

ALABAMA DEPARTMENT OF TRANSPORTATION

General Application Special Provision

DATE: January 5, 2023

GASP No. 22-GA0028

EFFECTIVE DATE: January 18, 2023

SUBJECT: Build America, Buy America Act.

Alabama Standard Specifications, 2022 Edition, SECTION 106 shall be amended as follows:

SECTION 106 CONTROL OF MATERIALS

106.01 Source of Supply and Quality Requirements.

(a) General.

1. Federal Participating Projects.

Item 106.01(a)1 shall be replaced by the following:

1. Federal Participating Projects.

- a. Steel and Iron Products (Buy America).

Steel/iron materials from the initial melting and mixing of these materials and all manufacturing processes including the stage of applying a coating to these materials (epoxy coating, galvanizing, painting, or any other coating that protects or enhances the value of the coated material) that are permanently incorporated into the completed project shall be produced domestically (in the United States, its territories, or possessions). If any part of the project (defined by and including the NEPA document) is funded by Federal-aid, then the entire project must meet the Buy America provisions, including utility relocation reimbursements for Federal-aid funds authorized after October 1, 2012.

If the dollar amount of the foreign source steel/iron is less than \$2,500 or 0.1% of the contract amount, whichever is greater, the foreign source steel/iron can be used in the project.

The Contractor shall provide certification that the steel/iron is domestically produced.

- b. Build America, Buy America Act.

The Build America, Buy America Act (BABA) of the Infrastructure Investment and Job Act (IIJA) (Pub. L. No. 117-58 §§ 70901-52) expands the requirements of the Buy America Act to include permanently incorporated construction materials on Federal-aid projects.

A "construction material" as defined under BABA shall include any article, material, or supply - other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as sand, stone, or gravel; or aggregate binding agents or additives - that is or consists primarily of the following:

1. Non-ferrous metals;
2. Plastic and polymer-based products, including but not limited to polyvinylchloride, composite building materials, and polymers used in fiber optic cables;
3. Glass (including optic glass);
4. Lumber; or
5. Drywall

Items that consist of two or more of the listed materials that have been combined together through a manufacturing process, and items that include at least one of the listed materials combined with a material that is not listed through a manufacturing process, should be considered as manufactured products rather than construction materials.

All construction materials must be manufactured in the United States. To be considered produced in the United States, at least the final manufacturing process and the immediately preceding manufacturing process must occur in the United States.

The Contractor assumes the risk of including any foreign materials that are not exempt, including iron or steel, in the Contractor's bid.

The Contractor has the obligation to remove and replace non-BABA complaint material unless a waiver is granted for the use. No claims for contract adjustment (additional time, money, or both) will be made because of the non-BABA complaint material.

The Contractor shall provide certification that the construction materials defined under BABA are domestically produced. After work is completed on the project, the Contractor must submit a certification to the Engineer with the following information:

"I hereby certify that all construction materials furnished to the Alabama Department of Transportation for the construction of the above referenced project that are required to be compliant with the Build America Buy America Act have been produced in the United States of America as defined by §70912 "Definitions" of the Infrastructure and Investment Jobs Act (IIJA) (Public Law 117-58 - Nov. 15, 2021). I further certify that all supporting documentation is on file and will be maintained for a period of three (3) years after project completion."

The Contractor may maintain this documentation electronically or in paper format. The Department or FHWA may request to review the Contractor's supporting documentation to verify compliance with the Buy America provisions at any time. The Contractor shall provide the supporting documentation within five (5) business days of the request. The burden of proof to meet the Buy America provisions rests on the Contractor. If the supporting documentation does not undeniably demonstrate to the Department or FHWA that the iron or steel, manufactured products, or construction materials identified in the Certificates of Compliance were produced in the United States of America, then such iron, steel, manufactured products or construction materials will be considered unacceptable and must be replaced at no cost to the Department.

The Contractor shall not anticipate that any BABA preference provisions will be waived.

c. Convict Produced Materials.

Materials produced after July 1, 1991, by convict labor are prohibited from being incorporated in the work unless such materials have been:

- Produced by convicts who are on parole, supervised release, or probation from a prison or
- Produced in a qualified prison facility and the cumulative annual production amount of such materials for use in Federal-aid highway construction does not exceed the amount of such materials produced in such facility for use in Federal-aid highway construction during the 12-month period ending July 1, 1987. "Qualified prison facility" means any prison facility in which convicts, during the 12-month period ending July 1, 1987, produced materials for use in Federal-aid highway construction projects.

d. Cargo Preference Act.

Materials or equipment that are acquired solely for a Federal-aid project must comply with the requirements of 46 CFR 381. Clauses 46 CFR 381.7(a)-(b) are hereby incorporated into these Specifications by reference.