

Build America Buy America in 2023

Michael Dennee, Contract Services Group Coordinator



1

1

What has changed

- Build America Buy America requires that all iron, steel, manufactured products, and construction materials used in construction projects are produced in the US
- Since FHWA already has a long standing Buy America program, the requirements for steel are still the same as they have always been
- There is also an interpretation of manufactured products that was made with the original Buy America. Based on this interpretation there are no additional requirements for manufactured products



2

2

What has changed

- Implementation of the new Build America Buy America requirements will be focused on the use of Construction Materials on projects
 - Non-ferrous metals
 - Plastic and polymer based products
 - Glass
 - Lumber
 - Drywall



3

3

What has changed

- Specific items that Build America Buy America does not apply
 - Temporary items
 - Asphalt products
 - Cement and cementitious products
 - Aggregates
 - Aggregate additives



4

4

Implementation

- Projects with Construction Authorization after November 10, 2022 must meet the Build America Buy America requirements
- At ODOT this means that it applies to any federal aid project that has a bid opening after January 1, 2023.



5

5

Implementation

- All projects with Construction Authorization prior to November 10, 2022 will not be required to meet the new requirements
- Projects that require additional increases in federal authorization will not be required to meet the new requirements if the original construction authorization was prior to November 10, 2022
- You can identify projects that have the Build America Buy America requirements in them by looking at the contract special provisions in 00160.20(d) and 00165.35(e)



6

6

00160.20(d) Build America Buy America Act Requirements - If federal highway funds are involved on the Project, the Contractor shall comply with the Build America Buy America Act and implementing regulations (Infrastructure Investment and Jobs Act ("IIJA"), Pub. L. No. 117-58, which includes the Build America, Buy America Act ("the Act"). Pub. L. No. 117-58, Sections 70901-70941).


All of the manufacturing processes must occur in the United States for the applicable construction materials permanently incorporated in the Project as listed below.

Construction materials include an article, Material, or supply that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass;
- lumber; or
- [drywall](#).

Add the following subsection:


00165.35(e) Certificate of Origin of Construction Materials - When a certificate of material origin for construction materials is specified, complete ODOT Form 734-5378 as required by 00160.20(d) for Federal-aid projects.


7

7

Implementation

- Build America Buy America does not allow for any de minimis amount of foreign construction material incorporated in projects
- The allowances for foreign iron or steel from Buy America still remains the same
- Because of these differences there will be two forms that are required (depending on the type of material)
 - Form 734-2126 – Certificate of Materials Origin
 - Form 734-5378 – Construction Materials CMO


8

8

CERTIFICATE OF MATERIALS ORIGIN

PROJECT NAME (SECTION) _____ CONTRACT NO. _____

BID ITEM NO. _____ BID ITEM NAME _____

DOMESTIC MATERIALS SOURCE (NAME AND ADDRESS)

DOMESTIC MATERIALS DESCRIPTION

FOREIGN MATERIALS SOURCE INCLUDING MATERIAL OF UNKNOWN ORIGIN (NAME AND ADDRESS)

FOREIGN MATERIALS (OR OF UNKNOWN ORIGIN) DESCRIPTION AND VALUE OF IRON OR STEEL PRODUCT AS IT IS DELIVERED TO THE PROJECT

This certification is made for the purpose of establishing materials acceptance under the Contract Special Provisions titled 00190.20(a) Buy America. All iron or steel manufacturing processes, including protective coatings, for the domestic materials described above occurred within the United States of America. Manufacturers' certificates verifying the origin of the above described domestic materials will be kept on file for three years following final payment. Copies will be furnished to the Engineer upon request. I declare under penalty of perjury or falsification under Oregon and Federal laws that the foregoing is true and correct.

AUTHORIZED REPRESENTATIVE* _____ COMPANY* NAME AND ADDRESS: _____

NAME: _____

TITLE: _____

SIGNATURE: _____

DATE: _____

Submit a new certificate for subsequent shipments if any of the above information changes. *May be Contractor, Sub-Contractor or supplier

Construction Material Certificate of Materials Origin

Project Name (Section) _____ Contract No. _____

BID Item No. _____ BID Item Name _____

Domestic Materials Source

Name _____

Address _____

Description (maximum 1000 characters)

This certification is made for the purpose of establishing materials acceptable under the Contract Specifications titled 00160.20(a) Build America Buy America. All manufacturing processes for the domestic materials described above occurred within the United States of America. Manufacturers' certificates verifying the origin of the above described domestic materials will be kept on file for three years following final payment. Copies will be furnished to the Engineer upon request. I declare under penalty of perjury or falsification under Oregon and Federal laws that the foregoing is true and correct.

Authorized Representative* _____ Company* Name and Address _____

Name _____ Company _____

Title _____ Address 1 _____

Sign _____ Address 2 _____

Date _____ City/State/Zip _____

*May be Contractor, Subcontractor or Supplier

Submit a new certificate for subsequent shipments if any of the above information changes.

9

Contract Administration

Construction Home

Events and Conferences

SERVICES

- Contract Administration
- Lab Services
- Quality Assurance
- Structure Services

TRAINING & CERTIFICATION

- Inspector Certification Program
- Technician Certification Program

PAVEMENT

- Managing Pavement Conditions
- Pavement Quality and Materials

REFERENCES

- Qualified Products
- Construction Manuals
- Resources
- Memorandums

The Contract Administration Unit is responsible for uniform administration of all Oregon Department of Transportation construction contracts including:

- Contract payments;
- Contract change orders;
- Labor compliance;
- Document compliance;
- Measurement and payment;
- Contractor's claims or disputes.

Tools

- [Buy America Exempted Item List](#)
- [Claims Against Contractor Bonds](#)
- [Closure & Delay Liquidated Damages Calculator](#)
- [Common CCO Templates](#)
- [CON-CAL \(Reduction Computation\)](#)
- [Construction Manual](#)
- [Construction Materials Testing Costs](#)
- [Oil Prices for Current/Newer Projects](#)
- [Project Status Reports Index](#)
- [Region Assurance Guide](#)
- [StatSpec – Version 3.10.5](#)
- [Subcontract Requirements](#)

Resources

Build America Buy America Act

Memo from the State Construction and Materials Engineer

- [Blue Sheets](#)
- [Bid Item Lists](#)
- [Current Qualified Products \(QPL\) List](#)

Contact the Construction Section

800 Airport Road SE
Salem, Oregon 97301
Phone: [503-986-3000](tel:503-986-3000)
Fax: 503-986-3096
[Email the Construction Section](#)

Contract Administration Field Personnel
Visit this page for more service resources.

10

Build America Buy America

5

- New language is ready to be posted as part of the Construction Manual (Chapter 12B starting on page 11)
- This will be your best reference for implementation of the Build America Buy America requirements
- Anything that we need to change as this is being implemented will be modified in the Construction Manual so that RE Offices have information to enforce the requirements
- Please contact us if the guidance in the Construction Manual does not follow the guidance that you have heard – so that we can clarify and make adjustments to the Construction Manual as necessary

Build America Buy America

On November 15, 2021, President Biden signed into law the Infrastructure Investment and Jobs Act (IIJA), which includes the BABA Act (Pub. L. No. 117 58, Sections 70901 70941). While existing Buy America requirements previously applied to iron, steel, and certain manufactured products, BABA expands requirements to include all manufactured products and construction materials in construction contracts that include Federal funding.

The Act requires that no later than May 14, 2022—180 days after the enactment of the IIJA—the head of each covered Federal agency shall ensure that “none of the funds made available for a Federal financial assistance program for infrastructure, including each deficient program, may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.” A 180-day transitional waiver was approved for US-DOT to extend the implementation of BABA to November 10, 2022.

Included in BABA

- Construction materials include non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber, and drywall.
- BABA does not apply to temporary items, asphalt products, cement and cementitious products, aggregates, or aggregate additives. The BABA preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project.
- Manufactured products are defined as products consisting of at least two construction materials or other constituents that are produced or assembled off the Project Site. The existing 1983 FHWA waiver for manufactured products is being reviewed at the national level, as required by BABA. For now, manufactured products fall under the 1983 FHWA waiver.

Pay Item List

- Complete list of all pay items
- Organized by Specification #
- 45 Pages of pay item information
- Identifies how each pay item is addressed

Bid Items List						
Sort	Exempt, Temporary, or Not Applicable	Iron and Steel (includes manufactured steel items)	BABA Construction Material	BABA Manufactured Product	Item Number	Item Description
1		560			0560-0105000A	STEEL BOX GIRDER
1					0560-0106000A	TRAPEZOIDAL STEEL BOX GIRDER WITH HAUNCH
1					0560-0107000A	HORIZONTAL CURVED STEEL BOX GIRDER
1					0560-0108000A	STEEL ROLLED BEAM
0	0560-0109000A				0560-0109000A	STRUCTURAL STEEL MAINTENANCE
1		564			0564-0100000A	FALL ARREST SYSTEM
3				565	0565-0100000A	CFRP STRENGTHENING - WET LAYUP SYSTEM
3				566	0566-0100000A	CFRP STRENGTHENING - NEAR SURFACE MOUNTED
2					0567-0101000A	TITANIUM SYSTEM, 0.375 INCH DIAMETER
2			567		0567-0102000A	TITANIUM SYSTEM, 0.500 INCH DIAMETER
2					0567-0103000A	TITANIUM SYSTEM, 0.625 INCH DIAMETER
2					0567-0104000A	TITANIUM SYSTEM, 0.750 INCH DIAMETER
2			0570-0100000K		0570-0100000K	TIMBER AND LUMBER
3				0570-0112000K	0570-0112000K	GLUED LAMINATED TIMBER
1		581			0581-0100000E	BRIDGE DRAINS
1					0582-0010000E	BEARING DEVICES, _____
1		582			0582-0020000E	BEARING DEVICES, _____ INCH WIDE, _____ INCH LONG, _____ INCH THICK
2					0583-0201000F	PVC CONDUIT SYSTEM, _____ INCH DIAMETER
2			583		0583-0202000F	GRC CONDUIT SYSTEM, _____ INCH DIAMETER
2					0583-0203000F	316 SS RMC CONDUIT SYSTEM, _____ INCH DIAMETER
2					0583-0204000F	RTRC CONDUIT SYSTEM, _____ INCH DIAMETER
3					0584-0100000F	ELASTOMERIC CONCRETE NOSING
3				584	0584-0101000K	ELASTOMERIC CONCRETE NOSING MATERIAL FOR REPAIR
3					0584-0102000F	REPAIR ELASTOMERIC CONCRETE NOSING
0	0585-0200100A				0585-0200100A	ASPHALTIC PLUG JOINT SEALS
0	0585-0201100K				0585-0201100K	ASPHALTIC PLUG JOINT SEAL MATERIAL
0	0585-0206100A				0585-0206100A	POURED JOINT SEAL

13

Blue Sheet Materials

- Represents all materials covered by the Blue Sheets for traffic signals
- Organized by equipment categories
 - 2 pages of information
- Identifies how each signal material is addressed

14

14

Blue Sheets list					
Exempt or Not Applicable	Iron and Steel (includes manufactured steel items)?	BABA Construction Material?	BABA Manufactured Product?	Category	Item
				Poles and Pedestals	
	x				Chase Nipple
	x				Pipe Plugs
		x			Pedestal
				Conduit & Appurtenances	
		x			Conduit
		x			Conduit Bushings, PVC
	x				Conduit Bushings, Metal
		x			Conduit Plug
	x				Condulet
			x		Conduit Hub
			x		Expansion Fitting
		x			Pull Line
		x			Underground Warning Tape
				Junction Box	
			x		Junction Boxes
				Cables, Wires, Grounding/Bonding & Appurtenances	
		x			Bond Wire
			x		Ground Rod & Clamp
			x		Control Cable
			x		Industrial Ethernet Cable
			x		Interconnect Cable
			x		TFFN, THWN & XHHW wire
			x		Strain Relief

15

QPL

- Identifies in the “Remarks” column which QPL items will require a CMO for either steel or construction materials

16

16

QPL items List							
ODOT CONSTRUCTION / MATERIALS SECTION QUALIFIED PRODUCTS LIST APPROVED LIST - NO SAMPLES OR TESTS REQUIRED** QUALIFIED LIST - ADDITIONAL REQUIREMENTS** DECEMBER 2022							Page 78
STANDARD SPEC #	CATEGORY	PRODUCT NAME	LOCAL REPRESENTATIVE AND/OR MANUFACTURER	EFFECTIVE DATE	PRODUCT NUMBER	LIST	REMARKS
00538.10	CRACK INJECTION EPOXY	SIKADUR 52	SIKA CORPORATION 800/933-7452 THAD BROWN 425486-5916 ATLAS SUPPLY 800/806-7862 MASON'S SUPPLY 800/537-3407	11/13/08	548	A	AASHTO TYPES I AND IV.
00538.10	CRACK INJECTION, EPOXY	DURAL 452 LV	EUCLID CHEMICAL COMPANY, THE 800/321-7628 DAVE DILLON 206/280-4576 MASON'S SUPPLY 800/537-3407	03/17/14	4752	A	
00556.10A	MULTI-LAYER POLYMER CONCRETE OVERLAY EPOXY	CRACKBOND EPOTHANE T3	ADHESIVES TECHNOLOGY CORP. 954/789-4764	08/18/22	5404	Q	CONSTRUCTION MATERIAL CMO REQUIRED
00556.10A	MULTI-LAYER POLYMER CONCRETE OVERLAY EPOXY	EPX50-OVERLAY	E-CHEM, LLC JAMES HIGH 505/217-2121	06/04/15	4654	Q	CONSTRUCTION MATERIAL CMO REQUIRED
00556.10A	MULTI-LAYER POLYMER CONCRETE OVERLAY EPOXY	EPX50-OVERLAY FAST	E-CHEM, LLC JAMES HIGH 505/217-2121	04/18/17	5048	Q	FOR USE AT LOW TEMPERATURES FOLLOW MANUFACTURES RECOMMENDATIONS TEST DECK 2017 CONSTRUCTION MATERIAL CMO REQUIRED
00556.10A	MULTI-LAYER POLYMER CONCRETE OVERLAY EPOXY	FLEXOLITH	EUCLID CHEMICAL COMPANY, THE 800/321-7628 DAVE DILLON 206/280-4576 MASON'S SUPPLY 800/537-3407	01/10/08	230	Q	WAS FLEXOLITH 216 CONSTRUCTION MATERIAL CMO REQUIRED
00556.10A	MULTI-LAYER POLYMER CONCRETE OVERLAY EPOXY	PRO-POXY TYPE III DOT	UNITEX BY DAYTON SUPERIOR STEVE HACKWORTH 253/245-0263 WILLIAMS FORM ENG 800/255-0580	06/10/10	1920	Q	CONSTRUCTION MATERIAL CMO REQUIRED
00556.10A	MULTI-LAYER POLYMER CONCRETE OVERLAY EPOXY	PRO-POXY TYPE III DOT LT	DAYTON SUPERIOR/UNITEX CLAY CHRISTIANSEN 801/871-3658	02/13/17	5017	Q	FOR USE AT LOW TEMPERATURES FOLLOW MANUFACTURES RECOMMENDATIONS TEST DECK 2017 CONSTRUCTION MATERIAL CMO REQUIRED
00556.10A	MULTI-LAYER POLYMER CONCRETE OVERLAY EPOXY	SIKADUR 22 LO MOD FS (FAST SET)	SIKA CORPORATION 800/933-7452	04/18/17	5051	Q	FOR USE AT LOW TEMPERATURES FOLLOW MANUFACTURES RECOMMENDATIONS TEST DECK 2017 CONSTRUCTION MATERIAL CMO REQUIRED

**LIST 'A' = APPROVED. MAY BE USED WITHOUT SAMPLES, TESTING, OR QUALITY COMPLIANCE CERTIFICATIONS. MAY NEED A FIELD INSPECTION REPORT.
**LIST 'Q' = QUALIFIED. USE WITH SAMPLING, TESTING, &/OR QUALITY COMPLIANCE CERTIFICATIONS AS NEEDED. NEEDS A FIELD INSPECTIONS REPORT. CHECK SPECS AND NFTMAG.
LIST PUBLISHED BY: ODOT MATERIALS LAB; 800 AIRPORT RD SE; SALEM, OR 97301-4798; (503) 986-3059. PLEASE REPORT ANY PROBLEMS USING THESE PRODUCTS.

17

Non Field Tested Materials Guide

- At this time the NTMAG refers to the spreadsheet of Pay Items
- The NTMAG will be updated to specifically show which items require the CMO form for Construction Materials

18

18

The updated Non field materials acceptance guide

OREGON DEPARTMENT OF TRANSPORTATION NONFIELD-TESTED MATERIALS ACCEPTANCE GUIDE LEGEND
January 2023 Update 2021 STANDARD SPECIFICATIONS

This guide provides a summary of acceptance documents for frequently used items. New Materials or Materials which are infrequently used may not be listed in this guide. Consult the Contract Documents for acceptance documentation for these items.
This guide does not have precedence over the Special Provisions, Contract Plans, or Standard Specifications. Refer to 00150.10(a)*

E – Equipment Lists and Drawings / Procedures	F – Field Inspection Report (FIR)
L – ODOT Central Materials Laboratory Report	➤ <i>More information in form 734-2605 processing instructions.</i>
I – ODOT Structure Services Inspection Report	O – Certificate of Materials Origin (CMO for Iron or Steel - refer to 00160.20(a))
W – Warranty (Manufacture or Workmanship)	BG – Blue and Green Sheets (see Sec. 00960, 00970 or 00990)
P – Proof of License/Certification or Apprenticeship Application	R – Field Report
M – Manufacturer’s Field Representative Report	P/R – DEQ Permit or Compost Producer Registration

C – Construction Materials Certificate of Materials Origin (C-CMO) Form 734-5378 - Build America Buy America (BABA) – Refer to 00160.20(d). Listings for specific items that have been identified as Construction Materials that require a C-CMO are not currently listed in this guide however, they can be found on the following; BABA Bid-Item-List, BABA Blue-Sheet-List, and the Qualified Products List (QPL). These lists are published on the following websites:

- <https://www.oregon.gov/odot/Construction/Pages/Qualified-Products.aspx>
- <https://www.oregon.gov/odot/Construction/Pages/Contract-Administration-Services.aspx>

Q - Quality Compliance Certificate – The certificate or equivalent document meeting specification shall be from the manufacturer and shall:

- Verify the Material meets the Specifications, and identify by number any applicable specified test methods used, (ODOT, AASHTO, ASTM, UL, others)
- Permit positive determination that Material delivered to the Project is the same Material covered by the certificate:
 - Be delivered to the Engineer with the shipment of the Material,
 - Or be an identification plate or mark, decal, sticker, label, or tag attached to the container or Material.

T – Test Results Certificate – The certificate shall:

- Be from the manufacturer, verifying the Material furnished has been sampled and tested and the test results meet the Specifications
- Include, or be accompanied by, a copy of the specified test results (ODOT, AASHTO, ASTM, UL or other)
- Identify the testing agency and the representative responsible for the test results
- Permit positive determination that Material delivered to the Project is the same Material covered by the test results
- Be delivered to the Engineer with the shipment of the Material.

Small Quantity - A method for accepting relatively small quantities of Materials as noted in this guide without normal sampling and testing. Normal acceptance of Materials may be waived by the Engineer when requested in writing by the Contractor. **Small quantity acceptance requirements are listed in this guide along with the maximum amount of Material that can be accepted as small quantity.**

QPL – For some Materials, this guide will refer to the Qualified Products List (QPL). For QPL Materials, the QPL number must be entered into the Contractor Payment System regardless of the method of documentation.

- When using an "A" listed product, document with an FIR/Pay Note citing the QPL product number.
- When using a "C" listed product, document with an FIR/Pay Note citing the QPL product number, and attach additional documentation required by this guide.
- When using a product approved after the QPL in effect for the Project, document with an FIR/Pay Note and attach a copy of the product approval letter or page from the later edition of the QPL.

For products submitted by the Contractor that are not listed on the QPL, follow section 00160.05 of the Standard Specifications or Special Provisions.

19

Resources:
 IIJA: <https://www.congress.gov/117/plaws/publ58/PLAW-117publ58.pdf>
 BABA: IIJA Division G, Title IX, Sections 70901-70941
 Office of Management and Budget Memo MB-22-11: <https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf>

Contact Information:
General Information & Certificate of Material Origin (CMO) Forms:
 Mike Dennee
Michael.J.Dennee@odot.oregon.gov
 503-580-2013

Specifications:
 Dan Anderson
Daniel.A.Anderson@odot.oregon.gov or ODOTSpecifications@odot.oregon.gov
 503-986-3777

Qualified Products List (QPL)
 Dean Chess
Dean.M.Chess@odot.oregon.gov
 503-986-3059

20

20