



TRAFFIC AND SAFETY MANUAL

Chapter 10 – Utilities 10D Buy America for Utility Relocations

Noncompliance

Originally Issued: 02-17-14, Last Revised: 02-17-14

Discussion:

The issue of noncompliance by utility companies is covered in this section. All federal funding on the associated DOT project may be rescinded after the fact so compliance with Buy America regulations is important. This can affect the IA DOT directly, but the utility would be affected indirectly as there is no mechanism to pass through the funding loss through to them. There are two scenarios where non-compliance with Buy America requirements can be a factor.

Case 1- noncompliant materials incorporation: Utility facility was relocated and it is subsequently discovered that non-compliant materials were incorporated (exceeding the minimal use amount, the greater amount of \$2,500 or 0.1% of the contract value). The DOT and Federal Highway Administration (FHWA) personnel will examine the severity, frequency of occurrence, replacement cost, assuage responsibility and determine culpability. Several options will be available and the appropriate action will be pursued. Any noncompliance will require: detailed explanation for state and federal officials, lead to increased auditing of future projects, and possible fraud charges if it is determined there was intentional misrepresentation of materials.

Options, not in order of preference and not mutually exclusive:

1. Remove the excess foreign iron and steel products and replace with domestic iron and steel products.
2. Withhold funding to the utility for relocation if this was a reimbursable moving expense.
3. The FHWA may withdraw funding for a portion or all of the projects within the associated NEPA project boundary. This would impact the IA DOT directly and the utility indirectly. Removal of the funds are not directly transferrable to the utilities.
4. If it is determined that the incorporation of noncompliant materials occurred after certification and done intentionally fraud charges may be forthcoming.

Case 2 - utility will not comply with or relocate because of Buy America requirements: Utility will not relocate due to additional cost, lead time, or they will relocate but will not comply with requirements and will not sign a document requiring them to do so before relocation occurs.

1. State may withhold all future permits for the utility for access to the state ROW in the district or statewide.
2. The utility may be liable to the contractor for delay expense.
3. The state may move the utility facilities at state expense and then invoice the utility for the expense.