Conference Substitute

The Committee is concerned that the States are inconsistently interpreting certain Buy America provisions of Federally-funded highway projects. To clear up these inconsistencies, we are reiterating our intent concerning the proper application of the "minimal use" exception to Buy America in these projects.

"Minimal use" of foreign steel and iron materials is only allowed on a project using Federal highway funds when the cost of the steel and iron materials does not exceed the higher of (a) 0.1 percent of the total contract cost or (b) $2,500. For the purpose of determining compliance with this "minimal use" exception, the "combined project cost" of the materials is to be used. "Combined project cost" is the unit cost as shown in the executed contract, multiplied by the quantity of units on the project. The contractor's cost of the actual material is irrelevant and is not to be considered. This procedure is to be followed with respect to procurements involving both prime contractors and sub-contractors, so that the cost to the subcontractor of materials supplied to a prime contractor under a project is not to be considered, but rather, the amount being charged to the prime contractor by the subcontractor for the materials.

For the purpose of this provision, if a contract contains a quantity of five units of a particular bid item, if even one of the units is of foreign origin, the total "combined project cost" of all five units is to be used to determine compliance with the "minimal use" requirement. In addition, if any component of a bid item is foreign, the entire bid item is considered foreign. In turn, the unit cost as shown in the executed contract, multiplied by the quantity of units used on the project, is to be used to determine compliance with the "minimal use" requirement.

For the purpose of this provision, the North American Free Trade Agreement (NAFTA) has no effect. Iron and steel products from Canada and Mexico are considered to be of foreign origin.