



STATE OF NEVADA  
DEPARTMENT OF TRANSPORTATION  
1263 S. Stewart Street  
Carson City, Nevada 89712

BRIAN SANDOVAL  
Governor

August 25, 2016

RUDY MALFABON, P.E., Director

In Reply, Refer to:

SUSAN KLEKAR DIVISION ADMINISTRATOR  
ATTN PAUL SCHNEIDER  
FEDERAL HIGHWAY ADMINISTRATION  
705 NORTH PLAZA STREET SUITE 220  
CARSON CITY NV 89701

**Buy America Concurrence Letter**

Dear Ms. Klekar:

Due to the cancelation of FHWA memorandum HIPA-30 dated December 21, 2012, the Nevada Department of Transportation (NDOT) has amended its policy for Buy America in relation to utility relocations. The amended Buy America policy is enclosed for your review and concurrence.

Should you have any questions or require further information, please feel free to contact me. Thank you for your assistance in this matter.

Sincerely,

Rudy Malfabon, P.E.  
Director

CONCUR:

Susan Klekar, Division Administrator

8/31/16  
Date

bt/jm

Enclosures

cc: R. Borrelli, Chief Right-of-Way Agent  
B. Tucker, Staff Specialist



## MEMORANDUM

### Right-of-Way Division

August 25, 2016

To: RW Division Staff

From: Ruth Borrelli, Chief RW Agent 

Subject: Buy America Policy Memo

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The Federal Highway Administration has recently canceled memorandum HIPA-30 dated December 21, 2012 establishing parts exemptions from Buy America provisions attached hereto as a reference. As such, the Right-of-Way Division has updated the following policy for utility relocations. All Projects advertised after January 6, 2016 must now comply with the amended Buy America Provisions.

Buy America provisions apply to all contracts (federally funded or not federally funded) for a given project that is within the scope of a NEPA document if State or Local Agency uses any Federal-aid funds in any phases of the project development. The funds do not have to be applied to a contract.

Utility Companies must provide a Certificate of Material Origin (CMO) using a form provided by NDOT as well as a mill test report or certification from the manufacturer that states clearly the country of manufacture. The certification must be submitted to the NDOT Utility Inspector prior to the installation of the material.

For the purpose of identifying materials subject to Buy America compliance, detailed cost estimates must be in accordance with Nevada Administrative Code (NAC) 408.337 with steel and iron product(s) identified separately.

Buy America provisions are applicable to, but are not limited to, the following:

- Steel or iron products used in pavements, bridges, tunnels or other structures, which include, but are not limited to, the following: fabricated structural steel, reinforcing steel, piling, high strength bolts, anchor bolts, dowel bars, permanently incorporated sheet piling, bridge bearings, cable wire/strand, pre-stressing/post-tensioning wire, motor/machinery brakes and other equipment for moveable structures;
- Guardrail, guardrail posts, end sections, terminals, cable guardrail;
- Steel fencing material, fence posts;
- Steel or iron pipe, conduit, grates, manhole covers, risers;
- Mast arms, poles, standards, trusses, or supporting structural members for signs, luminaries, or traffic control systems;
- Steel or iron components of precast concrete products, such as reinforcing steel, wire mesh and pre-stressing or post-tensioning strands or cables; and

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- Steel transmission or distribution pole structures, predominately steel cross arms, anchors, steel or iron conduit, steel rebar to be furnished in conjunction with: concrete foundations, concrete transmission or distribution pole structures, or any prefabricated concrete vaults or similar concrete structures, steel pipes for the transmission or distribution of gases or liquid fluids.

Buy America does apply to specific components within manufactured products. The Federal Highway Administration deems a product to be manufactured if that item must undergo one or more manufacturing processes before the item can be used in a highway project. A manufactured product may be usable as a stand-alone product, or as a component within a more complex assembly which would also be considered a manufactured product. Some typical stand-alone products used in highway projects are steel in the form of rebar and structural steel; asphaltic cement; Portland cement; and aggregates. Typical composite products include bridge bearings, signal heads, both asphaltic and Portland cement concrete; and precast concrete items.

Non-domestic iron and steel materials may be used provided, the cost of such material does not exceed one-tenth of one percent (0.1%) of the total contract cost or \$2,500.00, whichever is greater. For purposes of this paragraph, the cost is that shown to be the value of the steel and iron products as they are delivered to the project in accordance with 23 CFR 635.410(b) (4). This rule applies to each individual contract under a NEPA project. State and Local Agencies must not use the total project cost to establish the 0.1% threshold.

Under an alternate bid provision, foreign source materials may be used if the total project bid using domestic source materials is 25% more than the lowest overall bid using foreign materials in accordance with 23 CFR 635.410(b) (3).

Buy America does not apply to iron and steel (sheet piling, scaffolding, etc.) products used on a temporary basis for construction of a Federal-aid project. Temporary use means that the contract specifications provide that the iron and steel products used on the project either must be removed at the end of the project or may be removed at the contractor's convenience. Also, where a contracting agency is able to document that phased construction is imminent and the steel or iron product will be removed in subsequent near term stages, then the iron or steel product is required to remain in place at the end of the contract (per contract documents). If phased construction is not imminent, then the product is deemed permanent and Buy America applies.

Buy America applies to any utility work that is accomplished as a result of a Federal-aid highway project even if such utility work is not reimbursed with Federal-aid highway funds. The only instance where Buy America does not apply to utility work is where such work is not eligible for Federal-aid because the State is legally unable to pay the utility. In these instances, such work would not constitute a contract that is eligible for assistance.

In accordance with Nevada Revised Statute 408.407, when it has been determined that a utility facility must be relocated, the utility shall relocate its facility and be reimbursed by the State provided the proportionate part of such cost is reimbursable from federal funds under a Federal-aid Highway Program or any other act of Congress under which the State is entitled to reimbursement for all or part of such cost. This does not apply where a payment of the relocation costs by the State would be inconsistent with the terms of a permit issued by the Department.

Buy America applies to any utility work that is eligible for reimbursement. In accordance with Nevada Administrative Code 408.307 and 408.309.

Buy America does not apply to utility work that is not eligible for reimbursement. In accordance with Nevada Administrative Code 408.311, a utility is not eligible for reimbursement if:

- A highway right of way for a highway was granted pursuant to an occupancy permit;
- An encroachment licensed was issued pursuant to Nevada Revised Statute 408.210;
- Located within a highway, street or road pursuant to a franchise agreement or any other agreement with a local government which requires the utility to relocate because a project is funded solely with money received from this state; or
- Located within a highway, street or road pursuant to franchise agreement or any other agreement with a local government and the local government requires the utility to relocate its facility at the expense of the utility even though a portion of the project is administered by the Department.

A Buy America Waiver Request may be submitted on a project by project basis to the FHWA, Nevada Division, with initial review by NDOT. Waiver requests must be submitted to the Assistant Chief of Right-of-Way Agent for Utilities in letter form with supporting documentation. The Department will not grant time extensions or pay compensation for delays resulting from the processing of a waiver request. Utilities must expect the waiver process to take a minimum of ten (10) months and is not guaranteed to be granted.

To submit a Buy America Waiver Request the following information must be provided:

- Project description.
- Project cost.
- Product or waiver item cost.
- Product or waiver item country of origin.
- Reason for the waiver request.
- A description of the efforts made to locate a domestic manufactured product source.
- An analysis of re-design of the project using alternate or approved equal domestic product.

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State and Local Public agencies must consult with the FHWA, Nevada Division, when unable to determine whether a product must meet Buy America requirements.

rb/bt/jm

**Attachments**

cc: J. Terry, Asst. Director, Engineering  
D. Tedford Chief, Materials & Testing  
S. Foerschler Chief, Construction Engineer  
R. Dietrich, Deputy Chief R/W Agent  
J. Biggin, Asst. Chief R/W Agent, Utilities  
G. Schull, Asst. Chief R/W Agent, Realty  
D. Callahan, R/W Staff Specialist  
J. Pinther, R/W Staff Specialist  
L. Sundin, Utility Inspector – District I  
R. Musko, Utility Inspector – District I  
A. Ramos, Utility Inspector – District I  
M. Cutler, Utility Inspector – District I  
M. Fink, Utility Inspector – District II  
J. Smith, Utility Inspector – District II  
D. Lindeman, Asst. District Engineer District III  
J. Demaline, Utility Inspector – District III  
J. Ogden, Utility Inspector – District III  
B. Barto, Utility Inspector – District III