

Local Agency Program & Florida Highway Administration Certification & Recertification Computer Based Training

Module 4 Part 3 – Federal Statutes and Regulations

Now, Let us discuss 6 additional contract provisions “requirements” in this section, which were not in the 1273. They are:

1. Buy America
2. DBE
3. Non-collusion
4. Change Condition Clauses

For Buy America, the current regulations require the use of domestic steel and iron in federally funded construction projects. All foreign steel and iron materials and products are covered by Buy America regardless of the percentage they comprise in a manufactured product or the form they may take. The regulations allow bidders and the contracting agency some latitude through minimum use, waivers, and alternate bids.

With prior concurrence from Headquarters, the FHWA Division Administrator may grant a waiver of the Buy America requirements for specific projects if it can be shown that: it is not in the public interest and Insufficient domestic supply of satisfactory quality.

Please note that ‘contractor convenience’ or scheduling is not an adequate basis for a waiver request.

Buy America needs to be considered during the DESIGN phase to minimize last minute project delays.

The regulation allows minimal use of foreign steel as long as it does not exceed the one-tenth of one percent (0.1%) of the total contract cost or \$2,500, whichever is greater.

If domestically-produced steel or iron ingots are shipped outside the U.S. for any manufacturing process and then returned to U.S., the resulting product does not conform with the Buy America requirement.

The objectives of the Disadvantaged Business Enterprises or DBE program are:

- To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.
- To ensure that the Department’s DBE program is narrowly tailored in accordance with applicable law.
- To ensure that only firms that fully meets this part’s eligibility standards are permitted to participate as DBEs.

- To help remove barriers to the participation of DBE in DOT-assisted contracts.

Title VI of the Civil Rights Act of 1964 is the legislation that forms the foundation for the creation of the DBE Program.

By regulatory definition, a DBE is:

"... a for profit small business concern -- (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it."

Groups specifically targeted for success under the DBE Program include: Black American, Hispanic, Native American, Asian-Pacific, Subcontinent Asians, Women, and Others, if they can prove social & economic disadvantage

For example, White males can be social disadvantaged by disability or other restrictions that would prevent (permit) them from entering the business world.

Certification is an area of concern where fraud and abuse usually occur in this program. Why? First, certification is the process the state uses to verify that a firm is in fact eligible for the program. Typical abuse would be a "front" where a DBE poses as the owner/operator but actually is not in control of daily operations. Second, commercially useful function means that the DBE firm actually performs the work specified in his or her contract.

Failure to actually perform would be when the firm is not managing or utilizing its own work force, equipment and materials. If you don't notice any new faces and equipment when a DBE shows up to do a specific task, you might want to ask questions.

Review question

Which of the following could be indicators of DBE Fraud?

- a. DBE shares employees with Non-DBE Contractor
- b. DBE leases equipment from another contractor
- c. DBE never present at job site
- d. Materials for the DBE Ordered, or Paid For, by the Prime Contractor

The answers are A, C, and D.

Are the following statements TRUE or FALSE regarding BUY AMERICA as it pertains to the FHWA Federal Aid Program?

1. Steel manufactured in the United States may contain up to 50% (by value) foreign steel, without an exception being required. - FALSE

2. Foreign alloys (i.e. carbon, chromium) can be used in the production of domestic steel or iron to achieve certain characteristics within the final product. - TRUE

3. A Canadian reinforced concrete pipe manufacturer uses steel rebar cages wholly fabricated in the United States. The Firm asserts that it is only assembling components, not fabricating steel, and therefore, it is complying with Buy America. - TRUE

LINKS

LAP Website

<http://www.dot.state.fl.us/projectmanagementoffice/LAP/default.shtm>

Florida Statutes

<http://www.leg.state.fl.us/statutes/>

Wage Tables and related info

<http://www.dot.state.fl.us/construction/wage.htm>

Federal Statutes and Regulations

<http://www.fhwa.dot.gov/programadmin/contracts/core02.cfm#s2A02>

Environmental Process Acronyms

<http://www.fhwa.dot.gov/programadmin/contracts/coregloss.cfm>

FHWA 1273

<http://ecfr.gpoaccess.gov/cgi/t/text/textidx?c=ecfr&rgn=div6&view=text&node=23:1.0.1.7.22.1&idno=23>

Civil Rights Act of 1964

http://www.fhwa.dot.gov/environment/title_vi.htm

Section II.1 EEO

<http://www.fhwa.dot.gov/programadmin/contracts/core02.cfm#s2A02>

Davis Bacon Act

<http://www.gpo.gov/davisbacon/>

Federal aid policy guide 6011.10 has additional information:

<http://www.access.gpo.gov/nara/cfr/cfr-table-search.html#page1>

“Guidelines on Preparing Engineer's Estimate, Bid Reviews and Evaluation”

<http://www.fhwa.dot.gov/programadmin/contracts/ta508046.cfm>