

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 maybe 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. Similarity, 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 processed.

- 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 recognizes that certain items of material to be incorporated into the project and/or consumed in the prosecution of the project are temporarily in short supply and beyond the control and without the fault of the contractor. The effect of such shortages has, among other things, resulted in periodic fluctuations in the posted prices of such short supply materials, thereby making the proposal difficult for the contractor to bid with confidence.

For this project, the only materials considered in short supply and Sections involved herewith are tabulated below (See Proposal Schedule in regards to the Contracts Items involved):

Section	Description	Short Supply Material
301	Plant Mix Asphalt Concrete Base Course	Asphalt Cement
401	Asphalt Concrete Pavement	Asphalt Cement
411	Prime Coat	Asphalt Cement
412	Tack Coat	Asphalt Cement
554	Reinforcing Steel	Reinforcing Steel
601	Concrete Structures	Portland Cement
602	Culverts and Drains	Portland Cement / Reinforcing Steel
604	Manholes, Inlets, and Catch Basins	Portland Cement / Reinforcing Steel
609	Curb and/or Gutter	Asphalt Cement / Portland Cement
615	Sidewalks	Asphalt Cement / Portland Cement

Each bidder shall submit with proposal a written statement from the supplier of each short supply material indicating the supplier's current posted price, effective date of that price and the location of the material at the posted price (by island).

If the price of such short supply material is increased by more than 5% by the supplier prior to the completion of that contract item requiring the short supply material, the contractor shall submit to the CO a written statement from the supplier indicating the effective date and changed price the contractor will thereafter be charged for such short supply material. The contractor shall also obtain whenever possible, quotations for furnishing the material from other available local suppliers. The quotations shall be obtained sufficiently in advance of the need for the material to allow review by the CO so as not to delay the work. The Contractor's request to the CO for adjusted compensation due to such changed prices will be computed only with prices in effect at the time of delivery. Only the lowest quotation obtained will be accepted by the CO. Transportation, handling, loading, processing and other similar costs will not be subject to adjusted compensation.

No adjustment to the unit bid prices will be made when the increase or decrease in the price of the short supply material is less than 5% of the original posted price.

If the adjustment to the unit bid price is decreased in the price of the short supply material by more than 5% of the original posted price, the Government will be credited.

If an increase in the price of any short supply material exceeds or is scheduled to exceed 35% of the original posted price, the Contractor must notify the Government within five working days before using the short supply material. Upon receipt of such notification from the Contractor, the Government will direct the Contractor to either (1) authorized work to proceed as usual with assurance that the indicated incremental price increase above the 35% will be compensable, (2) issue such change orders as the Government may deem necessary to reduce further requirements of the short supply material which is to be paid at the increase price, or (3) if the material is considered to have priced itself beyond reason or beyond what the Government can pay, the Government may order cessation of further use of such short supply material on the project. Such Notification by the Contractor will be required at each instance of incremental price increase above the 35% limit. If the Contractor fails to notify the Government of any such incremental price increase within five working days before using the short supply material and continues to utilize the short supply material on the project, the Government will not be responsible for payment for the incremental cost increase of which the Government was not forewarned.

Computation for the adjusted compensation will be as follows:

(A) Portland Cement:

If, X = Adjustment per cubic yard of concrete,
 P = Portland cement content of the approved mix design expressed
 in hundredweight per cubic yard of concrete,
 Q = Increase or decrease in the price of Portland cement in dollars
 per hundredweight,

Then, $X = QP$

Example: Posted price of Portland cement increases from \$1.40 to \$1.70 per cwt. and the hundredweight (cwt) of concrete is 5.6 cwt per c.y. then, the adjustment shall be:

$\$1.70 - \$1.40 = \$0.30$
 $(\$1.40)(5\%) = \0.07
 $\$0.30 - \$0.07 = \$0.23$

$X = (\$0.23) (5.6) = \1.29 per c.y. of concrete

(B) Asphalt Cement:

If, X = Adjustment per ton of mix,
 P = Asphalt cement content, expressed in percent of dry weight of
 aggregates, as determined and accepted by the Government
 for each design plant mixes,

Q = Increase or decrease in the price of asphalt cement in dollars per ton,

$$\text{Then, } X = QP / (100+P)$$

Example: Posted price of asphalt cement increases from \$70 to \$80 per ton and the asphalt content of the A.C. mix was accepted at 6.0%, then the adjustment shall be:

$$\begin{aligned} \$80.00 - \$70.00 &= \$10.00 \\ (\$70.00)(5\%) &= \$3.50 \\ \$10.00 - \$3.50 &= \$6.50 \end{aligned}$$

$$X = (\$6.50) (6) / (100+6) = \$0.37 \text{ per ton of A.C. mix}$$

(C) Reinforcing Steel:

If, X = Adjustment of reinforcing steel,
P = Weight of reinforcing steel, expressed in hundredweight,
Q = Increase or decrease in the price of reinforcing steel in dollars per hundredweight,

$$\text{Then, } X = QP$$

Example: Posted price of grade 40 reinforcing steel increase from \$14.00 to \$15.00 per cwt. and the weight of the grade 40 reinforcing steel is 80,000 pounds, then the adjustment shall be:

$$\begin{aligned} \$15.00 - \$14.00 &= \$1.00 \\ (\$14.00)(5\%) &= \$0.70 \\ \$1.00 - \$0.70 &= \$0.30 \end{aligned}$$

$$X = (\$0.30) (800) = \$240.00 \text{ for grade 40 reinforcing steel}$$

The Contractor shall submit to the CO original receipted bills covering the short supply material used on the project as soon as practicable after shipments are completed. The bills shall accompanied by tabulation on which the bills are listed in chronological order showing for each bill the quantity, the date shipped from the supplier's terminal and the price per unit at the place indicated in the posted price (reflecting any deduction for quantity shipments). These bills shall be subject to audit verification.

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), andSamples 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