

Illinois Department of Transportation

Division of Highways / Bureau of Construction
2300 South Dirksen Parkway, Springfield, Illinois 62764

Subject:
Small Fasteners
Less Than ½" in Diameter

CONSTRUCTION MEMORANDUM NO. 15-85

Effective: October 1, 2015

Expires: Indefinitely

Purpose

This memo provides direction regarding application of the Steel Products Procurement Act (30 ILCS 565) for small fasteners less than ½ inch in diameter.

Background

The federal Buy America Act (Buy America) generally requires iron and steel products used in federal-aid highway construction to be domestically produced. However, Buy America does allow for the use of non-domestic iron and steel for small dollar amounts of up to \$2500 or 0.1% of contract value, whichever is greater.

The Illinois Steel Products Procurement Act (Act) requires contract specifications that state iron and steel products used in construction shall be domestically produced. Article 106.01 of the Standard Specifications satisfies this specification requirement. However, the Act does allow for the use of non-domestic iron and steel products as follows:

- 1) Where the contract involves an expenditure of less than \$500,
- 2) Where the executive head of the public agency certifies in writing that:
 - a. The specified products are not manufactured or produced in the United States in sufficient quantities to meet the agency's requirements or cannot be manufactured or produced in the United States within the necessary time in sufficient quantities to meet the agency's requirements,
 - b. Obtaining the specified products, manufactured or produced in the United States would increase the cost of the contract by more than 10%,
 - c. When its application is not in the public interest.

Small fasteners less than ½" in diameter, including associated nuts and washers, are either not made in the U.S., produced in sufficient quantities, or produced within the necessary time in sufficient quantities which results in delayed projects and higher cost for fabrication. On December 21, 2012, the Federal Highway Administration (FHWA) exempted such products from Buy America (see attached). As such, the Department considers that in order to serve the public interest the Act be waived for small fasteners less than ½" in diameter.

On September 21, 2015 the Secretary of Transportation provided in writing that such enforcement is not in the public interest (see attached Finding of Public Interest).

Procedure

Supported by the determination by the FHWA and the Finding of Public Interest by the Secretary referenced above, the Department will revise Article 106.01 of the Standard Specifications to specifically allow small fasteners less than ½” in diameter, including associated nuts and washers, to be non-domestically produced.

Article 106.01 provides an exception for the use of domestic steel if, “an exception is expressly permitted under Federal and/or State law and written permission is given by the Department.” The signed Finding of Public Interest will serve as the written permission of the Department. This exception will only apply to small fasteners less than ½” in diameter and associated nuts and washers. However, until the specification is revised, allowing the use of non-domestically produced small fasteners shall be provided in writing so as to document the appropriate enforcement of the contract.

Contractors must request the use of small fasteners that are not domestically produced in writing to the Engineer. The request shall be reviewed by the District Construction Engineer. Upon concurrence from the District Construction Engineer, an exemption shall be provided in writing allowing the use of the non-domestically produced fasteners. The written determination shall include the language, “With reference to the Finding of Public Interest signed by the Secretary of Transportation on September 21, 2015, the small fasteners required for use on the subject project are not manufactured or produced in the United States in sufficient supply to meet the needs for this project. The small fasteners less than ½” in diameter, and associated nuts and washers, required for this contract may be non-domestically produced.”

All other material specifications will be enforced.



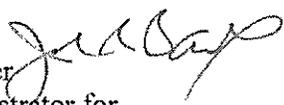
Tim Kell, P.E.
Interim Engineer of Construction

U.S. Department
of Transportation
Federal Highway
Administration

Memorandum

Subject: **ACTION**: Clarification of
Manufactured Products under Buy
America

Date: DEC 21 2012

From: Mr. John R. Baxter 
Associate Administrator for
Infrastructure

In Reply Refer To:
HIPA-30

To: Division Administrators
Directors of Field Services

This memo clarifies the Federal Highway Administration's (FHWA) position regarding application of Buy America requirements to manufactured products. Our current Buy America policy is based upon the statutory provisions in the Surface Transportation Assistance Act of 1982, as implemented with a November 25, 1983, final rule.

In the preamble to the 1983 final rule (48 FR 53099), after soliciting and considering public comments, the FHWA found that it was in the public interest to waive application of Buy America to manufactured products other than steel and iron manufactured products. As the Federal-aid Highway Program evolved and technology improved, the FHWA clarified the applicability of the standing waiver for manufactured products in a December 12, 1997, memo. In this 1997 memo, the FHWA clarified that, while Buy America does not apply to manufactured products, Buy America does apply to components of "predominately steel products."

With enactment of the American Recovery and Reinvestment Act (ARRA), the FHWA formed National Review Teams (NRT) (now known as Project Management Improvement Teams) to conduct reviews and make recommendations on how to improve the delivery of ARRA funded projects. One NRT review recommended that a State's Buy America certification be clarified to ensure that all covered steel and iron meets FHWA Buy America requirements. In working to address this finding, questions have arisen regarding the scope of the application of the 1983 public interest waiver for manufactured products. For example, it has been suggested that nuts, bolts, washers, and other miscellaneous steel or iron parts used in common off-the-shelf products such as toilets and the filaments in light bulbs must be Buy America compliant. Given these questions, the FHWA is concerned that such a reading of Buy America is inconsistent with the previous 1983 waiver decision and is not cost-effective to administer. Accordingly, it has become necessary to clarify the applicability of the waiver for manufactured products.

The FHWA continues to support the Buy America waiver for manufactured products in the 1983 final rule, as clarified by the 1997 memo. In particular, the waiver was intended to apply to all manufactured products except for steel and iron manufactured products. For example, the 1983 rule specified that traffic controllers are covered by the waiver since these products have many different components that are difficult to trace. Over time, however, some States have subjected signal heads and other traffic control equipment to Buy America and have sought project specific waivers. In reexamining the extent of the 1983 waiver in light of the NRT finding, we believe that the scope of the waiver was intended to encompass miscellaneous steel or iron components and subcomponents that are commonly available as off-the-shelf products such as faucets, door hardware, and light bulbs.

Thus, in order for a manufactured product to be considered subject to Buy America, the product must be manufactured predominantly of steel or iron. The FHWA deems a product to be manufactured predominantly of steel or iron if the product consists of at least 90% steel or iron content when it is delivered to the job site for installation. For purposes of applying Buy America and determining whether a product is a steel or iron manufactured product, the job site includes the sites where any precast concrete products are manufactured.

Examples of products that are subject to Buy America coverage include, 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, prestressing / 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, luminaires, or traffic control systems; and
- steel or iron components of precast concrete products, such as reinforcing steel, wire mesh and pre-stressing or post-tensioning strands or cables.

The miscellaneous steel or iron components, subcomponents and hardware necessary to encase, assemble and construct the above components (or manufactured products that are not predominantly steel or iron) are not subject to Buy America coverage. Examples include, but are not limited to, cabinets, covers, shelves, clamps, fittings, sleeves, washers, bolts, nuts, screws, tie wire, spacers, chairs, lifting hooks, faucets, door hinges, etc.

If you have any questions, please contact either Mr. Gerald Yakowenko at 202-366-1562 or Mr. Edwin Okonkwo at 202-366-1558.

Finding of Public Interest

WHEREAS: The Buy America requirements for the Federal-aid highway program (23 CFR 635.410) require iron and steel products permanently incorporated into highway construction to be domestically produced.

WHEREAS: these Federal Buy America requirements includes an exemption for small dollar amounts of up to \$2500 or 0.1% of contract value, whichever is greater, for the use of non-domestic iron and steel.

WHEREAS: The Federal Highway Administration provides examples of products that are subject to Buy America in a memo titled, "Clarification of Manufactured Products under Buy America," dated December 21, 2012.

WHEREAS: The Federal Highway Administration has also determined "miscellaneous steel or iron components, subcomponents and hardware necessary to encase, assemble and construct...are not subject to Buy America coverage. Examples include, but are not limited to cabinets, cover, shelves, clamps, fittings, sleeves, washers, bolts, nuts, screws, tie wire, spacers, chairs, lifting hooks, faucets, door hinges, etc."

WHEREAS: The Illinois Steel Products Procurement Act (30 ILCS 565) requires each contract for the construction, reconstruction, alteration, repair, improvement or maintenance of public works made by a public agency contain a provision that steel products used or supplied in the performance of that contract or any subcontract thereto shall be manufactured or produced in the United States.

WHEREAS: The Illinois Steel Products Procurement Act provides the following exemptions:

1. Where the contract involves an expenditure of less than \$500.
2. Where the executive head of the public agency certifies in writing that
 - a. the specified products are not manufactured or produced in the United States in sufficient quantities to meet the agency's requirements or cannot be manufactured or produced in the United States within the necessary time in sufficient quantities to meet the agency's requirements, or
 - b. obtaining the specified products, manufactured or produced in the United States would increase the cost of the contract by more than 10%
3. When its application is not in the public interest.

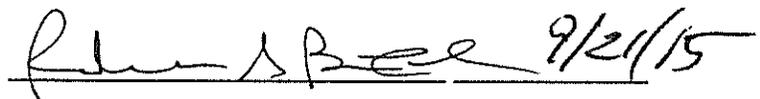
WHEREAS: An exemption for fasteners less than ½" in diameter and associated nuts and washers does not currently exist in the Illinois Steel Products Procurement Act.

WHEREAS: Consistency between federal and state law would streamline certain aspects of administering highway construction contracts.

WHEREAS: The Department expends considerable resources, in the form of staff time, tracking, verifying and documenting the source of fasteners less than ½" in diameter and associated nuts and washers.

WHEREAS: Fasteners less than 1/2" in diameter and associated nuts and washers are common and/or off the shelf products not made specifically or in supply for public works projects.

THEREFORE: In order to more closely align federal and state requirements, streamline certain contract administration functions, provide a more efficient use of the State's limited resources and reduce the expenditure of continually reducing state dollars, it is in the public interest to exempt fasteners less than 1/2" in diameter and associated nuts and washers from the requirements of the Illinois Steel Products Procurement Act as allowed under the law.

 9/21/15

Secretary of Transportation

Date