

Buy America

Recordkeeper Job Aid
Construction Division

Overview

The goal of this document is to provide information regarding the Build America Buy America Act (BABA Act).

Buy America is a federal and state provision that requires products to be made in the United States of America. A federally funded project or federally associated state funded project is required to comply with the FHWA requirements as outlined in the contract specifications, see table below:

Construction Materials and Manufactured Products	Iron or Steel products
Apply to all projects containing or associated with federal funds under the same NEPA clearance.	Apply to federally and state funded projects.
Requires Form 2806 Version 2 •Contract specifications: SP006-001 (2024 specification); SP006-040(2014 Specification)	Standard Specification Item 6 1.1 Requires: • Form 1818, • Mill Test Reports/Certifications Letters, and • Sourcing documentation
Requires Form 2806 Version 1 •Contract specifications: SP006-039/SP006-030 (2014 Specifications)	

Although Buy America as specified in Buy America requirement are the prime contractor's responsibility, TxDOT needs to oversee compliance. Ultimately compliance is the State's responsibility.

Resources:

The following agency websites with additional guidance, Crossroads' [Buy America Website](https://crossroads/divisions/cst/construction-support/buy-america.html), url: <https://crossroads/divisions/cst/construction-support/buy-america.html>

- TxDOT external [Materials Guidance](https://www.txdot.gov/business/resources/materials.html), url: <https://www.txdot.gov/business/resources/materials.html> and where you can obtain the [Material classification sheet](https://www.txdot.gov/business/resources/materials/buy-america-material-classification-sheet.html), at url: <https://www.txdot.gov/business/resources/materials/buy-america-material-classification-sheet.html>
- Federal regulations, [23 CFR 635.410](https://www.ecfr.gov) and [2 CFR 184](https://www.ecfr.gov), <https://www.ecfr.gov> and State statute, [Transportation Code 223.045](https://statutes.capitol.texas.gov/), <https://statutes.capitol.texas.gov/>

Applications utilized:

- E-forms; Form 2806 and Form 1818
- Project Wise along with Project Records Checklist

Key terms:

Standard Items – Item found in the specification book.

Special Specification – Pay Item not found in the specification book but found in the proposal of the contract.

Special Provision – A clause that overrides a standard specification or special specification, refer to respective Special Provision for definitions pertaining to Construction Materials, Manufactured Products, Iron or Steel Products.









Forms:

WHICH FORM TO USE?			
Form 2806 <i>can only be signed by the prime contractor</i>		Form 1818	No Form
<i>effective Nov. 2022 letting</i>	<i>effective Dec. 2023 letting (SP 6-40 or SP6-1 for 2024)</i>	<i>signed by Notary Public</i>	
Non-Ferrous Metals	Drywall	Iron	Manufactured Product
Plastic and polymer-based products (PVC, composite building materials and polymers used in fiber optic cables)	Fiber Optic Cable (including drop cable)	Steel	Any Construction Material combined with any other item as determined by TxDOT.
Glass (including optic glass)	Optical fiber		
Lumber	Engineer Wood		
Drywall	All previously defined construction materials		


- Record Keepers need to ensure Forms have been submitted prior to approval of monthly estimates. IF NOT, the decision to allow payment is the decision of the AE. **Best practice is to document the AE approval.**
- No material should be placed on MOH that is on the classification list without the Forms or AE approval, depending on the item.
 - If orders have to be placed prior to delivery: ETAs from the manufacture can stand in for MOH documentation until the material is delivered (example: electrical poles)
 - Other specialty items that need an 1818/2806, may not be received until after the MOH has been paid initially.


ProjectWise: To archive Buy America project documentation use the standard file and folder structure from the Project File Index, under CSJ Construction Field Records Project Documentation.


Form 1818, Line Item specific, file folder under **Pay Item Support**


	6 PROJECT DOCUMENTATION
	6.1 Pay Item Support - create sub folders for line numbers as needed; refer to Project Records Checklist for additional guidance
	0060 "Line Item Description"
	YYYYMMDD Line60 Calc Sheet - identify each file as a Pay Report/Drawing/Calculation/ Pictures/ Invoice/Material Verification/Tickets, etc.; use date of placement; date should match DWR date; matching dates will assist with audit trail
	YYYYMMDD Line60 ConcTickets
	0065 "Line Item Description"
	YYYYMMDD Line65 Calc Sheet - identify each file as a Pay Report/Drawing/Calculation/ Pictures/ Invoice/Material Verification/Tickets, etc.; use date of placement; date should match DWR date; matching dates will assist with audit trail
	YYYYMMDD Line65 ConcTickets


Form 2806 is located under **Materials** folder


 **6.2 Materials**


 xxxCSJxxx YYYYMMDD Sampling Checklist - Original Sampling Checklist at activation


 xxxCSJxxx YYYYMMDD MSL - Material Sourcing Letter (may include several updates)


 YYYYMMDD MD "MATERIAL" - Mix Designs correspondence if any; mix designs information is kept in SiteManager

 **Concrete Records**


 Testing Equipment Calibrations (if applicable)

 Cylinder Log

 Cylinder Pad Log

 **Bulk Material Verification Documents**

Description-Vendor - for items that have high quantities of material verification documentation/invoices, combine all by creating sub folders as needed; using naming convention of description and vendor or supplier; i.e. Rebar-CMC Steel, RCP-Rinker

 **Form 2806** - If SP included in contract, Form 2806 must be on file as applicable; create sub folders as needed

Record Keeper Tasks

- Record Keeper (RK) to **check if proposal has Special Provisions**: SP006-30, SP006-39, SP006-40, or SP006-01.
- RK should **discuss Buy America Provisions at Preconstruction Meeting** for standard items.
 - Consider providing contractor the Project Records Checklist filtered by CSJ at PreCon.
 - Initial Buy America Template (atch 1.) – may be used to document Buy America expectations to contractor.
- RK should **review and be familiar with Buy America Requirements and supporting documentation** required for work items performed for the project to date and for Material on Hand, (MOH) items; this includes subcontractor materials as well.
- RK may **provide inspectors and project manager the Project Records Checklist filtered by CSJ**. This will list which items will require Buy America compliance on the project.
- RK should **monitor how adjusted items may impact Buy America compliance**.
 - Items added via change order, or a unique change order item may require Buy America certifications that are not initially accounted for.
 - Running an updated Project Records checklist is recommended.
- RK to **collect and review necessary Buy America certification documents** for various work items performed to date and for Material on Hand, (MOH) items.
- RK to **ensure sourcing documentation matches the Buy America certifications**.
- RK may **request contractor to email a notification when Buy America materials are delivered** to the site, include Project Manager and the Record Keeper. Information to include:
 - ✓ date of delivery
 - ✓ description of materials (important because RK may not know all item codes)
 - ✓ item code the material will be associated to
 - ✓ documents showing Buy America certification with the item code listed on each form

- RK may send and save **contractor follow-up emails and letters to document Buy America oversight and ensure compliance** below are sample templates.
 - Missing Buy America (atch 2.) - used to document missing Buy America documentation to contractor.

- **RK shall follow their district SOP. These are some of the best practices from different districts.**

Exceptions to Buy America Requirements

- A contractor may request to use foreign/non-Buy America compliant materials.
 - There are limits in place on how much material may be foreign.
- For Construction Materials (and Manufactured Products when applicable) the limit is the lessor of 1 million dollars or 5% of Total Applicable Cost on the project.
 - Any project \$20 million or over will have a limit of 1 million dollars.
 - If project is under \$20 million dollars:
 - Total Applicable cost must be obtained from the contractor.
 - Total Applicable cost is the cost of all iron or steel products, construction materials, and manufactured products on the job including transportation cost.
- For iron and steel products, the limit (including delivery) of material cost is 0.1% of the total Contract cost of \$2,500 whichever is greater.
- Materials are temporarily installed or left in place at the contractors' convenience.
 - Items impracticable to remove are not left in place for contractors' convenience.
 - Other waivers may exist, check the Buy America Website: [CST Buy America Website](#).

Attachments:

1. Initial Buy America Letter template
2. Missing Buy America Documentation Letter template

Initial Buy America Letter

{select date}
{enter contractor}
{enter contractor's name}
{enter address}
[city], TX {enter zipcode}
RE: Project: {enter project federal no.}
Control: {enter project CSJ XXXX-XX-XXX}
Buy America Documentation

{enter contractor's name}:

We as a team, must meet the provisions of Buy America as listed in 23 CFR 635.410. Please submit all required documentation as required by Item 6, or special provision to Buy America section of item 6, with the supporting paperwork for verification compliance.

As the prime, we ask you to notify the Project Manager and Record Keeper via email when Buy America materials will be delivered to the project; this includes subcontractor materials as well.

The email should include:

- date of delivery
- description of materials
- item code the material will be associated to
- documents showing Buy America certification with the item code listed on each form

We ask that you separate each document per item code and name documents as seen below:

Template: CSJ – Item Code – Brief Description - YYYYMMDD

Example: 0188-04-035 – 03606066 – Reinforcing Steel – 20230718

Please refer to the attached Project Records Checklist spreadsheet and see the Project Documentation tab. Failure to comply with Buy America may result in progress payments being withheld.

Please contact RK Name at RK telephone, ([RK email](#)) or myself at Area Office telephone, ([AE email](#)) if you have any questions.

Sincerely,

Area Engineer Name
Area Office Name
District Name

cc: {enter TxDOT's staff name}, Assistant Area Engineer, TxDOT
{enter TxDOT's staff name}, Project Manager, TxDOT
{enter TxDOT's staff name}, Record Keeper, TxDOT

Missing Buy America Documentation Letter

{select date}
{enter contractor}
{enter contractor's name}
{enter address}
[city], TX {enter zipcode}

RE: Project: {enter project federal no.}
Control: {enter project CSJ XXXX-XX-XXX}
Buy America Documentation

{enter contractor's name}:

Item 6 of the contract specifications require the contractor to provide Buy America Certification documentation for applicable material classification. .

As discussed, on {select date}, {enter contractor} was substantially behind on providing the necessary Buy America required documents. As discussed, payment for the {enter Month and Year} estimate would be withheld if significant improvement are not achieved by {select date}.

I appreciate {enter contractor} taking measures to address the deficiencies.

As of {select date}, the below list of items still needs to be addressed:

ITEM NO.	ITEM DESCRIPTION	QTY PAID TO DATE	AMOUNT PAID TO DATE
XXX-XXXX	DESCRIPTION	8 EA	\$XX,XXX.XX

I ask that {enter contractor} provide the necessary Buy America certification documents for the above listed items, no later than {select date}, otherwise payment for these items will be removed from the {enter Month and Year} estimate, {enter contractor} must also keep all Buy America Certification requirements current from this point forward or payment for those items will be withheld as well.

The Texas Department of Transportation has no desire to withhold funds; however, Buy America requirements must be adhered to.

Please contact RK Name at RK telephone, ([RK email](#)) or myself at Area Office telephone, ([AE email](#)) if you have any questions.

Sincerely,

Area Engineer Name
Area Office Name
District Name

cc: {enter TxDOT's staff name}, Assistant Area Engineer, TxDOT
{enter TxDOT's staff name}, Project Manager, TxDOT
{enter TxDOT's staff name}, Record Keeper, TxDOT