

FAA Buy American Preference

October 24, 2023



Federal Aviation
Administration



FAA Buy American Preference

Objectives:

1. Buy American Preference
2. Sponsor Requirements
3. Documentation
4. FAA review of waivers



FAA Buy American Preference



- **What does Buy American preference mean?**
 - All iron, steel, manufactured goods, and construction materials used in all federally funded airport development projects meet all Made In America laws
 - 49 U.S.C. § 50101
 - Executive Order 14005
 - Build America Buy America Act (BABA)
- **Compliance with requirements applies to entire contract**
 - Includes change orders
 - Applies to ineligible or non-AIP funded work when included in same contract
- **Rules imposed by other federal agencies may differ from AIP**



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Sponsor Requirements:

The sponsor must complete one of the following:

- I. Certify, in writing, all products are wholly produced in America and are of 100% U.S. materials
- II. Certify that all equipment that is being used on the project is on the Nationwide Buy American conformance list
- III. Request a waiver to use non- U.S. produced products



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Sponsor Requirements:

- Nationwide Buy American conformance list
 - pdf and Xcel document updated ~monthly (updated October 3, 2023)
 - FAA incorporated the five-year limit required by BABA



https://www.faa.gov/airports/aip/buy_american

Internet Search: FAA AIP Buy American



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Waiver Type	Manufacturer	Product	Effective Date
Type III Equipment/Building	Potters Industries	Reflective Media TTB 1325D Type IVA (Flex-O-Lite) Glass Beads	9/26/2023
Type III Equipment/Building	ABD Safegate Americas LLC	L-862(L) Runway Edge Light High Intensity (HIRL) EREX2XXXXXXXXX02	8/26/2023
Type III Equipment/Building	ADB Safegate Americas, LLC	L-862E(L) Runway Threshold Light, High Intensity (HITHL) EREX2XXXXFX02	8/26/2023
Type III Equipment/Building	ADB Safegate Americas, LLC	L-852G(L) Inpavement Runway Guard Light, model RSRG11XX1NYXX2X1	7/22/2023
Type III Equipment/Building	DBT Transporation Services LLC	AWOS 2	7/22/2023
Type III Equipment/Building	DBT Transportation Services LLC	AWOS 1	7/22/2023
Type III Equipment/Building	DBT Transportation Services LLC	AWOS 3	7/22/2023
Type III Equipment/Building	DBT Transportation Services LLC	AWOS 3P	7/22/2023
Type III Equipment/Building	DBT Transportation Services LLC	AWOS 3PT	7/22/2023
Type III Equipment/Building	DBT Transportation Services LLC	AWOS AV	7/22/2023
Type III Equipment/Building	ADB Safegate Americas, LLC	L-830, Isolation Transformers, 60Hz Model 1STXXX66601001	7/8/2023
Type III Equipment/Building	Crown USA Incorporated	F-AB-297 TT-P-1952F Type II Black Marking Paint	7/8/2023
Type III Equipment/Building	Crown USA Incorporated	F-AG-355 TT-P-1952F Type II Bicycle Green Marking Paint	7/8/2023
Type III Equipment/Building	Crown USA Incorporated	F-AL-397 TT-P-1952F Type II Blue Marking Paint	7/8/2023
Type III Equipment/Building	Crown USA Incorporated	F-LFY-295 TT-P-1952F Type II L.F. Yellow Marking Paint	7/8/2023
Type III Equipment/Building	Crown USA Incorporated	F-AR-399 TT-P-1952F Type II Red Marking Paint	7/8/2023
Type III Equipment/Building	Crown USA Incorporated	F-AR-D-399 TT-P-1952F Type II Dark Red Marking Paint	7/8/2023
Type III Equipment/Building	Crown USA Incorporated	F-AW-292 TT-P-1952F Type II White Marking Paint	7/8/2023



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Sponsor Requirements:



- Request a waiver to use non- U.S. produced products
 - Sponsor/contractor must submit a Type 2, Type 3, or Type 4 waiver request within 15 calendar days of selection as the responsive bidder
 - Large/multi phase projects - use best available information
 - Update waiver request with each grant phase
 - *Type 1 and 2* waivers approved by FAA HQ
 - Project specific Type 3 and Type 4 waivers approved by ADO

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Sponsor Requirements:



- Request a waiver to use non- U.S. produced products

–Waiver Types:

I.Type I - Applying the Buy American requirements would be inconsistent with the public interest (Approved by FAA HQ)

II.Type II - Goods are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality (Approved by FAA HQ)

III.Type III – More than 60% of the components and subcomponents in the equipment/facility are of U.S. origin and their final assembly is in the United States

IV.Type IV - Applying Buy American requirements increases the cost of the overall project by more than 25%



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Sponsor Requirements:



- Type IV Waiver
 - Sponsors Must Provide:
 - I. Minimum of two equal comparable bids
 - II. Written justification for the use of non-domestic iron, structural steel, or manufactured good
 - III. Show effort to locate a domestic option, including the use of the Manufacturing Extension Partnership (MEP)...must clearly demonstrate domestic costs are unreasonable
- **Expectation is to demonstrate significant effort to locate domestic sources**



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What you need to do:



- Type III Waiver request
 - Required documentation:
 - I. Content Percentage Worksheet (Form 5100-136)**
 - I. Components/subcomponents and cost without labor and markup
 - II. US vs Non-US costs
 - III. Confirm more than 60% sourced from US
 - IV. Country of Origin
 - II. Final Assembly Questionnaire (Form 5100-137)**
 - I. Describe manufacturing processes; tools, labor, material necessary to make final product
 - II. Labor cost to manufacture
 - III. Confirm product is manufacture in US
 - III. Certificate of Compliance**



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What you need to do:



- General Notes:

- I. **Content Percentage Worksheet (Form 136)**

- I. By FAA policy, the list of items that have been determined non available per 48 CFR § 25.104 are excluded from the AIP Buy American preference requirements
- II. Petroleum products are on the list; therefore, asphalt is a non available item
- III. FAA has determined that cement and concrete are also non available items excluded from the Buy American preference requirements (AIP handbook, Table X-3)
 - I. However, steel used for reinforcement is NOT excluded



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Points to remember – Form 136:



Project/Product Information

FAA Eligible Project:

i.e. Expand Terminal Building or Construct Electrical Vault

Airport Sponsor:

Airport LOCID:

FAA Award Number:

Grant Number

FAA Item Number (FAA Advisory Circular reference, if applicable):

FAA Spec/Equipment number; i.e. L-826

Total Material Cost:

Total **U.S.** Material Content Cost:

Percentage: %

Total **Non-U.S.** Material Content Cost:

Percentage: %



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Points to remember – Form 136:



- Excluded Items: i.e. concrete, asphalt, etc.
- Country of Origin
- Some products sourced from China are prohibited
- Use of spreadsheet if equivalent to Form 136
- Exclude labor and retail mark-up

– CONFIDENTIAL –

NOT SUBJECT TO DISCLOSURE UNDER EXEMPTION # 4 OF THE FREEDOM OF INFORMATION ACT

Project Material Structure Worksheet

Level (0, 1, 2)	Part Number	Item Description	Quantity	Unit of Measure	Price/Unit of Measure	U.S. Origin Price/Unit of Measure	U.S. Origin Cost (Each)	Non-U.S. Price/Unit of Measure	Non-U.S. Cost (Each)	Country of Non-U.S. Materials
0			1	Each						



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Points to remember – Form 137:



- **Descriptions:** brief, but enough detail regarding how the materials listed on the worksheet are manufactured together into the final product
- **Forms:** use the FAA forms, not documents from other agencies

Company Name: Date:

FAA Eligible Item: i.e. Expand Terminal Bld FAA Item Number (if applicable):

Address of Final Assembly Location:

1. Provide a description of the assembly process occurring at the specified final location in the United States.
 - a. Describe the final assembly process and its various operations.



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Process:



- Waiver provided to ADO
- If there are no issues during review, the ADO will provide an approval letter to the contractor/sponsor
- The waiver is then published for public comment, ten days
- Waiver fully effective after the ten-day comment period

Waiver Type	Manufacturer	Product	Sponsor	Project Description	Effective Date
Type III Equipment/Building	A-Bridge, LLC	Three Passenger Boarding bridges	Monroe County, New York	Replace three Passenger Boarding Bridges.	9/26/2023
Type III Equipment/Building	Ground Support LLC	Deicing Vehicle	Central Wv Regional Airport Authority	This project acquires a new Deicing vehicle.	9/26/2023
Type III Equipment/Building	None	Zero Carbon Electrical Central Utility Plant	Dallas-fort Worth Airport, Texas	This project provides for the construction of Zero Carbon Electrical Central Utility Plant.	9/26/2023
Type III Equipment/Building	Oshkosh	Oshkosh Stryker ARFF Truck	City Of Clovis, New Mexico	This project acquires an aircraft rescue and firefighting vehicle.	9/26/2023
Type III Equipment/Building	PEM Door Inc. Prime Window Systems & Systems Components	HVAC, Doors, Windows	Acoustic Prime Doors Units, Acoustic Vinyl Windows And Doors, Hvac Equipment/System	Noise mitigation measures	9/26/2023



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