

Special Provision to Item 6

Control of Materials



Item 6, "Control of Materials" of the Standard Specifications is amended with respect to the clauses cited below. No other clauses or requirements of this Item are waived or changed.

Section 1.1. "Buy America," and Section 1.2., "Buy America Exceptions," are voided and replaced by the following.

- 1.1. **Buy America.** Comply with the latest provisions of Build America, Buy America Act (BABA Act) and applicable CFR, which restrict funds being made available from Federal financial assistance programs unless all the iron products, steel products, manufactured products, and construction materials used in the project are manufactured in the United States. Use iron or steel products, manufactured products, or construction materials manufactured in the United States for all permanently installed materials and products except when defined in Section 1.1.5., "Buy America Exceptions."

A material is solely classified based on its status at the time it is brought to the work site as either an iron or steel product, construction material, manufactured product, or excluded material. Refer to the Buy America Material Classification Sheet found on txdot.gov for additional clarification on material classification.

- 1.1.1. **Materials Excluded from Buy America.** Excluded Materials mean cement and cementitious material; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives. Excluded Materials do not require domestic sourcing or Buy America certification. In addition, mixtures of concrete or asphalt delivered to a job site without final form for incorporation into a project are not a manufactured product and are considered excluded.

- 1.1.2. **Iron or Steel Product.** Iron or steel products means articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both. For iron or steel products that are wholly or predominantly iron or steel, all manufacturing of the iron or steel must occur in the United States.

Predominantly of iron or steel or a combination of both means the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components.

For iron or steel products, manufacturing includes any process that modifies the chemical content, physical shape or size, or final finish of a product. The manufacturing process begins with initial melting and mixing and continues through fabrication (e.g., cutting, drilling, welding, bending.) and coating (e.g., paint, galvanizing, epoxy).

For iron or steel products, submit a notarized original FORM D-9-USA-1 (Department Form 1818) with the proper attachments for verification of compliance.

- 1.1.3. **Construction Materials.** Construction materials are classified as articles, materials, or supplies that consist of only one of the items listed in bullets below. Minor additions of articles, materials, supplies, or binding agents (as determined by the plans or the Engineer) to any of the items listed does not change the classification of a construction material.

- non-ferrous metals,
- plastic and polymer-based products (including polyvinyl chloride, composite building materials, and polymers used in fiber optic cables),
- glass (including optic glass),

- fiber optic cable (including drop cable),
- optical fiber,
- lumber,
- engineered wood, or
- drywall.

For construction materials, submit a Construction Material Buy America Certification Form (Department Form 2806) for verification of compliance that all manufacturing processes, as required, occurred in the United States. Each construction material has specific certification requirements stated below. Provide additional documentation as requested.

For non-ferrous metals, verification of compliance requires all manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.

For plastic and polymer-based products (including polyvinyl chloride, composite building materials, and polymers used in fiber optic cables), verification of compliance requires all manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.

For glass (including optic glass), verification of compliance requires all manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.

For fiber optic cable (including drop cable), verification of compliance requires all manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others.

For optical fiber, verification of compliance requires all manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.

For lumber, verification of compliance requires all manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.

For engineered wood, verification of compliance requires all manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

For drywall, verification of compliance requires all manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.

- 1.1.4. **Manufactured Products** means articles, materials, or supplies that have been processed into a specific form and shape, or combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies. Manufactured products may include components that are iron or steel products, excluded materials, or construction materials. Any product classified as an iron or steel product, excluded material, or construction material is not a manufactured product. Mixtures of excluded materials delivered to a work site without final form for incorporation into a project are not a manufactured product.

Manufactured products do not require Buy America certification except for categories described below.

- 1.1.4.1. **Precast Concrete products** classified as a manufactured product (not predominantly of iron and steel) require iron or steel components to comply with Buy America requirements as stated in Section 6.1.1.2 Iron or Steel Product.

- 1.1.4.2. **Intelligent Transportation Systems and other electronic hardware systems** classified as a manufactured product require iron or steel cabinets or other enclosures of such systems to comply with Buy America requirements as stated in Section 6.1.1.2 Iron or Steel Products.
- 1.1.4.3. **Component** means an article, material, or supply, whether manufactured or unmanufactured, incorporated directly into a manufactured product or where applicable, an iron or steel product.
- 1.1.5. **Buy America Exceptions.** Use of iron or steel products, construction materials, and manufactured products manufactured in the United States is required unless the material meets an exception below.
- A waiver exists exempting the material from Buy America compliance.
 - The total value of the non-compliant products (other than iron or steel products) is no more than the lesser of \$1,000,000 or 5% of Total Applicable Costs for the project. Total Applicable Cost means the actual cost of all materials requiring Buy America compliance including iron, steel, or other materials that are within the scope of existing waivers. Contractor must provide documentation showing under threshold in advance for Engineer's consideration.
 - The total value of foreign iron or steel products, including delivery, does not exceed 0.1% of the total Contract cost or \$2,500, whichever is greater. The Contractor must provide documentation showing under threshold in advance for the Engineer's consideration.
 - Foreign iron or steel products may be allowed when the Contract contains an alternate item for a foreign source iron or steel product and the Contract is awarded based on the alternate item.
 - The materials are temporarily installed or are supplies, tools, and equipment not incorporated into the project. Temporarily installed means the materials and products must be removed at the end of the project or may be removed at the Contractor's convenience with the Engineer's approval.