January 15, 2013

TO: Region Plans Engineers
    Region Documentation Engineers
    Region Construction Engineers
    Region Project Development Engineers

THRU: Pasco Bakotic

FROM: Jeff Carpenter
       360-705-78

SUBJECT: Clarification of Manufactured Products under Buy America

On December 21, 2012 the FHWA sent out a memo to clarify their position with regard to application of Buy America requirements to manufactured products.

The FHWA memo reads in part as stated in italics below, clarifying statements are added in bold:

_The FHWA deems a product to be manufactured predominantly of steel and iron if the product consists of at least 90% steel or iron content when it is delivered to the job site for installation. To clarify: the 90% is a percentage of the total monetary value of the manufactured product. To determine the 90% value, divide the raw steel or iron cost by the total manufactured product cost (without taxes, shipping, handling or other fees applied), and if the percentage is equal to or greater than 90% of the final manufactured product cost then Buy America applies._

_For purposes of applying Buy America and determining whether a product is a steel or iron manufactured product, the job site includes the sites where any precast concrete products are manufactured. To clarify; in the specific case of “precast concrete products” the casting yard is considered part of the “job site” for Buy America purposes, and therefore the iron or steel materials delivered to precast yard are subject to Buy America. (rebar, grates, etcetera)_

The second page of the memo lists several typical “miscellaneous steel or iron components,” that are exempted from Buy America. The list is not intended to be all-encompassing, but rather reinforces a concept that the myriad minor iron and steel subcomponents used to assemble products are not subject to Buy America. This exemption applies to manufactured items as well as on site fabrication.

_The miscellaneous steel or iron components, subcomponents and hardware necessary to encase, assemble and construct the above components (or manufactured products that_
are not predominantly steel or iron) are not subject to Buy America coverage. Examples include, but are not limited to, cabinets, covers, shelves, clamps, fittings, sleeves, washers, bolts (this does not mean high strength bolts), nuts, screws, tie wire, spacers, chairs, lifting hooks, faucets, door hinges, and etcetera.

Typical examples:

- Steel electrical conduit installed at the site,
  - 90% rule applies
    - BA criteria applies
- VMS sign
  - 90% rule applies
    - BA would typically not apply
- VMS steel supporting structure
  - Specifically called out in the bulleted list (12/21/12 Memorandum #HIPA-30)
    - BA criteria applies
- Electrical cabinets,
  - Exempted as "miscellaneous steel or iron components,"
    - BA typically would not apply
- Off the shelf or special order catch basins,
  - This qualifies as "precast concrete products,"
    - "the job site includes the sites where any precast concrete products are manufactured,"
      - Materials are subject to BA criteria
- Standard nuts, bolts, fasteners for mounting signs
  - Exempted as "miscellaneous steel or iron components,"
    - BA typically would not apply
- High strength bolts/anchor bolts,
  - BA criteria applies
- Bridge Expansion Joint,
  - Nuts, bolts fasteners
    - Exempted as "miscellaneous steel or iron components,"
      - BA typically would not apply
  - 90% rule applies as it is delivered to the site
    - BA may or may not apply
- Walls, regardless of type
  - Nuts, bolts fasteners
    - Exempted as "miscellaneous steel or iron components,"
      - BA typically would not apply
  - MSE straps or equivalent
    - BA criteria applies
  - Precast elements
    - See "precast concrete products" criteria
• Materials are subject to BA
  ○ Assembled on site
    ▪ Materials as they are delivered to the jobsite,
  ▪ BA criteria applies

The 90% rule applies to items that are manufactured offsite and delivered to the jobsite as a unit (except in the case of precast concrete where the point of manufacture is considered the jobsite.) Walls that are assembled on site are not considered a manufactured item and therefore are not subject to the 90% rule as a unit. The individual materials must meet buy America when they are delivered to the job site.

This FHWA memo does not require any change to current specification language concerning Buy America. This memo does not impact the requirement for materials permanently incorporated beyond the exemption of the noted minor items.

You may apply this clarification of the Buy America requirements to your current contracts. Consistent determinations of the application of Buy America are critical to our ability to enforce this requirement statewide. Therefore, if you have unusual items that do not lend themselves to the criteria, contact your Assistant State Construction Engineer for a determination.

Updates are being made to Construction Manual Chapter 9-4 Specific Requirements for Each Material, which will address the Buy America documentation requirements for material acceptance.

Please give this information wide distribution as appropriate.

If you have any questions, contact Craig McDaniel, 360 705 7823 or Mike Grigware 360 705 7831.

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