



U.S. Department
of Transportation

**Federal Highway
Administration**

Texas Division Office

May 31, 2018

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In Reply Refer To:
HAD-TX

Mr. Gus Cannon
Director, TxDOT Right of Way Division
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

Subject: TxDOT Implementation of Buy America Laws for Utility Accommodations

Dear Mr. Cannon,

The Federal Highway Administration received your May 30, 2018 letter addressed to Mr. Alonzi, transmitting *TxDOT's Buy America Guidelines-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 Lisell Guerra at (512) 536-5957.

Sincerely,

Carl M. Highsmith
District Engineer

cc: Ms. Charon Williams, Director Utility Portfolio



May 30, 2018

Al Alonzi
Division Administrator
Federal Highway Administration
J.J. Pickle Federal Building
300 E. 8th Street, Room 826
Austin, TX 78701

**Subject: TxDOT Implementation of Buy America Laws
for Utility Accommodations**


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 Charon Williams, Utility Portfolio Section Director, at 512-416-2135.

Sincerely,

DocuSigned by:

Gus Cannon

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.

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).

Domestically Manufactured – Products manufactured in the United States and that have not undergone any manufacturing process outside of the United States that modified the chemical content, physical shape or size, or final finish of a product, beginning with the initial melting and continuing through final shaping and coating.

Permanent Installation – 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.

Temporary Utility Relocation – A relocation that is needed to allow the project to proceed, but is not required to remain in its relocated area 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. This type of 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.

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, stating 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 an authorized representative, stating that all products that are composed predominately of steel and/or iron were manufactured domestically, 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 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

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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 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.