

**STATE OF SOUTH DAKOTA  
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION  
FOR  
BUY AMERICA**

**JANUARY 11, 2023**

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**Section 6.9 – Page 46 – Delete and replace with the following:**

- 6.9 BUY AMERICA** – Iron & steel, manufactured (composite) products, and construction materials must be produced in the United States in accordance with these Buy America requirements. Buy America preference applies to articles, materials, and supplies consumed in, permanently incorporated into, or affixed to the completed project. Buy America preference does not apply to tools, equipment, and supplies such as temporary works and other items brought to the project and removed at or before the final completion of the project.

The Department will consider a manufacturing process as any process which modifies the chemical content, the physical size or shape, or the final finish of a material, including melting and mixing, rolling, extruding, machining, bending, grinding, drilling, coating, and treating.

The application of a coating is interpreted to mean all processes that protect or enhance the value of material or product to which it is applied; examples are epoxy coatings, galvanizing, and painting.

Minor quantities of non-compliant iron, steel, manufactured (composite) products, and construction materials may be incorporated provided the total combined value of the non-compliant items do not exceed \$1,000,000 or 5.0% of the total contract amount, whichever is less.

**A. Certification:** Prior to final acceptance of the project, the Contractor will provide the Engineer a signed letter stating each article, material, or supply permanently incorporated into the work meets the Buy America requirements specified herein. In addition, the following category-based requirements will apply for each article, material, or supply.

- 1. Iron & Steel:** A statement will be included on the Certificate of Compliance stating whether the iron or steel is of domestic or foreign origin.

**2. Manufactured (Composite) Products:** Due to an existing nationwide waiver, manufactured (composite) products currently have no specific requirements.

**3. Construction Materials:** Construction materials and construction materials currently on the Department's Approved Products List will be treated as "Tier 1" items in accordance with the Required Samples, Tests, and Certificates (RSTC) section of the Department's Materials Manual. The Contractor will provide the Engineer a signed letter or other certification stating the construction material permanently incorporated into the work meets the Buy America requirements specified herein.

**B. Determination of Material Category:** The Department, in the Department's sole discretion, will classify an article, material, or supply into one of the following categories, (1) Iron & Steel, (2) Manufactured (Composite) Product, or (3) Construction Material. Articles, materials, and supplies will be considered to fall into only one single category of Buy America requirements. Some contract items are composed of multiple components that may fall into different categories. Individual components and composite items will be classified based on their nature when they arrive on the work site.

**1. Iron & Steel:** The Department will classify items predominantly composed of iron or steel as iron & steel.

**2. Manufactured (Composite) Products:** The Department will classify items not specifically listed as construction materials which are fabricated, combined, or manufactured through a manufacturing process into a commercially available composite item as manufactured (composite) products. The Department will classify items consisting of 2 or more of the listed construction materials combined through a manufacturing process as a manufactured (composite) product. The Department will classify items consisting of 1 of the listed construction materials combined with a material not listed through a manufacturing process as a manufactured (composite) product.

**3. Construction Materials:** The Department will classify only the materials specifically listed as construction materials as construction materials.

### **C. Iron & Steel**

Structural steel and other iron and steel products will be produced in the United States. Buy America does not apply to iron ore, scrap, pig iron, and processed, pelletized, and reduced iron ore.

If iron ingots or steel billets produced in the United States are sent out of the country for a subsequent manufacturing process and then are brought back

into the United States, the full value of the iron or steel as it reenters the country (including the original billet cost and any coatings) will be considered foreign.

If foreign iron or steel components are combined with other components into a fabricated or assembled manufactured (composite) product, the foreign iron or steel content of the manufactured (composite) product is not only the value of the foreign iron or steel components, but also the pro-rata value of the fabrication and assembly labor and overhead used in the combining the foreign iron or steel and other components into the finished manufactured (composite) product, including coatings.

#### **D. Manufactured (Composite) Product**

Iron and Steel components of manufactured (composite) products will conform to the Buy America requirements for iron & steel. Due to an existing nationwide waiver, manufactured (composite) products without iron and steel components currently have no specific requirements.

#### **E. Construction Material**

Construction materials excluding cement and cementitious materials; aggregates such as stone, sand, or gravel; and aggregate binding agents or additives will be produced in the United States. To be considered produced in the United States, at least the final manufacturing process and the immediately preceding manufacturing process must occur in the United States.

A construction material is an article, material, or supply that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products including polyvinylchloride, composite building materials, and polymers used in fiber optic cables;
- glass including optic glass;
- lumber; or,
- drywall.

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