



Utility Portfolio Section

Buy America Guide

Utility Portfolio Section, Right of Way Division

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1. Purpose

The purpose of this document is to provide guidance regarding the Buy America program requirements on utility accommodations that are eligible for reimbursement.

2. Overview

The Federal Highway Administration (FHWA) reviewed Texas Department of Transportation (TxDOT) *Buy America Guidelines for Utility Accommodations* and found them to be acceptable for use on Federal-aid Projects. The guidelines are relevant for all federally eligible transportation projects where FHWA is determined to be the lead federal agency. These procedures are intended to document the cooperative effort of the FHWA Texas Division and TxDOT.

The 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 and Transportation Code, Section 223.045.

As mentioned in section 3.2 below, these same requirements are also applicable to state funded projects.

This document is to be used as a guide to the Buy America process and how to review the required documentation.

3. Codes and Regulations

3.1. Federal Codes and Regulations

TxDOT Buy America Guidelines are relevant for all federally eligible transportation projects where FHWA is determined to be the lead federal agency.

- 23 USC § 313: Buy America
- 23 CFR 635.410: Buy America Requirements

3.2. State Codes and Regulations

- Texas Transportation Code Title 6, Subtitle B, Chapter 223, Subchapter A, Section 223.045 – Iron and Steel Preference Provisions in Improved Contracts: Iron and Steel Preference Provisions in Improvement Contracts requires the use of domestic iron and steel on contracts awarded by TxDOT for the improvement of the state highway system without federal aid. These contracts must contain the same preference provisions for iron and steel products that are required under federal law for an improvement made with federal aid.

3.3. Codes and Regulations Not Applicable to TxDOT Buy America Guidelines

The following codes and regulations are *not* applicable to FHWA Buy America requirements on utility relocation projects as per the latest TxDOT Buy America Guidelines:

- a) American Recovery and Reinvestment Act (ARRA) of 2009, Section 1605 – Buy American
- b) Federal Aviation Administration (FAA) 49 U.S.C. § 50101 – Buy American
- c) Federal Railroad Administration (FRA) High Speed Rail Program 49 U.S.C. Chapters 244, 246; § 24405 – Buy America
- d) National Railroad Passenger Corporation (AMTRAK) 49 U.S.C. § 24305
- e) Federal Transit Administration (FTA) 49 U.S.C. § 5323(j); 49 C.F.R. Part 661

Note: These laws are similar to Buy America, but related to industries *other than* highway construction.

4. Initial Coordination Phase - Roles and Responsibilities

4.1. Utility Owner

- The Utility owner will contact the manufacturer(s) regarding the availability of compliant material products. If Buy America compliance will require longer time to obtain any items (long lead times), the utility owner must notify TxDOT so the delay can be accounted for in the schedule.

4.2. TxDOT District

- The TxDOT District will provide the latest Buy America Guidelines and forms to the utility owner, and will communicate early and often regarding Buy America compliance.

4.3. TxDOT Right of Way Division

- Provide guidance, assistance, and training to the District, as requested.

5. Standard Utility Agreement Phase - Roles and Responsibilities

5.1. Utility Owner

- The Utility Owner will identify domestically manufactured products that are composed of predominantly steel and/or iron within the cost estimate. By doing this and upon execution of the Standard Utility Agreement, the utility owner is acknowledging that they will meet the Buy America requirements for the products identified and will monitor for compliance.
- **Note:** Buy America items will be identified with an asterisk (*) on the cost estimate with a note indicating what the asterisk (*) is for. If additional Buy America items are added after the execution of the Standard Utility Agreement, a supplemental agreement may be required. If a supplemental agreement is required, the additional items must be included in the supplemental. The cost estimate with compliant materials will be identified, documented, and monitored through the project's duration.

5.2. TxDOT District

- Upon receipt of the Standard Utility Agreement and supporting documentation from the utility owner, the District Utility Office will:
 - a) Perform a detailed review to ensure items composed of predominately steel and/or iron are identified on the cost estimate as required within the standard utility agreement.
 - b) Execute the Standard Utility Agreement on behalf of TxDOT, if found satisfactory according to applicable laws and regulations.
 - c) Forward an electronic copy of the executed Standard Utility Agreement assembly to ROW Division (ROW_UTILITYREQUESTS@TXDOT.GOV) for administrative review.

5.3. TxDOT Right of Way Division

- The Utility Portfolio Section (UPS) serves as the Program Oversight to Buy America compliance. UPS reviews agreements to verify that materials subject to Buy America provisions meet compliance.
- Upon receipt of an electronic copy of the executed Standard Utility Agreement assembly:
 - a) Utility Specialists may provide courtesy reviews of documentation prior to the Standard Utility Agreement being executed, at the request of the district.
 - b) ROW Division will perform an administrative review of the agreement
 - c) ROW Division will issue a review memo to the District with outlined conditions, general notes and/or deficiencies:
 - i. All conditions and/or deficiencies must be addressed before any payment can be processed.

6. Construction (Prior to Installation) Phase - Roles and Responsibilities

Please refer to section 8, “Required Documentation” below for more information regarding documentation required for compliance.

6.1. Utility Owner

- Prior to the installation of products subject to Buy America compliance, the Utility Owner will verify the domestic manufacture of all permanently installed materials that are composed predominately of steel and/or iron .
- Prior to the installation of products subject to Buy America compliance, the utility facility owner will submit a fully completed and executed TxDOT Form 1818 signed by the initial fabricator, supplier of materials, or utility owner and one of the following (or a combination of):
 - a) Mill Test Report
 - b) Certification signed by the vendor or manufacturer on company letterhead.

6.2. TxDOT District

- Prior to installation of products subject to Buy America compliance, the District will verify that the Utility Owner has submitted proper documentation.
- Review applicable documentation supplied by the Utility and verify that it is complete and sufficient.
- Field Verification prior to installation has been verified and documented. It is recommended to use the ROW-U-BAV verification form for inspection of materials found in e-forms. Please refer to section 9, “Field Verification Form (Recommended)”, for additional information on the form.
- Courtesy reviews can be submitted to ROW_UTILITYREQUESTS@TXDOT.GOV .
 - **Note:** Prior to submitting the courtesy review, the utility coordinator will submit the original documents and a copy of the documentation with mark ups showing their findings.

6.3. TxDOT Right of Way Division

- Performs courtesy reviews.
- Provides guidance and recommendations on documentation submitted from the District.
- Provides guidance on potential non-compliance issues.

7. Billing/Invoicing - Roles and Responsibilities

7.1. Utility Company

- Supply documentation from vendors/manufacturers to District Office.
- Verify information matches invoice (or certified ledger).
- Complete form 1818.

7.2. TxDOT District

- Reviews all documentation, and ensures that it is complete and ready to process.

7.3. TxDOT Right of Way Division

- Partial or final payments will not be made until all items on the cost estimate related to Buy America requirements have been submitted and verified for compliance.

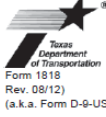
8. Required Documentation

Prior to the installation of materials and 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 as a substitute to Mill Test Reports. The certification must be signed by the vendor or manufacturer on a company letterhead signed by an authorized representative declaring that all supplied materials subject to the Buy America provisions are fully compliant. The certification will include the specific project information pertaining to the Standard Utility Agreement, it should state that predominately steel and/or iron materials and products were manufactured domestically and in compliance with the Buy America provisions of 23 CFR 635.410.

The utility must furnish the following for verifying compliance with Buy America requirements (domestic origin) of steel and iron materials:

8.1. Form 1818 Material Statement

This form is to be completed, furnished and signed by the supplier of materials, initial fabricator (manufacturer), or utility owner. Form 1818 will not be acceptable if it is incomplete and not notarized. Verify form 1818 was filled out completely and correctly as indicated below.

 Material Statement								
							1. Sheet ____ of ____	
2. Supplier:	_____		5. County:	_____				
3. Address:	_____		6. Project:	_____				
	_____		7. Control:	_____				
4. Contract No.:	_____		8. Contractor:	_____				
Purchase Order No.	Quantity (Amt./Units)	Material Description	Mill Name	Heat No.	Material Use	Required Spec.	Documentation MTR	Cert.
9.	10.	11.	12.	13.	14.	15.	16.a	16.b

This is to certify that the materials listed above and on the attached supplement (if attached) are in conformance with the governing specification(s). This is to also certify that all manufacturing processes for steel and iron materials or for the application of coatings (epoxy, galvanizing, painting or any other coating that protects or enhances the value of the steel or iron metal) to these materials occurred in the United States of America. Manufacturing processes are defined as all processes required to change the raw ore or scrap metal into the finished in-place steel or iron product. **The attached mill test reports (MTRs) and Certifications (Cert) are offered as proof of Domestic Origin.**

<p>Subscribed and sworn to before me this ____ day of</p> <p><u>17</u></p> <p>_____, _____</p> <p>Notary Public _____</p> <p>My Commission expires: _____, _____</p>	<p>I declare under penalty of perjury under the laws of the United States of America and the State of Texas that the foregoing is true and correct and that I am authorized to sign for the Firm listed below.</p> <p><u>18</u></p> <p>_____ (Authorized Corporate Official Signature) Date</p> <p>_____ (Type Name and Title)</p> <p>_____ (Firm Name)</p>
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Figure 1 - Form 1818 Material Statement.

All fields must be filled out completely to be an acceptable Form 1818 as seen in *Figure 1* above.

1. **Sheet ____ of ____** : Identify the number of sheets if there are multiple forms required
2. **Supplier:** Supplier, Vendor, or Distributor's Name
3. **Address:** Supplier, Vendor, or Distributor's Address
4. **Contract No (Optional):** Contract Number between supplier and manufacturer or utility owner
5. **County:** County name of proposed project location according to the Standard Utility Agreement
6. **Project:** TxDOT Project name or highway name with project limits
7. **Control:** ROW Control Section Job (CSJ), Construction CSJ, U#, and/or Utility ID#

- 8. Contractor:** Contractor name performing the adjustment and identified as the selected awarded contractor in the bid tabs or fee schedule (required at the time of billing)
- 9. Purchase Order No.:** Purchase order number from invoice that will be submitted for billing or from the Mill Test Report (MTR)
- 10. Quantity (Amt./Units):** Actual quantity installed with appropriate unit obtained from the cost estimate.
- 11. Material Description:** Material description should match what was identified on the cost estimate and on the MTR or Certification.
- 12. Mill Name:** Mill name from the MTR or manufacturer
- 13. Heat No.:** Heat number should match the heat number found on the attached MTR's. "See attached" is not an acceptable form to document. Verify that there is not a duplicate heat number on this column.
Note: If a Certification is submitted instead of a MTR, this box will be N/A.
- 14. Material Use:** What are the materials used for? Examples of acceptable items are: Casing, Valve, Rebar, etc.
- 15. Required Spec.:** Industry specifications used by the utility.
- 16. Documentation:** MTR or Cert. should be selected, per the documentation being submitted. The attached MTRs and Certifications (Cert.) are offered as proof of Domestic Origin.
 - 16.a MTR:** The Mill Test Report (MTR, also referred to as Material Test Report) issued and signed by the initial fabricator stating that the materials subject to Buy America were melted and manufactured in the United States.
 - 16.b Cert.:** Certification should state 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. Certification should include project information pertaining to the Standard Utility Agreement.
Note: Specifications, shop drawings, catalog pages, and emails are not acceptable documentation for compliance.
- 17. Notarized:** Subscribed and sworn by a public notary with seal and expiration stamp.
- 18. Signature:** Typed Name, Title, Firm Name, and signed by an authorized representative. The Vendor, Manufacturer, or Utility Owner may sign Form 1818.
Note: Date from the Notary should be the same date as the representative that is declaring that the information is true and correct.

8.2. Mill Testing Report (MTR)

What is the Mill Test Report (MTR)?

The Mill Test Report is also referred to as the Material Test Report. The MTR certifies: chemical analysis, mechanical properties, conformance to specification (ASME, ASTM, etc.). The MTR is supplied by the material, casting, or forging manufacturer. The MTR documents the country of origin of the material.

Heat Number

The MTR document contains the heat number which is also known as “melt number” and is similar to a lot or batch number. The heat number provides a way to trace back the steel or iron product to its production units and process conditions. During the inspection of the material, the heat number mentioned on the MTR must match with the one engraved/printed on the material or product.

Several plates might have identical heat number, and this is common since it indicates both plates were created from the same batch of melted material.


Contents of MTR

The MTR contains the following information in general.

- Basic information such as the name of the material manufacturer, material size, weight, material identification and grade (i.e. SA 516 Gr. 70, ASTM A106 Gr 60)
- Manufacture Location
- Material Heat Number
- Chemical composition analysis test result

Detailed information required on a MTR for compliance

Seq 5



1

2 MATERIAL TEST REPORT
FFI-QACON-F0003
Revision: 08, 05/02/2017

Mill Test Report			
Dodson Global		Purchase Order: 3	195426-00
PO BOX 330759		Sales Order:	0025347
Houston, Tx 77233		Line Item:	021 Qty: 258

Item Code:	4 FFI-FGRFW-00600	Material:	ASTM G94 F52	6
Description:	FLG WN RF 6 600 STD	Heat Code:	IC202	
FID:	H9692			

Element	Ladle
C Carbon	0.1700
Mn Manganese	1.2800
P Phosphorous	0.0080
S Sulphur	0.0010
Si Silicon	0.2200
Cu Copper	0.0100
Ni Nickel	0.0090
Cr Chromium	0.0180

Element	Ladle
N Nitrogen	
Mo Molybdenum	0.0070
V Vanadium	0.0030
Cb/Nb Columbium/Niobium	
Ti Titanium	
Al Aluminum	0.2800
B Boron	
Sn Tin	

7 Additional Chemicals
Chemical Composition analysis test result

Melting Practice: _____ Reduction Ratio: _____

Mechanical Test Results			
Tensile (PSI)	78,756		
Yield (PSI)	55,985		
Elong (%)	31.00		
Red (%)	68.00		
CE	0.3902		
PCM			
HBW	170	to	176
CVN Test Temperature	-51		*F
Ft/Lbs.	110	113	103
Shear (%)	50	55	55
MLE			
Tensile Test Size	10 X 10 MM		
QTC Type & Size			

Heat Treatment Information	
Tempering Temperature (*F)	1166
Tempering Time (HRS)	5
Austenitizing Temperature (*F)	1706

Additional Comments

8 *Lisa Johnson*
Lisa Johnson- Quality Representative

6/4/2018
Date

Product is compliant with NACE MR0175/ISO 15156-2009 / Product is compliant with NACE MR0103-2012
No weld repair is performed.
The product is free of Arsenic contamination.
Tensile test is taken from round specimen.
Yield Strength is determined using 0.2% offset method, unless otherwise specified.
When reported on the CSR, Tensile testing per ASTM E 8, Charpy Impact testing per ASTM E 23 and Brinell Hardness testing per ASTM E 10.
Federal Flange manufactures products according to a certified QMS conforming to ISO 9001:2008 and PLD 2014/08/10, Annex 1, section 4.3.
Products are manufactured in compliance to EN 10204 Type 3.1.

Physical Address: 4014 Pinemont Dr | Houston, TX 77018
Telephone: (713) 681-0606 | Fax: (713) 681-3005

Figure 2 – Mill Testing Report.

The following information is required on a MTR document for compliance as indicated in *Figure 2* above:

1. **Mill Name:** Mill name, mill letterhead, or logo will be indicated in the MTR.
2. **Documentation Type:** Material Test Report or Mill Test Report.
3. **Purchase order number:** PO # from invoice that will be submitted for billing or from MTR.
4. **Material Description:** Material Description of what was produced.
5. **Material Heat Number:** A material heat number is the main method of traceability for a given material. When comparing a MTR with raw materials, the corresponding heat number must be matched.
6. **Location of Manufacturing:** Melted and Manufactured in the USA.
7. **Additional Information**
 - **Material Dimensions:** A material's size and dimensions will be included on the MTR and displayed as material dimensions. This will change depending on the raw material. For example, metal plates are measured in thickness, while pipes are measured in diameter.
 - **Chemical Analysis:** Chemical analysis, like mechanical properties, refers to a specific chemical makeup that certifies a material can be used for a given application without risk of failure.
 - **Heat Treatment:** Heat treatment refers to a specific process of heating or cooling, usually to extreme temperatures, a material undergoes. The reviewer will identify all processes in the product specification and confirm details are accurate.
 - **Product Specifications Met:** Product specifications refer to the ASTM and ASME standards applied to a given material. For example, metals used in pressure and vacuum applications must meet specific product specifications. ASTM standards have a prefix which includes the letter "A".
8. **Certified Mill Signature and date:** The certified mill signature is provided by the responsible employee at the source mill. The employee signs to certify that the information is accurate.

8.3. Certification

When a utility purchases manufactured products from a vendor for use in its relocation activities, a letter from the vendor to the utility certifying that the materials meet Buy America requirements shall be deemed to constitute compliance.

The certification must be signed by an authorized representative, from the vendor, on company letterhead, declaring that all supplied materials subject to the Buy America provisions are fully compliant.

The certification is a written statement on company letterhead, signed by an authorized representative, from the manufacturer providing any additional treatment to the fabricated material (such as blasting, galvanizing, or painting) stating that all treatment processes occurred in the United States.

The certification should state 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. Certification should include project information pertaining to the standard utility agreement.

Sample certification letter and instructions below.

1. Company Letterhead

2. BUY AMERICA CERTIFICATION

3. Date:

4. Customer:

5. Attention:

6. Customer Order: *(Producer/Fabricator)*
Order:

7. Project Information: *(CSJ, Project Name)*

8. Material:

9. The following products, provided by *(producer/fabricator)* for the above order, are fabricated from steel or iron that is melted and manufactured, and any coating applied, in the United States and meet the requirements of Buy America 23 CFR 635.410:

(Product)

10. *(Product)*

(Product)...

This certification has been issued for only the products listed above for domestic compliance. Alterations to this document by any agency other than *(producer/fabricator)* will void the certification.

Please contact me if you have any questions regarding this certification.

Very truly yours,

11. *(name)*

12. *(producer/fabricator)*

13. *(position)*

14. Phone:

15. Email :

16. cc:

Figure 3 – Sample Certification Letter

Certification Instructions:

- 1. Company Letterhead:** A printed heading on stationery stating an organization’s name and address. It often contains the company logo.
- 2. Buy America Certification:** Title indicating this is a Certification Letter of Compliance.
- 3. Date:** Date cannot be prior to procurement of material date.
- 4. Customer:** Customer who is submitting this certification letter. This should be the manufacturer.
- 5. Attention:** The person who this letter is being addressed to.

6. **Customer Order:** PO# that would be found within form 1818 or invoices submitted.
7. **Project Information:** The project name, highway name, U#, ROW CSJ, CCSJ,
8. **Material:** Material that is being certified (i.e. steel pole, pipe casing, rebar, valve, etc.)
9. **Statement:** Producer/Manufacturer/Vendor stating that the products listed were melted and manufactured in the United States and meet the requirements of Buy America 23 CFR 635.410.
10. **Product:** Product description that will be found on the cost estimate, form 1818 description, and invoices that will be submitted at the time of final invoice.
11. **Name:** Printed name and signature of authorized representative that is signing the letter.
12. **Producer/Fabricator:** Name of company who is certifying this letter.
13. **Position:** Position of the authorized representative that is signing the certification letter.
14. **Phone:** Contact phone number of the company or authorized representative.
15. **Email:** Email information of company or authorized representative.
16. **Cc:** Carbon copy of people from the company.

9. Recommended Documentation

9.1. Field Verification Form (Form ROW-U-BAV)


The field verification form is a recommended form that could be used during the inspection process of the materials that require Buy America compliance. A TxDOT district employee or consultant working for TxDOT can fill out the verification form. The purpose of the form is to assist in verifying the material delivered is the same material identified within form 1818.

Quantity (Amt./Units)		Material Description	Mill Name	Heat No.	Documentation	
					Material Test Report	Certification

Inspector Utility Verification	
DISTRICT:	COUNTY:
CONST CSJ:	HWY:
ROW CSJ:	LIMITS:

UTILITY OWNER / CONTRACTOR	PERSONNEL

Texas Department of Transportation
Utility Coordination Buy America Verification Form
U# _____



COMMENTS

Inspector: _____ Date: _____

Page 1 of 2

Figure 4 - Form ROW-U-BAV. (Second page not shown.)

10. The De Minimus Calculation

10.1. Definition and Limits

FHWA's regulations permit a minimal use of non-domestic steel and/or iron in the amount of \$2,500 or one-tenth of one percent (0.1%) of the total individual utility agreement, whichever is greater, to be used in a Federal-aid project.

10.2. Example of Calculation

The De Minimus equation is calculated by the following formula: Combined cost of only those materials (material cost only) that are subject to Buy America and are non-compliant (limited to the individual utility agreement) divided by the total utility relocation cost (Standard Utility Agreement, Attachment A, Estimate).

10.3. Example of use

This would include items that are foreign but not currently exempt from Buy America requirements (e.g, do not fall under the assembly materials, attachment materials, housing encasements, or miscellaneous electronics).

10.4. How to document

Document the diligence by the utility owner (e.g. emails, requests, letters, etc.) and district ensuring domestic iron and steel products or equivalent are not available. Identify foreign iron and/or steel on the cost estimate of the Standard Utility Agreement with an "X" and a total indicating it does not exceed \$2,500 or 0.1% of the total individual utility agreement, whichever is greater.

11. Consequences of Non-Compliance

Failure to submit the required documentation or to comply with the Buy America, and Steel and Iron Preference requirements shall result in:

- a) the Utility becoming ineligible to receive any contract or subcontract made with funds authorized under the Intermodal Surface Transportation Efficiency Act of 1991;
- b) the State withholding reimbursement for the costs incurred by the Utility in the adjustment, removal, and relocation of the Utility's facilities;
- c) removal and replacement of the non-compliant products, and/or
- d) delay of billing processing.