

SECTION 00160 - SOURCE OF MATERIALS

(Follow all instructions and make all edits with “Track Changes” turned on. If there are no instructions [orange text] above a subsection, paragraph, sentence, or bullet, then include it in the Project. Delete all orange text before preparing the final document. All other modifications to this Section will require State Specifications Engineer approval and the State Specifications Engineer will obtain approval from the Department of Justice.)

(Use the following lead-in paragraph when none of the following subsections are included in the Project.)

Comply with Section 00160 of the Standard Specifications.

(Use the following lead-in paragraph when any of the following subsections are included in the Project.)

Comply with Section 00160 of the Standard Specifications modified as follows:

(Use the following subsection .20 when this Contract is state funded and the Work was considered and included in a NEPA decision that also applies to any other work that has any federal funding.)

00160.20 Preferences for Materials - Add the following paragraph to the beginning of this subsection:

Section 1518 of Moving Ahead for Progress in the 21st Century Act provides that Buy America applies to all Contracts eligible for federal assistance under Title 23, United States Code, included within the scope of an applicable National Environmental Policy Act (NEPA) finding, determination or decision, regardless of the funding source of such Contracts, where at least one Contract is funded with Title 23 funds. This Contract includes Title 23 funds under such a NEPA finding, determination or decision and Buy America under subsection (a) and Build America Buy America under subsection (d) apply to this Contract.

00160.20(d) Build America Buy America Act Requirements – Replace this subsection, except for the subsection number and title, with the following:

If federal highway funds are involved on the Project, the Contractor shall comply with the Build America Buy America Act and implementing regulations (Infrastructure Investment and Jobs Act (“IIJA”), Pub. L. No. 117-58, which includes the Build America, Buy America Act (“the Act”). Pub. L. No. 117-58, Sections 70901-70941).

All of the manufacturing processes must occur in the United States for the applicable construction materials permanently incorporated in the Project as listed below.

Construction materials include an article, Material, or supply that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass;
- lumber; or
- drywall.

The USDOT issued a Public Interest Waiver for De Minimis Costs and Small Grants. The final waiver can be viewed here:

<https://www.federalregister.gov/documents/2023/08/16/2023-17602/waiver-of-buy-america-requirements-for-de-minimis-costs-and-small-grants> and this waiver applies to Materials covered by the Build America Buy America Act.

The public interest waiver is for manufactured products and construction materials for which:

- The total value of the non-compliant products (foreign or unknown origin) is no more than the lesser of \$1,000,000 or 5% of total applicable costs for the project*; or
- The total amount of Federal financial assistance applied to the project, through awards or subawards, is below \$500,000.

*The “total value of the non-compliant products” includes construction materials only. The “total applicable costs” includes construction materials, iron and steel, and manufactured products. The value of materials are the actual cost of the materials, not the anticipated cost of materials. Furthermore, this bullet does not apply to iron and steel subject to the requirements of 23 U.S.C. 313. The de minimis threshold in 23 CFR 635.410(b)(4) continues to apply for steel and iron. (See 00160.20(a).)

Strict compliance with the Build America, Buy America domestic preferences is required, except to the extent the above public interest waiver applies. The Contractor shall not incorporate construction materials in excess of this amount into the Project. All foreign origin construction Materials incorporated in the Project in excess of the amount indicated above shall be removed and replaced with domestic construction Materials at the Contractor's expense.

The Contractor shall provide the Engineer with a Certificate of Materials Origin, on a form furnished by the Engineer, before incorporating any applicable construction materials into the Project. Unless a Certificate of Materials Origin has been provided to the Engineer, the products and Materials shall be considered of foreign origin.

The Contractor shall retain manufacturers' certificates verifying the origin of all applicable construction materials for 3 years after the date of final payment for the Project, and shall furnish copies to the Engineer upon request.

Manufactured products assembled outside the Project Site are not subject to the Build America Buy America requirements. Manufactured products are items that consist of two or more of the listed construction materials that have been combined together through a

manufacturing process, and items that include at least one of the listed construction materials combined with a Material that is not listed through a manufacturing process, and should be treated as manufactured products, rather than as construction materials.

Iron and steel Materials are subject to 00160.20(a).

The Contractor shall include this provision in all subcontracts.

(Use the following subsection .21 on Federal funded Projects.)

00160.21 Cargo Preference Act Requirements - Add the following to the end of this subsection:

Additional information may be available at the following websites:

<https://www.fhwa.dot.gov/construction/cqit/cargo.cfm>

<https://www.fhwa.dot.gov/construction/cqit/cargo/qa.cfm>.

(Use the following subsection .30 when the Agency will furnish items or materials other than material from a borrow source - for example: poles, timbers, guardrail, etc. Give the location where the items/materials may be picked up. Delete parentheses and the words in parentheses as needed. For aggregates and other similar materials, use 00160.40.)

00160.30 Agency-Furnished Material - Add the following to the end of this subsection:

The Agency will furnish the listed items at the (Project Site:)(following locations:)

(Use the following paragraph when Agency supplied materials need to be returned. Give the location and contact information where the items/materials may be dropped off. Delete parentheses and the words in parentheses as needed.)

Add the following to the end of this subsection:

The Contractor shall return the Agency-furnished items to the (following locations:)

(Use the following subsection .40 on Projects with Agency-furnished material sources. Include SP00235 when using this subsection.)

00160.40 Agency-Furnished Sources - Add the following paragraph after the paragraph that begins "The Agency may list in the...":

Agency-Furnished Sources for this Project are listed in Section 00235 of the Special Provisions.