



U.S. Department
of Transportation
**Federal Highway
Administration**

California Division

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July 12, 2013

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In Reply Refer To:
HDA-CA

Mr. Malcolm Dougherty
Director, California Department of Transportation
1120 N Street, MS-49
Sacramento, CA 95814

Attention: Ms. Karla Sutliff, Deputy Director, Project Delivery
Mr. Brent Green, Chief, Division of Right of Way and Land Surveys
Mr. Denix Anbiah, Chief, Division of Local Assistance
Mr. Fardad Falakfarsa, Chief, Federal Resources Office

Subject: Clarification on the Application of Buy America in California

Dear Mr. Dougherty:

I am writing to provide policy clarification for the application of Buy America under the Moving Ahead for Progress in the 21st Century Act (MAP-21).

Application of Buy America and MAP-21

Implementation of MAP-21 has broadened how Buy America is applied to federally funded highway construction projects. As a result of MAP-21, application of the requirements of the Buy America under MAP-21 is determined by considering both the date that federal highway funds were/will be obligated to the project and the date of execution of construction contracts necessary to implement the project.

MAP-21 requires that all aspects of a highway construction project (as defined by the project's NEPA decision document) comply with Buy America if any federal highway funds are obligated to the project on or after October 1, 2012. As a result, compliance with Buy America may now be required for aspects of the project that are not reimbursed with federal highway funds.

In addition, contracts required to implement the highway project that are executed on or after October 1, 2012, also invoke the Buy America requirements of MAP-21. In this context, "contract" means a utility agreement, railroad agreement, or other construction contract that is necessary to implement the project and is eligible for federal highway funds.

Based on the above, application of Buy America under MAP-21 is determined by considering the following conditions:

1. All contracts that are necessary to implement the project and that have federal highway funds are subject to Buy America. This is true regardless of when those funds were obligated or when the contracts were executed.
2. All construction contracts, including utility and railroad agreements, executed before October 1, 2012, are not subject to Buy America unless federal highway funds will be used on those contracts.
3. Obligation of federal highway funds on or after October 1, 2012, on any activity necessary to implement the project invokes the Buy America requirements of MAP-21 to all project

construction activities that come under contract on or after October 1, 2012, regardless of the funding source for that work.

4. Buy America applies to all project construction contracts that executed on or after October 1, 2012, and that include work that is eligible for federal highway funds, regardless of the funding source for those contracts. Executing a contract (utility agreement, railroad agreement, or construction contract) after October 1, 2012, without Buy America compliance requirements renders all project activities placed under a contract executed after October 1, 2012, ineligible for federal funds. This may be applied retroactively to October 1, 2012.

To assist in applying the above conditions to practical situations, a table of sample scenarios is enclosed.

Transition Plan

Notwithstanding conditions 1-4 above, the Federal highway Administration (FHWA) has established a transition plan for the application of Buy America to utility relocations. During the transition plan, project-specific utility relocation agreements executed before January 1, 2014, that do not have federal funding, are not required to comply with Buy America. This exemption does not apply to master, area-wide, or state-wide utility agreements.

Items subject to Buy America

Buy America provisions are applicable to, but are not limited to, the following:

1. Steel or iron products used in pavements, bridges, tunnels or other structures, which include, but are not limited to, the following: fabricated structural steel, reinforcing steel, piling, high strength bolts, anchor bolts, dowel bars, permanently incorporated sheet piling, bridge bearings, cable wire/strand, pre-stressing/post-tensioning wire, motor/machinery brakes and other equipment for moveable structures;
2. Guardrail, guardrail posts, end sections, terminals, cable guardrail;
3. Steel fencing material, fence posts;
4. Steel or iron pipe, conduit, grates, manhole covers, risers;
5. Mast arms, poles, standards, trusses, or supporting structural members for signs, luminaries, or traffic control systems;
6. Steel or iron components of recast concrete products, such as reinforcing steel, wire mesh and pre-stressing or post-tensioning strands or cables; and
7. Steel transmission or distributions pole structures, predominately steel cross arms, anchors, steel or iron conduit, steel rebar to be furnished in conjunction with: concrete foundations,
8. concrete transmission or distribution pole structures, or any prefabricated concrete vaults or similar concrete structures, steel pipes for the transmission or distribution of gases or liquid fluids.

Exemptions from Buy America

We understand that, when Buy America is applicable to utility relocations, some utility companies may be reluctant to certify Buy America compliance due to difficulties in tracing the origin of their materials. The attached policy memorandum titled "Clarification of Manufactured Products under Buy America," dated December 21, 2012, includes exemptions for certain products. The following is a list of other exclusions associated with Buy America that are based on that memo and other FHWA policy documents:

1. Miscellaneous steel or iron components, subcomponents and hardware necessary to encase, assemble

and construct the above components (or manufactured products that are not predominately steel or iron). Examples include, but are not limited to: cabinets, covers, shelves, clamps, fittings, sleeves, washers, bolts, nuts, screws, tie wire, spacers, chairs, lifting hooks, faucets, door hinges, guy wires, transformers, insulators, cutouts, surge arrestors, switches, hardware, fasteners, brackets, base plates, conductor or other separately provided attachments to be ordered separately and thereafter affixed to the pole structures.

2. Items that are not 90% iron or steel (i.e., wood poles, copper wire, etc.)
3. Items that are in place in one location at the project site and are relocated to another part of the site.
4. Items or work that are not eligible for federal highway funds, including but not limited to work that is a betterment, spare items used for future replacement, items used for maintenance, etc.
5. Items that are not permanently incorporated into the project and are not a functional part of the project (i.e., scaffolding, sheet piles left in place after construction that are not an integral part of the finished product). This includes equipment that was placed in a temporary location to facilitate construction of the project.
6. Work for which the utility company cannot legally be reimbursed from federal funds.

Minimal Amounts of Foreign Iron and Steel

Minimal amounts of foreign iron and steel materials used on highway projects are not subject to Buy America. The minimal amount allowed is the greater of \$2,500 or 0.1% of the contract value, calculated on a contract by contract basis. Calculations of 0.1% amount shall consider the following:

1. The value of iron and steel to be that are exempt from Buy America (i.e., exempted items listed above) may be excluded from the calculation.
2. Iron and steel products that are certified as compliant with Buy America may be excluded from the calculation.
3. The value of iron and steel shall include costs charged by the vendor/supplier that are necessary to prepare the item for use at the project site, including, assembly, testing, and transportation that are invoiced.

If you have any questions regarding our interpretation the applicability of MAP-21 as it relates to Buy America, please feel free to call Steve Pyburn, Construction Program Manager, at (916) 498-5057.

Sincerely,



For Vincent P. Mammato
Division Administrator

Enclosure

cc: (email)

Karla Sutliff
Brent Green
Denix Anbiah
Fardad Falakfarsa



Action Before 10/1/2012 ¹	Action After 10/1/2012 ^{1,2}	Does Buy America Apply Does MAP-21 Apply
UA executed. UA has no federal funds. Federal funds obligated for construction contract.	No future contracts executed or federal funds obligations. Change order adds federal funds to the construction but not the UA.	UA: Buy America does not apply. Construction contract: Buy America applies. MAP-21: Does not apply.
UA1 Signed. UA1 has no federal funds.	Federal funds obligated for construction UA2 executed. UA2 has no federal funds.	UA1: Buy America does not apply. Construction contract and UA2: Buy America Applies. MAP-21: Applies. Construction, UA 2 and other project activities that come under contract after 10/1/2012 are subject to Buy America.
UA Signed. UA Has no federal funds.	Construction contract executed. Construction contract has no federal funds.	UA: Buy America does not apply. Construction contract: Buy America Applies. MAP-21: Applies. Construction, UA 2 and other project activities that come under contract after 10/1/2012 are subject to Buy America.
UA1 Signed. UA1 Has federal funds.	Construction contract executed. Construction contract has no federal funds. UA2 Signed. UA2 Has no federal funds.	UA1: Buy America applies. Construction contract and UA2: Buy America Applies. MAP-21: Applies. Construction, UA 2 and other project activities that come under contract after 10/1/2012 are subject to Buy America.
UA1 Signed. UA1 Has no federal funds. Construction contract executed. Construction contract has no federal funds.	UA2 Signed. UA2 Has no federal funds. No future federal highway fund obligations or additional project contracts planned.	UA1: Buy America does not apply. Construction contract: Buy America does not apply. UA2: Buy America Applies. MAP-21: Applies. Execution of UA2 triggers MAP-21 and project activities that come under contract after 10/1/2012 are subject to Buy America. If UA2 does not comply with Buy America, all project activities placed under a contract executed after 10/1/2012 are ineligible for federal funds. This may be irrelevant since no additional contracts are needed and no federal funds will be used on the project.
UA1 Signed. UA has no federal funds.	Preliminary design contract executed after January 1, 2013. Construction contract executed. Construction contract has no federal funds. UA2 executed. UA2 has no federal funds.	UA1: Buy America does not apply. Construction contract and UA2: Buy America Applies. MAP-21: Applies. Execution of the design contract triggers requirements of MAP-21. Construction, UA 2 and other project activities that come under contract after 10/1/2012 are subject to Buy America.
UA: Utility (or Railroad) Agreement 1. During a transition period established by FHWA on July 11, 2013, project-specific utility relocation agreements executed before January 1, 2014, that do not have federal funding, are not required to comply with Buy America. 2. Executing a contract (utility agreement, railroad agreement, or construction contract) after 10/1/2012 without Buy America compliance requirements renders all project activities placed under a contract executed after 10/1/2012 ineligible for federal funds. This may be applied retroactively to 10/1/2012.		