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TAB 23
Reference No.: 4.16
December 11, 2013
Attachment 1

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: Implementation of Buy America (BA) provisions for utility relocations

Dear Mr. Mammano:

The California Department of Transportation (Department) is pleased to offer our guidelines to be used by utilities for the purpose of clarifying and defining BA requirements for utility relocations within the state of California. The use of these guidelines is strictly limited to utilities and will not impact or modify how the Department and public agencies apply BA requirements to transportation materials.

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.

These guidelines are intended to supplement, and to be implemented in conjunction with, the guidance issued by the Federal Highways Administration, California Division on July 12, 2013.

The Department intends to utilize the following definitions and documented decisions to provide clarity and to assist utility service providers as they strive to develop internal processes to discern and track materials that are subject to BA as well as the practical application of BA in the field.

It should also be noted that these guidelines have been reviewed by major California utility companies who have indicated that without the clear guidance provided herein, the successful application of BA would be questionable.

The Department has performed studies using actual utility material lists and compared the application of these guidelines against the general guidelines issued by FHWA and, to date, have not found any materials that were considered subject to BA using FHWA guidelines that were not also found to be subject to BA using these guidelines; in other words, the application of both

guidelines are in alignment. Furthermore, in many instances, over 99% of all steel that enters the utility job site is subject to BA. Therefore, the Department will implement BA utility relocation activities required for highway projects funded under Title 23 of the US Code as follows:

- For utilities, the following materials, when comprised of more than 90% steel or iron are subject to BA compliance:
    - Poles & cross arms;
    - Pipe and valves (except as stated below);
    - High-strength bolts, anchor bolts and anchor rods;
    - Girders used to comprise transmission towers and stand-alone structures;
    - Rebar and other reinforcing iron/steel for all cast-in-place installations;
    - Conduit and ducting;
    - Fire Hydrants
    - Manhole covers and rims, and drop-inlet grates.

  The Department will periodically review Bills of Materials (BOMs) for utility projects and determine if the above categories are adequately resulting in certification of compliance with BA as intended by Federal law. These periodic reviews may result in the addition of categories that are not currently listed above.

- All Utility Agreements (UA) executed before December 31, 2013 **that will not have** federal funding for utility materials or relocation are not subject to BA (even if other contracts associated with the project were reimbursed with federal funds)

- The date of the original UA will be used as the date to determine BA compliance even if the UA is amended after December 31, 2013.

- BA does not apply to existing utility materials that are relocated from one location to another within the project limits.

- If the project sponsor does not wish to subject betterment materials (as defined below) to BA provisions, then the betterments must be excluded from the utility agreement or contract that includes work eligible for Federal-aid.

- BA does not apply to assembly materials, attachment materials, miscellaneous electronics, or encasements, as defined below.

- BA does not apply to any associated materials (including spare materials) required for maintenance.

- BA does not apply to any materials necessary to repair equipment that was discovered or damaged during construction **and** requires immediate action to restore to safe conditions or to minimize adverse public impact.

- BA does not apply to associated materials necessary for a temporary utility relocation.

- 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:

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

- BA does not apply if the utility relocation effort is not eligible for reimbursement with federal funds. For example, if the utility owner is required to pay for 100% of the entire relocation effort, then the materials associated with that relocation are not subject to BA. However, all such work must remain separate from and cannot be accomplished under a utility agreement or contract that includes work eligible for Federal-aid.

- Per 23 CFR 635.410, the work to be performed under the utility agreement may include foreign iron and steel products if the cost of BA compliant materials will cause the cost of the work to increase by at least 25%. To determine applicability of this provision, one of the following two procedures shall be used:
    - If the utility company will use a contractor to perform the work included in the utility agreement, the following procedures apply: Demonstration of meeting the 25% excess cost requirement must be accomplished by receiving two separate bids each from at least two qualified contractors for the work. Requests for bids from the qualified contractors must conform to 23 CFR 635.410 (b)(3). One bid from each contractor will include a cost of performing the work described in the utility agreement using BA compliant material and the other bid will include a cost for the same work assuming foreign materials. If the bid with the BA compliant materials is at least 25% greater than the bid that includes foreign material, then the contract can be awarded to the lowest bid based on materials that are not compliant with BA.
    - If the utility company will perform work in the utility agreement with its own forces, the following procedures apply: Demonstration of meeting the 25% excess cost requirement must be accomplished by receiving two separate bids from vendors or manufacturers listing the cost of BA compliant materials on one bid document and listing the cost of non-compliant materials on a separate bid document. The utility company will take the cost of the BA compliant materials

and use it to create the total estimated cost of the work included in the utility agreement. The utility company will do the same with the cost of the non-compliant materials. If the cost of the work included in the utility agreement with BA compliant materials is at least 25% greater than the cost using the materials that are not compliant with BA, than the non-compliant materials may be used.

## Definitions:

Anchor & High-Strength Bolts – Anchor & high-strength bolts will be distinguished in one of three methods to be selected, and consistently applied, by the utility owner: 1) the utility owner may identify anchor & high-strength bolts in the specifications or plans as necessary for the safe and functional design of the utility relocation. If a bolt is not called out as anchor or high-strength, it stands that the design did not require that level of performance and the supplied bolt is not subject to BA; 2) the utility owner may identify anchor & high-strength bolts through the application of a strength rating. Any bolt possessing a yield strength of fifty-thousand pounds per square inch (50-ksi) or greater will be considered an anchor or high-strength; 3) the utility owner may identify anchor & high-strength bolts through the application of a weight measurement. Any bolt possessing a weight of 15 pounds or greater will be considered an anchor or high-strength.

Assembly Materials (miscellaneous steel) – The collection of miscellaneous materials used to fasten, hold, attach, secure and/or assemble materials including but not limited to nuts, bolts, U-bolts, screws, washers, clips, fittings, sleeves, lifting hooks, mounting brackets, pole steps, clamps, brackets, mountings, straps, fasteners, hooks, pins, braces, disks, clevises, couplers, swivels, snaps, crimps, trunnions, dead-ends, compression swages, and other miscellaneous materials used to assemble.

Attachment Materials – An item or material that is not an integral part or permanently attached to the pole, pipe or valve. Cross arms are an exception to this rule and do not qualify as attachment materials. Attachment materials include but are not limited to cross arm bracing, insulators, avian equipment, miscellaneous hardware (defined below), fittings, racks, ladders, encasements, guy wire, strand, conductors and tubing 0.75-inch diameter or less.

Betterments – Any upgrading of the facility being relocated that is not attributable to the highway construction and is made solely for the benefit of and at the election of the utility (23 CFR 645.105). As such, a betterment is not eligible for Federal-aid.

Conductor – A material (specifically wires and cables) that allows the flow of energy including electricity, heat, data, audio/video transmission, etc.

Encasements – Include cabinets, housings, boxes, vaults, covers, shelves, and other items use to protect or house equipment or miscellaneous electronics.

Fittings – Individual parts used to join, adjust or adapt a system of pipes including but not limited to elbows, tees, wyes, crosses, nipples, reducers, end caps, couplers, o-lets, transitions, connectors (steady state, seismic and flexible), unions, mechanical flanges (not permanently affixed to the pipe), bushings, ferrules, gaskets, O-rings, plugs or taps.

Girders – A load bearing beam or strut commonly taking the cross-sectional shape of a circle, square, rectangle, or an I, C, L, or Z, and assembled for the purpose of creating lattice towers, stand-alone platforms or transmission towers.

Lattice Towers – A structure that is compiled of girders and is typically used in series to support conductor cables.

Maintenance – An action or application of materials necessary to keep a system functioning safely and at optimal capacity; general up-keep.

Miscellaneous Electronics – Manufactured products or assemblies consisting of many components such as electronic equipment, routers, switches, radios, processors, power supplies, batteries, antennas, splice cases, pre-connectorized hubs and terminals, and cross-boxes.

Miscellaneous Hardware – An assembly of small parts that are compiled to form a finished product that is often used independently or as an attachment material, including but not limited to, locks, switches, cutouts, regulators, gauges, meters, barometers, strainers, filters, pilots, arrestors, insulators, ball bearings, dampeners, needle valves, braces, pipe supports, actuators, motors and pumps.

Permanent Installation – Is the final location and final installation of the materials as defined on the plans or in the specifications. No further adjustments or relocations are necessary to accommodate the final transportation project improvements.

Stand-alone Platforms – A structure that is compiled of girders and is used to permanently hold or support large equipment.

Temporary Utility Relocation – A temporary utility relocation is generally subject to the schedule necessary to accomplish the scope as defined by the NEPA document. A temporary utility relocation is one that is needed to allow the roadway construction to proceed, but is not required to remain in its relocation as a result of the ultimate roadway improvement. For example, if the scope requires the sequential completion of six separate construction contracts, theoretically a temporary utility relocation could remain in place prior to commencement of the

first construction contract and extend beyond completion of the sixth construction contract prior to its final placement. A temporary utility relocation can also be established if the contract specification or plans require that the steel or iron material used on the project either must be removed at the end of the project or may be removed at the contractor's convenience.

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

cc: Brent Green, Chief, Division of RW&LS
Gary Gutierrez, Project Manager, BA Task Force
Suzette Shellooe, Office Chief, Utility Agreements

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TAB 23
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December 11, 2013
Attachment 2

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.

Vendor/Manufacturer 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 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