



U.S. Department  
of Transportation

**Federal Highway  
Administration**

**Texas Division Office**

October 3, 2019

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In Reply Refer To:  
HAD-TX

Mr. Kyle Madsen  
Director, TxDOT Right of Way Division  
Texas Department of Transportation  
125 East 11<sup>th</sup> Street  
Austin, Texas 78701-2483

Subject: TxDOT Implementation of Buy America Laws for Utility Accommodations

Dear Mr. Madsen,

The Federal Highway Administration received your letter, dated October 3, 2019, transmitting TxDOT's Buy America Guidelines for Utility Accommodations. We have reviewed the proposed guidelines and found them to be acceptable for use on Federal-aid Projects.

Thank you for your cooperation in this important matter. If you should have any questions, please contact me at (512) 536-5957.

Sincerely,

Lisell Guerra  
Area Engineer/ Utility Program Liaison

cc: Ms. Anna, Pulido, P.E., Utility Portfolio Section Director



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October 3, 2019

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Austin, TX 78701

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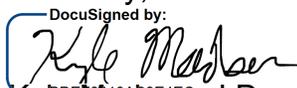
The Texas Department of Transportation (TxDOT) is pleased to offer our proposed Buy America guidelines (attached) to the Federal Highway Administration (FHWA) Texas Division. TxDOT will use these guidelines to clarify and implement Buy America requirements for utility relocations within the state of Texas.

These guidelines are relevant for all federally eligible transportation projects where FHWA is determined to be the lead federal agency; however, they do not take precedence over projects where the Federal Transit Administration (FTA) or the Federal Railroad Administration (FRA) is determined to be the lead federal agency. These procedures are intended to document the cooperative effort of the FHWA Texas Division and TxDOT.

I am hopeful that you will find the attached document satisfactory and acceptable for use on federal-aid projects.

Should you have questions or require additional information, please contact Anna Pulido, P, E., Utility Portfolio Section Director, at 512-416-2852.

Sincerely,

DocuSigned by:  
  
KYLE MADSEN, J.D.

Director, TxDOT Right of Way Division

## Buy America: Utility Accommodations

### Definitions:

TxDOT intends to use the following definitions to provide clarity and to assist utility-service providers as they develop internal processes to ensure compliance with Buy America.

TxDOT and the utility will identify the proposed utility structures and their components that will be monitored in the Utility Agreement Estimate.

**Anchor & High-Strength Bolts** – Anchor & high-strength bolts will be identified and consistently applied. The utility owner and TxDOT will identify anchor & high-strength bolts in the estimate, specifications or plans in the Utility Agreement as necessary for the safe and functional design of the utility relocation. If a bolt is not called out as an anchor or high strength bolt the supplied bolt is not subject to Buy America.

**Assembly Materials (miscellaneous steel)** – The collection of miscellaneous materials used to fasten, hold, attach, secure and/or assemble materials including but not limited to nuts, bolts, U-bolts, screws, washers, clips, fittings, sleeves, lifting hooks, mounting brackets, pole steps, clamps, brackets, mountings, straps, fasteners, hooks, pins, braces, disks, clevises, couplers, swivels, snaps, crimps, trunnions, dead-ends, compression swages, and other miscellaneous materials used to assemble.

**Attachment Materials** – Items or material that is not an integral part or permanently attached to a pole, pipe, or valve. Attachment materials include but, are not limited to cross arm bracing, insulators, avian equipment, miscellaneous hardware (as defined below), fittings, racks, ladders, encasements, guy wire, strand, conductors, and tubing 0.75-inch or less in diameter.

**Betterments** – Any upgrading of the facility being relocated that is not attributable to the highway construction and is made solely for the benefit of and at the election of the utility (23 CFR 645.105). Betterments as part of a reimbursable Utility Agreement must be Buy America compliant.

**Conductor** – A material (specifically wires and cables) that allows the flow of energy including electricity, heat, data, audio/video transmission, etc.

**Conductor Support Cables** – Iron or steel cables that support conductor lines between towers or poles.

**Fittings** – Individual parts used to join, adjust or adapt a system of pipes including but not limited to elbows, tees, wyes, crosses, nipples, reducers,

end caps, couplers, o-lets, transitions, connectors (steady state, seismic and flexible), unions, mechanical flanges (not permanently affixed to the pipe), bushings, ferrules, gaskets, O-rings, plugs or taps.

**Girders** – A load bearing beam or strut commonly taking the cross-sectional shape of a circle, square, rectangle, or an I, C, L, or Z, and assembled for the purpose of creating lattice towers, stand-alone platforms or transmission towers.

**Housing Encasements** – Include cabinets, housings, boxes, vaults, covers, shelves, and other items use to protect or house equipment or miscellaneous electronics.

**Lattice Towers** – A structure that is compiled of girders and is typically used in series to support conductor cables.

**Maintenance** – An action or application of materials necessary to keep a system functioning safely and at optimal capacity; general up-keep.

**Miscellaneous Electronics** – Manufactured products or assemblies consisting of many components such as electronic equipment, routers, switches, radios, processors, power supplies, batteries, antennas, splice cases, pre-connected hubs and terminals, and cross-boxes.

**Miscellaneous Hardware** – An assembly of small parts that are compiled to form a finished product that is often used independently or as an attachment material, including but not limited to, locks, switches, cutouts, regulators, gauges, meters, barometers, strainers, filters, pilots, arrestors, insulators, ball bearings, dampeners, needle valves, braces, pipe supports, actuators, motors and pumps.

**Permanent Installation** – Is the final location and final installation of the materials as defined on the plans or in the specifications. No further adjustments or relocations are necessary to accommodate the final transportation project improvements.

**Stand-alone Platforms** – A structure that is compiled of girders and is used to permanently hold or support large equipment.

**Temporary Utility Relocation** – A temporary utility relocation is generally subject to the schedule necessary to accomplish the scope of the project as defined by the NEPA document. A temporary utility relocation is one that is needed to allow the project to proceed, but is not required to remain in its relocation upon completion of the project. For example, if the scope of the project requires the sequential completion of six separate construction contracts, theoretically a temporary utility relocation could remain in place

prior to commencement of the first construction contract and extend beyond completion of the sixth construction contract prior to its final placement. A temporary utility relocation can also be established if the contract specification or plans require that the steel or iron material used on the project either must be removed at the end of the project or may be removed at the contractor's convenience.

OUR VALUES: *People • Accountability • Trust • Honesty*

OUR MISSION: *Through collaboration and leadership, we deliver a safe, reliable, and integrated transportation system that enables the movement of people and goods.*

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## Guidelines

On federal-aid projects, utility facility owners will use domestically manufactured products that are composed predominately of steel and/or iron to incorporate into the permanent installation of the utility facility – in compliance with the Buy America provisions of 23 CFR 635.410 as amended. Examples of such products may include poles, cross arms, and structural support members; towers and girders used to comprise transmission towers and stand-alone structures; conductor support cables; high-strength bolts used as anchor bolts and anchor rods; iron or steel baseplates; encasement pipes, pipes and valves; rebar and other reinforcing iron/steel for all cast-in-place and precast installations; conduit and ducting; fire hydrants; manhole covers, rims, and drop-inlet grates.

Prior to the installation of products subject to Buy America compliance, the utility facility owner will submit an executed TxDOT Form 1818 with attached Mill Test Reports, issued and signed by the initial fabricator, supplier of materials, or utility owner. Mill Test Reports should state that the materials were manufactured domestically. In certain instances, the utility facility owner may demonstrate Buy America compliance by providing a written certification signed by the vendor or manufacturer on company letterhead or other acceptable documentation signed by an authorized representative declaring that all supplied materials subject to the Buy America provisions are fully compliant. The written certification will include the specific project information pertaining to the Standard Utility Agreement and state that all products that are composed predominately of steel and/or iron were manufactured domestically and in compliance with the Buy America provisions of 23 CFR 635.410 as amended.

Certain utility agreements, executed before Dec. 31, 2013, that do not have federal funding for utility materials or relocation are not subject to Buy America (even if other contracts associated with the project were reimbursed with federal funds). The date of the original utility agreement will be used as the date to determine Buy America compliance if the utility agreement is amended after December 31, 2013 unless the amendment includes major changes in the scope of work.

Betterments as part of a reimbursable Utility Agreement must be Buy America compliant.

Buy America does not apply to assembly materials, attachment materials, housing encasements, or miscellaneous electronics, as defined below.

Buy America does not apply to any associated materials (including spare materials) required for maintenance.

Buy America does not apply to existing utility materials that are relocated from one location to another within the project limits.

Buy America does not apply to any materials necessary to repair equipment that was discovered or damaged during construction **and** requires immediate action to restore to safe conditions or to minimize adverse public impact. However, these materials shall be considered temporary and must be replaced with Buy America compliant material prior to completion of the project.

Buy America does not apply to associated materials necessary for a temporary utility relocation.

Non-domestic iron and steel materials may be used provided the cost of such materials does not exceed one-tenth of one percent (0.1 %) of the individual utility agreement amount or \$2,500.00, whichever is greater, per 23 CFR 635.410 (b)(4). The De Minimus equation is calculated by the following formula: Combined Cost of Only those Materials that are subject to Buy America and are Non-Compliant (limited to the individual utility agreement) divided by the Total Utility Relocation Cost (cited in the individual utility agreement).

Buy America does not apply if the utility relocation effort is not eligible for federal reimbursement when State law prohibits TxDOT from reimbursing utilities. For example, if the utility owner is required to pay for 100% of the entire relocation effort, then the materials associated with that relocation are not subject to Buy America. However, all such work must remain separate from and cannot be accomplished under a utility agreement or contract that includes work eligible for Federal-aid.

Per 23 CFR 635.410, the work to be performed under the utility agreement may include foreign iron and steel products if the cost of Buy America compliant materials will cause the cost of the work to increase by at least 25%. To determine applicability of this provision, one of the following two procedures shall be used, per Texas Department of Transportation policy:

- 1) If the utility company will use a contractor or developer or concessioner to perform the work included in the utility agreement, the following procedures apply: Demonstration of meeting the 25% excess cost requirement must be accomplished by receiving two separate bids each from at least two qualified contractors for the work. Requests for bids from the qualified contractors must conform to 23 CFR 635.410 (b)(3). One bid from each contractor will include a cost of performing the work described in the utility agreement using Buy America compliant material and the other bid will include a cost for the same work assuming foreign materials. If the bid with the Buy America compliant materials is at least 25% greater than

the bid that includes foreign material, then the contract can be awarded to the lowest bid based on materials that are not compliant with Buy America.

2) If the utility company will perform work in the utility agreement with its own forces, the following procedures apply: Demonstration of meeting the 25% excess cost requirement must be accomplished by receiving two separate bids from vendors or manufacturers listing the cost of Buy America compliant materials on one bid document and listing the cost of non-compliant materials on a separate bid document. The utility company will take the cost of the Buy America compliant materials and use it to create the total estimated cost of the work included in the utility agreement. The utility company will do the same with the cost of the noncompliant materials. If the cost of the work included in the utility agreement with Buy America compliant materials is at least 25% greater than the cost using the materials that are not compliant with Buy America, then the non-compliant materials may be used.

TxDOT will periodically review, or audit, the Form 1818 and Bills of Materials (BOMs) for utility projects and determine if the above categories are adequately documented resulting in certification of compliance with Buy America as intended by federal law.

These periodic reviews may result in the addition of categories that are not currently listed above.