

Buy America Preference

Ref: Office Bulletin #22-07 - Modified Buy America Requirements

(Bidder Inquiry Aid)

Frequently Asked Questions

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.

Questions regarding this Division of Local Assistance document, please contact:
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