

~ Guidance ~

# Buy America

## All Federally Funded Construction Projects

### Reference:

The FHWA Buy America statutory provisions are in 23U.S.C.313 and the regulatory provisions are in 23CFR635.410.

Buy America

Q&A's: [http://www.fhwa.dot.gov/construction/contracts/buyam\\_ga.cfm](http://www.fhwa.dot.gov/construction/contracts/buyam_ga.cfm)

### Applicability:

Applicable to all Federal-aid projects.

### Guidance:

Simply stated, the FHWA's Buy America policies require a DOMESTIC manufacturing process for ALL steel or iron products that are permanently incorporated in a Federal-aid highway construction project. Manufacturing begins with the initial melting and mixing, and continues through the coating stage. Any process which modifies the chemical makeup, physical shape or finish is considered a manufacturing process and as such must be performed in the United States. Waivers may be granted, in rare cases that meet specified criteria. Refer to the Q&A's above for more details.

Buy America requirements apply to the entire federal aid project even if some steel or iron products are purchased with non federal funds. All steel/iron must be manufactured in the United States.

Buy America provisions do allow use of a small portion of foreign steel and iron materials (less than one tenth of one percent of the total contract cost [0.1%] or \$2500, whichever is greater). Be vigilant and document. The consequences of exceeding this amount can be severe. Maintain a separate file for "Buy America" to facilitate oversight, certifications and compliance. It's that important.

Buy America requirements apply to all UTILITY RELOCATION WORK (regardless of funding) that is part of a FHWA funded contract and to all federally funded standalone utility work. Standalone, non-FHWA funded, contracts are NOT covered.

### Compliance:

The RE needs to receive the Buy America certification at time of delivery--absolutely PRIOR TO incorporating the steel/iron product in the project. Typically, the certification states:

*"All manufacturing processes for these steel and iron materials, including the application of coatings, have occurred in the United States."*

The certification MUST BE current, dated, signed and be specific to the material and project at hand. Step certification is encouraged when manufacturing occurs at different locations. This involves separate, self-supporting, certifications that are prepared at each location and accompany the product to the job site—a documentation trail confirming ALL manufacturing in the US.

# Contract Changes and Time

Inherent in every project – processing is key

## Reference:

Title 23 C.F.R. 635.120 - Changes and extra work  
Title 23 C.F.R. 635.121 - Contract time and contract time extensions  
2007 NJDOT Standard Specifications for Road and Bridge Construction

## Guidance:

Contract changes and progress of work must be monitored and documented daily.

The State's standard specifications shall govern the approval of changes in a contract. Below are some provisions that apply:

- Do not deviate from the requirements of the contract unless and until a field order is issued.
- Reimbursement cannot be made until a change order is approved by the Department.
- Extensions in contract time will only be granted for excusable, compensable delays and only for work defined on the critical path of the project, as defined in an approved project schedule.

Issue a formal "Notice to Proceed" (NTP) and stipulate a Contract Completion Date.

**Example NTP:** *The NTP date for this project is Friday, June 15, 2012. The duration for this project per section 100.03 of the Supplemental Specifications is sixty (60) calendar days. The date for final completion is Tuesday, August 14, 2012.*

## Basic Requirements:

"Time is of the essence as to all time frames stated in the Contract", Section 108.10 NJDOT Standard Specification

Any new or extra work needs to be defined and approved prior to being included in the contract. This approval is done through a change order which requires written justification, a breakdown of costs and quantities, and timely approvals.

Contract line item overruns are not permissible without formal requests and approvals.

Time shall always be evaluated as part of a change order.

Change orders for a time extension only must be fully substantiated in accordance with the contract requirements and specifications. Weather, right-of-way, utilities, and/or rail road work are not normally a legitimate basis for excusable, compensable delays.

Liquidated Damages: If changes in time are not fully justified and documented, liquidated damages may be assessed per the contract documents. Daily documentation of work activities is crucial.

The standard form DC-173A will be used to document the change order.

## New or Supplemental Costs:

All new or supplemental costs **must be** negotiated, itemized and justified. All documentation of the negotiations, including the basis of cost, must be on file and included in the change order request.

# DBE/ESBE/SBE Program

## Project Responsibility from Day One

### References:

- FHWA regulatory provisions: 49 CFR 26
- NJDOT's Construction Procedure Handbook for ESBE/DBE & SBE Program Implementation: Section V, Subsection B
- NJDOT DBE & ESBE Programs: <http://www.state.nj.us/transportation/business/civilrights/dbe.shtm>

### Applicability:

All federal aid projects with a contract DBE/ESBE requirement.

### Guidance:

The DBE Program is a legislatively mandated USDOT program. The mission of NJDOT's Disadvantaged and Small Business Programs is to promote contracting opportunities for small, socially and economically disadvantaged firms who seek to do business with the NJDOT.

DBE contract specifications are legally binding and **must be enforced in the same fashion as any other contract requirement**. Failure to carry out contract provisions may result in loss of Federal funds. The success of these programs is achieved by thoroughly implementing the monitoring and reporting procedures in place AS THE PROJECT PROGRESSES. REs will then be able address any issues early and take effective steps to ensure proper administration of the DBE/ ESBE/SBE Program and avoid any penalties.

### Implementation:

Beginning at the commencement of the project, the RE must continuously monitor DBE/ESBE/SBE participation as the project progresses to ensure that that the assigned DBE /ESBE/SBE goal on the contract will be met by the time the project is completed. This is a project responsibility. Maintain a separate file.

1. Check Recommendation To Award memorandum and the Schedule of Participation ESBE/DBE/SBE Form CR-266 (former "Form A") to determine status of subcontractors to monitor for compliance.
2. During the course of the Contract, the RE will monitor true participation by comparing contractor DBE/ ESBE/SBE Goal commitments against each Request for Approval to Sublet Form DC-18. In addition, the RE will cross check the Daily Work Reports with each affected Form DC-18, the Recommendation To Award, and the Utilization of ESBE/DBE/SBE Monthly Report Form CR-267.
3. During construction the RE and staff will use the Daily Work Report to document on-site monitoring of stipulated DBE work items and contractor performing the work in order to insure compliance.
4. The RE will notify the Person in Responsible Charge and the Contractor in writing of any violations and will direct the Contractor to comply with these requirements. Revisions can only be made to the committed DBE/ ESBE/SBE Program when the Contractor submits a revised Form CR-266.
5. Failure of the Contractor to comply will result in the RE notifying the Person in Responsible charge, NJDOT District Office, and DCR/AA by memorandum and presenting pertinent documents for their review and action. The RE must follow-up with all promptly to insure timely resolution.
6. If the DBE/ ESBE/SBE commitment is not fulfilled, documentation supporting adequate good faith effort (GFE) must be promptly submitted by the Contractor with Form CR-268. GFE will be reviewed by DCR/AA based on the guidance set forth in 49 CFR Part 26 Appendix A. .

# Pedestrian Facilities and ADA compliance – Curb Ramps

Must Conform To Standards and Contract Plans

## References:

All pedestrian facilities constructed or reconstructed must provide safe and easy accessibility **for all users**.

The Americans with Disabilities Act (ADA) of 1990  
Section 504 of the Rehabilitation Act of 1973  
28 CFR Part 35.151(e)  
NJDOT Construction Details 607 and 608

## Guidance:

Inspectors need to have immediate on-site access to contract plans.

It is the inspector's responsibility to insure that all sidewalks and ramps are constructed in strict accordance with contract plans. Slope is of critical importance; as are location, alignment, length, width and depth. Check plans. Measure-measure-measure, compare with plans and **DOCUMENT** conformance and quantities.

Immediately elevate questions or 'issues' for discussion and resolution. Document!

It starts with the concrete forms - PRIOR TO the placement of concrete.

NJDOT Standard Specifications, Sections 606 and 607, require RE approval of excavation and forms prior to placing concrete. Nonconformance at this stage means nonconformance with final product.

All measurements, checks, approvals and findings, including pay quantities, must be clearly documented. They become "Source Documents" – a critical item necessary to support payment.

This simple and basic guidance will promote compliance and avoid completed work that does not conform to contract plans and specifications.

## Be Vigilant:

The plans should be consistent with established design standards. If you note any design problems or inconsistencies, document and bring them to the attention of the RE/person in charge. Field inspection and documentation must occur for the following:

- The curb ramp type and crossing location are consistent with the plans.
- The curb ramp running slope **does not exceed 8.3%**.
- The curb ramp cross slope and connecting sidewalks **do not exceed 2.0%**.
- The turning areas (landings) are a minimum of 4 foot by 4 foot and cross slopes do not exceed 2% in both directions.
- All street connections, joints, and grade changes must be flush...no lip.
- There are no protrusions or obstacles within the pedestrian accessible route.
- The surface is firm, stable, & nonslip, including during temporary conditions.
- The pedestrian accessible route is free of utilities unless the design allows for exceptions.
- Detectable warning surface with truncated domes have been properly installed, are color contrasting, and aligned in the direction of pedestrian travel.
- No water ponding at the curb ramp or in the pedestrian pathway.
- Accessibility (walkway) has been provided to pedestrian push buttons, including a turning space at the button location.
- Diagonal ramps are discouraged. If provided for in the plans, they must provide a turning space at the back of curb to facilitate travel to the adjacent pedestrian pathway.

# Responsible Charge

*Every federal-aid project must have a person in responsible charge.*

## Reference:

23 CFR 635.105 – ‘*Supervising Agency*’: the State Transportation Department (STD) has responsibility for the construction of all Federal-aid projects, whether or not; it or a local public agency (LPA) performs the work. This section stresses that such projects must receive adequate supervision and inspection to insure that they are completed in conformance with approved plans and specifications.

The regulation provides that the STD and LPA must provide a full time employee to be in "responsible charge" of the project. This cannot be the consultant.

## Purpose:

To insure that (think *public interest*) every project receives adequate supervision and inspection to insure that it is completed in conformance with contract plans and specs.

## Implementation:

Implementation and accountability is mandated through the person in responsible charge. Who is this person?

**STD**-For projects administered by the STD, the regulation requires that the person in "responsible charge" be a full-time employed state engineer. This requirement applies even when consultants are providing construction engineering services.

**LPA**-For locally administered projects, the regulation requires that the person in "responsible charge" be a full time employee of the LPA. The regulation is silent about engineering credentials. Thus, the person in "responsible charge" of LPA administered projects need not be an engineer. This requirement applies even when consultants are providing construction engineering services.

## Duties:

Regardless of whether the project is administered by the STD or a LPA, the person designated as being in "responsible charge" is expected to be a full time public employee (not a consultant) who is accountable for the project. This person, may share duties, but is expected to be able to perform the following duties and functions:

- Administers inherently governmental project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects;
- Maintains familiarity of day to day project operations, including project safety issues;
- Makes or participates in decisions about changed conditions or scope changes that require change orders or supplemental agreements
- Reviews financial processes, transactions and documentation to ensure that safeguards are in place to minimize fraud, waste, and abuse; and
- Directs project staff, agency or consultant, to carry out project administration and contract oversight, including proper documentation.
- Is aware of the qualifications, assignments and on-the-job performance of the agency and consultant staff at all stages of the project.
- Visits and reviews the project on a frequency that is commensurate with the magnitude and complexity of the project
- On the jobsite for the time needed to verify and insure that the project receives adequate supervision and inspection to insure that work is accomplished in conformance with approved plans and specifications.

# Source Documents

An Absolute Must Have

## Reference:

23 CFR 635.123: Determination and documentation of PAY QUANTITIES.

## Applicability:

Applicable to all Federal-aid projects—basis for payment.

## Guidance:

What is a “Source Document”? Look at it in reverse: it’s a document prepared at the source--the ‘source’ being the point of delivery or the location of construction activity.

This is essentially the handwritten “receipt” of exactly how many and what was delivered. It is the **single most important document that substantiates quality and quantities and provides the required basis for payment to the contractor.**

The document consists of notes (documentation) of: counts; measurements (length, width, depth, and slope); calculations of area, volume, weights, etc; sketches; a STATEMENT of compliance with contract plans and specs; field changes; comments; and delivery tickets collected/initialed by the inspector at the point of unloading.

Who develops this documentation? The inspector, who is assigned to that project/location to protect the public interest and to insure that the number, size, and characteristics of what is being delivered match the plans/specs, completes this basic and essential documentation. Incorporate ‘established’ quantities into a Quantity Summary Sheet for each work item.

## Importance:

Highest level! This source documentation establishes quantities for payment. Without it, the eligibility of pay quantities may come under question. Later, after the fact, verification is very time consuming and often not possible.

## Examples:

**Item # \_\_\_\_; Sidewalk-Forms:** *Checked and measured forms for the sidewalk and ADA ramp at the NE corner of Grand and Market. Specific measurements including depth and slope are shown below (or are shown on the sketches below) along with quantity calculations. Also, noted on plan sheet # 21. Forms were clean, stable and uniform. Base was solid. Expansion joints were in place. All measurements, including depth and slopes, are in conformance with contract plans-a section was added to reach push button. The contractor was given approval to place concrete. (Sect. 606.03.02 DOT Spec)*

*Observed the **placement of concrete** at the NE corner of Grand and Market. Prior approval of forms had been granted. Placement and finishing procedures in accordance with specs. No access water. Curing compound placed 15 minutes after finishing. **Total quantity 24 SY** based on measurements taken. See plan sheet 21 of the contract plans. See calculations.*

**Item # \_\_\_\_:** **HMA Surface Coarse:** *Inspected HMA placement from Station 3+50 to 9+50. Took numerous measurements of D, W, and Temp as follows. Compaction/finish observed. Equipment and pattern as per spec (describe). Tickets collected at point of unloading. Initialed each w/station. Total tonnage \_\_\_\_\_. # of tickets \_\_\_\_\_. Refused one truck (# 254) due to time in transit was substantially over that allowed by spec.*

**Item # \_\_\_\_:** **Tack Coat;** *Observed test strip and noted several nozzles not functioning. Required repair of distributor to achieve uniform application. Repaired. Checked quantities before and after to affirm actual usage and pay quantity. See notes below.*