U.S. Department
of Transportation
Federal Highway
Administration

Office of the Administrator

1200 New Jersey Ave., SE
Washington, D.C. 20590

December 20, 2012

In Reply Refer To:
HCC-1

Mr. John Horsley
Executive Director
American Association of State Highway
and Transportation Officials
Washington, DC 20001

Dear Mr. Horsley:

The Federal Highway Administration (FHWA) appreciates the American Association of State Highway and Transportation Officials' (AASHTO) resolution to expedite the review of Buy America requirements related to utility work on Federal-aid projects, which the Standing Committee on Highways approved at the 2012 Spring Business Meeting. In this resolution, the Standing Committee on Highways resolved that it supports the FHWA's efforts to reassess the applicability of Buy America requirements to utility work on Federal-aid projects and requested that FHWA expedite the completion of its review of third party utility property rights and whether these rights exempt them from Buy America.

In response to AASHTO's resolution, the FHWA and the Office of the Secretary (collectively referred to as the Department of Transportation (DOT)) began to reassess the application of Buy America to utilities. However, on July 6, President Obama signed the Moving Ahead for Progress in the 21st Century Act (MAP-21) into law. As you know, MAP-21 contains a provision that amends Buy America by broadening the scope of the application of this provision. Specifically, this amendment substantially broadened the application of Buy America to any contract eligible for Federal highway funding within the scope of an applicable finding, determination, or decision under the National Environmental Policy Act regardless of the funding source of such contracts if at least one contract for the project is funded with Federal-aid highway funds. With the enactment of MAP-21, the DOT's reassessment had to take the new broadened scope of Buy America into account.

After thoroughly reassessing this matter, and taking into account the Standing Committee on Highways resolution, DOT has determined that Buy America applies to any utility work that is accomplished as a result of a Federal-aid highway project. As a result of the MAP-21 amendment, the application of Buy America cannot be narrowed to exclude utility work, even if such utility work is not reimbursed with Federal-aid highway funds. The only instance where Buy America would not apply to utility work is where such work is not eligible for Federal-aid because the State is legally unable to pay the utility. In these instances, such work would not constitute a contract that is eligible for assistance.

I look forward to continuing to work with you as we implement MAP-21.

Sincerely,

Victor M. Mendez
Administrator