

TRAFFIC AND SAFETY MANUAL

Chapter 10 – Utilities 10D Buy America for Utility Relocations

General

Originally Issued: 02-17-14, Last Revised: 02-1-16

HISTORY:

Buy America requirements originated in 1983 in the Code of Federal Regulations 23CFR 635.410. Part 1 states: “*The project either: (i) Includes no permanently incorporated steel or iron materials, or (ii) if steel or iron materials are to be used, all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes which protect or enhance the value of the material to which the coating is applied.*” This applied to all projects where Federal aid is involved.

Beginning January 1, 2014 per section 1518 of MAP-21, if the project as defined by National Environmental Policy Act (NEPA), has at least one authorized Federal-Aid Highway Program (FAHP) construction contract, all utility relocations eligible for federal reimbursement utility work must meet Buy America regardless of funding source.

APPLICABILITY:

- Buy America requirements only affect products containing or composed of steel or iron.
- Buy America only applies to relocations of utility facilities that must move due to highway projects under certain specific conditions as stated below.
- Buy America applies if the utility relocation is eligible for reimbursement with federal funds, however in the case of Buy America few of the eligible relocations will be reimbursed. See below for eligibility criteria and reimbursement guidance.
- Buy America applies in the case where the utility relocation is included in the federal-aid contract. This can be through an agreement with the DOT or Local Agency.

PROJECTS WHERE BUY AMERICA APPLIES TO UTILITY RELOCATIONS IN IOWA:

There are four primary cases when Buy America provisions must be applied to utility relocations in Iowa.

Case 1, Agreement work

This case involves relocation of a utility on private property (fee title or easement) in response to an Iowa Department of Transportation (DOT) project where any Federal funds are used within the NEPA project boundary and where property rights require the DOT to reimburse the utility for relocation. This case applies when the project is on any primary highway or freeway under the jurisdiction of the DOT.

Case 2, Interstate project relocation - DOT permitted work

This case involves relocation of any utility inside DOT right of way due to a DOT project on the interstate system and any federal funds are used within the NEPA project boundary. The reason this case applies in Iowa is because this relocation is eligible for reimbursement due to Iowa Code Section

306A.10 that states the relocation *may* be paid. While the relocation of the utility facility is eligible for reimbursement, historically, the DOT has not paid for such relocations.

Case 3, Interstate project relocation – city or county permitted or franchised work

This case involves relocation of any utility inside city or county right of way due to a DOT project on the interstate system and any federal funds are used within the NEPA project boundary. The reason this case applies in Iowa is because this relocation is eligible for reimbursement due to Iowa Code Section 306A.10 that states the relocation *may* be paid. While the relocation of the utility facility is eligible for reimbursement, historically, the DOT has not paid for such relocations.

Case 4, Utility relocation is included in a federal-aid contract

This involves relocation of any utility that is done as part of a federal-aid DOT project or a federal aid local agency project due to Article 1107.06 of the DOTs Standard Specification. This could be a project on a primary highway or city street. Special provisions may not override or circumvent the requirements of the specifications for Buy America Compliance.

HOW TO COMPLY WITH BUY AMERICA PROVISIONS (Case 1,2,3):

1. The DOT will determine if Buy America applies to utility relocations based on DOT or Local Public Agency (LPA) project requirements.
2. Complete Bill of Materials (form BA2) to determine items that may need to be Buy America compliant.
3. Complete Certificate of Compliance (form BA3) to signify compliance.
4. Submit the signed documents with the permit applications or reimbursement agreements to the DOT (BA2 and BA3).
 - Case 1: Submit signed BA2 and BA3 with the DOT reimbursement agreement.
 - Case 2: Submit signed BA2 and BA3 with the DOT permit application.
 - Case 3: Submit signed BA2 and BA3 to the DOT with a copy of the application or permit granted by the city or county.
5. Complete the relocation work in accordance with the Buy America requirements.
6. Retain verification paperwork (ie. mill and/or step certifications, bills of lading, manufacturers' certificates, etc.) for all Buy America materials for a period of 5 years from the date of issuance of the permit or reimbursement agreement. Field audits of the materials and/or office audits of the certification paperwork by DOT personnel should be expected.

HOW TO COMPLY WITH BUY AMERICA PROVISIONS (Case 4):

1. Comply with article 1107.06 of the DOT Standard Specifications. The process is identified in IADOT I.M. 107. It will be updated for the April 2016 letting. If you have a project that will be let before then, please request the draft information from Bryan Bradley (515-294-1014), bryan.bradley@iowa.gov.

POSSIBLE EXCEPTIONS:

Possible Waiver:

Title 23 Section 313 and FHWA's regulations in 23 CFR 635.410 provide that the Administrator may issue a waiver if, (1) the application of Buy America provisions would be inconsistent with the public

interest or (2) iron and steel materials/products are not produced in the United States in sufficient and reasonably available quantities which are of satisfactory quality. Very few of these waivers have been granted and the expectation is it will continue to be a stringent process with few applications being approved. The waiver process is a very lengthy process so time must be allowed for approvals up to the national level that would typically be on the order of a full year after initiation of the request before final approval. These applications have typically been denied. Consideration should be given to these issues when seeking a waiver.

Minimal Use of Foreign Steel:

Additionally, the FHWA's regulations permit a minimal use of foreign steel and iron in the amount of \$2,500 or one-tenth of one percent of the utility relocation contract/cost, whichever is greater. This amount would be the total amount of foreign steel or iron allowed on the utility project across all of the materials supplied. **Incorporation of any foreign steel must be preapproved by the DOT.**

Link to the exception descriptions;

<http://www.gpo.gov/fdsys/pkg/CFR-2013-title23-vol1/xml/CFR-2013-title23-vol1-sec635-410.xml>

WORDING IN PERMITS TO PROMPT COMPLIANCE (Special Requirements):

All work done under this utility accommodation permit must conform to Buy America requirements in accordance with 23CFR 635.410 as it relates to permanently incorporated steel and/or iron materials. Three supporting documents are attached to this permit. BA1 is a guide of why Buy America applies and how to apply Buy America requirements. BA2 and BA3 need to be signed and submitted to the DOT with the permit application. Failure to comply with Buy America requirements may result in revoking large government contracts and possible fraud charges.

IOWA CODE 306A.10

Iowa Code 306A.10 *Notice to relocate – costs paid.*

*Whenever the state department of transportation, city or county determines that relocation or removal of any utility facility now located in, over, along, or under any highway or street, is necessitated by the construction of a project on routes of the **national system of interstates** and defense highways including extensions within cities of on streets or highways resulting from interstate substitutions in a qualified metropolitan area under Tit. 23, U.S.C. the utility owning or operating the facility shall relocate or remove the same in accordance with statutory notice. The costs of relocation or removal, including the costs of installation in a new location, shall be ascertained by the authority having jurisdiction over the project or as determined in condemnation proceedings for such purposes and **may be paid** from participating federal aid or other funds.*