

Safety & Engineering

FAA's Buy American Preference

Prepared for: 2018 Southwest Region
Airport Conference

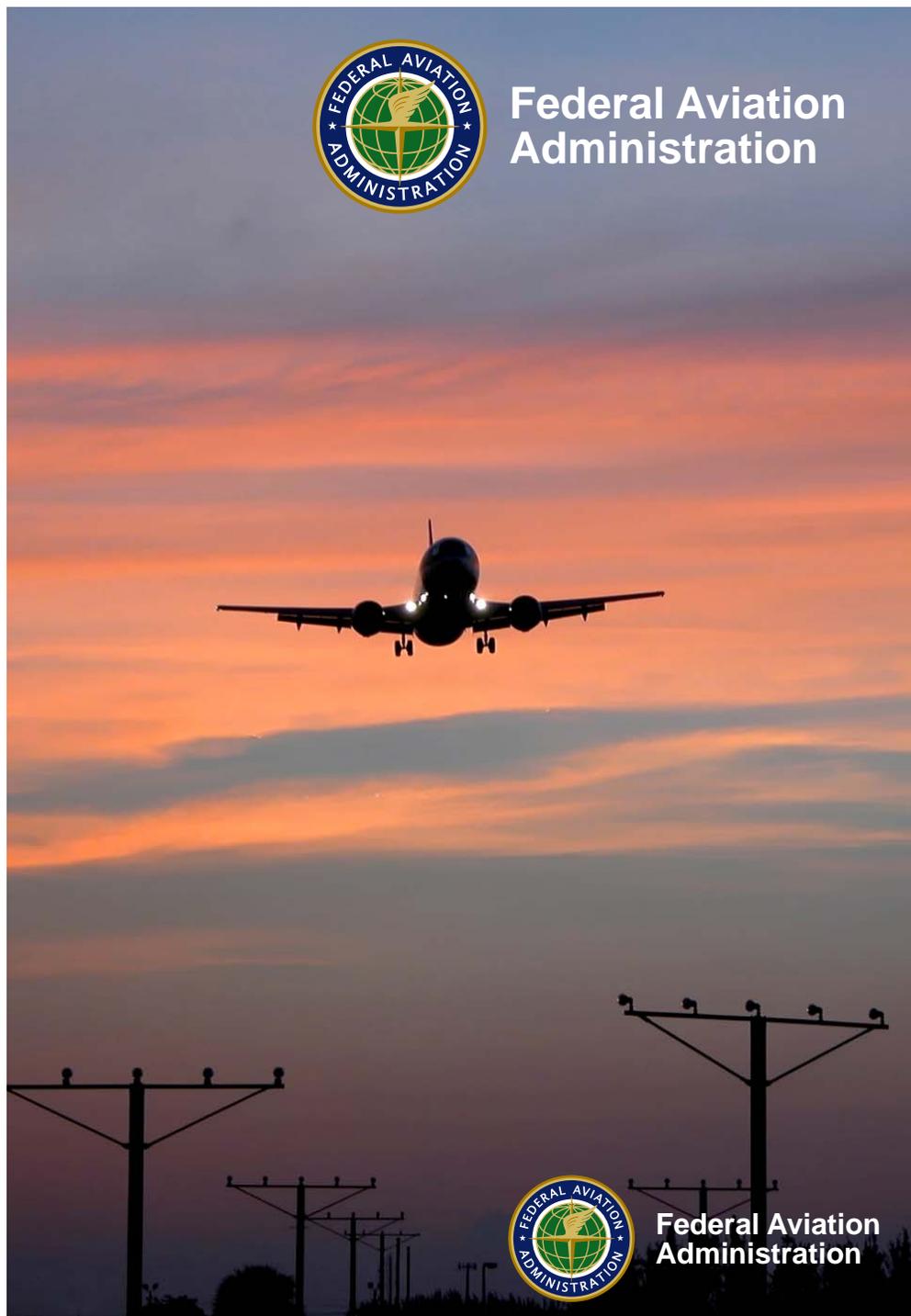
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Office of Airport Planning &
Programming (APP-1)

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Engineer, ASW-622

Date: January 31, 2018



Federal Aviation
Administration



Federal Aviation
Administration

FAA Buy American (BA) Preference

- **49 USC § 50101**
 - Exclusive to FAA.
 - Permits use of AIP/PFC funds only if **ALL** the steel or manufactured goods are produced in the US, unless waived.
- **Different than other DOT agencies.**
 - Goes down to the subcomponent level
 - Requires 60% not 50% US materials
 - Does not include NAFTA or International Treaties.
 - Cannot be substituted by other DOT statutes or regulations.



BA Certification in Solicitation

- **Section A4 of Required Federal Contract Provisions for AIP (Updated 1/12/2018):**
https://www.faa.gov/airports/aip/procurement/federal_contract_provisions/
- **Two types of BA Certification of Compliance**
 - Projects for a Facility (Terminal, SRE, ARFF buildings, etc.)
 - Projects for Non-Facility Development
 - Runway, Taxiway, Lighting & Marking
 - Equipment Acquisition



BA Certification for Facilities

- https://www.faa.gov/airports/aip/procurement/federal_contract_provisions/

CERTIFICATE OF BUY AMERICAN COMPLIANCE FOR **TOTAL FACILITY**

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with its proposal. The bidder or offeror must indicate how it intends to comply with 49 USC § 50101 by selecting one of the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (i.e. not both) by inserting a checkmark (✓) or the letter “X”.

- Bidder or offeror hereby certifies that it will comply with 49 USC § 50101 by:
 - a) Only installing steel and manufactured products produced in the United States; or
 - b) Installing manufactured products for which the Federal Aviation Administration (FAA) has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
 - c) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.



BA Certification for Non-Facilities

– https://www.faa.gov/airports/aip/procurement/federal_contract_provisions/

Certificate of Buy American Compliance for Manufactured Products

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC § 50101 by selecting one on the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (not both) by inserting a checkmark (✓) or the letter “X”.

- Bidder or offeror hereby certifies that it will comply with 49 USC § 50101 by:
 - a) Only installing steel and manufactured products produced in the United States;
 - b) Installing manufactured products for which the Federal Aviation Administration (FAA) has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
 - c) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.



What Do We Require of Sponsor in Regards to BA?

- **Certify, in writing, all products are wholly produced in America and are 100% US materials;**
 - Grant Condition #13, Buy American Requirement:
 13. **BUY AMERICAN REQUIREMENT:** Unless otherwise approved by the FAA, the Sponsor 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.
- **Use equipment on the project that is on the Nationwide Buy American conformance list (Updated 1/10/2017);**
 - https://www.faa.gov/airports/aip/buy_american/
- **Request a Waiver to Use Non-US products.**



FAA Buy American Waivers Allowed

- **Type I** – Inconsistent with Public Interest.
- **Type II** – Insufficient Quantity and/or Quality.
- **Type III** – Cost of components and subcomponents of US origin > than 60% AND final assembly in US.
- **Type IV** – Cost of including domestic material increases project costs by more than 25%.



Who at FAA Issues the Waivers?

- **Type I** – Inconsistent with Public Interest. **HQs Only**
- **Type II** – Insufficient Quantity and/or Quality. **HQ Only**
- **Type III** – Cost of components and subcomponents of US origin > than 60% AND final assembly in US. **ADO/RO/HQ**
- **Type IV** – Cost of including domestic material increases project costs by more than 25%. **ADO/RO/HQ**



Type I Waiver Process Inconsistent with Public Interest

- **FAA Initiates**

- No history of use. No Type I Waiver ever issued.
- Manufacturers responds to national request.

- **FAA HQ**

- Coordinates vetting analysis with agency leadership.
- Makes Determination



Type II Waiver Process

Insufficient Quantity or Quality

- **Manufacturer Initiates**
 - Manufacturer submits written request to FAA
 - Provides product percentage worksheet & final assembly questionnaire
- **FAA HQ**
 - Conducts market analysis through the Federal Register Notice
 - Evaluates worksheet and questionnaire.
 - Coordinates vetting analysis with agency leadership.
 - Makes Determination for up to 5 years, unless revoked.



Type III Waiver Process

Cost of components and subcomponents of US origin > 60% AND final assembly in US

- **Begins with the Bid Documents:**

The bidder or offeror hereby certifies it cannot comply with the 100 percent Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:

1. To submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that supports the type of waiver being requested.
2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may result in rejection of the proposal.
3. To faithfully comply with providing U.S. domestic products at or above the approved U.S. domestic content percentage as approved by the FAA.
4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.



Type III Waiver Documentation

- **Contractor/Supplier via Sponsor Submits to FAA for review:**
 - Content Percentage Calculation Worksheet
 - 3 levels (level 0, 1 & 2) in the Bill of Materials.
 - US Origin vs Non US Origin break-out.
 - Final Assembly Questionnaire
 - Location
 - Where is the product ready for use?
 - Is the Construction site in the US?
- **FAA ADO/RO/HQ Makes Determination**
 - If HQ issues determination then goes on Nationwide Buy American Conformance List



Buy American Questions

- **Question:** What are the **Bill of Material Levels**?
- **Answer:**
 - **Level 0 Material:** The manufactured eligible final product.
 - **Level 1 Material:** The list of component materials required to construct/manufacture the final product.
 - **Level 2 Material:** The list of subcomponent raw materials required to construct/manufacture the level one component required in the final product.



Type III – Product Content Percentage Worksheet

Company

Date:

Point of Contact
(Provide address, telephone, fax, e-mail)

No Labor Costs!

PRODUCT STRUCTURE
Multi-Level Bill of Materials
through level 2 only

Item: ALSF-2 SUBSTATION FACILITY
FAA Item Number: N/A

Address of Final Assembly Location:
TX,

Total Material Cost	\$ 520,737.42
US Content, % *	86.9%
Other, %	13.1%

Level (0, 1, 2)	Part Number	Description ²	Quantity Per Unit	Unit of Measure	Price/Unit of Measure	US Origin*		Other	
						Price/Unit of Measure	Cost/Each	Price/Unit of Measure	Cost/Each
0	1	ALSF-2 SUBSTATION FACILITY							
1	1.1	Building Foundation							
2	1.1.1	Concrete	1	LS	\$ 9,360.00	\$ 9,360.00	\$ 9,360.00	\$ -	\$ -
2	1.1.2	Reinforcing Steel	1	LS	\$ 3,200.00	\$ 3,200.00	\$ 3,200.00	\$ -	\$ -
1	1.2	Building Steel & Fasteners	1	LS	\$ 182,314.00	\$ 181,589.00	\$ 181,589.00	\$ 725.00	\$ 725.00
1	1.3	Mechanical							
2	1.3.1	HVAC	1	LS	\$ 34,656.94	\$ 15,414.99	\$ 15,414.99	\$ 19,241.95	\$ 19,241.95
2	1.3.2	Generator Exhaust	1	LS	\$ 5,377.00	\$ 5,377.00	\$ 5,377.00	\$ -	\$ -
2	1.3.3	Fuel Tank for Engine Generator	1	LS	\$ 26,527.44	\$ 26,527.44	\$ 26,527.44	\$ -	\$ -
1	1.4	Building Electrical Subsystems							
2	1.4.1	Electrical Devices	1	LS	\$ 25,024.09	\$ 19,547.96	\$ 19,547.96	\$ 5,476.13	\$ 5,476.13
2	1.4.2	Grounding	1	LS	\$ 28,456.46	\$ 28,456.46	\$ 28,456.46	\$ -	\$ -
2	1.4.3	Electrical Raceway	1	LS	\$ 112,398.62	\$ 80,688.87	\$ 80,688.87	\$ 31,709.75	\$ 31,709.75
2	1.4.4	Switchgear	1	LS	\$ 66,931.00	\$ 55,951.00	\$ 55,951.00	\$ 10,980.00	\$ 10,980.00
2	1.4.5	Cable	1	LS	\$ 26,491.87	\$ 26,491.87	\$ 26,491.87	\$ -	\$ -



Type III – Product Final Assembly Questionnaire

1. Please provide a description of the assembly process occurring at the specified final location in the United States?

Please describe the final assembly process and its various operations?

How long does the final assembly process take to complete?

2. Please provide a description of the resources used to conduct the assembly of the product at the specified location in the United States?

How many employees are involved in the final assembly process and what is the general skill level of those employees?

What type of equipment is used during the final assembly process?



Type IV Waiver Process

Cost of including domestic material increases project costs by more than 25%

- **Begins with the Bid Documents**
- **Contractor/Supplier via Sponsor Submits:**
 - Bid Tabulation
 - FAA must determine that there is one bid from a BA compliant supplier to make the 25% cost increase determination.
 - Cost Information for total project using US domestic product
 - Cost Information for total project using non-domestic product
- **FAA ADO/RO/HQ Makes Determination**
 - If HQ issues determination then goes on Nationwide Buy American Conformance List



Waiver Communication

- **Type I HQ**
 - FAA notifies manufacturer/airport division directors, and posts to the FAA website.
- **Type II HQ**
 - FAA notifies manufacturer of waiver and posts to Nationwide Waiver List on FAA website.
- **Type III or IV ADO/RO/HQ**
 - The FAA will write a letter to the Sponsor approving or disapproving the waiver, with notification placed in the grant file or is posted to the FAA website.



How Long Do Waivers Take to Process?

- **Type I HQ**
 - More than likely expeditiously
- **Type II HQ**
 - 3 to 6 months
- **Type III or IV ADO/RO/HQ**
 - Usually in 1 month



FAA Buy American FACTS

- **Only permanent parts of a AIP project are subject to FAA Buy American Preference.**
- **Both the cost of components and location of assembly are used to analyze proposed waivers.**
- **Manufacturing non-US materials into a final product in the US, does NOT make the product of US Origin.**



FAA Buy American FACTS (con't).

- **FAA Buy American Preference requires 100% American materials.**
- **Propriety information provided to FAA is NOT subject to FOIA.**
- **Manufacturers may seek Nationwide and/or project specific waivers.**
- **The cost and origin of third party materials must be disclosed by the manufacturer.**



BA and FAA-Certified Equipment

- **Airport Sponsors must use FAA-certified equipment in AC 150/5345-53C Addendums 3 & 4, but you must check the National BA Waiver list OR Sponsor must apply for a Waiver**

WARNING!!

FAA-certified equipment may or may not meet BA!!



Buy American Questions

- **Question:** If steel is shipped into the US and rolled in the US is that considered domestic material?
- **Answer:** No. Steel sourced outside of the United States is not considered a domestic material although rolled or manufactured in the United States.



Buy American Questions

- **Question:** What are the requirements for who should sign the forms? Does the contact need to be at a specific level with the company (VP, General Manager, Engineering Manager?)
- **Answer:** The point-of-contact is the designated representative of the manufacturer requesting a Buy American Waiver. This person should be able to answer questions about the equipment for which the waiver is being requested.



Buy American Questions

- **Question:** Is asphalt excluded from Buy American Preference requirements?
- **Answer:** Yes. The U.S. Code of Federal Regulations (CFR) section 25.104 lists “Petroleum, crude oil, unfinished oils, and finished products”, as non-available in accordance with 25.103(b)(1)(i). This list of items is excluded from the FAA Buy American preference requirements.



Buy American Questions

- **Question:** If my waived product has changed, does it need a new waiver?
- **Answer:** Yes. Products that have changed from its original waiver must apply for a new waiver. Waivers are not transferable and specific to a specific product.



Buy American Summary

- **Sponsors are responsible for meeting BA**
- **Consultants are responsible for checking that what goes into the job meets BA or has an approved waiver**
- **Contractors are responsible for knowing where the products that they use come from**
- **BA ISN'T GOING AWAY**



FAA Buy American Preference Assistance

- https://www.faa.gov/airports/aip/buy_american/
- **Regional Office**
 - Lana Logan
 - Lana.Logan@faa.gov
 - (817) 222-5622
- **Headquarters**
 - Carlos N. Fields
 - Carlos.Fields@faa.gov
 - (202) 267-8826



Questions?



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