

0060502 CONTROL OF MATERIALS
COMMENTS FROM INTERNAL/INDUSTRY REVIEW

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Comments: (9-30-15 from internal review)

1. Subtitle 6-5.2: Change the Subtitle “Source of Supply-Steel” to “Source of Supply-Steel and Iron”.

Response: Disagree. This language is consistent with that used in the Federal Statute. No change made.

2. First Sentence: “Buy America provisions of 23 CFR 635.410, *as amended*” . Provide the amendment date of Buy America Provisions.

Response: Disagree. This date will change in the future if the Statute undergoes further revisions. This is the correct method for citing a Statute to ensure that the latest revision is used. No change made.

3. Second Sentence: “Ensure that all manufacturing processes for *this material* occur in the United States.”. Change “this material” to “these materials. It is not only one material. It is steel and iron. These are two different materials.

Response: Disagree. This language is consistent with that used in the Federal Statute. No change made.

4. Fourth Sentence: “...when the *actual* total cost of such foreign materials does not exceed 0.1% of the total Contract amount or \$2,500, whichever is greater.” Define or clarify the terminology “actual”, whether it is based on the invoice value or market value at the time of use.

Response: Disagree. This language is consistent with that used in the Federal Statute. No change made.

5. Six Sentence:

“Provide a certification from the manufacturer of steel or iron, or any product containing steel or iron, stating that *all steel or iron* furnished or incorporated into the furnished product *was* manufactured in the United States or a statement that the product was produced within the United States except for minimal quantities of foreign steel and iron *valued at \$ (actual value)*. Recommend changing “was” to “were” because the subject of the sentence is plural. The phrase “valued at \$ (actual value)”needs further clarification.

Response: Disagree. The subject is singular. “Or” is an exclusive conjunction. The use of “and” would be plural. The use of the phrase “actual value” is consistent with that used in the Federal Statute. No change made.

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Comments: (10-29-15)

6-5.2: Since the specification is describing the requirements for steel and iron I recommend

revising the title to reflect that. The current title only references steel. Recommend changing from Source of Supply – Steel to Source of Supply – Steel and Iron.

Response: Disagree. This language is consistent with that used in the Federal Statute. No change made.

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Comments: (10-30-15)

1. Specification: A manufactured steel or iron product is complete only when all grinding, drilling, welding, finishing and coating have been completed.

Comment: I am not sure the reason for removing this sentence. I recommend keeping it since it provides additional clarifications to the overall manufacturing process. It helps and it does not harm.

Response: Disagree. I removed this sentence because it restates the definition of “manufacturing” from the prior sentence, (Any process that modifies the chemical content, physical shape or size, etc.) The prior definition is more inclusive and restating it just increases the possibility of confusion.

FHWA Response: I agree to eliminate, if the sentence repeats manufacturing process.

Final Response: No change made.

2. Specification: When using steel and or iron as a component of any manufactured product incorporated into the project (e.g., concrete pipe, prestressed beams, corrugated steel pipe, etc.), these same provisions apply, except that the manufacturer may use minimal quantities of foreign steel and iron when the actual total cost of such foreign materials does not exceed 0.1% of the total Contract amount or \$2,500, whichever is greater.

Comment: Recommend revising the sentence to read as follows, “When using steel or iron materials as a component of any manufactured product (e.g., concrete pipe, prestressed beams, corrugated steel pipe, etc.), these same provisions will apply. The Buy America provision allows minimal use of foreign steel and iron materials as long as the total actual cost of such foreign materials does not exceed 0.1% of the total contract amount or \$2,500, whichever is greater”.

Response: Disagree. Since the Specification is written in active/imperative mood, the current text DIRECTS the Contractor how to parse the value of foreign steel, rather than passively notifying them of the provision of the federal statute.

FHWA Response: I believe your proposed sentence mixing two items. One was to address the BA application to individual material (steel or iron) when incorporated into a manufactured product and other to address the BA allowable limits. My proposal separates these two items. The BA minimum allowable is applicable to all products whether it is a manufactured or

individual item.

Final Response: Change made per 11/5/2015 meeting with FHWA.

3. Specification: Provide a certification from the manufacturer of steel or iron, or any product containing steel or iron as a component, stating that all steel or iron furnished or incorporated into the furnished product was manufactured in the United States in accordance with the requirements of this specification and the Buy America provisions of 23 CFR 635.410, as amended.

Comment: Recommend revising the sentence to read as follows; “Provide a certification from the manufacturer of steel or iron, or any product containing steel or iron, stating that all steel or iron furnished or incorporated into the furnished product was manufactured in the United States in accordance with the requirements of Buy America provisions”. The reason is being that a manufacturing definition would be different to different states, local agencies or manufacturers/suppliers.

Response: Disagree. This is a practical impossibility and overreaches the requirements of the statute. Many of the certifications we receive are from suppliers who are two or three steps up the supply chain and do not have a contractual relationship with the Department, and who do business across several states. We cannot direct them on the test to include on their certifications. We provide a definition of “manufacturing” in the Spec. If the certification states that their product was “manufactured in the U.S.A.”, that satisfies the requirements of the Statute.

FHWA Response: I understand your point, but here is my concern with this, as an example, when a supplier from other states ex., from California provides a certification stating that “all steel or iron furnished or incorporated into the furnished product was manufactured in the United States”, my question is “what would be the definition/meaning of “manufactured in the USA” to him. Is he certifying to the definition “manufactured in the USA” as defined in the FDOT specification or is he certifying according to his own defined meaning? The meaning of “manufactured in the USA” could mean different to different people. This manufacture probably supplies these products to many agencies all over the country. Is that statement implies to FDOT requirements? How do we know for sure?

FDOT Response: Change made per 11/5/2015 meeting with FHWA.

4. Specification: or (2) a statement that the product was produced within the United States except for minimal quantities of foreign steel and iron valued at \$ (actual value).

Comment: Revise the sentence to read as follows, “or a statement that the product was manufactured in the United States except for minimal quantities of foreign steel or iron values at \$ (actual cost)”.

Response: Disagree. CFR 635.410 (b) (4) uses the phrase “value of the steel and iron products”. This prevents the Contractor from artificially decreasing their “cost” to circumvent the dollar limits on the use of foreign steel.

FHWA Response: The term “actual cost” has been used in the paragraph before. I am not sure,

why we need to use a different terminology “actual value” in this statement. Aren’t we using these terms for the same purpose? My recommendation is to use only one terminology whether it is “actual cost or actual value”. As long as it is clear, I am okay with using either one. By the way, the word “cost” is used in the following sentence of the specification.

Also, make a note that these costs must include material delivery cost to the project location. I am not sure, whether this needs to be clarified in the specification or not? I know we discussed this earlier, just want to make sure.

FDOT Response: Change made per 11/5/2015 meeting with FHWA.

5. Specification: Furnish each such certification to the Engineer prior to incorporating the material into the project. Prior to the use of foreign steel on a project, furnish invoices to document the cost of such material, and obtain the Engineer’s written approval prior to incorporating the material into the project.

Comment: Recommend revising the sentence as follows; “Furnish each such certification to the Engineer prior to incorporating the material or product into the project. Prior to the use of foreign steel or iron materials on a project, furnish invoices to document the actual cost of such material, and obtain the Engineer’s written approval prior to incorporating the material into the project.

Response: Agree. We’ll make the change.

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Comments: (11-2-15)

There has been a lot of issues concerning the cost of incidental hardware such as hose/bar clamps. Is there any way you can specifically mention items that would be exempt from this specification?

Response: Restating the Statute or guidance within the Spec is not advised. FHWA can issue revisions or further clarifications to the Statute that would not be captured by the Spec. No change made.

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Comments: (11-3-15)

In reviewing Tom Byron’s 6-page Buy America letter dated January 16, 2014, to help UAO’s comply with the Buy America initiative on federally funded projects, it appears that the focus is on UAO relocation efforts by their own forces. However, since there are a significant number of commitments contained within the letter that are not included in Section 6-5.2, Source of Supply-Steel, in the Standard Specifications, it appears they are unenforceable in the Contract Documents for projects involving UWHC’s. Has there been any consideration given to update Section 6-5.2, either within the Standards Specifications or as a Special Provision applicable when there is a UWHC goes-with project, to include the extensive Buy America requirements

for utilities contained in Tom's letter? Or is there another mechanism by which these requirements are enforceable in the contract?

Response: Those are valid questions but they are business practice issues which go beyond the scope of this revision. You may want to address these with Tom Bane and/or Tom Byron. No change made.
