

## Buy American Provisions for CE Directive – Effective 3/25/2018

*Note to Designers/Contracts: Choose one of Form 25D-151 or 25D-152 to include in the bid package. Also include Form 25D-159 in the bid package.*

*Delete Item GCP 20-06, Part a.(4); and replace with the highlighted language in Part a.(4) :*

### ITEM GCP 20-06

#### NONRESPONSIVE BIDS

**20-06 NONRESPONSIVE BIDS.** A responsive bid conforms to all significant terms and conditions contained in the Department's invitation to bid.

- a. A bid shall be rejected as nonresponsive if it:
- (1) Is not properly signed by an authorized representative of the bidder in ink and in a legally binding manner;
  - (2) Contains unauthorized additions, conditional or alternative bids, or other irregularities that make the bid incomplete, indefinite, or ambiguous;
  - (3) Includes a reservation of the right to accept or reject any award, or to enter into a contract pursuant to an award, except for an award limitation under Subsection 20-05;
  - (4) Fails to completely fill out, sign (with written or electronic signature) and submit bid forms that are required for bid. These documents include but are not limited to:
    - a. Bid Form
    - b. Bid Schedule
    - c. Acceptable Bid Guaranty
    - d. Bid Modifications (if paper bid is revised)
    - e. Certification of Buy American Compliance (Form 25D-151 or Form 25D-152)
    - f. Certification for Tax Delinquency and Felony Convictions (Form 25D-159);
  - (5) Is materially unbalanced; or
  - (6) Fails to meet any other material requirement of the Invitation To Bid.
- b. A bid may be rejected as nonresponsive, in the Department's discretion, if it:
- (1) Is not typed or completed in ink;
  - (2) Fails to include an acknowledgement of receipt of each addendum by assigned number and date of issue; or
  - (3) Is missing a bid price for any pay item, except when alternate pay items are authorized.

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Delete Item GCP 60-09 and replace with the following:

### ITEM GCP 60-09

#### BUY AMERICAN PREFERENCE

##### 60-09 Buy American Preference.

**a. GENERAL.** The Contractor shall comply with 49 USC Section 50101. The Contractor shall ensure that all steel and manufactured goods used on federally funded projects are wholly produced in the United States and are of 100% U.S. Materials, unless:

(1) The FAA has issued a waiver for the product;

(2) The product is listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation subpart 25.108; or

(3) The product is included in the FAA Nationwide Buy American Waivers Issued list.

**b. BID PROPOSAL.** The bidder must complete and submit with their bid the Certificate of Buy American Compliance (Form 25D-151 or Form 25D-152) provided in the bid documents. The Department will reject as nonresponsive any bid that does not include a completed Certificate of Buy American Compliance.

**c. WAIVER SUBMITTAL.** The apparent low bidder who indicates they will request a Type 3 waiver on the Certificate of Buy American Compliance, must complete Form 25D-153 and associated documentation including Form 25D-155 and Form 25D-156. Submit Form 25D-153 and associated documentation within 5 working days after date of notification of apparent low bidder.

An apparent low bidder who fails to submit a completed Type 3 waiver form within the time allowed, must agree to perform the work without a waiver, or they may be declared nonresponsive and may be required to forfeit the bid guaranty. The Department will then consider the next lowest bidder for award of the Contract.

The bidder agrees to refrain from seeking a waiver request after award of the contract, unless extenuating circumstances emerge that the FAA determines justified.

If FAA approves a waiver request, the bidder agrees to provide products in accordance with the waiver. If FAA will not approve a waiver, the bidder agrees to furnish U.S. domestic product for products listed on the waiver request that the FAA rejects.

A successful bidder's refusal to sign the Contract due to denial of a waiver request, will be considered nonresponsive, and will be addressed in accordance with subsection 30-03 Award of Contract.

**d. MATERIAL SUBMITTALS.** During performance of the Contract, the Contractor must provide a Material Submittal for Buy American Compliance (Form 25D-154), from the supplier for each steel or manufactured good, prior to incorporating any steel or manufactured good into the project. The supplier certifying Form 25D-154 may be the original manufacturer, fabricator, vendor, or subcontractor; provided the supplier has sufficient control and knowledge of the manufacturing process to accept responsibility and certify full and complete conformance with 49 USC Section 50101. Provide mill certificates or other material documentation when required by the Engineer. False statements may result in criminal penalties prescribed under AS 36.30.687 and Title 18 USC Section 1001.