

NHTSA–State Highway Safety Grant Programs
Buy America Act Questions and Answers
March 2014
Regional Operations and Program Delivery
Office of Grants Management and Operations

Question: If the State has already awarded bids for a specific product (e.g., tint meters), is the expectation that we would cancel that award, re-bid and give it to another company for the exact same product in the same fiscal year for potentially a higher price?

Answer: Each Governor’s Representative for Highway Safety signs annual assurances that the State will comply with the Buy America Act. The Buy America Act prohibits the use of Federal grant funds in contravention of its terms. NHTSA will not reimburse costs that are not allowable under the Act.

Question: What is NHTSA’s enforcement policy regarding the Buy America Act, and are there dollar thresholds or specific items that exempt compliance?

Answer: NHTSA’s enforcement policy requires grantees using Federal funds to comply with Buy America’s requirements. The Buy America Act prohibits the use of Federal highway safety grant funds to purchase steel, iron or manufactured products, unless these products are produced in the United States. There are no dollar thresholds or specific items that are exempt from compliance. NHTSA may waive the Buy America Act’s requirements if (1) their application would be inconsistent with the public interest; (2) such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) the inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent. To be reimbursed with Federal highway safety grant funds for a purchase, a State must comply with the requirements of the Buy America Act. If NHTSA identifies a non-compliance, it will deny reimbursement.

Question: If we submit a waiver request, will we be notified by NHTSA when it has been posted in the Federal Register?

Answer: Yes, the NHTSA regional office will provide you with notification.

Question: If we are not able to comply completely with the Buy America Act due to State and local purchasing laws/policies, what are the consequences for non-compliance?

Answer: To be reimbursed with Federal highway safety grant funds for a purchase, a State must comply with the requirements of the Buy America Act. Non-compliance will result in denial of reimbursement.

Question: If a waiver request has been submitted and approved for one State, will it apply to all States for that same specific item?

Answer: The applicability, scope and duration of each waiver will be addressed in the Federal Register notice responding to the waiver request.

Question: Why does NHTSA follow a different set of Buy America Act rules than does FHWA?

Answer: Regulations published by FHWA, which were promulgated in 1983, apply to its programs and do not extend to other operating modes of DOT. Each operating mode of the U.S. Department of Transportation has its own management structure. Under a NHTSA-administered grant program, NHTSA policies and procedures apply.

Question: Is there a date when NHTSA's interpretation of the Buy America Act will apply to all States or will it be retroactive? Since we are located in a DOT, up to this point we have been using the FHWA interpretation of this Act.

Answer: A State must comply with the provisions of the Buy America Act at all times when purchasing items using NHTSA highway safety grant funds. Under a NHTSA-administered grant program, NHTSA policies and procedures apply.

Question: Does the Buy America Act apply to leasing items under a grant?

Answer: Yes.

Question: Can items not meeting the Buy America Act requirements be used as matching dollars if they are being used to support the grant?

Answer: Yes, as long as the items meet the applicable cost principles, the value of the items may be used to satisfy State matching requirements.

Question: What is NHTSA's enforcement policy regarding the Buy America Act, and are there dollar thresholds or specific items that exempt compliance?

Answer: The Buy America Act prohibits the use of Federal highway safety grant funds to purchase steel, iron or manufactured products, unless these products are produced in the United States. NHTSA may waive those requirements if (1) their application would be inconsistent with the public interest; (2) such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) the inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.

To be reimbursed with Federal highway safety grant funds for a purchase, a State must comply with the requirements of the Buy America Act. Non-compliance will result in denial of reimbursement.

Question: Any estimates on how long it will take to submit a waiver request through the various levels and then be posted in the Federal Register? After it goes through the Register process, how long will it take to get a final decision?

Answer: NHTSA estimates the process will approximately 90 days from the date of receipt until NHTSA publishes a Federal Register notice. The Federal Register is the agency's final decision.

Question: If a State buys a product off of the Conforming Products List, does that product have to meet the Buy America law?

Answer: A State must comply with the provisions of the Buy America Act at all times when purchasing items using NHTSA highway safety grant funds.

Question: What is the scope of the waivers for Maryland and Wisconsin?

Answer: The Maryland and Wisconsin waivers exempt Maryland and Wisconsin from the requirements of Buy America for items identified in the relevant Federal Register notices. The applicability, scope and duration of each waiver will be addressed in the Federal Register notice responding to the waiver request.

Question: If a State receives a waiver for a 403 project, does it apply to Sections 402 and 405 as well?

Answer: The applicability, scope and duration of each waiver will be addressed in the Federal Register notice responding to the waiver request.

Question: How does Buy America Act apply to public information and education materials? And if it does apply, can an exemption be requested for certain types of items?

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Question: What are the sanctions for a violation of the Buy America Act?

Answer: To be reimbursed with Federal highway safety grant funds for a purchase, a State must comply with the requirements of the Buy America Act. Non-compliance will result in denial of reimbursement.

Question: How should a State proceed if they have a statewide contract for certain types of purchases (office supplies, IT)?

Answer: A State must comply with the provisions of the Buy America Act at all times when purchasing items using NHTSA highway safety grant funds.

Questions related to specific products:

(1) We provide funds to police departments to purchase a fully equipped police car to support our DWI units. The department receives the American made car and then sends it to another business to install the appropriate police equipment. Does every single piece of equipment placed on the vehicle to make it a fully equipped police car need to be American made or would this assembly process constitute assembled in the United States? This equipment would include light bar, strobe lights, in-car camera, radar, radios, mobile terminals, e-citation printers, etc.

(2) If we purchase an American-made 17 person passenger van and the van's interior is redesigned to support roadside breath alcohol testing (i.e., all seats removed, heavy duty wiring added, prisoner holding area, cabinets, generator, light bars), would all the additional individual components have to be American made or would this be considered assembled in the United States?

(3) We purchase radar equipment from a company and the charger is made in China. The radar unit itself is made in the United States. The two components are packaged and shipped in one box from a U.S. provider. Both pieces are required for the unit to be operational. Is this considered manufactured/assembled in the United States?

(4) Are t-shirts that are made overseas then screen printed with our specific safety messages in the United States considered manufactured/assembled in the United States?

(5) One of our subgrantees needs to purchase a \$50 battery for a laptop being used under a grant. The battery is not made in America. Does this type item need to be submitted as an exemption?

Answer: Each manufactured end product must comply with the provisions of the Buy America Act. Additionally, any manufactured add-on to an end product is, itself, an end product that must comply with the Act.