

ITEM 6  
CONTROL OF MATERIALS

**6.1. Source Control.** Use only materials that meet Contract requirements. Unless otherwise specified or approved, use new materials for the work. Secure the Engineer's approval of the proposed source of materials to be used before their delivery. Materials can be approved at a supply source or staging area but may be reinspected in accordance with Article 6.4, "Sampling, Testing, and Inspection."

**A. Buy America.** Comply with the latest provisions of Buy America as listed at 23 CFR 635.410. Use steel or iron materials manufactured in the United States except when:

- the cost of materials, including delivery, does not exceed 0.1% of the total Contract cost or \$2,500, whichever is greater;
- the Contract contains an alternate Item for a foreign source steel or iron product and the Contract is awarded based on the alternate Item; or
- the materials are temporarily installed.

Provide a notarized original of the FORM D-9-USA-1 with the proper attachments for verification of compliance.

Manufacturing is any process that modifies the chemical content, physical shape or size, or final finish of a product. Manufacturing begins with initial melting and mixing and continues through fabrication (cutting, drilling, welding, bending, etc.) and coating (paint, galvanizing, epoxy, etc.).

**B. Buy Texas.** For construction or routine maintenance Contracts without federal funds, buy materials produced in Texas when the materials are available at a comparable price and in a comparable period of time. Provide documentation of purchases or a description of good-faith efforts on request.

**6.2. Material Quality.** Correct or remove materials that fail to meet Contract requirements or that do not produce satisfactory results. Reimburse the Department for cost incurred if additional sampling and testing is required by a change of source.

Materials not meeting Contract requirements will be rejected, unless the Engineer approves corrective actions. Upon rejection, immediately remove and replace rejected materials.

If the Contractor does not comply with this Article, the Department may remove and replace defective material. The cost of testing, removal, and replacement will be deducted from the estimate.

**6.3. Manufacturer Warranties.** Transfer to the Department warranties and guarantees required by the Contract or received as part of normal trade practice.

**6.4. Sampling, Testing, and Inspection.** Incorporate into the work only material that has been inspected, tested, and accepted by the Department. Remove, at the Contractor's expense, materials from the work locations that are used without prior testing and approval or written permission of the Engineer.

The material requirements and standard test methods in effect at the time the proposed Contract is advertised govern. Unless otherwise noted, the Department will perform testing at its expense. In addition to facilities and equipment required by the Contract, furnish facilities and calibrated equipment required for tests to control the manufacture of construction Items. If requested, provide a complete written statement of the origin, composition, and manufacture of materials.

All materials used are subject to inspection or testing at any time during preparation or use. Material which that has been tested and approved at a supply source or staging area may be reinspected or tested before or during incorporation into the work, and rejected if it does not meet Contract requirements. Copies of test results are available upon request. Do not use material that, after approval, becomes unfit for use.

Unless otherwise noted in the Contract, all testing must be performed within the United States and witnessed by the Engineer. If materials or processes require testing outside the contiguous 48 United States, reimburse the Department for inspection expenses.

**6.5. Plant Inspection and Testing.** The Engineer may but is not obligated to inspect materials at the acquisition or manufacturing source. Material samples will be obtained and tested for compliance with quality requirements. Materials produced under Department inspection are for Department use only unless released in writing by the Engineer.

If inspection is at the plant, meet the following conditions unless otherwise specified:

- Cooperate fully and assist the Engineer during the inspection.
- Ensure the Engineer has full access to all parts of the plant used to manufacture or produce materials.
- In accordance with pertinent Items and the Contract, provide a facility at the plant for use by the Engineer as an office or laboratory.
- Provide and maintain adequate safety measures and restroom facilities.
- Furnish and calibrate scales, measuring devices, and other necessary equipment.

The Engineer may provide inspection for periods other than daylight hours if:

- continuous production of materials for Department use is necessary due to the production volume being handled at the plant and
- the lighting is adequate to allow satisfactory inspection.

**6.6. Storage of Materials.** Store and handle materials to preserve their quality and fitness for the work. Store materials so that they can be easily inspected and retested. Place materials under cover, on wooden platforms, or on other hard, clean surfaces as necessary or when directed.

Obtain approval to store materials on the right of way. Storage space off the right of way is at the Contractor's expense.

**6.7. Department-furnished Material.** The Department will supply materials as shown on the plans. The cost of handling and placing materials supplied by the Department will not be paid for directly but is subsidiary to the Item in which they are used. Assume responsibility for materials upon receipt.

**6.8. Use of Materials Found on the Right of Way.** Material found in the excavation areas and meeting the Department's specifications may be used in the work. This material will be paid for at the Contract bid price for excavation and under the Item for which the material is used.

Do not excavate or remove any material from within the right of way that is not within the limits of the excavation without written permission. If excavation is allowed within a right of way project-specific location (PSL), replace the removed material with suitable material at no cost to the Department as directed.

**6.9. Recycled Materials.** Hazardous wastes, as defined in 30 TAC 335, proposed for recycling will not be allowed in Department Contracts. Nonhazardous recyclable materials (NRMs) may be used unless disallowed or restricted by the Specification for the Item. Determine if NRMs are regulated under 30 TAC 312, 330, 332, 334, or 335, and comply with all general prohibitions and requirements. Furnish a written certification, sealed by a licensed professional engineer, that the NRMs are used in accordance with DMS-11000, "Evaluating and Using Nonhazardous Recyclable Materials Guidelines."

**6.10. Hazardous Materials.** Use materials that are free of hazardous materials as defined in Item 1, "Definition of Terms."

Notify the Engineer immediately when a visual observation or odor indicates that materials in required material sources or on sites owned or controlled by the Department may contain hazardous materials. The Department is responsible for testing and removing or disposing of hazardous materials not introduced by the Contractor on sites owned or controlled by the Department. The Contractor is not required to test, remediate, or remove hazardous materials that the Contractor did not introduce onto the work locations. The Engineer may suspend the work wholly or in part during the testing, removal, or disposition of hazardous materials on sites owned or controlled by the Department.

When a visual observation or odor indicates that materials delivered to the work locations by the Contractor may contain hazardous materials, have an approved commercial laboratory test the materials for contamination. Remove, remediate, and dispose of any of these materials found to be contaminated. Testing, removal, and disposition of hazardous materials introduced onto the work locations by the Contractor will be at the Contractor's expense. Working day charges will not be suspended and extensions of working days will not be granted for activities related to handling hazardous material delivered by the Contractor.

**6.11. Surplus Materials.** Take ownership of surplus materials unless otherwise shown on the plans or directed. Remove and dispose of materials in accordance with federal, state, and local regulations. If requested, provide an appropriate level of documentation to verify proper disposal. When materials are disposed of on private property, provide written authorization from the property owner for the use of the property for this purpose, upon request.