertaken in the United States. The definition of "manufacturing process" is smelting or any subsequent process that alters the material's physical form, shape or chemical composition. These processes include rolling, extruding, machining, bending, grinding, drilling, etc. The application of coatings, such as epoxy coating, galvanizing, painting or any other coating that protects or enhances the value of steel or iron materials shall also be considered a manufacturing process subject to the requirements of Section 106-1.01, Buy America Provision and of the Buy America Act.

Buy America does not apply to raw materials (iron ore), pig iron, and processed, pelletized and reduced iron ore. It also does not apply to temporary steel items (e.g., temporary sheet piling, temporary bridges, steel scaffolding, and falsework). Further, it does not apply to materials which remain in place at the Contractor's convenience (e.g., sheet piling, and forms).

The North American Free Trade Agreement (NAFTA) does not apply to the Buy America requirement. There is a specific exemption within NAFTA (article 1001) for grant programs such as the Federal-aid highway program.

References: (1) <https://dot.alaska.gov/stwddes/dcsspecs/assets/pdf/hwyspecs/sshc2020.pdf>

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FOR
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2020 Edition**

11/14/2023

SPECIAL PROVISION
HSP20-7A

**SECTION 106
CONTROL OF MATERIALS**

106-1.01 SOURCE OF SUPPLY AND QUALITY REQUIREMENTS. Replace the BUY AMERICA PROVISION with the following:
Buy America Provision. On projects using federal funds the Contractor shall ensure all iron, steel, manufactured products, and construction materials incorporated into the project are produced in the United States as required by 2 CFR Part 184 Buy America Preferences for Infrastructure Projects and 23 CFR §635.410, Buy America requirements.

The Contractor shall submit a completed Non-Domestic Minimal Use & De Minimis Register, Form 25D-60, prior to award of the contract. When the Contractor becomes aware of a change from or error in a previously submitted Form 25D-60, the Contractor shall submit an updated Form 25D-60.

The Contractor shall submit a completed Certificate of Buy America Act Compliance Form 25D-62 for each product that is predominately steel or iron, or a combination of both, manufactured products, and construction materials incorporated into the project. The Department will not allow installation of, nor pay

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Special Provisions to Standard Specifications
for Highway Construction 2020 Edition


for, products that must comply with Buy America until the Contractor has submitted acceptable Forms 25D-60 and 25D-62.

Manufactured products that are not predominantly steel or iron, or a combination of both, or construction materials are not subject to Buy America provisions. Declare manufactured products on Form 25D-62 regardless of their exemption.

Non-domestic products in excess of the minimal use and/or the de minimis amounts shall be replaced at no expense to the State. Failure to comply may also subject the Contractor to default and debarment.

The supplier certifying Form 25D-62 may be the manufacturer, fabricator, vendor, or supplier; provided they have sufficient control and knowledge of the manufacturing process to accept responsibility and certify full and complete conformance with 23 CFR §635.410 and 2 CFR Part 184. The Prime Contractor shall also certify Form 25D-62. Provide additional certifications and backup documentation to signed Form 25D-62 when required by the Engineer. False statements may result in criminal penalties prescribed under AS 36.30.687 and Title 18 US Code Section 1001 and 1020.

References: (1) <https://dot.alaska.gov/stwddes/dcsspecs/assets/pdf/hwyspecs/sshc2020.pdf>



Where Government Contracting Starts

State of Alaska Websites

Alaska Department of Transportation and Public Facilities

STATEWIDE DESIGN & ENGINEERING SVCS.

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You are here: DOT&PF > Statewide Design & Engineering Services > Design & Construction Standards > Standard Specifications

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Design & Construction Standards

Standard Specifications

We develop, publish, and manage standard construction contract specifications, standard modifications for highways and statewide special provisions for highways and airports, as well as coordinate with and advise others in development and use of specifications for buildings, marine highways, and harbors.



Design & Construction Standards

- D&C Standards Home
- Construction
- ePermits
- Preconstruction
- Right-of-Way
- Traffic & Safety
- Publications
- Site Questions & Comments


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Lauren Little, P.E.
Chief Engineer

[Standard Specifications, Design & Construction Standards, Statewide Design & Engineering Services, Transportation & Public Facilities, State of Alaska](#)

Resources


Airports



- Standard Specifications
- Special Provisions

- MSTF Table
- Contract Forms for Construction Bids

Highways




- Standard Specifications
- Standard Modifications and Special Provisions
- Contract Forms for Construction Bids

- MSTF Table
- Electronic Highway Specifications Memo 2015

Special Notices

- FHWA Davis-Bacon Rule Notice to Bidders (Effective October 23, 2023)
- FAA Davis-Bacon Rule Notice to Bidders (Effective October 22, 2023)
- Buy American Special Notice to Bidders (Effective July 12, 2023)


- Buy America Special Notice to Bidders (Effective January 12, 2016)
- Certified Payroll by AASHTOWare (Effective January 21, 2020)




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In Conclusion

- ❖ The Buy American Act requires Federal agencies to procure domestic materials and products.
- ❖ Two conditions must be present for the Buy American Act to apply: (1) the procurement must be intended for public use within the United States; and (2) the items to be procured or the materials from which they are manufactured must be present in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.
- ❖ Under BAA, non-domestic products can be offered if: not mined or made in sufficient volume/quantity, or the lowest domestic offer is unreasonable or if another exception applies
- ❖ Trade Agreements allow products/components from listed countries a waiver from the Buy American statute and other discriminatory provisions for eligible products
- ❖ Read your solicitation – look for Buy American or Build America, Buy America requirements. Ask for clarification (if needed) before the bid due dates!
- ❖ Know the country of origin for all components/materials priced in your proposal
- ❖ Ensure that all required Buy American Certificates have been completed and included where required.




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Where Government Contracting Starts

Program Introduction

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- Free assistance with all aspects of government contracting, from cradle to grave (start to finish) for federal, state and local purchasing activity
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The Alaska APEX is a program of the UAA Business Enterprise Institute and is funded in part through a cooperative agreement with the Department of Defense Office of Small Business Programs



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Questions?

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To request assistance, sign up here: <https://akapex.ecenterdirect.com/signup?reset=1>

How can the Alaska APEX help you?