

A1 BUY AMERICAN PREFERENCE

A1.1 SOURCE

Title 49 USC § 50101

A1.2 APPLICABILITY

The Buy-American Preference requirement in 49 USC § 50101 requires that all steel and manufactured goods used on AIP projects be produced in the United States. The statute gives the FAA the ability to issue a waiver to a sponsor to use non-domestic material on the AIP funded project. The sponsor may request that the FAA issue a waiver from the Buy American Preference requirements if the FAA finds that:

- 1) Applying the provision is not in the public interest;
- 2) The steel or manufactured goods are not available in sufficient quantity or quality in the United States;
- 3) The cost of components and subcomponents produced in the United States is more than 60 percent of the total components of a facility or equipment, and final assembly has taken place in the United States. Items that have an FAA standard specification item number (such as specific airport lighting equipment) are considered the equipment.
- 4) Applying this provision would increase the cost of the overall project by more than 25 percent.

Timing of Waiver Requests. The sponsor must submit Type 1 or Type 2 waiver requests *before* issuing a solicitation for bids or a request for proposal for a project.

The sponsor must submit Type 3 or Type 4 waiver requests *prior* to executing the contract. The FAA will generally not consider waiver requests after execution of the contract except where extraordinary only if extenuating circumstances exist. The FAA cannot review incomplete waiver requests or requests that the Sponsor has not reviewed for adequacy. Sponsor must assess the adequacy of the waiver request before forwarding the request to the FAA.

Buy American Conformance List. The FAA Office of Airports maintains a listing of equipment that has received National waivers from the Buy American Preference requirements or that fully meet the Buy American requirements. This Buy American Conformance List is available online at www.faa.gov/airports/aip/buy_american/. Products listed on the Buy American Conformance list do not require a project specific Buy American Preference requirement waiver from the FAA.

Facility Waiver Requests. For construction of a facility, the sponsor may submit the waiver request after bid opening, but prior to contract execution. Examples of facility construction include terminal buildings, terminal renovation, and snow removal equipment buildings.

Contract Types –

Construction and Equipment - The sponsor must meet the Buy American Preference requirements of 49 USC § 50101 for all AIP funded projects that require steel or manufactured goods. The Buy America requirements flow down from the sponsor to first tier contractors, who

are responsible for ensuring that lower tier contractors and subcontractors are also in compliance.

Note: the Buy American Preference does not apply to equipment a contractor uses as a tool of their trade and does not remain as part of the project.

Professional Services – Professional service agreements (PSA) do not normally result in a deliverable that meets the definition of a manufactured product. However, the emergence of different project delivery methods has created situations where task deliverables may include a manufactured product. If a PSA includes providing a manufactured good as part of the contract, the sponsor must include the Buy American Preference provision in the agreement.

Property – Most land transactions do not involve acquiring a manufactured product. However, under certain circumstances, a property acquisition project could result in the installation of a manufactured product. For example, the installation of property fencing, gates, doors and locks, etc. represent manufactured products acquired under the AIP funded project that must meet the Buy American Preference.

Use of Provision – The regulation does not prescribe mandatory language, the following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor’s revised language must fully comply with 49 USC § 50101.

There are two types of Buy American certifications. The sponsor must incorporate the appropriate “Certificate of Buy America Compliance” in the solicitation:

- Projects for a facility (Buildings such as Terminal, SRE, ARFF, etc.) – Insert the Certificate of Compliance Based on Total Facility
- Projects for non-facility development (non-building construction projects such as runway or roadway construction; or equipment acquisition projects) – Insert the Certificate of Compliance Based on Equipment and Materials Used on the Project.

A1.3 CONTRACT CLAUSE

A1.3.1 Buy American Preference Statement

BUY AMERICAN PREFERENCE

The contractor agrees to comply with 49 USC § 50101, which provides that Federal funds may not be obligated unless all steel and manufactured goods used in AIP funded projects are produced in the United States, unless the FAA has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

A bidder or offeror must complete and submit the Buy America certification included herein with their bid or offer. The Owner will reject as nonresponsive any bid or offer that does not include a completed Certificate of Buy American Compliance.

A1.3.2 Certificate of Buy American Compliance – Manufactured Product

Certificate of Buy American Compliance for Manufactured Products

A2 (BUY AMERICAN PREFERENCE)

A2.1 SOURCE

Title 49 USC § 50101

A2.2 APPLICABILITY

The Buy-American Preference requirement in 49 USC § 50101 requires that all steel and manufactured goods used on AIP projects be produced in the United States. The statute gives the FAA the ability to issue a waiver to a sponsor to use non-domestic material on the AIP funded project. The sponsor may request that the FAA issue a waiver from the Buy American Preference requirements if the FAA finds that:

- 5) Applying the provision is not in the public interest;
- 6) The steel or manufactured goods are not available in sufficient quantity or quality in the United States;
- 7) The cost of components and subcomponents produced in the United States is more than 60 percent of the total components of a facility or equipment, and final assembly has taken place in the United States. Items that have an FAA standard specification item number (such as specific airport lighting equipment) are considered the equipment.
- 8) Applying this provision would increase the cost of the overall project by more than 25 percent.

Timing of Waiver Requests. The sponsor must submit Type 1 or Type 2 waiver requests *before* issuing a solicitation for bids or a request for proposal for a project.

The sponsor must submit Type 3 or Type 4 waiver requests *prior* to executing the contract. The FAA will generally not consider waiver requests after execution of the contract except where extraordinary only if extenuating circumstances exist. The FAA cannot review incomplete waiver requests or requests that the Sponsor has not reviewed for adequacy. Sponsor must assess the adequacy of the waiver request before forwarding the request to the FAA.

Buy American Conformance List. The FAA Office of Airports maintains a listing of equipment that has received National waivers from the Buy American Preference requirements or that fully meet the Buy American requirements. This Buy American Conformance List is available online at www.faa.gov/airports/aip/buy_american/. Products listed on the Buy American Conformance list do not require a project specific Buy American Preference requirement waiver from the FAA.

Facility Waiver Requests. For construction of a facility, the sponsor may submit the waiver request after bid opening, but prior to contract execution. Examples of facility construction include terminal buildings, terminal renovation, and snow removal equipment buildings.

Contract Types –

Construction and Equipment - The sponsor must meet the Buy American Preference requirements of 49 USC § 50101 for all AIP funded projects that require steel or manufactured goods. The Buy America requirements flow down from the sponsor to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are also in compliance.

Note: the Buy American Preference does not apply to equipment a contractor uses as a tool of their trade and does not remain as part of the project.

Professional Services – Professional service agreements (PSA) do not normally result in a deliverable that meets the definition of a manufactured product. However, the emergence of different project delivery methods has created situations where task deliverables may include a manufactured product. If a PSA includes providing a manufactured good as part of the contract, the sponsor must include the Buy American Preference provision in the agreement.

Property – Most land transactions do not involve acquiring a manufactured product. However, under certain circumstances, a property acquisition project could result in the installation of a manufactured product. For example, the installation of property fencing, gates, doors and locks, etc. represent manufactured products acquired under the AIP funded project that must meet the Buy American Preference.

Use of Provision – The regulation does not prescribe mandatory language, the following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor’s revised language must fully comply with 49 USC § 50101.

There are two types of Buy American certifications. The sponsor must incorporate the appropriate “Certificate of Buy America Compliance” in the solicitation:

- Projects for a facility (Buildings such as Terminal, SRE, ARFF, etc.) – Insert the Certificate of Compliance Based on Total Facility
- Projects for non-facility development (non-building construction projects such as runway or roadway construction; or equipment acquisition projects) – Insert the Certificate of Compliance Based on Equipment and Materials Used on the Project.

A2.3 CONTRACT CLAUSE

A2.3.1 Buy American Preference Statement

BUY AMERICAN PREFERENCE

The contractor agrees to comply with 49 USC § 50101, which provides that Federal funds may not be obligated unless all steel and manufactured goods used in AIP funded projects are produced in the United States, unless the FAA has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

A bidder or offeror must complete and submit the Buy America certification included herein with their bid or offer. The Owner will reject as nonresponsive any bid or offer that does not include a completed Certificate of Buy American Compliance.

A2.3.2 Certificate of Buy American Compliance – Manufactured Product

Certificate of Buy American Compliance for Manufactured Products

(For all other projects, the *Certificate of Compliance Based on Equipment and Materials Used on the Project (Non-building heavy construction projects such as runway or roadway construction; or equipment acquisition projects)* must be submitted.)

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC § 50101 by selecting one on the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (not both) by inserting a checkmark (✓) or the letter “X”.

- Bidder or offeror hereby certifies that it will comply with 49 USC § 50101 by:
- a) Only installing steel and manufactured products produced in the United States, or;
 - b) Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing, or;
 - c) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
2. To faithfully comply with providing US domestic product
3. To furnish US domestic product for any waiver request that the FAA rejects
4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

- The bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:

1. To submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that support the type of waiver being requested.
2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may result in rejection of the proposal.
3. To faithfully comply with providing US domestic products at or above the approved US domestic content percentage as approved by the FAA.
4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

Required Documentation

Type 3 Waiver - The cost of the item components and subcomponents produced in the United States is more than 60% of the cost of all components and subcomponents of the “item”. The required documentation for a type 3 waiver is:

- a) Listing of all product components and subcomponents that are not comprised of 100% US domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety).
- b) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly at place of manufacture.
- c) Percentage of non-domestic component and subcomponent cost as compared to total “item” component and subcomponent costs, excluding labor costs associated with final assembly at place of manufacture.

Type 4 Waiver – Total cost of project using US domestic source product exceeds the total project cost using non-domestic product by 25%. The required documentation for a type 4 of waiver is:

- a) Detailed cost information for total project using US domestic product
- b) Detailed cost information for total project using non-domestic product

False Statements: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

Date

Signature

Company Name

Title

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC § 50101 by selecting one on the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (not both) by inserting a checkmark (✓) or the letter “X”.

- Bidder or offeror hereby certifies that it will comply with 49 USC § 50101 by:
- d) Only installing steel and manufactured products produced in the United States, or;
 - e) Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing, or;
 - f) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- 5. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
- 6. To faithfully comply with providing US domestic product
- 7. To furnish US domestic product for any waiver request that the FAA rejects
- 8. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

- The bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:

- 5. To submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that support the type of waiver being requested.
- 6. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may result in rejection of the proposal.
- 7. To faithfully comply with providing US domestic products at or above the approved US domestic content percentage as approved by the FAA.
- 8. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

Required Documentation

Type 3 Waiver - The cost of the item components and subcomponents produced in the United States is more than 60% of the cost of all components and subcomponents of the “item”. The required documentation for a type 3 waiver is:

- d) Listing of all product components and subcomponents that are not comprised of 100% US domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety).

- e) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly at place of manufacture.
- f) Percentage of non-domestic component and subcomponent cost as compared to total “item” component and subcomponent costs, excluding labor costs associated with final assembly at place of manufacture.

Type 4 Waiver – Total cost of project using US domestic source product exceeds the total project cost using non-domestic product by 25%. The required documentation for a type 4 of waiver is:

- c) Detailed cost information for total project using US domestic product
- d) Detailed cost information for total project using non-domestic product

False Statements: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

Date

Signature

Company Name

Title