

To Whom It May Concern:

RESCINDING THE FHWA DECEMBER 21, 2012 MEMORANDUM ON BUY AMERICA AND RELATED WSDOT MEMORANDUMS

Date: January 15, 2016

Interpretation of the Buy America requirements is facilitated by guidance and general information provided by FHWA. On December 21, 2012 FHWA issued a memorandum for use by states and local public agencies in administering Federal-aid projects titled *Clarification of Manufactured Products under Buy America*. This memorandum excluded select miscellaneous steel and iron components from the Buy America requirements and added a threshold that a product consists of at least 90% steel or iron. We have been administering contracts in accordance with this guidance since the memorandum was issued.

On December 22, 2015 the U.S. District Court for the District of Columbia issued a decision vacating this memorandum. As a result of that decision, FHWA has withdrawn the FHWA December 21, 2012 memorandum.

The withdrawal by FHWA of their memorandum requires HQ Construction and HQ Materials Laboratory to in turn withdraw their January 15, 2013 memorandum titled, *Clarification of Manufactured Products under Buy America*, and their January 24, 2013 memorandum titled *Revision to Material Documentation Requirements for Buy America*. These documents as well as the memorandum withdrawing them are available online at:

<http://www.wsdot.wa.gov/design/support.htm#america>

Withdrawal of the memorandums does not affect the specification language of Section 1-06 Buy America, however Construction Manual Section 9-1.2E has been revised to reflect this decision.

Current FHWA guidance on Buy America can be viewed online at:

<https://www.fhwa.dot.gov/construction/cqit/buyam.cfm>

As a result of the withdrawal of the memorandum, all contracts advertised on or after January 11, 2016 will no longer be able to use the guidance provided in the aforementioned three memorandums with regard to exemptions to Buy America and shall use the revised guidance shown in Construction Manual Section 9-1.2E. Contracts advertised prior to January 11, 2016 will continue to use the guidance in the memorandums.

If you have other comments about this topic that you would like to share, please e-mail Jenna Fettig, Contract Ad & Award Manager at fettigj@wsdot.wa.gov.