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A Message from the American Concrete Pipe Association

Bulletin No. 141

Rulemaking For SAFETEA-LU Section 5514

The Ruling:

The FHWA has revised its regulation for culvert pipes in the Code of Federal Regulations because of the requirements in SAFETEA-LU. FHWA has deleted paragraph (d) in Section 635.411 of Title 23 Highways, Subpart D which read:

(d) Appendix A sets forth the FHWA requirements regarding 1) the specification of alternative types of culvert pipes, and 2) the number and types of such alternatives which must be set forth in the specifications for various types of drainage installations.

FHWA also deleted Appendix A to subpart D-”Summary of Acceptable Criteria for Specifying Types of Culvert Pipes” in its entirety.

Paragraph (d):

Paragraph (d) and Appendix A had been officially incorporated into FHWA’s regulations on September 30, 1974. Appendix A contained the requirements for the number and types of culvert pipes specified on Federal-aid highway construction projects. These requirements were intended to encourage competition and lower the cost of culvert pipes by encouraging the consideration of alternate culvert pipe materials in certain drainage installations.

This rulemaking will eliminate the specific requirement for the consideration of alternative types of culverts for certain drainage installations. Now the selection and specification of culvert types will be governed by the same policies for all other products and materials thus insuring competition in the selection of pipes.

Consequences:

The requirements of the previously existing Code of Federal Regulations Title 23 Highways, Section 635.411 listed below in paragraphs (b) and (c) are now applicable to culvert pipes.

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(b) When there is available for purchase more than one nonpatented, nonproprietary material, semifinished or finished article or product that will fulfill the requirements for an item of work of a project and these available materials or products are judged to be of satisfactory quality and equally acceptable on the basis of engineering analysis and the anticipated prices for the related item(s) of work are estimated to be approximately the same, the PS&E for the project shall either contain or include by reference the specifications for each such material or product that is considered acceptable for incorporation in the work. If the State transportation department wishes to substitute some other acceptable material or product for the material or product designated by the successful bidder or bid as the lowest alternate, and such substitution results in an increase in costs, there will not be Federal-aid participation in any increase in costs.

(c) A State transportation department may require a specific material or product when there are other acceptable materials and products, when such specific choice is approved by the Division Administrator as being in the public interest. When the Division Administrator's approval is not obtained, the item will be nonparticipating unless bidding procedures are used that establish the unit price of each acceptable alternative. In this case Federal-aid participation will be based on the lowest price so established.

When alternative products are judged to be of satisfactory quality and equally acceptable on the basis of engineering and economic analysis, the FHWA requires equal consideration in the specification of materials. Paragraph (b) does not mandate that every project must include all culvert types as bid alternatives. State DOTs may specify only one culvert type if there are no other pipes that *"...are judged to be of satisfactory quality and equally acceptable on the basis of engineering analysis and the anticipated process for the related item(s) of work are estimated to be approximately the same..."*