

Appendix X. Buy American Guidance

X-1. General Sponsor Buy American Requirements.

The Buy American Preferences under 49 USC § 50101 require that all steel and manufactured goods used in AIP funded projects be produced in the United States. Under 49 USC § 50101(c), ground transportation demonstration projects in 49 USC § 47127 are excluded. Sponsors must complete one of the three requirements in Table X-1 for the AIP projects (including ineligible or non-AIP funded work included in the same contract).

Table X-1 General Sponsor Buy American Requirements

All sponsors must complete one of the following for AIP funded projects...
(1) Certify, in writing, all products are wholly produced in America and are of 100% U.S. materials.
(2) Certify that all equipment that is being used on the project is on the Nationwide Buy American conformance list.
(3) Request a waiver to use non- U.S. produced products.

X-2. Other Buy American and Buy America Requirements.

There are other Buy American and Buy America preference rules and requirements imposed by other Federal agencies that may differ from the AIP Buy American guidance. That is because there are difference statutory requirements for other Federal agencies and grant programs that do not apply to AIP.

X-3. Changes Orders and Buy American Requirements.

A change order to a project requires a separate Buy American review and may require an ADO determination.

X-4. Buy American Waiver Process and Delegation.

Under 49 USC § 50101(b) and 49 CFR § 1.83(a)(11), the FAA is given the authority to waive these Buy American Preferences if certain market or product conditions exist. Many pieces of equipment are constructed with some non- U.S. produced components or subcomponents. Therefore, it is expected that the sponsor will have to request a waiver on a majority of projects (unless the project is constructed of materials that already have a nationwide waiver). These requirements only apply to manufactured components and subcomponents. Software is not considered a component or subcomponent.

The four types of Buy American waivers that the FAA may be issued are listed in Table X-2. The responsibility for Type I and II waivers, as well as any nationwide waivers remains with

APP-500. The ADOs have been delegated the authority to issue Type III and Type IV waivers to a sponsor on a project level.

Table X-2 Criteria by Buy American Waiver Type

For the following...	The following criteria apply...
Type I Waiver	Per 49 USC § 50101(b)(1), the FAA can issue this type of waiver if the FAA determines that applying the Buy American requirements would be inconsistent with the public interest. Due to the possible national implications of such a waiver, APP-500 is responsible for reviewing and issuing Type I Waivers.
Type II Waiver	Per 49 USC § 50101(b)(2), the FAA can issue this type of waiver for equipment or construction material if the FAA determines that the goods are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality. Type II Waivers can only be issued on the equipment/construction material level and cannot be issued for a system and/or facility that is comprised of various pieces of equipment/construction material. These waivers are issued by APP-500, after the FAA publishes a Federal Register Notice asking manufacturers to advise the FAA if they manufacture the equipment/material that is seeking a waiver and if their product meets the FAA specifications and Buy American requirements. After manufacturers respond to this notice, APP-500 will make a determination if there is insufficient quantity or quality.
Type III Waiver	Per 49 USC § 50101(b)(3), the FAA can issue this type of waiver if the FAA determines that 60% or more of the components and subcomponents in the equipment/facility are of U.S. origin and their final assembly is in the United States. A Type III Waiver cannot be issued at the system level and must be issued for each piece of equipment; however, in the case of facilities a Type III Waiver may be issued for the entire facility if all the construction materials when combined meet the 60% U.S. origin requirement. The ADO may issue these waivers. For block grant state projects, only the FAA (usually the ADO) may issue the waivers. Block grant states are not allowed to issue a waiver. To complete a Type III Waiver request, the following supporting documentation must be submitted by the requester: (1) A completed Buy American Content Percentage Calculation Worksheet (or equivalent) (see Appendix B for link). Per 49 USC § 50101(c), labor costs at final assembly must be excluded from this worksheet. This is because the Buy American statute is based on the cost of materials and equipment, not labor. (2) A completed Buy American Product Final Assembly Questionnaire (or equivalent) (see Appendix B for link). Final assembly in the United States must meet the standard defined below under Final Assembly Location. (3) The manufacturer must certify in writing that any major structural steel used in their equipment is of 100% U.S. origin. Small amounts of steel that are used in components and subcomponents, that are not structural steel, may be of foreign origin. This would typically consist of nuts, bolts and clips. For these types of steel, the manufacturer must indicate the use of the steel (nuts, bolts, clips, etc.) and must count this steel as non-U.S. origin when completing the Content Percentage Calculation Form. Per FAA policy, after the ADO reviews the waiver request, the ADO must send a notification to the requester informing them of the approval or disapproval of the

Table X-2 Criteria by Buy American Waiver Type

For the following...	The following criteria apply...
	waiver. The ADO must use the following language in this notification for project specific waivers: <i>I have reviewed the request for Waiver of Buy American Requirement submitted by XXX for the use of XXXXX equipment on the subject project. The information submitted by XXXX satisfies the requirement for waiver of the requirements of 49 USC § 50101 based on XX% of the cost of components and subcomponents to be used in the project being produced in the United States with final assembly being performed in XXXXXXXX. The waiver is hereby approved for use on this AIP grant project.</i> The ADO must place a copy of the notifications in the grant file. Following this notification, no further action is required.
Type IV Waiver	Per 49 USC § 50101(b)(4), the FAA can issue this type of waiver if the FAA determines that applying Buy American requirements increases the cost of the overall project by more than 25%. The ADO may issue these waivers. For block grant state projects, only the FAA (usually the ADO) may issue the waivers. Block grant states are not allowed to issue a waiver. In order to issue this type of waiver, the FAA must determine that there is at least one bid from a Buy American compliant supplier to make the 25% cost increase determination. Per FAA policy, after the ADO reviews the waiver request, the ADO must send a notification to the requester informing them of the approval or disapproval of the waiver. The ADO must use the following language in this notification for project specific waivers: <i>I have reviewed the request for Waiver of Buy American Requirement submitted by XXX for the use of XXXXX equipment on the subject project. The information submitted by XXXX satisfies the requirement for waiver of the requirements of 49 USC § 50101 that including domestic material will increase the cost of the overall project by more than 25%. The waiver is hereby approved for use on this AIP grant project.</i> The ADO must place a copy of the notifications in the grant file. Following this notification no further action is required.

X-5. National Buy American Waiver.

APP-500 may issue National Waivers for certain equipment/material that is used frequently in AIP funded projects. APP-500 will list these National Waivers on the FAA Office of Airports website under the Buy American Conformance List. Any equipment or materials on the Buy American Conformance List do not need additional waiver materials. All personnel not in APP-500 must direct any manufacturer seeking to be added to this Buy American Conformance List to APP-500.

X-6. Definitions.

To assist in making Buy American Waiver determinations the following definitions apply:

Table X-3 Buy American Specific Definitions

Buy American Waiver specific definitions include...	
a. Project.	The <i>Project</i> is generally the project that is being bid or procured. The <i>Project</i> does not extend over multiple grants or phases, even though the overall project may be phased or may be built in multiple bid packages.
b. Facility or Equipment.	This will be defined differently depending on the project. For a building, the portion of the building that is being funded under the AIP grant is the <i>facility</i> listed in the waiver. For other projects, the bid items as described in the current version of Advisory Circular 150/5370-10, Standards for Specifying Construction of Airports, will generally be the <i>equipment</i> referred to in the waiver except for airfield electrical equipment. For airfield electrical equipment, the L- items listed in the Addendum to the current version of Advisory Circular 150/5345-53, Airport Lighting Equipment Certification Program, will generally be the <i>equipment</i> referred to in the waiver. For a vehicle or single piece of equipment like a snow plow or ARFF vehicle, the single vehicle itself is the <i>equipment</i> .
c. Final Assembly Location.	Final assembly is a process whereby assembly is meaningful and complex utilizing a substantial amount of time and resources, a number of different assembly operations, and a high level of skilled labor. The Final Assembly Questionnaire must be completed in order to determine whether final assembly occurs at the recorded site.
d. Nonavailable Items.	By FAA policy, the list of items that have been determined nonavailable per 48 CFR § 25.104 are excluded from the Buy American preference requirements for AIP funded projects. This list includes petroleum products; therefore, asphalt is a nonavailable item per this list. In addition, the FAA has determined that cement and concrete are also nonavailable items excluded from the Buy American preference requirements (although the steel used for reinforcement, ties, stirrups, etc. must meet Buy American).