Buy America

Presented by

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Road School March 2015
Topics of this Discussion

- What is Buy America?
- Regulations and Requirements
- Map-21 changes
- Who’s Responsibility?
- Certification requirements
- After Fact Findings
- Best Management Practices
What is Buy America?

Let’s start with what it is **NOT**

- Buy American is not the same as Buy America
  - Buy American 41 USC 10a-10d
  - Buy American 48 CFR 25
  - Direct Federal Procurement
  - All construction materials with exceptions
  - Thresholds identified in NAFTA and other trade agreements

## Buy America vs Buy American

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Statute</th>
<th>Applicability</th>
<th>Coverage</th>
<th>Threshold</th>
</tr>
</thead>
<tbody>
<tr>
<td>Buy America</td>
<td>USC 313 23 CFR 635.410</td>
<td>Federal-aid Contracts</td>
<td>Iron and Steel products only</td>
<td>None. $1 NAFTA/EU; no effect</td>
</tr>
<tr>
<td>Buy American</td>
<td>FAR 41USC 10a-10d 48CFR25</td>
<td>Direct Federal Government Contracts</td>
<td>All materials except the 100 specified</td>
<td>Specifically identified in NAFTA &amp; other trade agreements</td>
</tr>
</tbody>
</table>
What is Buy America?

- **Buy America Regulations**
  - 23 USC 313
  - 23 CFR 635.410
  - Pertains to All Federal-aid Construction Projects
  - Links to FHWA Program Policy & Guidance Center Buy America page, and specifically to the Q&A page

http://www.fhwa.dot.gov/pgc/advsearch.cfm

http://www.fhwa.dot.gov/pgc/results.cfm?id=4588
What is Buy America? *Cont.*

- **Buy America** *is:*
  - Domestic manufacturing of all steel and iron materials permanently incorporated in a Federal-aid project funded under Title 23 USC.
  - Types of manufacturing processes include initial melting, bending, drilling, machining, etc.
  - Includes the application of a coating.
  - NAFTA and other international trade agreements have no effect.
Some Limitations to Buy America

- Manufactured products that are not steel or iron (total iron and steel content <90% by weight)
- Misc. steel or iron components, subcomponents, and hardware necessary to encase, assemble, and construct steel components

http://www.fhwa.dot.gov/construction/contracts/121221.cfm
More Limitations to Buy America

- Minimal Use
- Temporary Use
- Alternative Bid Procedures
- Waivers

[Link to FHWA Notice of Buy America Waiver Request Website](http://www.fhwa.dot.gov/construction/contracts/waivers.cfm)
More Limitations to Buy America

- Two Nationwide waivers to Buy America
  - 23 CFR 635 Notice of nationwide waiver of **Buy America** for Ferryboat Equipment and Machinery (1994)
Buy America Waiver Request

- Should be done as early in Project Development as possible
- Needs to be Well Justified
- Information Required on Request (#22 of Q&A)
  - Federal-aid Project Number
  - Project Description
  - Project Cost
  - Waiver Item Cost
  - Country of Origin for the Product
  - Reason for the Waiver
Additions to Buy America

- MAP-21 section 1518
  - Broadens Buy America to apply to any contract under a project as defined by NEPA
  - Non FHWA-funded Utility Relocations

Link to Memorandum applying Buy America to non-FHWA-funded Utility relocations.

http://www.fhwa.dot.gov/construction/contracts/130711.cfm
Responsibility and Enforcement

- STA is responsible to enforce Buy America
  - INDOT 2014 Standard Specification Section 106.01(c) (Page 57)
Buy America Certification

- The form of the statement/certification is not open
- Should provide confidence that all melting and manufacturing processes have occurred within the US
- Needs to be signed (notarized is even better)
- False statements certifications are subject to prosecution under 18 USC 1020.

http://www.fhwa.dot.gov/programadmin/contracts/fhwaw1022.cfm
After Fact Findings of Foreign Steel

Three possible action (Question 48 of the Buy America Q&A)

- Remove the Foreign Steel Items and Replace with Domestic Steel Items
- Make the Foreign Steel Items Federal-aid Non-Participating
  - Level of Impact to the Public
  - Lack of Availability of the Items Domestically
- Remove all Federal-aid from the project
INDOT Process Improvements

- Increased Awareness
- Preconstruction Conference Topic
- INDOT Specifications
- Buy America Certification is in Hand Prior to Installation
Best Management Practices

- Think of Buy America Early On!
- Step Certification
- Obtain Certifications prior to Installation
- Consider Buy America waiver request
Are there Any Questions?