

# Buy American

49 United States Code §50101



Presented to: **Helena ADO Conference**

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**Federal Aviation  
Administration**



# Discussion Points

## 49 United States Code §50101

### Definitions:

- 49 USC §50101
- Project
- Facility or Equipment
- Final Assembly Location

### Waivers:

- Nationwide Wavers
- Type 1
- Type 2
- Type 3
- Type 4

### Sponsor Responsibilities:

- Contract Administration
- Submitting Waiver Requests
- Implementing Approved Waivers

### FAA Responsibilities:

- Headquarter Approval
- Regional/ADO Approval

### Common Misconceptions:

- Perception verse Reality



# Definitions:

## 49 United States Code §50101:

- It is the law applicable to FAA fund obligations.
- In a nutshell – The FAA will not obligate any funds authorized to be appropriated for any project unless steel and manufactured products used in such projects are produced in the United States.
- Therefore – Sponsors must not permit any Contractor or Subcontractor to acquire steel or manufactured product unless otherwise authorized by the FAA.



# Definitions:

## Project:

- This is the project that is being bid.
- Does not extend over multiple grant phases.



# Definitions:

## Facility or Equipment:

- Buildings – The portion being funded under the AIP grant.
- Vehicles or single piece of equipment – The single vehicle itself.
- Other projects - The bid items as described in the latest edition of AC 5370-10 (except airfield electrical equipment).
- Airfield electrical equipment – “L-” items listed in the Addendum to FAA Advisory Circular 5345-53C.



# Definitions:

## Final Assembly Location:

- Buildings – Final assembly location is the airport building site.
- Other projects – Final assembly is the location where the equipment is assembled, not typically the project site itself.



# Waivers:

## Buy American Intent:

- Install only steel and manufactured goods that are 100% made in the United States.

## Statute Permitted Waivers:

- The Secretary may waive....
- Four applicable scenarios provided.



# Waivers:

## Nationwide Wavers:

- Evaluation of common equipment used on AIP projects for compliance with Buy American provision.
- Items listed have been granted a national waiver or been found to meet Buy America requirements.
- Additional evaluation is not necessary if found on the list.

[http://www.faa.gov/airports/aip/buy\\_american/](http://www.faa.gov/airports/aip/buy_american/)

-Access the “Nationwide Buy American Waivers Issued (as of ##/##/####)” link



# Waivers:

## Type 1 Waiver:

- Public Interest Waiver.
- Application would be inconsistent with the public interest.



# Waivers:

## Type 2 Waiver:

- Insufficient U.S. material.
- Not produced in a sufficient and reasonably available quantity.
- Not of a satisfactory quality.



# Waivers:

## Type 3 Waiver (most common):

- More than 60% domestic.
- Final assembly is in the United States.

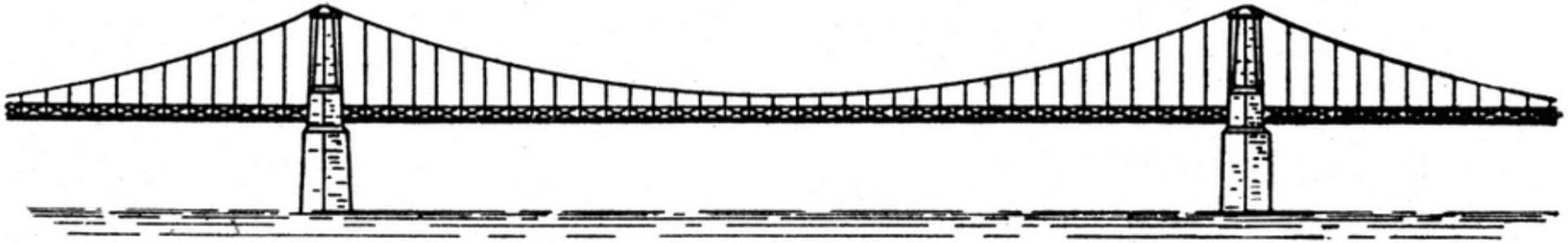
**NOTE: Suppliers must be willing to provide the necessary information – they can claim proprietary, but if it can't be evaluated then it can't be approved.**



# Waivers:

## Type 4 Waiver:

- Total project cost waiver.
- Use of domestic material would increase the cost of the overall project by more than 25%.



# Sponsor Responsibilities:

## Contract Administration:

- Sponsor's must know what is going into the project.
- Sponsor must not permit steel or manufactured products produced outside of the U.S. unless authorized by the FAA.

## Submitting Waiver Requests:

- The Secretary may waive.... (no guarantees)
- Type 3 (60% domestic) is the most common waiver encountered.



# Sponsor Responsibilities:

## Type 3 Waiver Process:

### 1. Bid Solicitation

- Bid packages must incorporate Buy American provision.
- Bidders must indicate how they intend to meet Buy American.

### 2. Apparent Low Bidder

- Sponsor evaluates submitted Buy American certification.
- CAUTION: Avoid executing any contract until the Buy American evaluation is complete and the FAA concurs with any waiver requests.



# Sponsor Responsibilities:

## Type 3 Waiver Process (Continued):

### 3. Waiver Request

- Must include the percentage of components and subcomponents that are U.S. made.
- Percentage shall be based on completed component calculation table (cannot simply state 60% domestic).
- Materials analyzed must exclude labor costs from the percentage calculation.
- Include a Sponsor recommendation.



# Sponsor Responsibilities:

## Type 3 Waiver Process (Continued):

### 4. FAA Review/Approval

- If sufficient FAA will generate a Buy America Waiver approval letter.
- Common causes for FAA rejection:
  - Including labor and assembly costs in the component cost calculation.
  - Insufficient component breakout or inadequate component calculation.
  - Foreign made steel included in waiver request.
  - Less than 60% U.S. made participation.
  - Simply stating it will meet the 60% requirement.



# Sponsor Responsibilities:

## Implementing Approved Waivers:

- The Sponsor remains responsible for verifying the Contractor's compliance with approved waivers.
- Review submittal documentation.
- Monitor actual installation.
- Values identified in the approved waiver request become a contract obligation.



# FAA Responsibilities:

## Headquarter Approval:

- Retains responsibility for addressing Type 1 (Public Interest Waivers) and Type 2 (Insufficient U.S. Material).

## Regional/ADO Approval:

- Type 3 (60% Domestic) is the most common.
- Type 4 (Total Project Costs) is not common. If encountered or expected to be encountered begin coordination with the ADO as early as possible.



# Common Misconceptions:

## **FAA approval of a Type 3 request applies to multiple projects.**

- This is not true. Each project needs to have standalone documentation showing Buy American compliance.
- Even if it is common, keep following the process.

## **“FAA-certified” products automatically meet Buy American.**

- This is not true. FAA-certified is in regards to technical standards. Don't get FAA-certified mixed up with items having Nationwide Waivers.



# Common Misconceptions:

**If items are commonly encountered as non-Domestic, but routinely approved then Waiver Requests do not need submitted to FAA.**

- This is not true. No matter how common a situation is we need to address unless listed in as a Nationwide Waiver.

**North America Free Trade Act (NAFTA) exempts equipment manufactured in Mexico or Canada.**

- This is not true. NAFTA is not applicable to AIP projects.



# Discussion

