SP00160 (Special Provisions for the 2024 Book) **(Bidding on or after: 0208-01-2706**
Last updated: 1104-0922-26
This Section requires SP00235 when Agency-furnished material sources are used.)

SECTION 00160 - SOURCE OF MATERIALS

(Follow all instructions and make all edits with "Track Changes" turned on. If there are no instructions [purple text] above a subsection, paragraph, sentence, or bullet, then include it in the Project. Delete all purple text before preparing the final document. All other modifications to this Section will require State Specifications Engineer approval and the State Specifications Engineer will obtain approval from the Department of Justice.)

Comply with Section 00160 of the Standard Specifications modified as follows:

00160.01(a) All Materials - Replace the paragraph that begins "The Contractor shall identify…" with the following paragraph:

When the estimated value is over $10,000, the Contractor shall submit a copy of the materials purchase order or supply agreement.

Delete the paragraph that begins "For this purpose…".

00160.05 Qualified Products List (QPL) - Replace this subsection, except for the subsection number and title, with the following:

The QPL is a listing of manufactured products available on the market (shelf items) that ODOT has evaluated and found suitable for a specified use in highway construction. The QPL is available from ODOT's Construction Section website (see 00110.05(e)).

The most current version of the QPL on ODOT's Construction Section website at the time of Advertisement is the version in effect for the Project. When the Contract specifies the use of the QPL, unless specified as the subject of an exemption per ORS 279C.345, the Agency may approve for use a product qualified for inclusion in a later edition of the QPL, or other equivalent product that meets the requirements of the QPL, following the Standard Guidelines for Product Review, if the Agency finds the product acceptable for use on the Project.

Use of listed products shall be restricted to the category of use for which they are listed. The Contractor shall install all products as recommended by the manufacturer. The Contractor shall replace qualified products not conforming to Specifications or not properly handled or installed at no additional cost to the Agency.

(Use the following subsection .20 when this Contract is state funded and the Work was considered and included in a NEPA decision that also applies to any other work that has any federal funding. This requires 00160.20(a) Option B.)

00160.20 Preferences for Materials - Add the following paragraph to the beginning of this subsection:

Section 1518 of Moving Ahead for Progress in the 21st Century Act provides that Buy America applies to all Contracts eligible for federal assistance under Title 23, United States Code, included within the scope of an applicable National Environmental Policy Act (NEPA) finding, determination or decision, regardless of the funding source of such Contracts, where at least one Contract is funded with Title 23 funds. This Contract includes Title 23 funds under such a NEPA finding, determination or decision and Buy America under subsection (a) and Build America Buy America under subsection (d) apply to this Contract.

00160.20(a) Buy America - Replace this subsection, except for the subsection number and title, with the following:

(Use one of the following options for 00160.20(a))

[Begin Option A]

(Option A1:
Contracting Agency is not ODOT or DAS (HB3332 does not apply)
Less than $500K in Federal Aid (USDOT Waiver)
The USDOT issued a Public Interest Waiver for De Minimis Costs and Small Grants.

The final waiver can be viewed here:
https://www.federalregister.gov/documents/2023/08/16/2023-17602/waiver-of-buy-america-requirements-for-de-minimis-costs-and-small-grants and this waiver applies to iron and steel covered by Buy America. The public interest waiver includes iron and steel manufactured products and construction materials when the total amount of Federal financial assistance applied to the project, through awards or subawards, is below $500,000.

Option A2:
Contracting Agency is ODOT or DAS (HB3332 may apply)
Estimated Contract price less than $250K (HB3332 does not apply)

Less than $250K necessarily involves less than $500K: (Less than $500K in Federal Aid (USDOT Waiver)

The USDOT issued a Public Interest Waiver for De Minimis Costs and Small Grants.

The final waiver can be viewed here:
https://www.federalregister.gov/documents/2023/08/16/2023-17602/waiver-of-buy-america-requirements-for-de-minimis-costs-and-small-grants and this waiver applies to iron and steel covered by Buy America. The public interest waiver includes iron and steel manufactured products and construction materials when the total amount of Federal financial assistance applied to the project, through awards or subawards, is below $500,000.)

Option A= Buy America for iron or steel does not apply to this Project.)

Buy America for iron and steel does not apply to this Contract.

[End Option A]

[Option B]

(Option B1
Contracting Agency is not ODOT or DAS (HB3332 does not apply)
$500K or more in Federal Aid (USDOT Waiver does not apply)

Option B2
Contracting Agency is ODOT or DAS and estimated contract price is over $250,000 (HB3332 applies)

$500K or more in in Federal Aid (USDOT Waiver does not apply; Federal Buy America is triggered.)

Pursuant to ORS 279A.030, in the event of conflict between the federal and state law, federal law prevails.

Option B= Federal Buy America laws apply.)

If $500,000 or more of federal highway funds are involved on the Project, the Contractor shall limit the quantity of foreign Materials incorporated into the Work as follows. Section 635.410 of Title 23, Code of Federal Regulations, and the Intermodal Surface Transportation Efficiency Act require that all iron or steel manufacturing processes, including, without limitation, the casting of ingots, for iron or steel Materials permanently incorporated into the Project shall occur in the United States, unless the cost of foreign-origin iron or steel Materials does not exceed one-tenth of one percent (0.1%) of the Contract Amount or $2,500, whichever is greater. Buy America requirements apply to any steel or iron component of a manufactured product regardless of the overall composition of the manufactured product (e.g., Buy America applies to the steel wire mesh or steel reinforcing components of a precast reinforced concrete pipe). The Contractor shall not incorporate foreign-origin iron or steel Materials in excess of this amount into the Project. All foreign-origin iron or steel Materials incorporated in the Project in excess of the amount indicated above shall be removed and replaced with domestic iron or steel Materials at the Contractor's expense. For purposes of this Specification, the cost of foreign-origin iron or steel Materials shall be the value of the iron or steel products as of the date they are delivered to the Project Site.

Manufacturing processes include without limitation the casting of ingots and the application of coatings to finished iron or steel products or components. Coatings include epoxy coating, galvanizing, painting, and any other coating that protects or enhances the value of the steel or iron product or component. The Contractor shall provide the Engineer with a Certificate of Materials Origin, on a form furnished by the Engineer, before incorporating any iron or steel products into the Project. Unless a Certificate of Materials Origin has been provided to the Engineer, the Materials shall be considered of foreign origin.

The Contractor shall retain manufacturers' certificates verifying the origin of all domestic iron or steel Materials for 3 years after the date of final payment for the Project, and shall furnish copies to the Engineer upon request.

The Contractor shall include this provision in all subcontracts.

[End Option B]

[Begin Option C]

(Option C
Contracting Agency is ODOT or DAS (HB3332)
Contract value of $250K or more (HB3332)
Less than $500K in Federal Aid (USDOT Waiver)

The USDOT issued a Public Interest Waiver for De Minimis Costs and Small Grants.

The final waiver can be viewed here: https://www.federalregister.gov/documents/2023/08/16/2023-17602/waiver-of-buy-america-requirements-for-de-minimis-costs-and-small-grants and this waiver applies to iron and steel covered by Buy America. The public interest waiver includes iron and steel manufactured products and construction materials when the total amount of Federal financial assistance applied to the project, through awards or subawards, is below $500,000.

The USDOT Waiver waives the requirements of Federal law for Buy America; HB3332 applies.

Option C= Oregon Law (HB3332) applies

DO NOT CHANGE FORMATTING AS THIS IS REQUIRED BY ORS.)

The Contractor shall comply with HB3332 (2023) which specifies that steel, iron, coatings for steel and iron and manufactured products that a contractor purchases for or uses in the public improvement contract or public works contract, and that become part of a permanent structure, must be produced in the United States. For iron and steel products all manufacturing processes, from the initial melting stage through the application of coatings, shall occur within the United States. For manufactured products, the manufacture of the product shall occur within the United States and the cost of the components of the product that are mined, produced or manufactured in the United States shall be more than 55 percent of the total cost of all components of the product.

No de minimis amount has been established for foreign or unknown origin and no list of exempted items has been created. ODOT or DAS may adopt rules or make findings according to HB3332 (2023).

The Contractor shall provide the Engineer with a Certificate of Materials Origin, on a form furnished by the Engineer, before incorporating any iron or steel products into the Project. Unless a Certificate of Materials Origin has been provided to the Engineer, the Materials shall be considered of foreign origin.

The Contractor shall retain manufacturers' certificates verifying the origin of all domestic iron or steel Materials for 3 years after the date of final payment for the Project, and shall furnish copies to the Engineer upon request.

The Contractor shall include this provision in all subcontracts.

[End Option C]

00160.20(d) Build America Buy America Act Requirements – Replace this subsection, except for the subsection number and title, with the following:

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).

The Build America Buy America Act requirements apply to construction materials and manufactured products permanently incorporated in the Project. All construction materials and manufactured products permanently incorporated in the Project must be produced in the United States.

Construction materials include an article, Material, or supply that is or consists primarily of only one of the following, with the standard for the material to be considered ''produced in the United States'':

- **Non-ferrous metals -** All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.
- **Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables)** - All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.
- **Glass (including optic glass)** - All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.
- **Fiber optic cable (including drop cable)** - All manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others.
- **Optical fiber** - All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.
- **Lumber** - All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.
- **Drywall** - All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.

- **Engineered wood** - All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

The classification of an article, material, or supply as construction material is based on its status at the time it is brought to the work site for incorporation in the Project. In general, the work site is the location of the Project at which the construction materials will be incorporated.

FHWA issued a final rule on January 14, 2025 amending FHWA's Buy America regulation to terminate FHWA's general waiver for manufactured products and establish Buy America requirements for manufactured products with respect to Federal-aid highway projects. https://www.federalregister.gov/documents/2025/01/14/2024-31350/buy-america-requirements-for-manufactured-products

Manufactured products assembled outside the Project Site are also subject to the Build America Buy America requirements. Manufactured products means articles, materials, or supplies that have been:

- Processed into a specific form and shape; or
- Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.

For manufactured products, the final assembly of the product shall occur within the United States for projects obligated on or after October 1, 2025. For projects obligated after October 1, 2026, the cost of the components of the product that are mined, produced or manufactured in the United States shall be more than 55 percent of the total cost of all components of the product.

The USDOT issued a Public Interest Waiver for De Minimis Costs and Small Grants. The final waiver can be viewed here: https://www.federalregister.gov/documents/2023/08/16/2023-17602/waiver-of-buy-america-requirements-for-de-minimis-costs-and-small-grants and this waiver applies to Materials covered by the Build America Buy America Act.

The public interest waiver is for manufactured products and construction materials for which:

- The total value of the non-compliant products (foreign or unknown origin) is no more than the lesser of $1,000,000 or 5% of total applicable costs for the project*; or
- The total amount of Federal financial assistance applied to the project, through awards or subawards, is below $500,000.

*The “total value of the non-compliant products” includes construction materials and manufactured products only. The “total applicable costs” includes construction materials, iron and steel, and manufactured products. The value of materials are the actual cost of the materials, not the anticipated cost of materials. Furthermore, this bullet does not apply to iron and steel subject to the requirements of 23 U.S.C. 313. The de minimis threshold in 23 CFR 635.410(b)(4) continues to apply for steel and iron. (See 00160.20(a).)

Strict compliance with the Build America, Buy America domestic preferences is required, except to the extent the above public interest waiver applies. The Contractor shall not

incorporate construction materials and manufactured products in excess of this amount into the Project. All foreign origin construction materials and manufactured products incorporated in the Project in excess of the amount indicated above shall be removed and replaced with domestic construction materials at the Contractor's expense.

The Contractor shall provide the Engineer with a Certificate of Materials Origin, on a form furnished by the Engineer, before incorporating any applicable construction materials and manufactured products into the Project. Unless a Certificate of Materials Origin has been provided to the Engineer, the products and Materials shall be considered of foreign origin.

The Contractor shall retain manufacturers' certificates verifying the origin of all applicable construction materials and manufactured products for 3 years after the date of final payment for the Project, and shall furnish copies to the Engineer upon request.

Iron and steel Materials and manufactured products that are predominately iron or steel are subject to 00160.20(a).

The Contractor shall include this provision in all subcontracts.

(Use the following subsection .21 on Federal funded Projects.)

00160.21 Cargo Preference Act Requirements - Add the following to the end of this subsection:

Additional information may be available at the following websites:

https://www.fhwa.dot.gov/construction/cqit/cargo.cfm
https://www.fhwa.dot.gov/construction/cqit/cargo/qa.cfm.

(Use the following subsection .30 when the Agency will furnish items or materials other than material from a borrow source - for example: poles, timbers, guardrail, etc. Give the location where the items/materials may be picked up. Delete parentheses and the words in parentheses as needed. For aggregates and other similar materials, use 00160.40.)

00160.30 Agency-Furnished Material - Add the following to the end of this subsection:

The Agency will furnish the listed items at the *(*Project Site:*)(*following locations:*)*

(Use the following paragraph when Agency supplied materials need to be returned. Give the location and contact information where the items/materials may be dropped off. Delete parentheses and the words in parentheses as needed.)

Add the following to the end of this subsection:

The Contractor shall return the Agency-furnished items to the *(*following locations:*)*

(Use the following subsection .40 on Projects with Agency-furnished material sources. Include SP00235 when using this subsection.)

00160.40 Agency-Furnished Sources - Add the following paragraph after the paragraph that begins "The Agency may list in the…":

Agency-Furnished Sources for this Project are listed in Section 00235 of the Special Provisions.

(Use the following subsection .65 on ODOT Projects (non-ODLAP) when the Contract price ~~Region engineer's estimate~~ is estimated at or above $3 million (Region estimate at~~prior to~~ PS&E of the total of the Pay Items withough engineering, contingencies or anticipated items). For questions contact the State Specifications Engineer.)

Add the following subsection:

00160.65 Environmental Product Declaration – Pursuant to ORS 184.879 and OAR 731-005-0910, provide an Environmental Product Declaration for the following materials:

- Concrete, including ready mix concrete, shotcrete, precast concrete and concrete masonry units;
- Asphalt paving mixtures;
- Steel, including rebar, reinforcing steel and structural steel, hot-rolled sections, hollow sections, plate steel and cold-formed steel.

Submit an EPD according to the *ODOT Environmental Product Declaration Manual (see 00110.05(e))*.

The most current published PDF version of the *ODOT Environmental Product Declaration Manual* on the date of Advertisement is the version in effect for the Project.

The EPD must be accepted by the Engineer before the product is incorporated into the Project unless the product is procured under a listed exemption in ODOT's *Environmental Product Declaration Manual*.