

§ 635.409

when they have been actually incorporated in accepted items of work, or in the cost of such materials meeting the criteria and stockpiled at the locations specified in §635.114 of this chapter.

(d) To be eligible for Federal participation in its cost, any material, other than local natural materials, to be purchased by the State transportation department and furnished to the contractor for mandatory use in the project, must have been acquired on the basis of competitive bidding, except when there is a finding of public interest justifying the use of another method of acquisition. The location and unit price at which such material will be available to the contractor must be stated in the special provisions for the benefit of all prospective bidders. The unit cost eligible for Federal participation will be limited to the unit cost of such material to the State transportation department.

(e) When the State transportation department or another public agency owns or has control over the source of a local natural material the unit price at which such material will be made available to the contractor must be stated in the plans or special provisions. Federal participation will be limited to (1) the cost of the material to the State transportation department or other public agency; or (2) the fair and reasonable value of the material, whichever is less. Special cases may arise that will justify Federal participation on a basis other than that set forth above. Such cases should be fully documented and receive advance approval by the FHWA Division Administrator.

(f) Costs incurred by the State transportation department or other public agency for acquiring a designated source or the right to take materials from it will not be eligible for Federal participation if the source is not used by the contractor.

(g) The contract provisions for one or a combination of Federal-aid projects shall not specify a mandatory site for the disposal of surplus excavated materials unless there is a finding by the State transportation department with the concurrence of the FHWA Division Administrator that such placement is

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the most economical except that the designation of a mandatory site may be permitted based on environmental considerations, provided the environment would be substantially enhanced without excessive cost.

§ 635.409 Restrictions upon materials.

No requirement shall be imposed and no procedure shall be enforced by any State transportation department in connection with a project which may operate:

(a) To require the use of or provide a price differential in favor of articles or materials produced within the State, or otherwise to prohibit, restrict or discriminate against the use of articles or materials shipped from or prepared, made or produced in any State, territory or possession of the United States; or

(b) To prohibit, restrict or otherwise discriminate against the use of articles or materials of foreign origin to any greater extent than is permissible under policies of the Department of Transportation as evidenced by requirements and procedures prescribed by the FHWA Administrator to carry out such policies.

§ 635.410 Buy America requirements.

(a) The provisions of this section shall prevail and be given precedence over any requirements of this subpart which are contrary to this section. However, nothing in this section shall be construed to be contrary to the requirements of §635.409(a) of this subpart.

(b) No Federal-aid highway construction project is to be authorized for advertisement or otherwise authorized to proceed unless at least one of the following requirements is met:

(1) The project either: (i) Includes no permanently incorporated steel or iron materials, or (ii) if steel or iron materials are to be used, all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes which protect or enhance the value of the material to which the coating is applied.