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December 3, 2013

Mr. Vincent Mammano
Division Administrator
U.S. Department of Transportation
Federal Highway Administrator
650 Capitol Mall, Suite 4-100
Sacramento, CA 95814

RE: Guidelines for the certification of materials subject to Buy America (BA) for utility relocations

Dear Mr. Mammano:

The Department is pleased to offer our proposed guidelines to be used by utilities for the purpose of demonstrating compliance with the BA provisions.

These guidelines are relevant for all federally eligible transportation projects where the Federal Highway Administration (FHWA) is determined to be the lead federal agency; it does not take precedence over projects where the Federal Transit Administration (FTA) or the Federal Railroad Administration (FRA) is determined to be the lead federal agency.

The Department desires a process that provides reasonable assurance that utility materials subject to BA requirements are compliant prior to permanent installation. These guidelines will be implemented in conjunction with the Department's guidelines for the implementation of BA requirements for utility relocations issued on December 3, 2013. The Department will accept either of the following two certification methods: 1) Utility Owner Self Certification and 2) Vendor/Manufacturer Certification. Each provides sufficient demonstration of BA compliance for utility relocations.

Utility Owner Self Certification Method:

The Department or Local Agency will enter into a legally binding utility agreement (UA) with each utility owner on a project by project basis. The UA will include the following provisions:

i) Utility owner will source materials that comply with BA requirements.
ii) Utility owner will certify compliance via a contract provision in the UA as follows:

[Utility Owner] understands and acknowledges that this project is subject to the requirements of the Buy America law (23 USC § 313) and applicable regulations, including 23 CFR 635.410 and Federal Highway Administration guidance. [Utility Owner] hereby certifies that in the performance of this Agreement, for products where Buy America requirements apply, it shall use only such products for which it has received a certification from its supplier, or provider of construction services that procures the product certifying Buy America compliance. This does not include products for which waivers have been granted under 23 C.F.R. § 635.410 or other applicable provisions or excluded materials cited in the Department's guidelines for the implementation of BA requirements for utility relocations issued on December 3, 2013.

iii) Utility owner will not be required to provide copies of supplier certifications or other utility owner-signed certifications as part of this Agreement or with the final invoice.

<u>Vendor/Manufacturer Certification Method:</u>

The Department or Local Agency will enter into a legally binding utility agreement (UA) with each utility owner on a project by project basis. The UA will include the following provisions:

i) Utility owner will source materials that comply with BA requirements.
ii) Utility owner will demonstrate BA compliance by one of the two (2) following methods (or a combination of both):
    (a) Utility owner will collect written certification from the vendor(s);
        (i) The written certification will be signed by the vendor on company letterhead, or other acceptable documentation, signed by an authorized representative of the vendor and will declare that all supplied materials subject to the BA provisions are fully compliant.

    (b) Utility owner will collect written certification from the factory(s);
        (i) The mill test report (MTR) issued and signed by the initial fabricator stating that the materials subject to BA were melted and manufactured in the United States.
        (ii) Other written statements on company letterhead, or other acceptable documentation, signed by an authorized representative, from the manufacturers providing any additional treatment to the fabricated material (such as blasting, galvanizing or painting) will state that all treatment processes occurred in the United States in accordance with FHWA guidelines.
iii) All documents obtained to demonstrate BA compliance will be held by the utility owner for a period of three (3) years from the date the final payment was received by the utility owner and will be made available to Caltrans or FHWA upon request.

iv) One (1) set of copies of all documents obtained to demonstrate BA compliance will be attached to, and submitted with, the final invoice.
v) If no materials were subject to BA, the utility owner will indicate that as part of the final invoice submittal (i.e. with a separate memo, rubber stamp on the invoice or other reasonable method).

Additional Provisions Common to both Certification Methods:

1) No certification (demonstration of BA compliance) is required for any materials or parts that are not subject to BA requirements for any reason, including but not limited to application, material composition and the minimal use threshold exclusion.

2) It will be up to the utility owner to declare compliance with the minimal use threshold exclusion. Non-domestic iron and steel materials may be used provided the cost of such materials do not exceed one-tenth of one percent (0.1%) of the individual Utility Agreement (UA) amount, or $2,500.00 whichever is greater. The De Minimus equation is calculated according to the following formula:

$$\frac{\text{Combined Cost of Only those Materials that are Subject to BA } \textbf{and} \text{ are Non-Compliant (limited to the individual UA)}}{\text{Total Utility Relocation Cost (cited in the individual UA)}}$$

3) Utility owners will bear responsibility to ensure all materials permanently incorporated into their utility relocations are either compliant or not required to be compliant.

4) Where a utility owner purchases manufactured products from a vendor for use by the owner in its relocation activities, a certification from the vendor to owner that the materials meet Buy America requirements shall be deemed to constitute compliance by the utility owner.

5) Where a utility owner obtains construction services in connection with utility relocation work and the provider of construction services is also responsible for provision of manufactured products used in connection with that project, a certification from the provider of construction services that the materials provided by that construction services provider meet Buy America requirements shall be deemed to constitute compliance by the utility owner.

I am hopeful you will find this satisfactory and able to offer concurrence.

Should you have any questions or require additional information, please do not hesitate to contact me. Thank you for your assistance in this matter

Sincerely,

MALCOLM DOUGHERTY
Director

CONCUR:

12/4/13

Vincent Mammano, Division Administrator Date