

New Build America, Buy America (BABA)
Requirements
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New Buy America (BA) and Build America, Buy America (BABA) Requirements

The purpose of this Bulletin is to provide information and instruction regarding revisions to Standard Specifications 101.02 and 106.11. Changes to the specifications were made to comply with the supplemental guidance issued by the Office of Management and Budget in Washington, D.C. as contained in [Memorandum M-24-02](#) released October 25, 2023, and based on the [Notification of Final Guidance/Final Rule](#) as published in the Code of Federal Regulations on August 23, 2023. Three revised specifications were issued as Standard Special Provisions (SSPs) on January 8, 2024 and should be applied to projects with a Construction Phase Federal Funding Authorization Date that occurred on or after October 23, 2023. Projects currently under ad **or that have already been opened/awarded** and that meet the criteria outlined herein should pursue a Revision Under Ad **or a Contract Modification Order (CMO), respectively**, to ensure the appropriate specification is included in the project. This would similarly apply to any Local Agency projects meeting the same criteria.

To determine which of the three SSPs should be included on your project, the Design Project Manager will need to determine the Federal Funding Authorization Date for the Construction Phase as well as the total amount of Federal-Aid highway funding used or to be used in the project.

The federal-aid highway funding amount is to include all federal funding utilized in any pre-construction phase (Right of way, Utility, Design, Environmental, and Miscellaneous), as well as the construction phase. Instructions on determining the amount of federal-aid highway funding used or to be used in the project and determining the Federal Funding Authorization date are provided below.

Additionally, application of Buy America is required for all contracts eligible for Federal-Aid 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. This would apply even if the NEPA process was completed prior to October 23, 2023. Consultation with your Program Engineer as well as the FHWA Area Engineer for your Region is recommended to help determine those potential projects that fall under this criteria.

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Example 1: Aerotropolis Interchange on I-70 is being constructed by a developer with no federal funds. The project will, however, need to follow Buy America and Build America, Buy America (BA/BABA) requirements since the interchange was cleared in an Environmental Assessment (EA) as part of the E470/I-70 interchange complex.

Example 2: Crystal Valley Interchange. Phase 1 is developer only funds. Phase 1 will need to incorporate Buy America and Build America, Buy America (BA/BABA) requirements because the City is planning to use federal funds in Phase 2 and they have a RAISE grant that they are using to acquire right-of-way. The project was the preferred alternative from the Crystal Valley/I-25 Interchange Environmental Assessment (EA)

Federal Funding Authorization Date

Project design managers will now have to determine the federal funding authorization date for construction. NOTE: this is the date FHWA authorizes the construction phase and agrees to pay us (CDOT) for the work performed after that date, not the budget request or budget action date when funds are requested for the project. **Projects with a Federal Funding Authorization date for the construction phase that have occurred on or after October 23, 2023 are required to incorporate the Final (new) BA/BABA requirements.**

The federal funding authorization date can be determined from the ZJ40 (Project Status) report available from SAP, under the FHWA Agreement Date Column. Alternatively, the federal funding authorization date can be requested from the Region or HQ Business Manager.

The federal funding authorization date may potentially also be used to determine compliance requirements for other phases that may pay for work/materials, e.g., utility phase, miscellaneous phase, etc., as well as allow for the De Minimis provision of the new specification to be applied to those phases.

Example ZJ40 reports are provided below:

Example 1) ZJ40 Report for PCN #24509 - FHWA Authorization Date = FHWA Agrmnt Date Column for Construction

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Project Status Report.

Report Date: Dec 7, 2023

Project Information:

Project Def.: 24509	Project Number: STR 065A-024	Region: 03	RE Org Code: 3410
Description: GJ Residency Chip Seals			
Program Engineer/Branch Manager: ROBERT B BECK		Resident Engineer/ Section Head: Kaitlyn C Clark	
Project Manager/Pre-Const: Hannah M Kadel		Project Engineer/Const.Eng: SHANNON L EHLERS	
Initial Ad Date: Oct 5, 2023	Current AD: Oct 5, 2023	Scheduled AD: Oct 5, 2023	Actual AD: Oct 5, 2023
Award Date: Nov 3, 2023	Re-AD Date:	Shelf Date:	Proj Acceptance Date:
Advertised by: State		Companion Projects:	
STIP Numbers: SR35217			

Budget Information:

WBS	Description	Budget	Expenditure	Encumbrance	Balance	FHWA Agrmnt Date	FHWA End Date
24509.10.30	DESIGN	36,871.00	32,300.35	0.00	4,570.65	Aug 10, 2021	Jul 31, 2024
24509.20.10	CONSTRUCTION	3,165,598.00	418.56	2,993,794.91	171,384.53	Sep 13, 2023	Sep 30, 2026
	Total	3,202,469.00	32,718.91	2,993,794.91	175,955.18		

For the above example, the Construction phase funding for this particular project was authorized by the FHWA on September 13, 2023. Because the federal funding authorization date occurred prior to October 23, 2023, this project will not require that the Final BA/BABA requirements be included in the project specifications package. This particular project would require preliminary BA/BABA compliance as contained within the 2023 CDOT Standard Specifications for Road and Bridge Construction.

NOTE: The FHWA Agreement date can differ by phase if federal funding has been requested/utilized in multiple phases of the project. You should be looking specifically for the agreement date for the Construction phase of the project to determine whether the new BA/BABA requirements should apply to the project.

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Example 2) ZJ40 Report for PCN #23465 - FHWA Authorization Date = FHWA Agrmnt Date
Column for Construction



Project Status Report.

Report Date: Jan 10, 2024

Project Information:

Project Def.: 23465	Project Number: FSA 0063-065	Region: 03	RE Org Code: 3120
Description: US 6 Post Blvd Roundabout			
Program Engineer/Branch Manager: Karen M Berdoulay		Resident Engineer/ Section Head: PETER J LOMBARDI	
Project Manager/Pre-Const: Dale S Patterson		Project Engineer/Const.Eng: David J Leyba	
Initial Ad Date: Oct 6, 2022	Current AD: Nov 16, 2023	Scheduled AD: Nov 16, 2023	Actual AD: Nov 16, 2023
Award Date:	Re-AD Date:	Shelf Date:	Proj Acceptance Date:
Advertised by: State		Companion Projects:	
STIP Numbers: SR36693 SR37006			

Budget Information:

WBS	Description	Budget	Expenditure	Encumbrance	Balance	FHWA Agrmnt Date	FHWA End Date
23465.10.10	RIGHT OF WAY	172,000.00	63,017.08	0.00	108,982.92		
23465.10.30	DESIGN	663,800.00	629,413.62	37,732.78	-3,346.40		
23465.20.10	CONSTRUCTION	6,795,500.00	0.00	10,001.00	6,785,499.00	Nov 3, 2023	Oct 31, 2026
	Total	7,631,300.00	692,430.70	47,733.78	6,891,135.52		

For this example, the Federal Funding Authorization Date is November 3, 2023. This is on or after October 23, 2023, therefore the final BA/BABA provisions would apply to this project. The amount of federal-aid highway funding should then be obtained to determine which of the new BA/BABA specifications should be included in the project.

Funding Types and Amounts

Project design managers will also have to determine the types and amounts of federal funding in the project. Due to the complexities in funding codes as well as the often multiple sources of funding that can be seen in a project, it is recommended that these questions be answered through consultation with their respective Business Office. They will need to determine the total amount of federal-aid highway funding in the project to determine the level of compliance necessary. This is the sum of federal-aid highway funding that is or is planned to be used in ALL Phases, pre-construction (RUDEM) through construction. If there is a single dollar of federal-aid highway funding within any phase of the project, the entire project is thus considered federalized. Example: A single dollar of

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federal-aid highway funding was used in the environmental preconstruction phase of the project. Even if no federal-aid highway funding was used in the construction phase, federal-aid requirements for the project still would need to be applied/enforced.

The updated BA/BABA specifications as well as the criteria on which should be used are provided below:

- \$500,000 or more of federal funding and a construction phase federal funding obligation date on or after October 23, 2023 - ([Revision of Sections 101 and 106 - Buy America and Build America, Buy America Requirements for Projects Containing \\$500,000 or More in Federal-Aid Highway Funding](#)):
 - o Specification will require full Buy America (BA) and Build America, Buy America (BABA) requirements apply for iron or steel, manufactured products, and construction materials.
- Between \$1 and \$499,999.99 of federal funding and a construction phase Federal Funding Authorization Date on or after October 23, 2023 - ([Revision of Sections 101 and 106 - Buy America and Build America, Buy America Requirements for Projects Containing Federal-Aid Highway Funding in the Amount Less Than \\$500,000](#)):
 - o Full Buy America (BA) compliance required for iron or steel. BABA requirements for manufactured products do apply, but BABA requirements for construction materials do not apply.
- \$0 of federal funding ([Revision of Sections 101 and 106 - Buy America and Build America, Buy America Requirements - No-Federal Aid](#)):
 - o No Buy America (BA) or Build America, Buy America (BABA) requirements apply on the project.
 - o Note: the domestic source of glass beads requirement still applies and the project could have the Revision of 106 - Country of Origin specification included if the project budget is greater than \$500,000 and is exclusively state-funded.

Level of compliance for final BA/BABA guidance on the project will be addressed by which of the three specifications is used.

NOTE: The breakdown on types/amounts of funding cannot be determined by the ZJ40 report, but if there is an FHWA agreement date in any of the project phases, it is indicative of Federal Funding has been used in the project.



COLORADO
Department of Transportation
Materials and Geotechnical Branch

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For more information on Buy America and Build America, Buy America please visit the following webpage: <https://www.codot.gov/business/designsupport/buy-america-requirements>

Please contact CDOT_BuyAmerica@state.co.us for additional support or questions.