



COLORADO

Department of Transportation

Office of the Chief Engineer

Local Agency Bulletin

Division of Project Support
Project Development Branch
Local Agency Program

**New Buy America (BA) and 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.**

To determine which of the three SSPs should be included on your project, the Local Agency Coordinator 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 the CDOT 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.

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

Local Agency Coordinators 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 ZJ40LA (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 ZJ40LA reports are provided below:

Example 1) ZJ40LA Report for PCN #24596 - FHWA Authorization Date = FHWA Agreement Date Column for Construction.



Local Agency Project Status Report.

Report Date: Oct 10, 2024

Project Information:							
Project Definition:	24596	Prefix:	SAR	Project Number:	P6C0-035	Project Profile:	Z000002
Project Description:	SMITH ELEMENTARY INT IMP-SRTS - Denver-					Region:	01
Init Planned AD Date:	09/30/2022	Current Planned AD Date:	09/30/2022	Scheduled AD Date:	12/01/2023		
Actual AD Date:		Construction DBE Goal:	0.00	Davis-Bacon?	Concur to Award:		
Re-AD Date:		LA Record Retention:		Award Date:	Construction Start Date:		
Environmental Clearance Date:	12/01/2022	STIP ID:	SR17013	Subrecipient Risk Level: LOW			
IGA Valid to Date:	06/28/2031	IGA Contract #:	0331002524	Companion Projects:			
Primary RA:	06/11/2021	Updated RA:					

Local Agency Funding & Overmatch							
	Phase Estimate	FED Funding	Local Match	State Match	Local Overmatch	FHWA Agreement Date	FHWA End Date
Right Of Way:	0.00	0.00	0.00	0.00	0.00		
Utility:	0.00	0.00	0.00	0.00	0.00		
Design:	167,487.00	133,990.00	33,497.00	0.00	0.00	09/08/2021	06/30/2024
Environmental:	0.00	0.00	0.00	0.00	0.00		
Miscellaneous:	0.00	0.00	0.00	0.00	0.00		
Construction:	910,302.00	267,702.00	66,926.00	0.00	575,674.00	10/19/2023	05/31/2026
Total :	1,077,789.00	401,692.00	100,423.00	0.00	575,674.00		

Project's Total Funding:	502,115.00
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For the above example, the Construction phase funding for this particular project was authorized by the FHWA on October 19, 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.

Example 2) ZJ40LA Report for PCN #24393 - FHWA Authorization Date = FHWA Agreement Date Column for Construction



Local Agency Project Status Report.

Report Date: Oct 8, 2024

Project Information:							
Project Definition: 24393	Prefix: TAP	Project Number: 1211-100		Project Profile: Z000002			
Project Description: SH121 SHARED USE PATH & INTERSECT RECON				Region: 01			
Init Planned AD Date: 04/07/2022		Current Planned AD Date: 10/06/2022		Scheduled AD Date: 10/10/2023			
Actual AD Date:		Construction DBE Goal: 0.00		Davis-Bacon? Y		Concur to Award:	
Re-AD Date:		LA Record Retention:		Award Date:		Construction Start Date:	
Environmental Clearance Date: 06/09/2022				STIP ID: SR15098		Subrecipient Risk Level: LOW	
IGA Valid to Date: 03/29/2031		IGA Contract #: 0331002417		Companion Projects:			
Primary RA:		Updated RA:					
Local Agency Funding & Overmatch							
	Phase Estimate	FED Funding	Local Match	State Match	Local Overmatch	FHWA Agreement Date	FHWA End Date
Right Of Way:	0.00	0.00	0.00	0.00	0.00		
Utility:	0.00	0.00	0.00	0.00	0.00		
Design:	642,952.00	436,431.00	109,109.00	0.00	97,412.00	08/02/2021	12/31/2025
Environmental:	0.00	0.00	0.00	0.00	0.00		
Miscellaneous:	0.00	0.00	0.00	0.00	0.00		
Construction:	7,894,536.00	6,478,531.00	1,619,631.00	0.00	0.00	11/08/2023	12/31/2025
Total :	8,537,488.00	6,914,962.00	1,728,740.00	0.00	97,412.00		
Project's Total Funding:						8,643,702.00	

For this example, the Federal Funding Authorization Date is November 8, 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

Local Agency Coordinators 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 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. Buy America and Build America, Buy America requirements do not apply to projects solely funded with State and Local Fiscal

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Recovery Funds (SLFRF) provided by the American Rescue Plan Act (ARPA), commonly referred to as Federal Recovery Funds. However, if this funding source is mixed with another Federal funding source, Buy America and Build America, Buy America requirements apply.

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.
 - o Form #1600 and Form #1610 are required when the SSP “Revision of Sections 101 and 106 Buy America and Build America, Buy America Requirements for Projects Containing Federal-Aid Highway Funding in the Amount more Than \$500,000” is included. Please note, the 1600 form has been revised to track delivered products throughout the project and not just monthly. The forms are available here [Field Materials Manual](#) .
- Less than \$500,000 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 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.
 - o Form #1600 and Form #1610 are not required when the SSP “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” is included.

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

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NOTE: The breakdown on types/amounts of funding cannot be determined by the ZJ40LA 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.

Additional Information

An example for multiple component items like guardrail has been added to the [Fields Material Manual](#).

Products on the APL or QML have not been checked for compliance with the new BA/BABA requirements.

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.