



Division of Operations

Aberdeen Region Office
West Highway 12
PO Box 1767
Aberdeen, South Dakota 57402-1767
O: 605.626.2244 | F: 605.626.7875
dot.sd.gov

January 31, 2023

ADDENDUM NO. 1

Re: **025-151, PCN i6jn**
Day County
Sidewalk Replacement

TO WHOM IT MAY CONCERN:

PROPOSAL: Please remove the Index of Special Provisions and replace with attached Index of Special Provisions revised 1/30/23.

Please insert the Special Provision for Restriction on Contracts with Prohibited Entities, dated 1/23/23.

Please remove the "Special Provision for Buy America", dated 1/11/23 and replace with the "Special Provision for Buy America", dated 1/20/23.

PLANS: No change.

When sending in your sealed bid please state on the front of the envelope that Addendum No. 1 was received.

Sincerely,

DEPARTMENT OF TRANSPORTATION

Mark Peterson
Region Engineer

cc: **B. Schroeder** C. Bennett Steen File

INDEX OF SPECIAL PROVISIONS

PROJECT(S): 025-151 PCN i6JN

COUNTY(IES): Day

TYPE OF WORK: SIDEWALK REPLACEMENT

THE FOLLOWING ITEMS ARE INCLUDED IN THIS PROPOSAL FORM:

Plans for Project – Sheets 1 thru 14.

SPECIAL PROVISION REGARDING RAILROAD INSURANCE REQUIREMENTS FOR BNSF RAILWAY COMPANY, dated 1/17/23

SPECIAL PROVISION REGARDING WORKING ON RAILROAD PROPERTY FOR BNSF RAILWAY COMPANY, dates 1/17/23

Special Provision for Restriction on Contracts with Prohibited Entities, dated 1/23/23.

Special Provision for Buy America, dated 1/20/23.

Special Provision for Liability Insurance, dated 4/21/22.

Special Provision for Responsibility for Damage Claims, dated 4/21/22.

Special Provision for Grass Seed Substitution, dated 1/26/22.

Special Provision for Restriction of Boycott of Israel, dated 1/31/20.

Special Provision for Contractor Administered Preconstruction Meeting, dated 12/18/19.

Fuel Adjustment Affidavit, DOT form 208 dated 7/15.

Standard Title VI Assurance, dated 3/1/16.

Special Provision For Implementation of Clean Air Act & Federal Water Pollution Control Act, dated 9/1/97.

Special Provision Regarding Minimum Wage on State Funded Projects, dated 10/24/19.

Wage and Hour Division US Department of Labor Washington DC.

- US Dept. of Labor Decision Number SD180001, dated 4/6/18.

Special Provision for Supplemental Specifications to 2015 Standard Specifications for Roads and Bridges, dated 9/7/22.

Special Provision for Price Schedule for Miscellaneous Items, dated 10/7/20.

* * * *

**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION
FOR
RESTRICTION ON CONTRACTS WITH PROHIBITED ENTITIES**

JANUARY 23, 2023

In accordance with the State of South Dakota Office of the Governor Executive Order 2023-02, the following will apply to all contracts:

By submitting a bid proposal for this contract, the bidder certifies and agrees the following information is correct for the bidder and all subcontractors (all tiers) and suppliers:

The bidder, in preparing the bid proposal or in considering proposals submitted from qualified potential suppliers and subcontractors, or in the solicitation, selection, or commercial treatment of any supplier or subcontractor; is not an entity, regardless of its principal place of business, that is ultimately owned or controlled, directly or indirectly, by a foreign national, a foreign parent entity, or foreign government from China, Iran, North Korea, Russia, Cuba, or Venezuela, as defined by South Dakota Executive Order 2023-02.

It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the Department to reject the bid proposal submitted by the bidder on this contract and terminate any contract awarded based on the bid.

The bidder also agrees to provide immediate written notice to the Department if, during the term of the contract awarded to the bidder, the bidder no longer complies with this certification. The bidder further agrees such noncompliance may be grounds for contract termination.

* * * * *

**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION
FOR
BUY AMERICA**

JANUARY 20, 2023

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 required to be 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 temporary items brought to the project and removed at or before the final completion of the project. Temporary items are items that are not part of contract specifications, items that are not required in the design or final working drawings, and items that are removed or could be removed but allowed to remain in place if requested by the Contractor and approved by the Engineer.

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.

A. Certification: The following category-based requirements will apply for each article, material, or supply.

- 1. Iron & Steel:** A statement will be included on the certification stating whether the iron or steel is of domestic or foreign origin. The Department will consider iron & steel that does not require separate certification in accordance with the Department's Materials Manual as miscellaneous iron & steel. The Contractor will provide the Department a completed and signed Miscellaneous Materials Buy America Certificate stating the miscellaneous iron & steel required to be consumed in, permanently incorporated into, or affixed to the completed project complies with the Buy America requirements specified herein.

- 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 Department a completed and signed Miscellaneous Materials Buy America Certificate stating the construction materials required to be consumed in, permanently incorporated into, or affixed to the completed project complies with 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) Products: Iron and Steel components of manufactured (composite) products will comply with 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 Materials: 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.

F. Unavailability of Compliant Items: If the Contractor discovers a Buy America compliant item or items does not exist or an item becomes unavailable, the Contractor will immediately notify the Department. The Contractor will furnish written documentation of the Contractor's complete efforts to obtain a compliant item. This documentation will include a complete contact log with dates and times of the Contractor's efforts to obtain a compliant item, the responses received, and any correspondence between the Contractor and potential suppliers of the item which demonstrate efforts to obtain a compliant item. If, based on review of the documentation provided, the Department determines

all potential options to obtain a compliant item have been exhausted; the Department will determine the appropriate course of action.

G. Non-Compliant Items: If the Engineer, in the Engineer's sole discretion, determines an article, material, or supply provided to the project does not comply with these Buy America requirements but is available; the following will apply:

1. If the non-compliant item is not permanently incorporated into the completed work, the Contractor will not permanently incorporate the item and will replace the non-compliant item with an item that complies with the Buy America requirements specified herein at the Contractor's expense.
2. If the non-compliant item has been permanently incorporated into the completed project; the Engineer, in the Engineer's sole discretion, will determine if the non-compliant item must be removed and replaced including any completed work at the Contractor's expense or if the non-compliant item may remain in place in accordance with the following:

Minor quantities of non-compliant iron & steel may be incorporated in the Department's sole discretion based on the Department's review of the Contractor's documented efforts to procure compliant items and the Contractor's documented invoiced material costs, provided the invoiced material costs of all non-compliant iron & steel do not exceed 0.1% of the total contract amount or \$2,500, whichever is greater.

* * * * *