



U.S. Department
of Transportation

**Federal Highway
Administration**

Missouri Division

4/3/2014

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In Reply Refer To:
HDA-MO

**MoDOT Design
Revised Utility Accommodation Policy
Attn: Eric Schroeter**

Mr. Dave Nichols, Director
Missouri Department of Transportation
Jefferson City, Missouri 65102

Dear Mr. Nichols:

We have reviewed your revised utility accommodation policy and procedures which specifically address the MAP-21 Buy America changes and have approved it for use on Federal-Aid projects.

Please call Dawn Perkins in our office at 638-2626 if you have any questions.

Sincerely yours,

for Kevin W. Ward, P.E.
Division Administrator

Enclosures

EPG 643.2.1.43 Buy America for Utilities

The FHWA's Buy America policies require a domestic manufacturing process for all steel or iron products that are permanently incorporated in a Federal-aid highway construction project, including utility materials. Below are the Buy America (BA) guidelines and BA certification requirements for utility companies in the State of Missouri.

643.2.1.43.1 Buy America Guidelines for Utilities – These BA guidelines are to be used by utilities for the purpose of defining the BA requirements for utility relocations in the state of Missouri. These guidelines are for all federally eligible transportation projects where Federal Highway Administration (FHWA) is the lead federal agency; it does not take precedence over projects where Federal Transit Administration (FTA) or the Federal Railroad Administration (FRA) is deemed to be the lead federal agency.

Missouri Highway Transportation Commission (MHTC) will implement BA utility relocation activities required for highway transportation projects as follows:

- The following materials, when comprised of more than 90% steel or iron **are subject** to BA compliance:
 - Poles & cross arms;
 - Pipe and valves (except as stated below);
 - High-strength bolts, anchor bolts and anchor rods;
 - Girders used to comprise transmission towers, stand-alone structures, lattice towers;
 - Rebar and other reinforcing iron/steel for all cast-in-place and precast installations;
 - Conduit and ducting;
 - Fire Hydrants;
 - Manhole covers and rims; drop-inlet grates and risers.
- BA **does not** apply to assembly materials, attachment materials, miscellaneous electronics, or encasements, as defined below in EPG 643.2.1.43.3.
- BA **does not** apply to any associated materials (including spare materials) required for maintenance.
- BA **does not** apply to existing utility materials that are relocated from one location to another within the project limits. Any new materials are subject to BA.
- BA **does not** apply to any materials necessary to repair equipment that was discovered or damaged during construction and required immediate action to restore to safe conditions or to minimize adverse public impact.
- BA **does not** apply to associated materials necessary for temporary utility relocation.
- BA **does not** apply if the utility relocation is not eligible for federal reimbursement (non-reimbursable as defined in EPG 643). For example, if the utility owner is required to pay for 100% of the entire relocation effort, then the materials associated with that specific relocation are not subject to BA. However, all such work must remain separate from and cannot be accomplished under a utility agreement or contract that includes work eligible for Federal reimbursement.

- If the project sponsor does not wish to subject betterment materials (as defined below in EPG 643.2.1.43.3) to BA provisions, then the betterment must be excluded from the utility contract that includes work eligible for federal reimbursement.
- Per 23 CFR 635.410, Non-domestic iron and steel materials can be used provided the cost of such materials do not exceed one-tenth of one percent (0.1%) of the individual utility contract amount, or \$2,500.00, whichever is greater.
- Per 23 CFR 635.410, the work to be performed under the utility contract may include foreign iron and steel products if the cost of the BA compliant materials will cause the cost of the work to increase by at least 25%. To determine applicability of this provision, one of the following two procedures shall be used:
 - If the utility company will use a contractor to perform the work included in the utility contract, the following procedures apply: demonstration of meeting the 25% excess cost requirement must be accomplished by receiving two separate bids each from at least two qualified contractors for the work. Requests for bids from qualified contractors must conform to 23 CFR 635.410 (b)(3). One bid from each contractor will include a cost of performing the work described in the utility contract using BA compliant material and the other bid will include a cost for the same work assuming foreign materials. If the bid with the BA compliant materials is at least 25% greater than the bid that includes foreign materials, then the contract can be awarded to the lowest bid based on materials that are not BA compliant.
 - If the utility company will perform work in the utility contract with its own forces, the following procedures apply: demonstrations of meeting the 25% excess cost requirement must be accomplished by receiving two separate bids from vendors or manufacturers listing the cost of BA compliant materials on one bid document and listing the cost of non-compliant materials on a separate bid document. The utility company will take the cost of the BA compliant materials and use it to create the total estimated cost of the work included in the utility contract. The utility company will do the same with the cost of the non-compliant materials. If the cost of the work included in the utility contract with BA compliant materials is at least 25% greater than the cost using the materials that are not compliant with BA, then the non-compliant materials may be used.

643.2.1.43.2 Buy America Certification Requirement for Utilities - These BA certification requirements are to be used by utilities for the purpose of defining BA certification methods for utility relocations in the state of Missouri. These certification requirements are for all federally eligible transportation projects where Federal Highway Administration (FHWA) is the lead federal agency; it does not take precedence over projects where Federal Transit Administration (FTA) or the Federal Railroad Administration (FRA) is deemed to be the lead federal agency.

Missouri Highway Transportation Commission (MHTC) will implement BA certification requirements for highway transportation projects by using one of the following two certification methods that is chosen by the utility company:

Buy America Utility Owner Self-Certification Method: MHTC will enter into a Master Reimbursable Utility Agreement (MRUA) or a project specific agreement. The agreement will include the following provisions:

- Utility owner will be compliant with BA requirements.
- Utility agreement will contain the statement *“Buy America Compliance Certification: The City/Company certifies that when determining products/materials subject to Buy America requirements to use in the performance of this Agreement, it shall use only such products/materials for which it has received a certification from its supplier, or provider of construction services that procures the product/material, certifying compliance with Buy America requirements. This does not include products/materials for which waivers have been granted pursuant to 23 CFR 635.410 or those products/materials that are excluded from compliance with Buy America requirements in the Commission’s Engineering Policy Guide 643.2.1.43. **The City/Company will not be required to provide the Commission copies of the supplier certification as part of this Agreement or with the final invoice of said Commission’s Federal-Aid Highway Construction Project.***
- Retention of documents clause.

Buy America Vendor/Manufacturer Certification Method: MHTC will enter into a Master Reimbursable Utility Agreement (MRUA) or a project specific agreement. The agreement will include the following provisions:

- Utility owner will be compliant with BA requirements.
- Utility agreement will contain the statement *“Buy America Compliance Certification: The **City/Company** certifies that when determining products/materials subject to Buy America requirements to use in the performance of this Agreement, it shall use only such products/materials for which it has received a certification from its supplier, or provider of construction services that procures the product/material, certifying compliance with Buy America requirements. This does not include products/materials for which waivers have been granted pursuant to 23 CFR 635.410 or those products/materials that are excluded from compliance with Buy America requirements in the Commission’s Engineering Policy Guide 643.2.1.43. **The City/Company shall provide to the Commission all Buy America compliance documents as outlined in the Commission’s Engineering Policy Guide 643.2.1.43. All required compliance documents shall accompany the final invoice submitted to the Commission.***
- Utility owner will supply MHTC all BA compliance documents in one of the following ways or combination of both:
 - Vendor Certification – Utility owner will collect written certification from the vendor(s). The written certification will be signed by the vendor on the company letterhead, or other acceptable documentation, signed by an authorized representative of the vendor and will declare that all supplied materials subject to BA requirements are fully compliant.

- Manufacturer/Factory Certification – Utility owner will collect written certification from factory(s). The written certification must be in the form of a mill test report (MTR) issued and signed by the initial fabricator stating that the materials subject to BA were melted and manufactured in the United States. Other written statements on company letterhead, or other acceptable documentation, signed by an authorized representative of the manufacturer for any additional treatment to the fabricated material (such as blasting, galvanizing, painting or any coating) will state that all treatment processes occurred in the United States in accordance with FHWA guidelines.
- Retention of documents clause.

643.2.1.43.3 Buy America for Utilities Definitions

Anchor & High-Strength Bolts – Anchor and high-strength bolts will be distinguished in one of the following three methods to be selected, and consistently applied, by the utility owner:

- 1.) The utility owner may identify anchor and high-strength bolts in the specifications or plans as necessary for the safe and functional design of the utility relocation. If a bolt is not called out as anchor or high-strength, it stands that the design did not require that level of performance and the supplied bolt is not subject to BA;
- 2.) The utility owner may identify anchor and high-strength bolts through the application of a strength rating. Any bolt possessing a yield strength of fifty-thousand pounds per square inch (50-ksi) or greater will be considered an anchor or high-strength
- 3.) The utility owner may identify anchor and high-strength bolts through the application of a weight measurement. Any bolt possessing a weight of 15 pounds or greater will be considered an anchor or high-strength.

Assembly Materials – (miscellaneous steel) – The collection of miscellaneous materials used to fasten, hold, attach, secure and/or assemble materials including but not limited to: cabinets, covers, shelves, tie wire, guy wires, transformers, insulators, cutouts, surge arrestors, switches, hardware, base plates, conductor, spacers, chairs, faucets, door hinges, nuts, bolts, U-bolts, screws, washers, clips, fittings, sleeves, lifting hooks, mounting brackets, pole steps, clamps, brackets, mountings, straps, fasteners, hooks, pins, braces, disks, clevises, couplers, swivels, snaps, crimps, trunnions, dead-ends, compression swages, and other miscellaneous materials used to assemble.

Attachment Materials – An items or material that is not an integral part or permanently attached to the pole, pipe or valve. Attachment materials include but are not limited to: cross arm bracing, insulators, avian equipment, miscellaneous hardware (defined below), fittings (as defined below), racks, ladders, encasements, guy wire, strand, conductors and tubing 0.75-inch diameter or less.

Betterments – Any upgrading of the facility being relocated that is not attributable to the highway construction and is made solely for the benefit of and at the election of the utility (23 CFR 645.105). As such, a betterment is not eligible for federal reimbursement.

Conductor – A material (specifically wires and cables) that allows the flow of energy including electricity, heat, data, audio/video transmission etc.

Encasements – Include cabinets, housings, boxes, vaults, covers, shelves, and other items used to protect or house equipment or miscellaneous electronics. Encasements as defined in EPG 643.3.9.3 **will be** subject to BA if comprised of more than 90% of iron or steel. The type of encasement in EPG 643.3.9.3 is considered conduit for the purposes of enforcing Buy America compliance.

Fittings – Individual parts used to join, adjust or adapt a system of pipes including but not limited to elbows, tees, wyes, crosses, nipples, reducers, end caps, couplers, o-lets, transitions, connectors (steady state, seismic and flexible), unions, mechanical flanges (not permanently affixed to the pipe), bushings, ferrules, gaskets, O-rings, plugs, taps, air release valves and vacuum release valves.

Girders – A load bearing beam or strut commonly taking the cross-sectional shape of a circle, square, rectangle, or and I, C, L or Z and assembled for the purpose of creating lattice towers, stand-alone platforms or transmission towers.

Lattice Towers – A structure that is compiled of girders and is typically used in series to support conductor cables.

Maintenance – An action or application of materials necessary to keep a system functioning safely and at optimum capacity; general up-keep.

Miscellaneous Electronics – Manufactured products or assemblies consisting of many components such as electronic equipment, routers, switches, radios, processors, power supplies, batteries, antennas, splice cases, pre-connectorized hubs and terminals, and cross-boxes.

Miscellaneous Hardware – An assembly of small parts that are compiled to form a finished product that is often used independently or as an attachment material, including but not limited to, locks switches, cutouts, regulators, gauges, meters, barometers, strainers, filters, pilots, arrestors, insulators, ball bearings, dampeners, needle valves, braces, pipe supports, actuators, motors and pumps.

Permanent Installation – Is the final location and final installation of the materials as defined on the plans or in the specifications. No further adjustments or relocations are necessary to accommodate the final transportation project improvements.

Stand-alone Platforms – A structure that is compiled of girders and is used to permanently hold or support large equipment.

Temporary Utility Relocation – A temporary utility relocation is generally subject to the schedule necessary to accomplish the scope as defined by the NEPA document. A temporary utility relocation is one that is needed to allow the roadway construction to proceed, but is not required to remain in its relocation as a result of the final transportation improvement. For example, if the scope requires the sequential completion of six separate construction contracts, theoretically a temporary utility relocation could remain in place prior to commencement of the first construction contract and extend beyond the

completion of the sixth construction contract prior to its final placement. A temporary utility relocation can also be established if the contract specifications or plans require that the steel or iron material used on the project either must be removed at the end of the project or may be removed at the contractor's convenience.

Buy America – Supplemental Agreement Language

[Choose only one of the following]:

(21) **BUY AMERICA REQUIREMENT COMPLIANCE:** The **City/Company** agrees to abide by the provisions of the Buy America requirements as found in 23 USC 313 and 23 CFR 635.410 for the Commission's Federal-Aid Construction Program.

[Drafter's Note: Choose only one of the following paragraphs (A) in red ink letters or in blue ink letters, as applicable, based upon what the City or Utility Company elects. Once selection is made, delete the alternate paragraph, change the color of the letters in the selected paragraph to black and delete this Drafter's Note.]

(A) **Buy America Compliance Certification:** The **City/Company** certifies that when determining products/materials subject to Buy America requirements to use in the performance of this Agreement, it shall use only such products/materials for which it has received a certification from its supplier, or provider of construction services that procures the product/material, certifying compliance with Buy America requirements. This does not include products/materials for which waivers have been granted pursuant to 23 CFR 635.410 or those products/materials that are excluded from compliance with Buy America requirements in the Commission's Engineering Policy Guide 643.2.1.43. The **City/Company** will not be required to provide the Commission copies of the supplier certification as part of this Agreement or with the final invoice of said Commission's Federal-Aid Highway Construction Project.

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(B) **Buy America Record Retention:** The **City/Company** agrees to retain all Buy America compliance documents obtained pursuant to paragraph (21)(A) above, for a period of time of no less than 3 years after the receipt of the final reimbursement for the project by FHWA of said Commission's Federal-Aid Highway Construction Project in accordance with 49 CFR 18.42 (b) and (c). All Buy America compliance documents shall be made available upon request of, and at no cost to, the Commission and/or Federal Highway Administration

Process to Request Change To Buy America Guidelines

