



**VENTURA COUNTY TRANSPORTATION COMMISSION
TRANSPORTATION TECHNICAL ADVISORY COMMITTEE**

Camarillo City Hall
Administrative Conference Room
601 Carmen Drive
Camarillo, CA

Thursday, January 17, 2013 at 9:00 AM

- Item # 1** Call to Order
- Item # 2** Public Comments
- Item # 3** Approval of December 20, 2012 Minutes
- Item # 4** Caltrans Local Assistance Update
- Item # 5** Caltrans Environmental Review Process Presentation
- Item # 6** TTAC Chair and Vice Chair Appointments
 - Elect new TTAC chair and vice chair.
- Item # 7** Buy America for Utility Relocations
 - Receive and file.
- Item # 8** Future Agenda Items
 - Congestion Management Program Update /Approval
 - Periodic Highway Construction Updates
 - Regional Transportation Funding & Planning
 - Route 1 Rerouting to Rice Avenue
 - VCTC Programming Procedures—Potential Revision
- Item # 9** Next Meeting February 21, 2013

**MINUTES OF THE
VENTURA COUNTY TRANSPORTATION COMMISSION
TRANSPORTATION TECHNICAL ADVISORY COMMITTEE
December 20, 2012 Meeting**

Item #1 Call to Order

Chair David Fleisch called the meeting to order at 9am.

Item #2 Public Comments

There were no public comments

Item #3 Approval of November 15, 2012 Minutes

Dave Klotzle of Moorpark moved to approve the November 15, 2012 minutes with the edited attendance record shown below. Ken Matsuoka of Camarillo seconded the motion and it passed unanimously.

November 15, 2012 TTAC Attendance:

Ben Cacatian	APCD
David Klotzle	Moorpark
Kit Nell	Port Hueneme
Cynthia Daniels	Oxnard
Michael Tohidian	Thousand Oaks
Soher Abdemalik	Oxnard
Ken Matsuoka	Camarillo
David Fleisch	Ventura County
Thang Tran	Camarillo
Robert Wong	Caltrans
Fred Bral	Caltrans
Morris Zarbi	Caltrans
David Sosa	Caltrans
Tony Johnson	Caltrans
Kamran Panah	Simi Valley
Darren Kettle	VCTC
Brian Yanez	Santa Paula
Ben Emami	Ventura County
Will Berg	Port of Hueneme
Peter De Haan	VCTC
James Hinkamp	VCTC
Tom Mericle	Ventura

Item #4 Caltrans Local Assistance Update

Robert Wong of Caltrans Local Assistance provided information on a proposal for Construction Administration Process Reviews. A Construction Process Review training will be held in Ventura County on January 24. More information to follow.

Item #5 Revised Route 101/23 Improvement Project Funding Plan

Peter De Haan introduced the item. The new funding plan would increase the TCIF contribution to \$13,018,000 and the STP funding to \$12,518,000. This would reduce the City contribution by

an offsetting amount. Tom Mericle of Ventura moved to approve the staff recommended funding plan. Cliff Finley of Thousand Oaks seconded the motion and it passed unanimously.

Item #6 Route 101 Santa Clara River Bridge Environmental Mitigation

Reza Fateh of Caltrans introduced the item. The following motion was made by Tom Mericle and seconded by Cliff Finley:

- That staff apply for \$350,000 Environmental Enhancement and Mitigation Program grant funding towards this project.
- That TTAC will be provided with an explanation of funding options at the January meeting.

The motion passed unanimously.

Item #7 MAP-21 Change Regarding Applicability of Buy America Policy to Utility Relocations

Peter De Haan introduced this "Receive and File" item. No actions were taken.

Item #8 Changes to California Building Code, Access Standards

Stephanie Young introduced this "Receive and File" item. No actions were taken.

Item #9 2013 Meeting Schedule

Brian Yanez of the City of Santa Paula moved to approve the proposed 2013 meeting schedule. Chris Birkelo of Port Hueneme seconded the motion and it passed unanimously.

TRANSPORTATION TECHNICAL ADVISORY COMMITTEE
December 20, 2012
ATTENDANCE

<u>Name</u>	<u>Agency</u>
Morris Zarbi	Caltrans
Robert Wong	Caltrans
Ken Matsuoka	City of Camarillo
Thang Tran	City of Camarillo
Dave Klotzle	City of Moorpark
Cynthia Daniels	City of Oxnard
Jason Samonte	City of Oxnard
Kit Nell	City of Port Hueneme
Brian Yanez	City of Santa Paula
Kamran Panah	City of Simi Valley
Cliff Finley	City of Thousand Oaks
Mike Tohidian	City of Thousand Oaks
Tom Mericle	City of Ventura
Ben Emami	County of Ventura
David Fleisch	County of Ventura
Steve Brown	Gold Coast Transit
Chris Birkelo	Port of Hueneme
Ben Cacatian	VCAPCD
Peter De Haan	VCTC
Stephanie Young	VCTC



Item # 7

January 17, 2013

MEMO TO: TRANSPORTATION TECHNICAL ADVISORY COMMITTEE

FROM: STEPHANIE YOUNG, PROGRAM ANALYST

SUBJECT: BUY AMERICA FOR UTILITY RELOCATIONS

RECOMMENDATION:

- Receive and file.

BACKGROUND:

Attached is guidance from the FHWA website on Buy America Provisions in MAP-21. The following is an excerpt from an FHWA Q&A.

Question 6: Does Federal participation in contracts or agreements for environmental studies and document preparation, right of way acquisition, preliminary engineering and other non-construction work invoke the application of Buy America to the project under Section 1518 of MAP-21, even if no Federal funds are used in the construction? *(added 12/20/2012)*

Answer 6: Yes. Section 1518 of MAP-21 (codified at 23 U.S.C. 313(g)) provides that Buy America applies to all contracts eligible for assistance under title 23, United States Code, for a project carried out within the scope of the applicable finding, determination, or decision under the National Environmental Policy Act (NEPA) regardless of the funding source of such contracts if at least one contract for the project is funded with title 23 funds. Therefore, if Federal funds are used for any activity within the scope of a NEPA decision, then Buy America applies to the entire project. There is no limitation in the statute that the Federal funds be used only in construction contracts. If any contract or agreement for such work is executed after October 1, 2012 all construction contracts on that project will be subject to Buy America regardless of whether Federal funds are used in any of the contracts for construction.

Q# 48. How does FHWA resolve an after-the-fact discovery of an inadvertent incorporation of foreign iron and steel products into a Federal-aid project?

A# 48. For resolving an after-the-fact discovery of incorporated foreign iron and steel products exceeding the minimal use amount (the greater amount of \$2,500 or 0.1% of the contract value), FHWA will review the following information to determine the appropriate resolution:

- The state's material certification procedures for determining Buy America compliance.
- Degree of diligence by the State DOT and contracting agency in ensuring Buy America compliance.
- Contract provisions prescribing Buy America requirements.
- Availability of domestic iron and steel products or its equivalent at the time when excess

foreign iron and steel products were incorporated into the project.

v. Issues associated with removal and replacement with domestic iron and steel products during construction/completion.

With the Headquarters' concurrence, available options based on the conclusion of the reviews include the following:

- a. Remove the excess foreign iron and steel products and replace with domestic iron and steel products.
- b. Make the non-compliant iron and steel products Federal-aid non-participating.
- c. In instances where there is evidence of carelessness, negligence, incompetence, or understaffing on the part of the contracting agency, the Division Office may determine that all project costs are ineligible.

Buy America Questions & Answers

Updated 12/20/2012

Question 1: Did MAP-21 make any changes to Buy America?

Answer 1: Yes. Section 1518 of MAP-21 amends the Buy America statute at 23 U.S.C. 313 to require the application of Buy America to **all contracts** eligible for assistance under title 23 within the scope of a finding, determination, or decision under the National Environmental Policy Act (NEPA), regardless of funding source, if at least one contract within the scope of the same NEPA document is funded with Federal funding provided under Title 23.

Question 2: What is the effective date of the Buy America amendment of MAP-21 section 1518?

Answer 2: The effective implementation date of section 1518 is October 1, 2012. Thus, on or after October 1, 2012, if one contract within the scope of a NEPA document is awarded using Federal-aid funding, then the Buy America provisions would apply to all contracts within the scope of the NEPA document, regardless of the source of funding. FHWA anticipates issuing a Notice of Proposed Rule Making for those regulations in 2013.

Question 3: Does MAP-21 require States to include Buy America provisions in non-Federal-aid highway contracts?

Answer 3: Yes, if the non-Federal-aid highway contract is included within the scope of a NEPA document and at least one other contract within the scope of the same NEPA document is funded or will be funded with Federal-aid highway funds. Awarding any such non-Federal-aid highway contract on or after October 1, 2012, without applicable Buy America provisions would render all contracts within the scope of the NEPA document ineligible for Federal-aid highway funds.

Question 4: What happens if a project is funded by Federal-aid highway funds on one contract and the project also has a non-Federal-aid highway contract without Buy America provisions and the non-Federal-aid highway contract was awarded before October 1, 2012?

Answer 4: If the non-Federal-aid highway contract without Buy America provisions was awarded before October 1, 2012, then the rest of the contracts within the scope of the NEPA document would remain eligible for Federal-aid funding as long as they contain the Buy America provisions. However, all contracts within the scope of the same NEPA document that are awarded on or after October 1, 2012, must include appropriate Buy America provisions.

Question 5: FTA and FHWA have slightly different Buy America requirements, particularly as they apply to manufactured products. On a project with mixed FTA-FHWA funding, which Buy America rules apply?

Answer 5: Further direction will be coordinated and provided by FHWA and/or FTA at a future date.

Question 6: Does Federal participation in contracts or agreements for environmental studies and document preparation, right of way acquisition, preliminary engineering and other non-construction work invoke the application of Buy America to the project under Section 1518 of MAP-21, even if no Federal funds are used in the construction? *(added 12/20/2012)*

Answer 6: Yes. Section 1518 of MAP-21 (codified at 23 U.S.C. 313(g)) provides that Buy America applies to all contracts eligible for assistance under title 23, United States Code, for a project carried out within the scope of the applicable finding, determination, or decision under the National Environmental Policy Act (NEPA) regardless of the funding source of such contracts if at least one contract for the project is funded with title 23 funds. Therefore, if Federal funds are used for any activity within the scope of a NEPA decision, then Buy America applies to the entire project. There is no limitation in the statute that the Federal funds be used only in construction contracts. If any contract or agreement for such work is executed after October 1, 2012 all construction contracts on that project will be subject to Buy America regardless of whether Federal funds are used in any of the contracts for construction.

Buy America Issues to Consider for Utility Work on Projects

The following guidance addresses the applicability of the Buy America requirements to utility work accomplished as part of a larger Federal-aid highway program (FAHP) funded project, as defined by the National Environmental Protection Act (NEPA):

1. Do the Buy America requirements apply to utility work using FAHP funding?

Yes, any contract or agreement involving utility work that uses any amount of FAHP funding must comply with the Buy America requirements (23 U.S.C. 313).

For example, if the utility work is accomplished through a standalone contract or agreement and uses FAHP funding the Buy America requirements apply.

Additional policy and guidance information is available in the FHWA Construction Program Guide at: <http://www.fhwa.dot.gov/construction/cqit/buyam.cfm>

2. For FAHP funded projects, do Buy America requirements apply to utility work accomplished using no FAHP funds?

Yes. Per section 1518 of MAP-21, if the project, as defined by NEPA, has at least one FAHP funded construction contract authorized after October 1, 2012 or at least one FAHP funded Preliminary Engineering contract authorized after January 1, 2013, all federally eligible utility work must meet Buy America requirements regardless of funding source.

3. For FAHP funded projects, do Buy America requirements apply to utility work where State law does not allow the State DOT to reimburse the utility for relocation costs?

No. When State law prohibits State DOTs from reimbursing utilities, the utility work is not eligible for federal reimbursement (23 USC 123(a)). Federally ineligible work is not subject to Buy America requirements.

4. Can foreign steel be allowed in an FAHP funded project if the foreign items are made non-participating?

No. All materials permanently incorporated into an FAHP funded project, as defined by NEPA, must meet the Buy America requirements (as specified in MAP-21 section 1518 and 23 U.S.C. 313). For example, it is not acceptable to allow foreign steel as a permanent component of an FAHP project by using State or local funds for the non-conforming items. It is generally not acceptable for non-conforming materials to be donated to an FAHP funded project. Additional information on Buy America requirements is available in the FHWA Construction Program Guide at: <http://www.fhwa.dot.gov/construction/cqit/buyam.cfm>

Buy America Issues to Consider for Utility Work on Projects

5. Do the Buy America requirements take precedence over the 23 CFR 645 requirements pertaining to the relocation or accommodation of utility facilities?

Yes, based on the Buy America requirements being codified in Federal law (23 U.S.C. 313), these requirements take precedence over regulations pertaining to the accommodation or relocation of utility facilities on projects involving FAHP funding.

For example, the Buy America requirements take precedence over the regulations which allow utilities to furnish materials from company stock (as specified in 23 CFR 645.117(e)). This provision allows the utility owner to furnish materials from company stock only in the case where the supplied materials meet the Buy America requirements. Company stock materials that do not meet Buy America requirements may not be permanently incorporated into an FAHP funded project.

Another example where the Buy America requirements take precedence over utility requirements is the statement 'The utility shall not be required to change its existing standards for materials used in permanent changes to its facilities' (as specified in 23 CFR 645.117(e)). Once again, Buy America requirements take precedence over this utility regulation. Therefore, a utility is not required to change its existing standards for materials as long as the Buy America requirements are met.

6. What Buy America and utility issues should be considered when developing agreements to relocate utilities on FAHP funded projects?

The utility contract or agreement must include the requirements for the utility company to meet the Buy America requirements (as specified in MAP-21 section 1518 and 23 U.S.C. 313). The contract or agreement shall require the contractor to provide a definitive statement about the origin of all products, permanently incorporated into the project, covered under the Buy America requirements. Additional information on the Buy America requirements to include in utility contracts and agreements is available in the FHWA Construction Program Guide at: <http://www.fhwa.dot.gov/construction/cqit/buyam.cfm>, and in the FHWA Contract Administration Core Curriculum Participant's Manual and Reference Guide 2006 at: <http://www.fhwa.dot.gov/programadmin/contracts/core02.cfm#s2B01>.

7. Can a waiver be granted for the Buy America requirements?

Yes, waivers of the Buy America requirements may be granted on a project-by-project basis. Additional information on the requirements and conditions around which FHWA will consider waivers is available in the FHWA Construction Program Guide at: <http://www.fhwa.dot.gov/construction/cqit/buyam.cfm>