

“New” Buy America Interpretation and Enforcement in Michigan

Prepared by the Michigan Infrastructure & Transportation Association (MITA), May 2012

Background

In early 2012, the Michigan Department of Transportation (MDOT) implemented a new *Special Provision for Buy America* in all of its contracts, reportedly at the urging of the Federal Highway Administration’s (FHWA) Michigan Division Office. Although the federal “Buy America” (BA) statute and regulations have not changed, the product coverage and level of certification the new *Special Provision* requires are drastic and significant changes from past practices, and beyond the reasonable intent of the regulations.

MITA and many of our partners are very concerned that this new interpretation of the Buy America regulations is:

- increasing project costs, when funding is at a premium;
- lengthening construction time, when MDOT and the public expect timely completion of projects (especially given the seasonal nature of highway and bridge construction in Michigan);
- contrary to the principles of Accelerated Bridge Construction and other accelerated project delivery efforts being promoted by FHWA nationally; and
- doing little or nothing to further the public policy objectives of the Buy America statute.

At the same time, the FHWA Michigan Division Office’s suggestions for compliance are impractical and/or costly, as is described below.

The *Buy America* regulations require that **100%** of the steel and iron products permanently incorporated in the work be derived from domestic sources and that all of the manufacturing processes for the products take place in the United States. However, the regulation does allow a minor amount of non-domestic steel and iron in the project with a total cumulative maximum value of 0.10% of the project cost or \$2,500, whichever is greater.

The new interpretation by FHWA’s Michigan Division Office as to the products covered by BA can be summed up by their quote, “If a magnet sticks to it, it’s covered by Buy America.”

MITA’s Position and Concerns

Based on historic practice and reasonableness, MITA acknowledges that steel and iron products like structural steel, guard rail, anchor bolts, mesh, reinforcing bars, steel casings, foundation piles, expansion joint devices, dowel bars, drainage castings, cantilevers, light and sign standards, and the like, have been, and should continue to be, covered by BA. However, we do have concerns relative to the new BA interpretations and these products, as follows:

- The new “step certification” for these products is problematic, as a certification for every step of the manufacturing process may not currently exist, or may not be available for stockpiled products.

- The requirement that each piece and part arriving on a project be accompanied by its own original (not copied or scanned) set of certification documents is extremely redundant and onerous, and is contrary to the Paperwork Reduction Act of 1980.
- What “project to project” documentation/certification will be required/accepted for the use of pile or sheeting cut-offs from one project on a second project? As a solution, the FHWA Division Office suggests recycling pile and sheeting cut-offs.

Moreover, under the new interpretation in Michigan, contractors are being required to certify their sources for reinforcement tie wire, sheet metal screws in metal stay-in-place forms, welding rods/wire, bar chairs, fasteners and inserts (whether for “contractor convenience” or not), and other ancillary and non-structural items. MITA believes these miscellaneous items are outside the scope of Buy America. Our related concerns include the following:

- Tie wire - Steel reinforcement in Michigan is tied using automatic hand held tying machines only available from Japan. The tying machines only use tie wire manufactured in Japan. The FHWA Division Office’s suggested solution is to stop using the tying machine and go back to hand tying, regardless of the added cost or extra time required. Clearly, this is contrary to FHWA initiatives like Every Day Counts and Accelerated Bridge Construction.
- Most screws, nuts and bolts, and other fasteners sold in the U.S. come from non-domestic sources. When pressed about providing domestically manufactured items, the manufacturers have indicated it is completely impractical in terms of cost and delivery time.
- The BA regulations provide no clarity on the definition of a “manufactured product,” such as pumps, traffic signals and controllers that contain steel and iron elements in their assembled units. The FHWA Division Office suggests applying for a waiver for any of these manufactured products that are not domestically available. However, there are no “blanket waivers” as a waiver is project-specific; the waiver process is months long; and a waiver should be submitted by the agency prior to bid.

As a result in Michigan, thousands of dollars in payments are being withheld, a project has been pulled from a recent letting, and several other projects are being considered for postponement.

Conclusion

With program dollars and project time being lost every day as a result of this outlying interpretation of Buy America, MITA seeks a clarification of the issues raised herein. We also support a legislative solution to prevent the type of misinterpretation we believe is occurring.

For more information from MITA, please contact:

Glenn Bukoski, P.E., VP of Engineering Services, 517-256-0741, glennbukoski@mi-ita.com
 Doug Needham, P.E., VP of Industry Relations, 517-896-6186, dougneedham@mi-ita.com

MITA is an affiliate of the American Road & Transportation Builders Association (ARTBA).