

Appendix B: Standard Buy American Specifications for Bid Package

The Contractor is required to comply with the “Buy America Provision” found in section 70914 of the Infrastructure Investments and Jobs Act, Pub. L. 117-58, sections 70901-52 (the “Act”). The Act includes strict domestic source requirements for iron, steel, manufactured products, and construction materials used in EDA Public Works infrastructure projects.

In accordance with section 70914 of the Act and guidance provided at 2 C.F.R. pt. 184, all the iron, steel, manufactured products, and construction materials used in the Project must be produced in the United States and the Contractor shall include this requirement in all bid specifications, contracts, purchase orders, and other procurement documents for goods and materials used in the Project.

EDA may grant waivers to this requirement if it finds that at least one of the following conditions applies:

- Applying this subsection would be inconsistent with the public interest.
- Iron, steel, the relevant manufactured goods, or construction materials are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.
- Inclusion of iron, steel and manufactured goods produced in the United States will increase the overall project cost by more than 25%.

Specific procedures and documentation are required for each category of waiver. If EDA determines that it is necessary to waive this provision based on their findings, they shall publish in the Federal Register a detailed written justification as to why the provision is being waived.

This section of the law shall be applied in a manner consistent with United States obligations under international agreements.

To ensure compliance with the Buy America Provision, the Contractor shall retain the following information for each item that includes iron, steel, for each manufactured good, and construction materials incorporated into the Project and may be required to submit:

1. Type and quantity of material (iron, steel, manufactured product, construction material);
2. Name and phone number of the supplier of the material;
3. Name of the manufacturer of the material; and
4. The city and State of production.

In addition, the Contractor shall include the following Buy America Contract Clause in all bid specifications, contracts, purchase orders, and other procurement documents for goods and materials used for the Project to require: (i) all iron, steel, manufactured products, and construction materials being purchased for the Project be produced in the United States, and (ii) all suppliers providing iron, steel, manufactured products, and construction materials for the Project provide information related to the origin of these items to EDA upon request.

Buy America Contract Clause

The Contractor acknowledges to and for the benefit of _____ (“Recipient”) and the Economic Development Administration (“EDA”) that it understands the goods and services under this Agreement are being funded with federal monies and have statutory requirements in section 70914 of the Infrastructure Investments and Jobs Act (Pub. L. 117-58, sections 70901-52) and 2 C.F.R. pt. 184, commonly known as “Build America, Buy America” that require all of the iron and steel, manufactured products, and construction materials used in the project to be produced in the United States (“Build America, Buy America Requirements”). The Build America, Buy America Requirements include all iron and steel, manufactured products, and construction materials provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Recipient and EDA (a) the Contractor has reviewed and understands the Build America, Buy America Requirements, (b) all of the iron and steel, manufactured products, and construction materials used in the project will be and/or have been produced in the United States in a manner that complies with the Build America, Buy America Requirements, unless a waiver of the requirements is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the Build America, Buy America Requirements, as may be requested by the Recipient or EDA. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Recipient or EDA to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney’s fees) incurred by the Recipient or EDA resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from EDA or any damages owed to the EDA by the Recipient). If the Contractor has no direct contractual privity with EDA, the Recipient and the Contractor agree that the EDA is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of EDA.