

MEMO TO: Local Administered Project Coordinators

DATE: March 24, 2010

SUBJECT: Buy America Provision

RE: BLP Memo 10-4

Recently we have had a number of locally administered projects where there have been issues with contractors providing iron or steel products that were produced outside of the United States. These projects have been dealt with individually, but we also thought it would be beneficial to provide all cities administering their federal-aid projects with a summary of the requirements. One of the provisions required for use of federal funds in highway construction projects is compliance with the Buy America Act as described in 23 CFR 635.410. This provision requires that all permanently incorporated iron or steel materials, along with all coatings to protect and enhance the value of the iron and steel materials, be manufactured, produced, and processed in the United States. There are special circumstances where exceptions to this requirement may be appropriate. Those exceptions are described in 23 CFR and in special provision 07-19-07 or latest version.

A common misconception regarding the Buy America provision is that it does not apply to non-participating items of work. The Buy America provision applies to ALL bid items in a federal-aid construction project whether the bid item is federally participating or not. If a federal-aid construction contract included installation of a utility, such as a waterline or sanitary sewer, which most likely would be federally non-participating, the iron and steel materials and coating used in that installation must comply with the Buy America provision.

It is the responsibility of the contractor to supply domestically produced steel for federal-aid projects. To remind the contractors of this requirement, all federal-aid construction contracts are required to include special provision 07-19-07 or latest version titled "NOTICE TO CONTRACTORS 'Buy America' Material". The Bureau of Local Projects reviews all draft construction contracts developed by your staff and verifies that they contain the Buy America provision before KDOT will issue the authority to advertise. It is the responsibility of your project staff to verify the contractor is in compliance with the Buy America provision by receiving and ensuring that all material certifications and/or mill certifications contain a Buy America statement. The statement should contain language to the effect that all manufacturing, fabricating or coating processes, as appropriate, were performed in the USA.

Most domestic producers of highway-related iron and steel materials already include a Buy America statement on their certifications. The certifications need to be traceable to the delivered products through heat numbers, tag numbers or other identifiers so the project staff can verify compliance for each product.

Compliance with Buy America is one of the items KDOT and the FHWA will be checking during project reviews so please make sure the contractor supplies all material certifications for iron and steel products and that they contain a Buy America statement. Also, make sure the project inspectors have access to the certifications so compliance can be verified before the iron and steel products are incorporated into the project.

If during the project development, it is recognized that there is the possibility that a desired domestic steel or iron product will not be available for use on a federal aid project, an exception or waiver needs to be pursued and granted **prior to obligating the federal funds**. Waivers for the Buy America provision can only be granted by the FHWA at their Headquarters level. Normally, requesting a waiver after obligation of the federal funds will not be viewed as favorable by the FHWA. If a contractor is found to not be in compliance with the Buy America provision, the foreign steel and iron products must be replaced with domestic products that conform to the Buy America provision. Any additional costs and delays to the project resulting from non-compliance with the Buy America provision will not be eligible for federal participation.

If you have a question about this requirement or any other requirement for federal-aid projects, please don't hesitate to contact Jeff Horton or Alison Bell at (785) 296-3681.

Sincerely,

Ronald J. Seitz, P.E., Chief
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