



November 7, 2012

TO: Region Plans Engineers
Region Construction Engineers

THRU: Pasco Bakotich

FROM: Jeff Carpenter
360-705-78

SUBJECT: Moving Ahead for Progress in the 21st Century (MAP 21)
Buy America

On July 6, 2012, MAP-21 was signed into Federal law. A significant provision to this law is the change in the application of Buy America requirements. The law now stipulates that any project defined in a Federal record of decision under the National Environmental Policy Act (NEPA) must contain Buy America requirements in any contract(s) that is eligible for assistance and falls within the scope of the NEPA document regardless of funding. If there are multiple projects or a single project within the NEPA and at least one of those projects receives Federal funding, regardless of the phase (R/W, Design, or Construction), then all construction contracts must contain Buy America mandates. This new requirement affects all contracts awarded on and after October 1, 2012. This requirement also includes any public works contract within the Right of Way covered under the original scope of the NEPA document such as utilities, Cities, Counties, etc.

As an example of how this may affect us; the Eastern Region completed the Environmental Impact Statement for the North Spokane Corridor (NSC) in 1997. Since that time there have been nine State funded contracts and three federally funded contracts and it is anticipated that an additional ten to fifteen contracts will be necessary to complete the NSC corridor. The first twelve contracts would not be affected by this new law since they were awarded prior to the October 1, 2012, effective date. Now, if the Eastern Region uses Federal funding on any phase of the next fifteen contracts (R/W, Design or Construction), the Buy America requirements will need to be included in all contracts, regardless of funding. If the Region elects not to use Federal funding in any phase of the next fifteen contracts and uses state funds only, then the Buy America requirements would not be necessary. However, this would be a risk as any non-Federal-aid highway contract awarded after October 1, 2012, without applicable Buy America provisions, would render all contracts within the scope of the NEPA document ineligible

Region Plans/Construction Engineers
November 5, 2012
Page 2

for Federal-aid highway funds if the Region decided to use Federal funds on any subsequent contract.

So, it will be necessary for Region Program Management and Designers to establish if a contract that is being assembled is included in a NEPA determination and if the Region anticipates using or has used Federal funding in any phase of the project. The Designer will then need to decide if the Buy America specification should be included in the contract.

It will be necessary for the Regions to review current advertised contracts to determine if the Buy America GSP is to be included in the contract via an addendum.

The MAP 21 Buy America directive is being reviewed and may change; however, until further guidance is provided by the FHWA, the above steps are necessary in order for WSDOT to be in compliance with the law and continue to receive federal funding on eligible contracts. The Regions have the best knowledge as to how they will fund their projects, however, it is highly recommended that for each new construction contract, regardless of funding source or NEPA status, the Buy America General Special Provision is included.

Please give this information wide distribution as appropriate.

Additional information may be found at the FHWA websites shown below.

Overview

<http://www.fhwa.dot.gov/map21/summaryinfo.cfm>

Q&A

<http://www.fhwa.dot.gov/map21/qandas/qabuyamerica.cfm>

If you have any questions at all, please feel free to contact Craig McDaniel, Mike Grigware or Randy Dubigk.

EJC/rjd

cc: Jay Alexander CPD&M 47325
Tim Smith-Terminal Engineering TB-32
Ahmer Nizam-Utilities 47329
Yvonne Medina Facilities 47328
Kurt Williams HQ Materials 47365
Anthony Sarhan-FHWA