



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

# Memorandum

Subject Program Guidance Letter 91-3

Date 24 APR 1991

From Manager, Grants-in-Aid Division, APP-500

Reply to  
Attn of

To PGL Distribution List

91-3.1 Buy American Requirement - Jim Borsari, (267-8822).

Under section 9129 of the Aviation Safety and Capacity Expansion Act of 1990, the Secretary of Transportation shall not obligate after the date of enactment (November 5, 1990), any funds for any project unless "steel and manufactured products" (hereafter materials) used in such projects are produced in the United States. Although this appears to be a blanket requirement, the Act further provides the following 4 exceptions:

- (1) The Secretary determines that application of the Buy American requirement would not be in the public interest;
- (2) The Secretary finds that such materials are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;
- (3) In the case of the procurement of facilities and equipment under the Airport and Airway Improvement Act of 1982, as amended, that (A) the cost of components and subcomponents which are produced in the United States is more than 60 % of the cost of all components of the facility or equipment, and (B) final assembly of the facility or equipment has taken place in the United States; or
- (4) The inclusion of domestic materials will increase the cost of the overall project contract by more than 25 %.

If a sponsor requests the application of one of the exceptions to the requirement, it must do so in writing and provide complete rationale for its request. The approval/disapproval issued by the Region/ADO or by Washington Headquarters must also be in writing and contain the basis for the decision. Sponsor requests and approval/disapproval letters shall be made available to the public upon request. In the review of contracts for approval, FAA project managers/airport engineers must take into account the Buy American provisions. Acceptance of a contract under exceptions 1 and 2 above must be coordinated with this office. All other exceptions may be granted at the Region/ADO level without coordination with this office.

This guidance has been coordinated with AGC-100.

*Stam Low*

*for* Lowell H. Johnson

Attachments

Cancelled

SPECIAL CONDITION TO BE INCLUDED IN NEW GRANTS

**Buy American Requirement.** Unless otherwise approved by the FAA, it will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured products produced outside the United States to be used for any project for airport development or noise compatibility for which funds are provided under this grant. The sponsor will include in every contract a provision implementing this special condition.

Cancelled

BUY AMERICAN CERTIFICATE (JAN 1991)

By submitting a bid/proposal under this solicitation, except for those items listed by the offeror below or on a separate and clearly identified attachment to this bid/proposal, the offeror certifies that steel and each manufactured product, is produced in the United States (as defined in the clause Buy American - Steel and Manufactured Products or Buy American - Steel and Manufactured Products For Construction Contracts) and that components of unknown origin are considered to have been produced or manufactured outside the United States.

Offerors may obtain from (insert Sponsor Representative) lists of articles, materials, and supplies excepted from this provision.

PRODUCT

COUNTRY OF ORIGIN

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TO BE INCLUDED IN SOLICITATIONS

## NOTICE TO BIDDERS

BUY AMERICAN - STEEL AND MANUFACTURED  
PRODUCTS FOR CONSTRUCTION CONTRACTS (JAN 1991)

(a) The Aviation Safety and Capacity Expansion Act of 1990 provides that preference be given to steel and manufactured products produced in the United States when funds are expended pursuant to a grant issued under the Airport Improvement Program. The following terms apply:

1. Steel and manufactured products. As used in this clause, steel and manufactured products include (1) steel produced in the United States or (2) a manufactured product produced in the United States, if the cost of its components mined, produced or manufactured in the United States exceeds 60 percent of the cost of all its components and final assembly has taken place in the United States. Components of foreign origin of the same class or kind as the products referred to in subparagraphs (b)(1) or (2) shall be treated as domestic.

2. Components. As used in this clause, components means those articles, materials, and supplies incorporated directly into steel and manufactured products.

3. Cost of Components. This means the costs for production of the components, exclusive of final assembly labor costs.

(b) The successful bidder will be required to assure that only domestic steel and manufactured products will be used by the Contractor, subcontractors, materialmen, and suppliers in the performance of this contract, except those-

(1) that the U.S. Department of Transportation has determined, under the Aviation Safety and Capacity Expansion Act of 1990, are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;

(2) that the U.S. Department of Transportation has determined, under the Aviation Safety and Capacity Expansion Act of 1990, that domestic preference would be inconsistent with the public interest; or

(3) that inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.

(End of Clause)

TO BE INCLUDED IN SOLICITATIONS
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BUY AMERICAN - STEEL AND MANUFACTURED PRODUCTS  
(JAN 1991)

(a) The Contractor shall deliver only domestic steel and manufactured products under this contract as defined in paragraph (b) below.

(b) The following terms apply to this clause:

1. Steel and manufactured products. As used in this clause, steel and manufactured products include (1) those produced in the United States or (2) a manufactured product produced in the United States, if the cost of its components mined, produced or manufactured in the United States exceeds 60 percent of the cost of all its components and final assembly has taken place in the United States.

2. Components. As used in this clause, components means those articles, materials, and supplies incorporated directly into steel and manufactured products.

3. Cost of Components. This means the costs for production of the components, exclusive of final assembly labor costs.

(End of Clause)

TO BE INCLUDED IN CONTRACTS

List of Supplies/Materials that the U.S. Government Has  
Determined Are Not Produced In the United States In Sufficient  
and Reasonably Available Quantities And of Sufficient Quality  
(Jan 1991)

Acetylene, black.	Diamonds, industrial, stones and abrasives.
Agar, bulk.	Emetine, bulk.
Anise.	Ergot, crude.
Antimony, as metal or oxide.	Erthrityl tetranitrate.
Asbestos, amosite, chrys- olite, and crocidolite.	Fair linen, altar.
Bananas.	Fibers of the following types: abaca, abace, agave, coir, flax, jute, jute burlaps, palmyra and sisal.
Bauxite.	Goat and kidskins.
Beef, corned, canned.	Graphite, natural, crystal- line, crucible grade.
Beef extract.	Handsewing needles.
Bephenium Hydroxynapthoate.	Hemp yarn.
Bismuth.	Hog bristles for brushes.
Books, trade, text, technical, or scientific; newspapers; pamphlets; magazines; periodicals; printed briefs and films; not printed in the United States and for which domestic editions are not available.	Hyoscine, bulk.
Brazil nuts, unroasted.	Ipecac, root.
Cadmium, ores and flue dust.	Iodine, crude.
Calcium cyanamide.	Kaurigum.
Capers.	Lac.
Cashew nuts.	Leather, sheepskin, hair type.
Castor beans and castor oil.	Lavender oil.
Chalk, English.	Manganese.
Chestnuts.	Menthol, natural bulk.
Chicle.	Mica.
Chrome ore or chromite.	Microprocessor chips (brought onto a construction site as separate units for incor- poration into building systems during construction or repair and alteration of real property.)
Cinchona bark.	Nickel, primary, in ingots, pigs, shots, cathodes, or similar forms; nickel oxide and nickel salts.
Cobalt, in cathodes, rondelles, or other primary ore and metal forms.	Nitroguanidine (also known as picrite).
Cocoa beans.	Nux vomica, crude.
Coconut and coconut meat, unsweetened, in shredded, desiccated or similarly prepared form.	Oiticica oil.
Coffee, raw or green bean.	Olive Oil.
Colchicine alkaloid, raw.	
Copra.	
Cork, wood or bark and waste.	
Cover glass, microscope slide.	
Cryolite, natural.	
Dammar gum.	

List of Supplies/Materials that the U.S. Government Has Determined Are Not Produced In the United States In Sufficient and Reasonably Available Quantities And of Sufficient Quality (Jan 1991) (CONTINUED)

Petroleum terms are used as follows:

"Crude oil" means crude petroleum, as it is produced at the wellhead, and liquids (under atmospheric conditions) that have been recovered from mixtures of hydrocarbons that existed in a vaporous phase in a reservoir and that are not natural gas products.

"Finished products" means any one or more of the following petroleum oils, or a mixture or combination of these oils, to be used without further processing except blending by mechanical means:

- (A) "Asphalt" - a solid or semi-solid cementitious material that (1) gradually liquefies when heated, (2) has bitumens as its predominating constituents, and (3) is obtained in refining crude oil.
- (B) "Fuel oil" - a liquid or liquefiable petroleum product burned for lighting or for the generation of heat or power and derived directly or indirectly from crude oil, such as kerosene, range oil, distillate fuel oils, gas oil, diesel fuel, topped crude oil, or residues.
- (C) "Gasoline" - a refined petroleum distillate that, by its consumption, is suitable for use as a carburant in internal combustion engines.
- (D) "Jet fuel" - a refined petroleum distillate used to fuel jet propulsion engines.
- (E) "Liquefied gases" - hydrocarbon gases recovered from natural gas or produced from petroleum refining and kept under pressure to maintain a liquid state at ambient temperatures.
- (F) "Lubricating oil" - a refined petroleum distillate or specially treated petroleum residue used to lessen friction between surfaces.
- (G) "Naphtha" - a refined petroleum distillate falling within a distillation range overlapping the higher gasoline and the lower kerosenes.