



U.S. Department  
of Transportation  
**Federal Highway  
Administration**

# Memorandum

Subject: **ACTION:** Buy America Requirements

Date: DEC 2 1993

From: Director, Office of Engineering

Reply to  
Attn. of HNG-22

To: Mr. John G. Bestgen, Jr.  
Regional Federal Highway Administrator (HRA-01)  
Albany, New York

We have recently been made aware, as a result of concerns raised by the steel and iron industry, that there may be some variation in interpretation of the Buy America requirements for sheet piling on the Central Artery/Tunnel (CA/T) projects in Massachusetts. As you know, we attended a meeting with the steel and iron industry representatives relative to specific CA/T projects on October 21. During this meeting, the policy of permanent incorporation of Buy America covered materials, as directed by the owner, was discussed.

The Buy America requirements [23 CFR 635.410(b)(1)(ii)] state that "if steel or iron materials are to be used [on a project], all manufacturing processes [including application of a coating] for these materials must occur in the United States." The Buy America Final Rule, which was printed in the November 25, 1983, *Federal Register* further clarified that "... only those products which are brought to the construction site and permanently incorporated into the completed project are covered. Construction materials, forms, etc., which remain in place at the contractor's convenience, but are not required [to remain in place] by the contract, are not covered."

The key phrase included in the November 25 *Federal Register* concerns whether the materials are left in place by contract direction, or at the contractor's convenience.

On the C04A2 project, the contractor was directed by the special provisions to leave the steel temporary excavation support walls in place. The inclusion of this language in the special provisions makes the Buy America requirements applicable to the steel sheet piling which was used as temporary excavation support walls. However, it is our understanding that the sheet piling was produced outside of the United States and are therefore, in violation of the Buy America requirements.

Since there was either a variation in interpretation of the Buy America requirements or some error in the review process for the C04A2 project, we would appreciate your review and comments on this item. If there was a



misinterpretation of the requirements, we believe that some specific action should be taken to assure that this is corrected on future CA/T projects. In addition, we would also appreciate being advised of any actions that are proposed to address the incorporation of foreign steel in the C04A2 project.

Our concerns have previously been discussed with Mr. Hart of your staff. If you have any questions, please contact Mr. Edward A. Sheldahl (HNG-22) at (202) 366-1565.



William A. Weseman

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