

Memorandum

Date: January 8, 2024
To: All holders of Standard Special Provisions
From: Shawn Yu, Standards and Specifications Unit Manager
Subject: Revised standard special provision: Revision of Sections 101 and 106 - Buy America and Build America, Buy America Requirements - No Federal Aid

As of January 8, 2024, this unit has issued the revised standard special provision, "Revision of Sections 101 and 106 - Buy America and Build America, Buy America Requirements - No Federal Aid", with 4 pages, and dated January 8, 2024. This standard special provision is to be used on all state only funded (CDOT and Local Agency administered) infrastructure projects advertised on or after January 8, 2024, that contain no federal-aid highway funding.

This specification replaces "Revision of Section 106 - Buy American Requirements Non-Federal Aid Highway (FHWA)", and dated October 1, 2023.

This provision revised subsections 101.02 and 106.11.

Project Managers: Please check to see if your projects are affected and take appropriate action. A Revision Under Ad is required for projects that have already been advertised.

For those of you who keep a book of Standard Special Provisions, please include this revised standard special provision. For your convenience, this specification and the latest SSP Index are attached in the email. You can also find these in our Construction Specifications web pages: [Standard Special Provisions](#) and the [Recently Issued Special Provisions](#).

If you have any questions or comments, please contact this office.



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Revision of Sections 101 and 106
Buy America And Build America, Buy America Requirements - No Federal
Aid

Notice

The Standard Special Provision (SSP) on the following page revises or modifies CDOT's *Standard Specifications for Road and Bridge Construction*. The Construction Engineering Services Branch has reviewed, approved, and issued it. Use as written without change. Do not use modified versions of it on CDOT construction projects. Do not use the following special provision on CDOT projects in a manner other than specified in the instructions without approval by CDOT's Standards and Specifications Unit. The instructions for use appear below.

Other agencies using the *Standard Specifications for Road and Bridge Construction* to administer construction projects may use this special provision appropriately and at their own risk.

Instructions for use on CDOT (and local agency-administered) construction projects:

Use this standard special provision on all state only funded (CDOT and Local Agency administered) Infrastructure projects advertised on or after January 8, 2024, that contain no federal-aid highway funding. The project should have no federal-aid highway funding in any phase of the project, including Construction and any preliminary engineering phases (e.g., Right-of-way, Utilities, Design, Environmental, or Miscellaneous. Design Project Managers should consult with their respective Region Business Office or HQ Business Office to determine if any federal-aid highway funding has been or will be used in the project

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Sections 101 and 106 of the Standard Specifications shall be revised as follows:

Add the following to Subsection 101.02:

Build America, Buy America (BABA) Requirements: Division G, title IX, subtitle A, parts I-II, sections 70901 through 70927 of the Infrastructure Investment and Jobs Act (Pub. L. 117-58) and 2 CFR Parts 184 and 200. The “domestic content procurement preference” set forth in section 70914 of the Build America, Buy America Act, requires that all construction materials and manufactured products incorporated into the project are produced in the United States.

Buy America (BA) Requirements: FHWA Buy America statutory provisions are in 23 U.S.C.313 and the regulatory provisions are in 23 CFR 635.410, which requires that all of the steel and iron incorporated into the project is produced in the United States. For other policy and guidance links, see the FHWA Construction Program Guide.

Buy America Preferences for Infrastructure Projects: Requirements for federal-aid funded highway projects as outlined and encompassed in 2 CFR Part 184.

Component: An article, material, or supply, whether manufactured or unmanufactured, incorporated directly into: (i) a manufactured product; or, where applicable, (ii) an iron or steel product.

Construction Material: Includes an article, material, or supply that consist of only one of the following items listed means articles, materials, or supplies that consist of only one of the items listed in paragraph (1) of this definition, except as provided in paragraph (2). To the extent one of the items listed in paragraph (1) contains as inputs other items listed in paragraph (1), it is nonetheless a construction material.

(1) The listed items are:

- i. Non-ferrous metals;
- ii. Plastic and polymer-based products (including polyvinylchloride [PVC], composite building materials, and polymers used in fiber optic cables);
- iii. Glass (including optic glass);
- iv. Fiber optic cable (including drop cable);
- v. Optical fiber;
- vi. Lumber;
- vii. Engineered wood; and
- viii. Drywall.

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- (2) Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material.

Cost of Components for Manufactured Products: In determining whether the cost of components for manufactured products is greater than 55 percent of the total cost of all components, use the following instructions:

- (i) or components purchased by the manufacturer, the acquisition cost, including transportation costs to the place of incorporation into the manufactured product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (ii) or components manufactured by the manufacturer, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (i) of this section, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the manufactured product.

Infrastructure Project: Includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

Iron or Steel Product: Articles, materials, or supplies that consists wholly or predominantly of iron or steel or a combination of both. Typical iron and steel products subject to Buy America preferences include, but is not limited to, structural and reinforcing steel incorporated into pavements, bridges, and buildings (such as maintenance facilities); steel rail; and other equipment.

Manufactured Product:

- (1) Articles, materials, or supplies that have been:
 - i. Processed into a specific form and shape; or
 - ii. Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.

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- (2) If an item is classified as an iron or steel product, a construction material, or a section 70917(c) material under the definitions set forth in this section, then it is not a manufactured product. However, an article, material, or supply classified as a manufactured product under paragraph (1) of this definition may include components that are construction materials, iron or steel products, or section 70917(c) materials.

Manufacturer: The entity that performs the final manufacturing process that produces a manufactured product.

Predominantly of iron or steel or a combination of both: Means that 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.

Produced in the United States:

- (1) Steel or Iron Products: All manufacturing processes, from the initial melting/smelting stage through the application of coatings, occurred in the United States.
- (2) Manufactured Products:
- i. The product was manufactured in the United States; and
 - ii. The cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product.
- (3) Construction materials: All manufacturing processes for the construction material occurred in the United States per 106.11(f) of this specification.

Section 70917(c) Materials: Cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives. See section 70917(c) of the Build America, Buy America Act.

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Section 106 of the Standard Specifications is hereby revised as follows:

Delete Section 106.11 of the Standard Specifications and replace with the following:

106.11 Buy America (BA) and Build America, Buy America (BABA) Requirements

- (a) *Contractual Documents*. This specification shall be used in conjunction with the applicable version of the Special Notice to Contractors Section of the CDOT Field Materials Manual (FMM), and the requirements therein, in effect at the time of bidding. The Special Notice to Contractors Section of the FMM, and the requirements therein, shall be considered a contractual document when this specification is included.
- (b) *Glass Beads for Pavement Marking*. All post-consumer and industrial glass beads for pavement marking shall have been manufactured from North American glass waste streams in the United States of America. The bead manufacturer shall submit a COC in accordance with subsection 106.12 confirming that North American glass waste streams were used in the manufacture of the glass beads.