

2023

ITD

~~2022~~ BUILD AMERICA BUY AMERICA
PROCESS



**Your Safety • Your Mobility
Your Economic Opportunity**

**HQ CONSTRUCTION & MATERIALS
BOISE, IDAHO
JANUARY 2024**



BUILD AMERICA BUY AMERICA CONTACTS HQ CONSTRUCTION AND MATERIALS

- ▶ John Arambarri, Pavements Engineer
- ▶ Mike Copeland, Quality Program Manager
- ▶ Dana Dietz, Structural Materials Engineer
- ▶ Jason Henscheid, Business Analyst
- ▶ James Szatkowski, Technical Engineer 2



MORE CHANGES WITH BUY AMERICA?!!!



OUTLINE SUMMARY

- ▶ History of Buy America
- ▶ What has NOT changed with Buy America?
- ▶ What has changed **again** with Buy America?
- ▶ What are Construction Materials (2023 BABA)?
- ▶ What are NOT Construction Materials (2023 BABA)?



OUTLINE SUMMARY (CONTINUED)

- ▶ Combining vs. Assembling Materials
- ▶ QPL Items
- ▶ KISS Principle
- ▶ When is the change effective?
- ▶ What projects does 2023 BABA apply to?
- ▶ What is the new process?



HISTORY OF BUY AMERICA

- ▶ Since the 1980's, the Buy America requirements have applied to iron/steel.
 - ▶ All iron/steel products permanently incorporated into the project are required to be produced in the USA.



HISTORY OF BUY AMERICA

- ▶ Effective November 10, 2022, Buy America was expanded to include Construction Materials.
 - ▶ Office of Management and Budget (OMB) provided “*preliminary and non-binding guidance*” to assist agencies.
 - ▶ HQ Construction and Materials Team developed a process and presented this guidance statewide.



HISTORY OF BUY AMERICA

- ▶ Effective for awards that are obligated on or after August 16, 2023, Waiver of Buy America Requirements for De Minimis Costs and Small Grants:
 - ▶ Has included a de minimis for Construction Materials.



HISTORY OF BUY AMERICA

- ▶ Effective October 23, 2023, *2 CFR 184 Build America Buy America*:
 - ▶ Has new definitions for Construction Materials and Manufactured Products.



WHAT HAS CHANGED WITH 2023 BUILD AMERICA BUY AMERICA?

- ▶ More stringent standards for the definition of “produced in the United States” and varies by type of construction material;
- ▶ Definitions for “Construction Materials” and “Manufactured Products” have changed;
- ▶ There is now a de minimis for Construction Materials.

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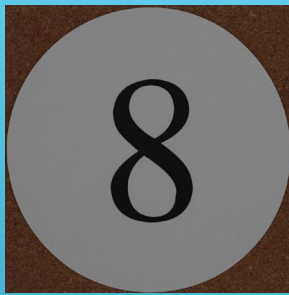
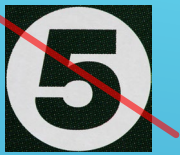


STILL NO CHANGE TO IRON/STEEL



- ▶ Buy America for Iron and Steel remains the same.
- ▶ ITD 914 and Mill Certs are required for all iron and steel components
- ▶ Remove and Replace remains the prescribed remedy for non-domestic iron/steel
- ▶ The minimum quantity remains the same.
 - ▶ The quantity cannot exceed 0.1 percent of the total contract amount or \$2,500, whichever is greater.





EIGHT

WHAT ARE THE ~~FIVE~~ CONSTRUCTION MATERIALS?

Items PRIMARILY consisting of **only one of the items listed, except for minor additions:**

1. non-ferrous metals (e.g., aluminum and brass);
2. plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
3. glass (including optic glass);
4. **Fiber optic cable;**
5. **Optical fiber;**
6. Lumber (including treated or untreated wood);
7. Drywall;
8. **Engineered wood.**

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DEFINITION OF CONSTRUCTION MATERIAL (CONTINUED)

- ▶ To the extent one of the items listed contains as inputs other items listed, it is nonetheless a construction material.
 - ▶ For example, fiber optic cable contains as inputs other items listed, such as glass and/or plastics, but fiber optic cable is nonetheless a construction material.
- ▶ Coatings do not change the categorization of a construction material. (E.g., treated wood, wax)



DEFINITION OF CONSTRUCTION MATERIAL (CONTINUED)

- ▶ Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of construction material.
 - ▶ For example, wax added to engineered wood should not disqualify the engineered wood from categorization as a construction material. However, if before the engineered wood is brought to the work site, it is combined with glass or other items or materials to produce a new product, which is not listed, the new product would be classified as a manufactured product, not a construction material.



PRODUCED IN THE UNITED STATES FROM 2 CFR 184.3

- ▶ (1) In the case of iron or steel products, all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- ▶ (2) In the case of construction materials, all manufacturing processes for the construction material occurred in the United States. See 2 CFR 184.6 for more information on the meaning of “all manufacturing processes” for specific construction materials.
- ▶ The manufactured products are currently under an FHWA waiver.



PRODUCED IN THE UNITED STATES

- ▶ All construction materials must be produced in the United States. Produced in the United States is defined below for each Construction Material.
 - ▶ 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. 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. All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.



PRODUCED 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.



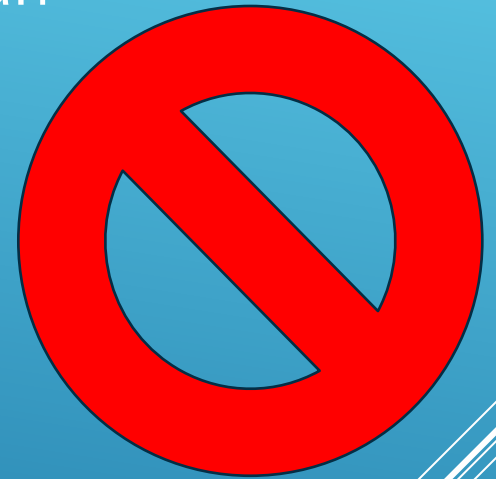
PRODUCED IN THE UNITED STATES

- ▶ 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 initial combination of constituent materials until the wood product is in its final form, occurred in the United States.



WHAT ARE NOT CONSTRUCTION MATERIALS (2023 BA)?

- ▶ products that are primarily iron or steel (an item cannot fall into more than one category);
- ▶ A manufactured product;
- ▶ Products specifically excluded:
 - ▶ cement and cementitious materials;
 - ▶ aggregates such as stone, sand, or gravel;
 - ▶ aggregate binding agents or additives.



DEFINITION OF “MANUFACTURED PRODUCT”

Manufactured products are 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.

Note: If an item is classified as “predominantly iron or steel”, or as a “construction material”, it cannot be classified as a “manufactured product”. Section 70917(c) materials (cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives) are not construction materials or manufactured products.



DE MINIMIS QUANTITY FOR CONSTRUCTION MATERIALS (WILL REPEAT)

For awards obligated on or after August 16, 2023, the Engineer may allow small quantities of “foreign construction materials”, so long as the “total value of the non-compliant products”, does not exceed the lesser of \$1,000,000 or 5 percent of the “total applicable costs for the project”.

- ▶ This de minimis differs from that for iron or steel.



TOTAL VALUE OF NON-COMPLIANT PRODUCTS

The “total value of non-compliant products” does not include the value of those products subject to a separate Buy America waiver (e.g., FHWA waiver on Manufactured Products),



TOTAL APPLICABLE PROJECT COSTS

“Total applicable project costs” are defined as the cost of materials used in the project that are subject to a domestic preference requirement, including materials that are within the scope of an existing waiver (e.g., FHWA waiver on “manufactured products”).



DE MINIMIS QUANTITY FOR CONSTRUCTION MATERIALS (REPEATED)

For awards obligated on or after August 16, 2023, the Engineer may allow small quantities of “foreign construction materials”, so long as the “total value of the non-compliant products”, does not exceed the lesser of \$1,000,000 or 5 percent of the “total applicable costs for the project”.

- ▶ This de minimis differs from that for iron or steel.



BABA DOES NOT APPLY TO SMALL GRANTS

For awards obligated on or after August 16, 2023, where the total amount of federal financial assistance is below \$500,000, BABA requirements do not apply to iron or steel, construction materials, or manufactured products.



TOTAL AMOUNT OF FEDERAL FINANCIAL ASSISTANCE

“Total amount of federal financial assistance” includes federal funding associated with preliminary engineering, right of way, and all construction contracts under the project’s NEPA decision.



WHAT ARE NOT CONSTRUCTION MATERIALS?



Items that consist of two or more of the listed materials that have been combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials or supplies.



Example:
Plastic framed sliding
glass window.



WHAT ARE NOT CONSTRUCTION MATERIALS?



Items that include at least one of the listed materials combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies



Example:
Prepackaged electronic components
- It has plastic and other metals, but it is not predominantly iron or steel, or one of the eight listed materials.

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CLASSIFICATION PRIOR TO DELIVERY

- ▶ It is highly encouraged that a product to be permanently incorporated into the project be classified prior to delivery to the project as:
 - ▶ 1) iron or steel;
 - ▶ 2) construction material;
 - ▶ 3) manufactured product;
 - ▶ 4) none of the above.

Note: Contact the Construction and Materials Group if you need help with these classifications.



COMBINING VS. ASSEMBLING MATERIALS

- ▶ 2023 BABA will still apply to the specified construction materials that are assembled (example - end terminal).
- ▶ If the item cannot be disassembled, it could possibly be considered combined through a manufacturing process and possibly not be classified as a “construction material” (example – aluminum sign panel).
 - ▶ Use form ITD-915 to justify that the material does not fall under the category of “construction material”.
 - ▶ HQ Construction and Materials must approve the justification prior to incorporation into the project to reduce risk of removal and replacement.



EXAMPLE – END TERMINAL

- ▶ The plastic yellow cells are assembled with the steel nose.
 - ▶ The steel nose is iron/steel (ITD-914)
 - ▶ The plastic cells are construction materials (ITD-915)
- ▶ Note that certification is not required for temporary applications.



EXAMPLE – ALUMINUM SIGN PANEL



Roadway signs are made of aluminum blanks covered with a retroreflective sheeting and finished with inks and topped with sheeting in a manufacturing process. Sign panels are delivered to the project site as a finished product.

They are not a construction material. The aluminum sheeting is not considered a "coating" in this case.



QUALIFIED PRODUCT LIST (QPL) ITEMS

Products listed on the QPL still need the appropriate tests and certifications as required by the contract in order to be accepted on the project. Qualification of a product on the QPL is not blanket approval.

H-Pile common points are on QPL and still must meet Buy America requirements (iron/steel), including ITD-914 and mill certs.



It is the same for Construction Materials;

Subgrade Separation Geotextile will require an ITD-849 Geosynthetic Certification plus an ITD-915 Construction Material Certification for Buy America.

APPLY THE KISS PRINCIPLE



For ease of application of 2023 BABA, it is best to apply the KISS principle when defining the material.

Keep It Super Simple

(the politically correct version)

Don't read too much into it.



SIMPLY STATED:



- ▶ No changes to Iron/Steel
- ▶ **Eight** Construction Materials
- ▶ Specific groups of materials excluded

IMPORTANT TO NOTE

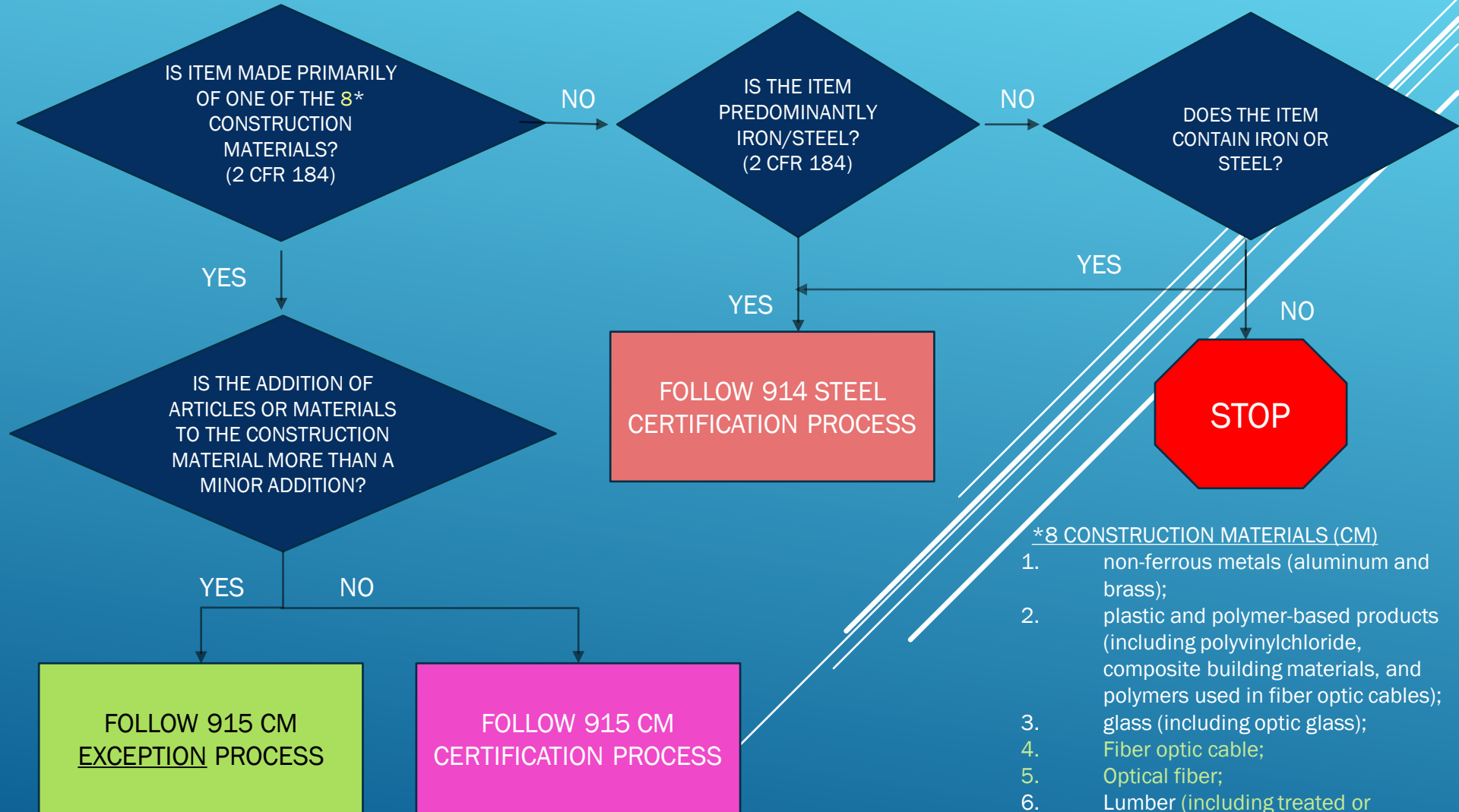
- An item can only fall into one category.
 - i.e., An Iron/Steel item cannot also be a construction material.
- Manufactured products can be subject to BABA (e.g., Precast Concrete Manhole)
 - Rebar requires iron/steel Buy America certification



2023

2022 BUY AMERICA FLOWCHART

FOR MATERIALS THAT ARE PERMANENTLY INCORPORATED



*8 CONSTRUCTION MATERIALS (CM)

1. non-ferrous metals (aluminum and brass);
2. plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
3. glass (including optic glass);
4. Fiber optic cable;
5. Optical fiber;
6. Lumber (including treated or untreated wood);
7. Drywall;
8. Engineered wood.

BUY AMERICA EXCEPTION APP

- ▶ Found under Highways / Construction and Materials

The screenshot shows the SharePoint interface for the 'Construction & Materials' site. The top navigation bar includes 'SharePoint', a search box, and a menu with options like 'ITD Portal', 'Administration', 'DMV', 'ETS', 'Executive Leadership', 'Highways', 'Human Resources', and 'Applications'. The main content area features a large image of an orange excavator on the left and a 'Resources' grid on the right. The 'Buy America Exception' link in the grid is highlighted with a red circle.

Resources			
Buy America Exception	ITD Stand. Spec. & QASP	Manuals	Pay Items
User Guides	DRB Roster	Asphalt & Fuel Index	Construction & Materials Forms
About Us	Internal Documents	Shared Calendar	



WHEN WAS THE CHANGE EFFECTIVE?

August 16, 2023 (De Minimis)
or October 23, 2023 (New Definitions)



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WHAT PROJECTS DOES THE 2023 BABA APPLY TO?

1. De Minimis rules apply to all federally funded construction projects where funding is obligated on or after **August 16, 2023**.
2. New definitions for construction materials applies to all federally funded construction projects where funding is obligated on or after **October 23, 2023**.



WHAT PROJECTS DOES THE 2023 BABA APPLY TO?

3. Federal law requires that any project defined in a Federal record of decision under the National Environmental Policy Act (NEPA) must contain BA requirements if the project has received federal funds in any phase (Right of Way, Design, or Construction). If there are multiple projects within the NEPA and at least one of those projects receives Federal funding in any phase, then all construction contracts under that NEPA decision must contain BA mandates.

The special provisions will indicate if BABA applies if the work is not a federally funded construction project.

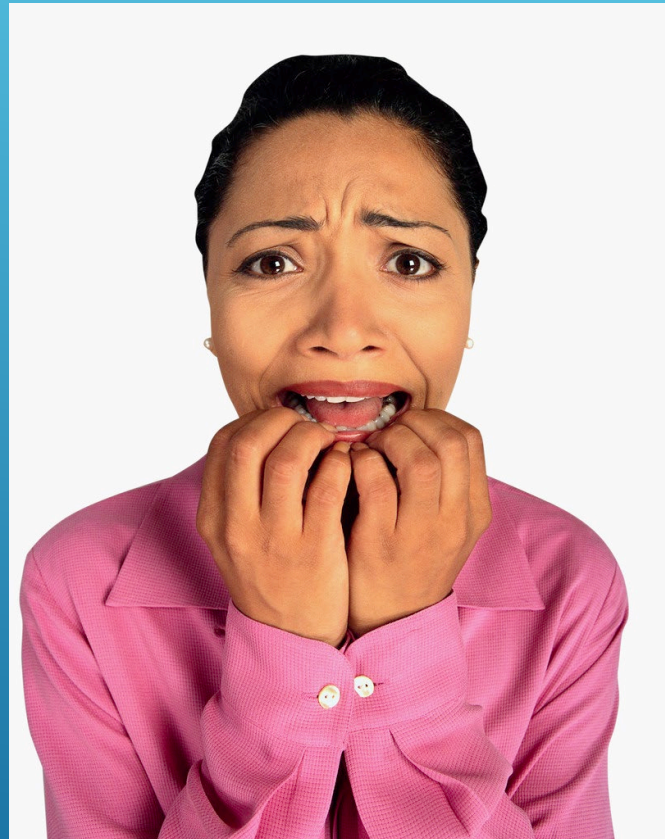


WHAT PROJECTS DOES THE NEW 2023 BABA APPLY TO?

- ▶ 2023 BABA does not apply retroactively to any awarded projects.
- ▶ Projects are not advertised unless the funding is obligated.



WHAT'S THE NEW PROCESS?



OVERVIEW OF THE NEW PROCESS

- ▶ What documents have changed?
- ▶ How do I know which materials are Construction Materials?
- ▶ What is the Department doing to identify Construction Materials?
- ▶ How do I certify Construction Materials for 2023 BABA?
- ▶ ITD-915, Construction Materials Certification for 2023 BABA



WHAT DOCUMENTS HAVE CHANGED?

- ▶ Specifications:

- ▶ New specification language will be provided as a bid insert and included in the special provisions for projects which apply to 2023 BABA until the new 2024 Supplementals to the Standard Specifications are published and used.
 - ▶ First Page, Insert Index and BA Spec Change (ProjectWise)
 - ▶ State-funded BA Insert
 - ▶ First Paragraph – 2020 QA Manual, 2023 QA Manual BA Supplementals

- ▶ QA Manual:

- ▶ Revisions to the Quality Assurance (QA) Manual will be provided in the contract documents and online.



WHAT DOCUMENTS HAVE CHANGED?

- ▶ Forms:
 - ▶ New and revised forms have been posted online (e.g., ITD-849, ITD-0915).
- ▶ CA Manual:
 - ▶ Revisions to the Contract Administration (CA) Manual will be provided online.



HOW DO I KNOW WHICH MATERIALS ARE CONSTRUCTION MATERIALS?

- ▶ Over time, the Department will work to identify all commonly used materials that appear to be construction materials.
- ▶ For now, the QA Manual 270 MTR tables have been modified to indicate that an item is a construction material with “ITD-915”.
 - ▶ This table will be included in the contract documents.

STANDARD SPECIFICATION SECTION: 212 – EROSION AND SEDIMENT CONTROL						
Slope Drain	ACCEPTANCE Certification	212.03-B 706		ITD-914 with mill test report attached for steel/iron	Total Quantity Paid	See QA Manual Section 230.01 and Section 230.03 If Specification requires removal then ITD-914 is not required
		Manufacturer	Manufacturer	ITD-851 (All other material)		
					ITD-915	



WHAT IS THE DEPARTMENT DOING TO IDENTIFY CONSTRUCTION MATERIALS?

- ▶ Products that are assumed to NOT apply to Buy America, even though their title might suggest otherwise, are denoted with “BA N/A”.

		708.03	AASHTO M 254			
Dowel Bars	ACCEPTANCE Certification			ITD-914 with mill test reports attached for steel/iron	Total Quantity Paid	See QA Manual Section 230.01 and Section 230.03
GFRP manuf		Manufacturer	Manufacturer	BA N/A for GFRP		


Manufactured products are 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.



HOW DO I CERTIFY CONSTRUCTION MATERIALS FOR 2023 BABA?

- ▶ ITD-0915, Construction Material Certification (for Buy America)
- ▶ The form must be signed by the manufacturer, certifying that it was made in America.



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ITD 0915 (11-22)
itd.idaho.gov


CONSTRUCTION MATERIAL CERTIFICATION (For Buy America)

	Key No.	Project No.	Location
Contract Number	Contractor Company		
<p>Part 1. Manufacturer Only: All construction materials listed in this block conform to the requirements of the Buy America Act including all manufacturing processes having occurred in the United States. Attach all invoices.</p>			
Phone	Manufacturer's Company & Address		Manufacturer's Email Address
Date	Manufacturer's Authorized Rep's Name (Printed)		Signature
Invoice Number	Material Description	Lot Number	Date(s) Produced
<p>Part 2. Contractor Only: The certified construction material(s) on this form have been procured for and are being incorporated in the project for the pay items indicated below. Attach all invoices showing chain of custody from manufacturer to the contractor.</p>			
Date	Contractor's Name (Printed, last and first)		Signature*



ITD-0915, CONSTRUCTION MATERIAL CERT

▶ Header and Part 1 – Start with Manufacturer



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ITD 0915 (11-22)
itd.idaho.gov

CONSTRUCTION MATERIAL CERTIFICATION (For Buy America)

	Key No.	Project No.		Location
Contract Number	Contractor Company			
<p>ements of the Build America, attach all invoices.</p>				
<p>d for and are being incorporated from manufacturer to the</p>				
Phone	Manufacturer's Company & Address		Manufacturer's Email Address	
Date	Manufacturer's Authorized Rep's Name (Printed)		Signature	
Invoice Number	Material Description		Lot Number	Date(s) Produced
Date	Contractor's Name (Printed, last and first)		Signature*	

Part 1. Manufacturer Only: All construction materials listed in this block conform to the requirements of the Buy America Act including all manufacturing processes having occurred in the United States. **Attach all invoices showing chain of custody from manufacturer to the contractor.**

Part 2. Contractor Only: The certified construction material(s) on this form have been procured in the project for the pay items indicated below. **Attach all invoices showing chain of custody from manufacturer to the contractor.**



CERTIFICATION FORM SLIDE 2 OF 3

- ▶ **Manufacturer's Certification: Made in America**
- ▶ **Contractor's Certification: Certified material was used on the job**

Part 1. Manufacturer Only: All construction materials listed in this block conform to the requirements of the Build America, Buy America Act including all manufacturing processes having occurred in the United States. **Attach all invoices.**

Manufacturer's Company & Address		Phone	
Manufacturer's Authorized Rep's Name (Printed)	Signature	Date	
Material Description	Lot Number	Date(s) Produced	Invoice Number

Part 2. Contractor Only: The certified construction material(s) on this form have been procured for and are being incorporated in the project for the pay items indicated below. **Attach all invoices showing chain of custody from manufacturer to the contractor.**

Contractor's Name (Printed, last and first)		Signature*	Date
Item Number	Item Description	Quantity	
Item Number	Item Description	Quantity	

*I acknowledge materials must be certified prior to incorporation into the project, and that uncertified Construction Materials are to be removed and replaced at the contractor's expense. Note: a complete certification requires Part 1 and Part 2.



WHAT IF I DON'T THINK IT CONSTITUTES A CONSTRUCTION MATERIAL FOR 2023 BA?



IMPORTANT

- ▶ The Contractor can submit justification to the Engineer that an item does not qualify as Construction Materials on the new Construction Materials Certification form (ITD-0915) based on the definitions provided in the specifications.
- ▶ It is suggested that the statement for justification begin with..."This item is not considered a construction material because..."
 - ▶ HQ Construction and Materials must approve the justification prior to incorporation of the product into the project. Project Personnel can submit this information via the "Buy America Exception Application".



Resources



Buy America
Exception



ITD Stand. Spec.
& QASP



Manuals



Pay Items



User Guides



DRB Roster



Asphalt & Fuel
Index



Construction &
Materials Forms



About Us



Internal
Documents



Shared Calendar

BUY AMERICA EXCEPTION APP



CERTIFICATION FORMS SLIDE 3 OF 3

- ▶ ITD-915: If the Contractor/Supplier does not believe an item is a true “construction material”, justification and vetting is done in this section.
- ▶ Final Approval must be obtained by the HQ Construction & Materials Engineer
- ▶ Approved items will be placed on a master list for future use and ease of approval.

***** STOP! *** NOT A CONSTRUCTION MATERIAL?** Use this section only if you believe this material is not a Construction Material and that a certification is not required based on the specifications. **Attach supporting documentation. Final approval must be given by the CME.**

This material does not meet the definition of a Construction Material per the specification because:		
Requester's Company & Address		Phone
Requester's Name (Printed)	Signature	Date
Recommended by ITD Dist. Staff (Printed)	Signature	Date
Reviewed by HQ CME (Printed)	Signature	Date
CME Comment:		

Approved by CME Not approved by CME



IS THERE A MINIMAL QUANTITY OF NON-DOMESTIC CONSTRUCTION MATERIALS?

- ▶ The iron/steel de minimis remains unchanged.
- ▶ For awards obligated on or after August 16, 2023, the Engineer may allow small quantities of foreign manufactured products and construction materials, so long as the total value of the non-compliant products does not exceed the lesser of \$1,000,000 or 5 percent of the total applicable costs for the project or where the total amount of federal financial assistance is below \$500,000. “Total applicable project costs” are defined as the cost of construction materials and manufactured products and iron or steel, used in the project that are subject to a domestic preference requirement, including materials that are within the scope of an existing waiver.
- ▶ “Total amount of federal financial assistance” includes preliminary engineering, right of way, and all construction contracts under the project’s NEPA decision.



2023 BABA AND DESIGN

- ▶ In the Design Phase, it is important that the Design Team specify products that either comply with BABA or are exempt from BABA.
- ▶ There will not be time during the bidding process to determine if something is available domestically or not.
- ▶ If a product is specified that is a Construction Material and is not available domestically, there are few options after award other than redesign.



ITD 862

QA ACCEPTANCE & IA SCHEDULE

- ▶ The District IA, the Project Coordinator and the Materials Engineer, with approval from the Design Construction Engineer, will assemble the ITD-0862 for each project and try to make a best determination of what might require an ITD-0915 for Construction Materials Certification.
- ▶ Ultimately, only the Contractor will know exactly which materials are made of what. It is imperative that the Contractor work with ITD to make sure all BABA materials are certified to avoid risk of removal and replacement.



WHAT ABOUT ITEMS THAT ARE NOT LISTED IN THE 270 TABLE?

- ▶ Each item must be looked at separately and in detail by the Contractor and residency with each component prior to incorporation into the project to determine if it is subject to 2023 BABA requirements. If there is a question, reach out to HQ Construction and Materials, or the Contractor may be at risk of removing and replacing the material.
- ▶ An item does not have to have its own pay item to comply with Buy America.
 - ▶ For example, geogrid used in a retaining wall will likely require a certification that it is made domestically.



WHAT IF WE MISS SOMETHING?

- ▶ If it is determined that a construction material was incorporated into the project without certification, the Contractor will either provide certification or remove and replace the material.
- ▶ ITD choosing to non-participate an item does not resolve Buy America non-compliance.



THE DEPARTMENT WILL DO OUR BEST
TO CLARIFY THE PROCESS OVER TIME



BUILD AMERICA BUY AMERICA CONTACTS HQ CONSTRUCTION AND MATERIALS

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- ▶ Mike Copeland, Quality Program Manager, 208.334.8446
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- ▶ James Szatkowski, Technical Engineer 2, 208.334.8774



QUESTIONS?

