

SECTION 105 CONTROL OF MATERIAL

105.01 SOURCE OF SUPPLY AND QUALITY REQUIREMENTS:

Add the following to this Subsection:

BUY AMERICA REQUIREMENTS:

- a. Buy America applies only to the Federal-aid highway construction program.
- b. Applies to iron and steel products and their coatings. Raw materials were originally included, however, lack of adequate domestic supply resulted in a 1996 nationwide waiver for iron ore, pig iron, reduced/processed/palletized iron ore, and raw alloys.
- c. All manufacturing processes must take place domestically. Manufacturing is any process that modifies the chemical content; physical shape or size; or final finish of a product. Manufacturing begins with initial melting and mixing, and continues through the bending and coating stages. If a domestic product is taken out of the US for any process, it becomes foreign source material.
- d. Materials must be permanently installed, not temporary. Temporary materials may be left in place at the contractor's convenience.
- e. Minimal Use Criteria – Non-domestic iron and steel materials may be used provided, the cost of such material does not exceed one-tenth of one percent (0.1 percent) of the total contract cost or \$2,500 whichever is greater. For purpose of this paragraph, the cost is that shown to be the value of the steel and iron products as they are delivered to the project.
- f. Under an alternative bid procedure, foreign source materials may be used if the total project bid using foreign source materials is 25% less than the lowest total bid using domestic materials.
- g. Project specific waivers may be approved by the Regional Administrator.
- h. NAFTA does not apply. There is a specific exemption within NAFTA (Article 1001) for grant programs such as the Federal-Aid Highway program. Similarly, the GATT and EEC agreements do not apply.
- i. Buy America is a separate and distinct program from Buy American. Buy American applies to all federal direct procurements; it covers approximately 100 products and has completely different rules. Requirements are found in U.S.C. 10(a)-10(c).
- j. In 1994, a nationwide waiver for specific ferryboat parts came into effect.
- k. State restrictions may include additional products but must allow any US domestic source.

STEEL AND IRON CONSTRUCTION MATERIAL:

The major quantities of steel and iron construction material that is permanently incorporated into the project shall consist of American-made materials only.

The contractor may utilize minor amounts of foreign steel and iron in this project provided the cost of the foreign material used does not exceed one-tenth of one percent of the total cost or \$2,500 whichever is greater.

American-made material is defined as material having all manufacturing processes occur in the United States. The action of applying a coating to steel or iron is deemed a manufacturing process. Coating includes epoxy coating, galvanizing, aluminizing, painting, and any other coating that protects or enhances the value of steel or iron. Any process from the original reduction from ore to the finished product constitutes a manufacturing process for iron. The following are considered to be steel manufacturing processes.

- 1) Product of steel by any of the following processes:
 - a. Open hearth furnace
 - b. Basic oxygen
 - c. Electric furnace
 - d. Direct reduction
- 2) Rolling, heat treating, and any other similar processing
- 3) Fabrication of products
 - a. Spinning wire into cable or strand
 - b. Corrugating and rolling into culverts
 - c. Shop fabrication

A certification of materials origin will be required for any items comprised of, or containing steel or iron construction prior to such items being incorporated into the permanent work.

The Government reserves the right to alter quantities of material to be furnished. The Government also reserves the right, during construction, to decrease or increase the scope of work because of limitations of funds, with no adjustment in unit prices other than that specified hereinabove.

105.02

MATERIAL SOURCES:

Delete subsection (a) Government-provided sources entirely and adjust (b) Contractor-located sources to (a).

105.05 USE OF MATERIAL FOUND IN THE WORK:

Delete starting from the second paragraph of this subsection.

Add the following to this Section:

105.06 SAMPLES:

- a. After award of the contract, the Contractor shall furnish, for the approval of the Contracting Officer, samples required by the specifications or by the Contracting Officer. Samples shall be delivered to the Contracting Officer or to the Engineer as specified or directed by the Contracting Officer. The Contractor shall prepay all shipping charges on samples. Materials or equipment for which samples are required shall not be used in the work unless approved in writing by the Contracting Officer.
- b. Each sample shall have a label indicating the following:

 Project title and contract number,

 Name of Contractor and (if appropriate) the name of the subcontractor,

 Identification of material or equipment with specification requirement,

 Place of origin,

 Name of sample producer and brand (if any), and

 Samples of finished materials shall be identified with the finished schedule requirements.
- c. The Contractor shall mail (under separate cover) a letter submitting each sample shipment and the label information required in paragraph (b). He shall enclose a copy of the letter with the sample shipment and send a copy of the letter to the Commonwealth representative on the project site. Approval of the sample shall be only for the characteristics of use named in such approval and shall not be construed to change or modify any contract requirement. Substitutions will not be permitted unless approved in writing by the Contracting Officer.
- d. Approved samples not destroyed in testing will be sent to the Commonwealth representative at the project site. Approved samples of hardware in good condition will be marked for identification and may be used in the work. Materials and equipment incorporated in the work shall match the approved samples. Other samples not destroyed in testing or not approved will be returned to the Contractor at his expense if so requested at the time of submission.
- e. Failure of any material to pass the specified test will be sufficient cause for refusal to consider, under the Contract, any further samples of the same brand or make of the material. The Commonwealth reserves the right to disapprove any material or equipment that was previously proven unsatisfactory in service.

- f. Samples of various materials or equipment delivered on the site or in place may be taken for testing by the Commonwealth representative. Samples failing to meet contract requirements will automatically void previous approvals of the item tested. The Contractor shall replace such materials or equipment found not to have met contract requirements, or there shall be adjustment of the contract price as determined by the Contracting Officer.
- g. Unless otherwise specified, when tests are required, only one test of each sample proposed for use be made at the expense of the Commonwealth. Samples that do not meet specification requirements will be rejected. Testing of additional samples will be at the expense of the Contractor.

END OF SECTION 105