

UDOT Central Construction Guidance **(2012 Standard Spec. 01455 Buy America Clarification)**

1. Reasonably Conclude

Project documentation must be sufficient enough that one can “reasonably conclude” that all processes were performed domestically for all quantities of steel/iron incorporated into the project. Every situation will be different and a judgment will need to be made and documented when 100% certification cannot be shown.

2. Step Certification (Process)

As Defined in Question #40 of FHWA Buy America Q&A
A step certification is a process under which each handler (supplier, fabricator, manufacturer, processor, etc) of the iron and steel products certifies that their step in the process was domestically performed.

As Defined in 2012 Standard Specification 01455 Section 1.16.C.1

- b) Signed certification by each Fabricator and Manufacturer that has handled the steel and iron product affirming that every process, including the application of a coating, performed on the steel or iron product has been carried out in the United States.*
- c) Materials descriptions, quantities, and means of material identification such as heat numbers, lot numbers, and other industry identification markings for each process the material underwent so the final product can be tracked through a step process from smelting to final product.*

To meet the intent of the 2012 Standard Specification 01455, steel/iron products must follow a step process whereby the material can be tracked from smelting through all processes to the final product via a common tracking number such as a heat number, lot number, etc. or a combination thereof. By not being able to specifically track each step by heat/lot or any other identifying number on the certificate, the project office must be able to employ the logic of “reasonably conclude” before the item in question can be accepted for use and paid for on the project. To arrive at this conclusion without the ability to track by number from one process to another, the project office must exhaust every reasonable effort to obtain Buy America certifications with tracking numbers that match from one process to the other for the material in question. The effort put forth, in this case, should be documented in detail explaining why the project office can “reasonably conclude” that the material is the same from one process to the other without the aid of identifying numbers.

3. Temporary Steel

As Defined in Question #19 of FHWA Buy America Q&A
Buy America applies only to iron and steel products required to be permanently incorporated into a Federal-aid construction project. Temporary use means that the contract specifications provide that the iron and steel products used on the project either must be removed at the end of

the project or may be removed at the contractor's convenience. Also, where a contracting agency is able to document that phased construction is imminent and the steel or iron product will be removed in subsequent near term stages, then the iron and steel product may be considered temporary and not subject to Buy America. However, if the iron or steel product is required to remain in place at the end of the contract (per contract documents) and where phased construction is not imminent, then the product is deemed permanent and Buy America applies.

If the steel or iron product does not perform a permanent structural purpose and is utilized as part of the contractor's means and methods, Buy America does not apply regardless of whether it is removed or left in place (i.e. sheet pile walls, temporary abutments on ABC bridges, etc). As a general rule, if the steel or iron product is a bid item then Buy America applies, however, many lump sum items will have individual steel or iron products that must comply with Buy America.

In the case of phased construction, steel and iron products can only be considered temporary if the phase of construction planned to remove them is in the STIP at the time the phase to install them is awarded.

4. Escalation Process

If compliance to 2012 Standard Specification 01455 cannot be reached between the Resident Engineer and the Contractor the process should be escalated through the following channels in the following order:

- a) District Engineer
- b) Deputy Construction Engineer
- c) State Construction Engineer
- d) FHWA Area Engineer

Should the escalation process be used, if the person responsible for the next step of escalation is not available or does not respond within a reasonable period of time, the issue should be escalated to the next level. The FHWA Area Engineer for each Region has indicated their availability to discuss these matters at most any time during this process. Unnecessary delays to the project in order to reach a decision on the adequacy of the certifications should be avoided.

5. Incorporation without Documentation

If the contractor proceeds to incorporate steel/iron products into a project without approved documentation meeting spec 01455, the Resident Engineer will provide written notification to the contractor stating that they are proceeding at their own risk and if sufficient documentation cannot be provided for said steel/iron products, the products may have to be removed and replaced with confirmed domestic material at the contractor's expense.

This scenario should only be allowed in cases where the schedule will be significantly impacted. Additionally, it is not only about the potential to

remove and replace, it could result in the removal of federal funds on the entire project if removal and replacement are not feasible (i.e. soil nails).

6. Pre-Construction Meeting

Set aside time at the Pre-Construction meeting to discuss in detail 2012 Standard Specification 01455 to include a discussion of each steel/iron material that is to be incorporated into the project. Emphasize the Step Certification Process and the requirement of approved documentation prior to incorporation and payment of steel/iron products on the project and the consequences of non-compliance. Also discuss the minimal use and tracking of foreign steel incorporated in the project.

7. Document Decisions

Document all decisions made and the accompanying thought processes when “reasonably concluding” anything other than exact conformance to 2012 Standard Specification 01455.

****All the guidance provided in this document also applies to Special Provision 01455M for projects with bid-opening dates prior to July 15, 2011.**

*****Refer to the “FHWA’s Buy America Q and A for Federal-aid Program” document for further information.**

http://www.fhwa.dot.gov/construction/contracts/buyam_qa.cfm