

8. BUY AMERICA

BASIC REQUIREMENT

Per FTA's "Buy America" requirements, federal funds may not be obligated unless steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless FTA has granted a waiver, or the product is subject to a general waiver. Rolling stock must have sixty percent domestic content and final assembly must take place in the United States.

AREAS TO BE EXAMINED

1. *Buy America Provisions and Certifications*

For all procurements of steel, iron, and manufactured products (including rolling stock) over \$100,000, the grantee is required to obtain and retain a [Buy America](#) certification of compliance from the successful bidder. The only exception is for an item subject to a [Buy America](#) waiver. If the procurement is not subject to a permanent waiver and the successful bidder/responder certified non-compliance with Buy America, then the grantee must have a waiver from FTA on file.

Grantees may request and FTA can grant a specific Buy America waiver in one of three circumstances: (1) when it is in the public interest, (2) when domestically produced goods are not available, or (3) when there is a price differential of at least 25 percent between domestic and foreign bids. More detailed information on Buy America waivers is on FTA's web site. Grantees should be cautioned that waivers are issued on a case-by-case basis and typically apply only to the particular procurement. A grantee may not apply a ruling from another grantee's procurement to its particular situation.

A review of procurement files will be conducted for review area 6. Procurement. As part of that effort,

the reviewer also will check for the Buy America provisions. The selection of procurements to be reviewed should include purchases made over the past three years for rolling stock and other steel, iron, or manufactured products, when the grantee has made such purchases.

2. *Pre-Award and Post-Delivery of Rolling Stock*

Grantees must conduct a pre-award and post-delivery audit for all purchases of rolling stock in order to verify that the 60 percent domestic content and final assembly requirements were met. The process followed and the documentation maintained by the grantee will be reviewed to determine if these requirements were met.

REFERENCES

1. [49 CFR Part 661](#), "Buy America Requirements."
2. [49 CFR Part 663](#), "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases."
3. [FTA "Dear Colleague" Letter, March 18, 1997](#).
4. [Federal Register Vol. 71, No. 54, pp. 14112-14118](#), Buy America Requirements; Amendments to Definitions.
5. [Federal Register Vol. 72, No. 182, pp. 53688-53698](#), Buy America Requirements; End Product Analysis and Waiver Procedures. Final rule.
6. [Federal Register Vol. 72, No. 188, pp. 55102-55103](#), Buy America Requirements; End Product Analysis and Waiver Procedures. Final rule; correction.

QUESTIONS FOR THE REVIEW

1. *Has the grantee included a [Buy America](#) provision for all procurements of steel, iron, and manufactured products, except products with a waiver or small purchases of \$100,000 or less?*
2. *Has the grantee obtained and retained [Buy America](#) certifications from successful vendors for purchases of more than \$100,000?*

EXPLANATION

[Buy America](#) regulations require that all procurements for steel, iron, and manufactured products contain the Buy America provisions. The only exception is for items subject to a waiver. General waivers are listed in Appendix A to 49 CFR [661.7](#). The general waiver for final assembly in the United States of 15-passenger vans and 15-passenger wagons produced by Chrysler Corporation was repealed as a result of SAFETEA-LU. Small purchases were added to the general waiver effective July 24, 1995, and include all purchases with capital, planning, or operating assistance costing \$100,000 or less. The small purchase limitation is based on the value of the procurement, not the price of the item. For example, a purchase of four vans that totals \$120,000, even though each van costs \$30,000, must follow the Buy America procedures.

Buy America provisions apply to all purchases of steel, iron, and manufactured goods exceeding \$100,000, regardless of whether they involve capital, operating, or planning funds. The requirements apply to subcontractors, regardless of the size of their contract, if the prime contract is more than \$100,000. The requirements apply when a grantee uses an intergovernmental agreement or otherwise jointly purchases manufactured products. Grantees are required to pass the requirements down to management or service contractors when the contractor is making FTA funded procurements on the grantee's behalf.

The grantee needs to include a clause citing the Buy America requirement in its Invitations for Bids (IFB) and Requests for Proposals (RFP). A Buy America certification also should be included. There are different certifications required for procurements of rolling stock than for procurements of other steel, iron, or manufactured products. The specific text for steel, or manufactured products can be found at 49 CFR [661.6](#). The specific test for rolling stock can be found

at 49 CFR [661.12](#). Each is contained in the FTA [Best Practices Procurement Manual](#).

The grantee must obtain a signed certification from each successful bidder providing steel, iron, or manufactured products when the total purchase price exceeds \$100,000. The contractor is required to certify that the materials provided either comply or do not comply with Buy America requirements. The grantee is required to retain these certifications in the contract file and make them available for inspection upon request. If the contractor certifies that it does not comply with the Buy America requirements, then the grantee must request, receive, and retain a waiver from FTA.

REASON FOR THE QUESTION

49 CFR [661.6](#) and 49 CFR [661.13](#)
[Federal Register Vol. 71, No. 54, pp. 14112-14118](#)

SOURCES OF INFORMATION

Grantee procurement procedures and procurement files will provide this information. The reviewer should check the grantee's written purchasing procedures and determine if the Buy America provisions have been included. While not specifically required, FTA recommends that grantees include the Buy America requirements in purchasing procedures. Grantee purchase solicitations, i.e., IFBs and RFPs, as well as responses from vendors, should be examined to determine if Buy America provisions have been included (clauses and certifications) and proper certifications have been executed by bidders and proposers and submitted to the grantee.

DETERMINATION

If the grantee is applying Buy America requirements to all applicable procurements, and obtaining the proper certifications, it is not deficient. If it failed to include the requirement in its procurement contracts for steel, iron, or manufactured products not subject to a waiver, the grantee is deficient. If the grantee cannot provide original, signed Buy America certifications, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must revise its procurement procedures to include the Buy America provisions, including the requirement to obtain signed Buy America certifications from vendors when purchasing covered items. The grantee should submit a copy of the revised procedures to FTA. For purchases in progress, the grantee may need to obtain signed Buy America certifications from the contractors and provide a copy to the FTA regional office.

3. *Did the grantee conduct pre-award and post-delivery audits for its purchases of rolling stock over \$100,000? Does the grantee have properly completed pre-award and post-delivery certifications in its contract files?*

EXPLANATION

Any grantee that purchases revenue service rolling stock with a procurement contract that exceeds \$100,000, must certify to FTA that it will conduct or cause to be conducted pre-award and post-delivery audits verifying compliance with [Buy America](#) provisions. Besides the certification that must be filed with FTA as part of the Annual List of Certifications and Assurances, the grantee is required to keep records including pre-award and post-delivery audit certifications that show that the regulations have been followed.

If a grantee is using another grantee's procurement contract to purchasing revenue vehicles (i.e., "piggybacking"), the purchaser may rely on the pre-award audit completed prior to the original contract. However, the grantee must review the audit and prepare its own signed certifications.

The grantee's contract files should contain the following documents and supporting papers for each procurement of rolling stock:

[Pre-Award Buy America Certification of Compliance](#) – The grantee has reviewed (either by itself or with an audit prepared by someone other than the manufacturer) that the manufacturer intends to build vehicles that meet the Buy America content and final assembly requirements.

[Pre-Award Purchaser's Requirements Certification](#) – The vehicles are consistent with the grantee's specifications and the proposed manufacturer is responsible and capable of producing the vehicles.

The grantee purchasing revenue service rolling stock with FTA funds must ensure that a pre-award audit is completed before entering into a formal contract with the manufacturer. The grantee uses the pre-award audit as a basis for the Pre-Award Buy America Certification. The Pre-Award Buy America Certification and the Pre-Award Purchaser's Requirements Certification must be prepared and retained by the grantee.

[Post-Delivery Buy America Certification of Compliance](#) – The vehicle either meets Buy America domestic content and final assembly requirements or FTA has granted a Buy America waiver for the vehicle.

[Post-Delivery Purchaser's Requirements Certification](#)

– For vehicle orders of more than ten buses or rail vehicles for urbanized areas over 200,000 in population and more than 20 buses for urbanized areas 200,000 or less in population, the grantee must certify that an on-site inspector was present throughout the manufacturing period and the grantee has received an inspector's report that accurately records the construction process and explains how construction and operation of the vehicle meets specifications.

For all other vehicle orders, the grantee must certify that it has visually inspected and road tested the delivered vehicles and determined that the vehicles meet contract specifications.

Following construction of the vehicles, the grantee must complete a post-delivery audit before title to the rolling stock can be transferred to ensure that the manufacturer has complied with the Buy America requirements. The grantee shall use the post-delivery audit as a basis for completing the Post-Delivery Certification. The Post-Delivery Certification and the Post-Delivery Purchaser's Requirements Certifications must be completed and retained on file by the grantee.

[Certification of Compliance with the Federal Motor Vehicle Safety Standards](#)

– The grantee has received from the vehicle manufacturer at both the pre-award and post-delivery stage a certification that the vehicles comply with the Federal Motor Vehicle Safety Standards (FMVSS) issued by the National Highway Traffic Safety Administration ([49 CFR Part 571](#)).

If the vehicle purchased is subject to FMVSS, the grantee shall obtain a copy of the manufacturer's self-certification at the pre-award and post-delivery stage. Both the pre-award and post-delivery audits must include the grantee's review of the manufacturer's FMVSS self-certification information. The grantee should keep on file the certification that it received at both the pre-award and post-delivery stages, and a copy of the manufacturer's self-certification information that the vehicle complies with relevant FMVSS. While it is suggested that the grantee complete separate certifications of FMVSS compliance at both the pre-award and post-delivery stages, it is acceptable for the grantee to use one certification of FMVSS compliance as long as the certification covers both audits.

All of these certifications are to be completed by the grantee.

FTA has published two guidance manuals to assist grantees conducting pre-award and post-delivery audits.

Conducting Pre-Award and Post-Delivery Audits for Bus Procurements, FTA T-90-7713-93-1, Rev. B.

Conducting Pre-Award and Post-Delivery Audits for Rail Vehicle Procurements, FTA DC-90-7713-94-1, Rev. B.

REASON FOR THE QUESTION

49 CFR 661.11, Appendices B and C
49 CFR 663.21 and 663.31
Dear Colleague letter of March 30, 2001
Federal Register Vol. 71, No. 54, pp. 14112-14118

SOURCES OF INFORMATION

The grantee should provide the documents to show that it has complied with the pre-award and post-delivery requirements.

DETERMINATION

The grantee is not deficient if the required pre-award and post-delivery audits have been conducted, have been documented, and all of the required certifications have been completed and are on file. If the grantee did not conduct all of the required reviews and audits for any rolling stock procurement, the grantee is deficient. If the grantee has conducted the required pre-award and post-delivery audits and documented the procedures, but does not have all required certifications, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee needs to execute all required certifications. The grantee needs to conduct after-the-fact pre-award and post-delivery audits to prove that the vehicles comply with the domestic content and final assembly requirements.

4. *If the grantee purchases rolling stock with multiple delivery dates using either options or multi-year procurements, has the grantee performed and certified a pre-award and post-delivery audit for each group of vehicles before placing them into service?*

EXPLANATION

Grantees may be purchasing vehicles in several groups over several years using either vehicle procurement contracts with options or multi-year vehicle procurement contracts. FTA requires that each group of vehicles purchased, i.e., each "order" of vehicles, must have a valid pre-award and post-delivery audit before it is placed into service. One pre-award audit may suffice provided that there is no change in vehicle configuration between successive deliveries of vehicles.

REASON FOR THE QUESTION

49 CFR 663.21 and 663.31
FTA Dear Colleague Letter, March 18, 1997

SOURCES OF INFORMATION

Examine contract files, invoices, and other procurement documentation available at the site visit to identify delivery dates and obtain information on options.

DETERMINATION

This question applies only to grantees executing options or multi-year procurements of rolling stock. The grantee is not deficient if it has completed these requirements for each group of vehicles prior to the vehicles being placed in service. If the grantee has placed a group of vehicles into service before the pre-award and post-delivery audits were completed, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must provide FTA with an explanation and complete the required audits without delay. FTA should be furnished with copies of the audit documentation and work papers. The grantee should ensure that changes in procedures have been made so that future procurements will comply with this requirement.

5. *What process did the grantee use to verify the domestic content of the vehicle, its components, and its subcomponents prior to awarding the contract?*

EXPLANATION

The purpose of the pre-award audit process is to substantiate that the manufacturer intends to construct a vehicle that meets the domestic content limitations of the Buy America requirement. The manufacturer is required to provide the grantee with a listing of the components and subcomponents in the vehicle. The list must contain either the cost of each component or the percentage that each contributes to the total cost of the materials required to build the vehicle, as well as the country of origin of each component. The percentages of those components identified as manufactured in the United States must total a minimum of 60 percent. The grantee is required to review this information and verify that it is accurate. Per the Dear Colleague letter of March 30, 2001, the domestic content requirements should comply with 49 CFR 661.11, Appendices B and C, by designating those items listed as components.

FTA allows grantees flexibility in meeting these requirements, reflecting the size of and resources available to the grantee and the number of vehicles in

the procurement. A grantee with a large order of many vehicles costing several million dollars would be expected to perform an actual audit of the vehicle manufacturer. Component costs would be determined from the manufacturer's bill of materials and domestic component percentages would be independently verified. Buy America auditors usually require a separate Buy America certification from each component manufacturer identified as domestic. Often an accountant or consultant is retained to complete this audit, although it is equally acceptable for the grantee to use its own personnel if they are qualified.

Conversely, a smaller grantee purchasing one or two vehicles can satisfy these requirements by reviewing the material supplied by the manufacturer, attesting that the percentages seem reasonable, and noting that the component manufacturers identified as domestic are recognized as American manufacturers.

REASON FOR THE QUESTION

49 CFR [661.11](#), Appendices B and C
49 CFR [663.9](#), and [663.25](#)
[Dear Colleague letter of March 30, 2001](#)

SOURCES OF INFORMATION

The grantee's representative should be interviewed to determine the process used to verify the manufacturer's assertion of the domestic content of the vehicles. The manufacturer's listings of components, audit reports, and work papers substantiate the process used.

DETERMINATION

If the grantee has conducted an independent review of the manufacturer's documents and verified that the manufacturer intends to comply with the Buy America requirements, the grantee is not deficient. If the extent of the review appears insufficient, given the grantee's resources, the number of the vehicles in the order, or the value of the contract, the grantee is deficient. If the manufacturer has not provided a listing of the components, percentages, and component origins, or if the grantee has done nothing beyond accepting and retaining the manufacturer's documents, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must take whatever actions are necessary to obtain appropriate certifications. The grantee might be directed to conduct an after-the-fact pre-award audit to prove that the vehicles comply with the domestic content requirements. For vehicle purchases that have been completed, the grantee must provide FTA with a written explanation for not complying with the regulations. The grantee also needs to revise its procedures and assure adherence to these requirements in future procurements.

6. *If required, did the grantee use in-plant inspectors during the manufacturing process?*

EXPLANATION

Grantees are required to have an in-plant inspector throughout the manufacturing process if it meets the following criteria:

- Grantees purchasing any number of rail vehicles;
- Grantees in urbanized areas with populations of more than 200,000 that purchase more than 10 buses; and
- Grantees in urbanized areas with populations of 200,000 or less that purchase more than 20 buses.

Bus purchases that do not meet the aforementioned criteria, or purchases of any number of standard production and unmodified vans, require only a visual inspection and road test upon delivery. The grantee still must complete the proper post-delivery purchaser's requirements certifications showing that the vehicles met contract specifications.

REASON FOR THE QUESTION

49 CFR [663.37](#) (a) and (c)
[Federal Register Vol. 71, No. 54, pp. 14112-14118](#)

SOURCES OF INFORMATION

The post-award purchaser's requirement certification must include a certification that an on-site inspector was present throughout the manufacturing period. It also must state that the grantee received a report that accurately recorded the construction process and described that the vehicle met the grantee's specifications.

DETERMINATION

If the size of the grantee's purchase required an in-plant inspector and the grantee did use an in-plant inspector who provided reports throughout the manufacturing process, the grantee is not deficient. If the grantee did not use in-plant inspectors, but was required to do so, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

If an in-plant inspector was lacking, the grantee must provide FTA with a complete explanation for not complying with the regulations, change its procedures, and assure that future procurements will be done properly.

7. *Does the grantee have a description of the manufacturing activities taking*

place during the final assembly of the vehicles and, for vehicles that were partially manufactured outside the United States, did the final assembly meet FTA requirements?

EXPLANATION

The final assembly of rolling stock must take place in the United States.

The Buy America Requirements, [49 CFR Part 661.11\(r\)](#), define final assembly as “the creation of the end product from individual elements brought together for that purpose through application of manufacturing processes.”

In the case of a new, remanufacture, or overhauled bus, final assembly would typically include, at a minimum, the installation and interconnection of the typical Bus Components listed in [49 CFR 661.11, Appendix B](#), including but not limited to the following items: car body shells, engines, transmissions, front axle assemblies, rear axle assemblies, drive shaft assemblies, front suspension assemblies, rear suspension assemblies, air compressor and pneumatic systems, generator/alternator and electrical systems, steering system assemblies, front and rear air brake assemblies, air conditioning compressor assemblies, air conditioning evaporator/condenser assemblies, heating systems, passenger seats, driver’s seat assemblies, window assemblies, entrance and exit door assemblies, door control systems, destination sign assemblies, interior lighting assemblies, front and rear end cap assemblies, front and rear bumper assemblies, specialty steel (structural steel tubing, etc.) aluminum extrusions, aluminum, steel or fiberglass exterior panels, and interior trim, flooring, and floor coverings. Final assembly activities also include final inspection, repairs and preparation of the vehicles for delivery. In the case of articulated vehicles, the interconnection of the car bodies or shells shall be included as work to be performed by the manufacturer as part of vehicle delivery.

In the case of the manufacture of a new, remanufactured, or overhauled rail car, final assembly would typically include, as a minimum, installation and interconnection of the typical Rail Car Components listed in [49 CFR 661.11, Appendix C](#), including but not limited to the following items: car shells, engines, main transformer, pantographs, traction motors, propulsion gear boxes, interior linings, acceleration

and braking resistors, propulsion controls, low voltage auxiliary power supplies, air conditioning equipment, air brake compressors, brake controls, foundation brake equipment, articulation assemblies, train control systems, window assemblies, communication equipment, lighting, seating, doors, door actuators and controls, wheelchair lifts and ramps to make the vehicle accessible to persons with disabilities, couplers and draft gear, trucks, journal bearings, axles, diagnostic equipment, and third rail pick-up equipment. Final Assembly activities shall also include the inspection and verification of all installation and interconnection work; and the in-plant testing of the rail car to verify all functions. In the case of articulated vehicles, the interconnection of the car bodies or shells shall be included as work to be performed by the manufacturer as part of vehicle delivery.

Buy America information can be found at www.fta.dot.gov/laws/leg_reg_557.html.

REASON FOR THE QUESTION

[49 CFR 661.11](#)
[FTA Dear Colleague Letter, March 18, 1997](#)

SOURCES OF INFORMATION

The manufacturer is required to provide the grantee with the location of the final assembly for the vehicles and a listing of the manufacturing tasks that took place during final assembly. If in-plant inspectors were required, the inspector reports will confirm that the activities identified as final assembly by the manufacturer did take place.

DETERMINATION

If the location of the final assembly was in the United States and the manufacturer’s final assembly activities met the minimum requirements described above, the grantee is not deficient. If not, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

If the vehicles were constructed partially outside the United States, and final assembly did not meet FTA’s standards, the grantee must provide FTA with a complete explanation for not complying with the regulations. The grantee also must assure that future vehicle procurements will be conducted in accordance with the requirements.